

**STANDARD TERMS AND
CONDITIONS OF CONTRACT**

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Appendix 1

1. The Data Processor Supplemental Agreement

1. Definitions and Interpretation

1.1. The following words and expressions shall have the following meanings:

Assets: Any Council equipment, software or intellectual property used by the Provider for the delivery of the Service.

Authorised Council Officers: Council officers authorised by the Contract Manager as notified to the Provider in writing by the Council from time to time.

Background IPR: means intellectual property rights existing prior to this Agreement or generated outside the services under this Contract which one Party agrees to make available to the other in the course of carrying out its obligations.

Business Continuity Plan: the business continuity and disaster recovery plan prepared by the Provider pursuant to Clause 9

Change in Law: means any change in any law or change in any of the requirements of any code of practice, which comes into force after the Commencement Date

Change of Control Events: means the events in clause 20.

Commencement Date: means the date as the parties may agree.

Commercially Sensitive Information: the information comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss.

Confidential Information: means any information which relates to trade secrets, know-how, intellectual property rights and personnel or has been designated as confidential by either party in writing or that ought to be considered as confidential including Commercially Sensitive Information.

Contract: means the contract for provision of the Service in accordance with the Contract Documents.

Contract Documents:	any document agreed by the parties to be Contract Documents including but not limited to these terms and conditions, the Specification, the Contract Particulars, the Providers' tender and all other Tender Documents;
Contract Manger:	means the person who is authorised by the Council to manage the Contract.
Contract Particulars:	means the contract particulars set out in part A of this Contract.
Contract Period:	means the period from the Commencement Date to either: <ul style="list-style-type: none"> i. the date of expiry of the Term or such other date of expiry as may be varied by any extensions to the Contract which are agreed pursuant to clause 3.2 (Extended Term); or ii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.
Contract Price:	means the price agree by the parties for the full and proper performance by the Provider of its obligations under the Contract.
Council Auditors:	means the Council's internal auditors and external auditors.
Council Data:	<ul style="list-style-type: none"> i. data, text drawings sounds which are embodied in any electric optical or tangible media which are :- <ul style="list-style-type: none"> (a) supplied to the Provider by or on behalf of the Council or (b) which the Provider is required to generate, process store or transmit pursuant to this Contract or ii. any Personal Data for which the Council is the Data Controller
Data Controller:	data controller as defined by the DPL.
Data Processor:	data processor as defined in the DPL.

Data Protection Legislation (DPL):	(i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR, (ii) the DPA, (iii) and any national implemented Laws, regulations and secondary legislation about the processing of personal data and privacy as amended or updated from time to time and (iv) any successor legislation to the GDPR or the DPA
Data Subject:	a natural person whose data is processed.
DPA:	Data Protection Act 1989 and or Data Protection Act 2018 [subject to Royal Assent]
Default:	means any breach of the obligations of the relevant party or any act or omission or negligence of the relevant party in connection with performance of their obligations.
Default Interest Rate:	means 8% above the base lending rate of the Bank of England.
Force Majeure:	means: <ul style="list-style-type: none"> (a) an act of God including but not limited to fire, flood or natural disaster, act of war, destruction or damage to; or (b) any event or circumstances which are beyond the reasonable control of the party affected but shall not include strike action (save to the extent caused by an event of Force Majeure) or the failure to provide the Service by a sub-Contractor.
General Change in Law:	a Change in Law where the change is of a general legislative nature (e.g. taxation or duties of any sort affecting the Provider)
GDPR:	General Data Protection Regulation (Regulation (EU) 2016/679)

Good Industry Practice:	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the services similar to the Service under the same or similar circumstances;
Intellectual Property Rights(IPR):	means copyright, know-how, goodwill, specifications, plans, policies, procedures, training manuals, database rights, trade or business names moral rights and other similar rights or obligations whether registerable or not.
Key Officers:	means Council and Provider employees who are identified as being key to performance of the party's obligations and who are appointed under clause 18.
KPI:	Key Performance Indicator
Organised Crime:	means planned and co-ordinated criminal behaviour and conduct by people working together on a continuing basis.
Performance Management Reports:	means all reports, records and data in any form required by the Council for monitoring performance and provision of the Service.
Premises:	means the location where the Service is performed.
Personal Data:	personal data as defined in the GDPR which is processed in connection with this Contract.
Products:	the products, equipment or the like supplied by the Provider or used by the Provider in performance of the Service
Prohibited Act:	means and shall comprise of: <ul style="list-style-type: none"> i. to directly or indirectly promise or give any person working for or engaged by the Council a financial or other advantage to induce or to reward that person to perform improperly any function or activity; ii. 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 function or activity in connection with this Contract;

iii. to committing any offence:

- a. under the Bribery Act; or
- b. any under legislation creating offences concerning fraudulent acts relating to this Contract; or
- c. any other contract with the Council; or
- d. defrauding, attempting to defraud or conspiring to defraud the Council.

Provider: means the person, firm or company whose tender to perform the Contract is accepted and where the context so admits, his personal representatives, successors and permitted assignees

Regulated Activity: In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
In relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: As defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Regulatory Body: Any body which is established by or pursuant to statute, to whose regulatory powers either of the parties are subject.

Result: means all Intellectual Property Rights created by or on behalf of the Provider:
i. in the course of performing the Service or
ii. arising from the Service or
iii. exclusively for the purpose of performing the Service
including but not limited to reports, drawings, software, designs, and materials and supporting data.

Serious Issues of Concern: means and shall include but is not limited to physical, mental and sexual abuse of Service Users and fraudulent and criminal activities.

Service: means the delivery of service, and all related services and work to be performed as set out in Clause 7 and more particularly described in the Specification.

Service User:	means the recipient of the Service.
Specific Change in Law:	a Change in Law that relates specifically to the business of the Council which could not affect a comparable service.
Specification:	means the Specification or any other document setting out the description of the Services to be performed as set out in the Specification
Tender Documents:	means all documents sent by the Council to the Provider and documents received by the Council from the Provider which comprise and relate to the tender for the Contract.
Term:	means the period starting from the Commencement Date for the period stated in the Contract documents or as agreed by the parties
Working Day:	Means any day from Monday to Friday (inclusive), which is not Christmas Day, Good Friday or a statutory bank holiday.

- 1.2. The terms defined in the Contract Particulars shall have the same meaning in these terms and conditions.
- 1.3. Headings are used in this Contract for the convenience of the parties and shall not affect the interpretation and reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.4. Words denoting the masculine gender include the feminine gender and words denoting natural persons include corporations and firms and any other legal entity and shall be construed interchangeably in that manner.
- 1.5. Words denoting the singular include where the context so admits the plural and vice versa.
- 1.6. Any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.7. Any reference to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended modified extended or re-enacted or replaced and in force and including all subordinate legislation made under it.
- 1.8. Any reference to any law, regulation, directive or statutory provision of the European Union (European Union Law) or any legislation or statutory provision enacted under or to give effect to any European Union law, shall following Britain withdrawing from the European Union (EU).(Brexit), be

construed as referring to any legislation, replacing or superseding or re-enactment or revocation or consolidation of that European Union Law or applicable legislation or statutory provision .

2. Application of these terms and conditions

- 2.1. Subject to the Council's right to terminate the Contract, these terms and conditions shall apply and shall remain in force for the Contract Period.

3. Contract Period

- 3.1. This Contract shall commence on the Commencement Date and shall continue for the Term unless terminated earlier or extended in accordance with the terms of this Contract.
- 3.2. The Contract may be extended at the option of the Council for a further period, the 'Extended Term' but otherwise upon the same terms and conditions set out in this Contract.
- 3.3. Unless terminated earlier in accordance with the terms of this Contract, this Contract shall expire either at the end of the Term or upon exercise of the option by the Council, at the end of the Extended Term.

4. Provider's Status

- 4.1. The Contract is a contract for service and the Provider shall be acting as an independent contractor not as agent of the Council.
- 4.2. Nothing in the Contract shall create, or be deemed to create a partnership between the parties.
- 4.3. The Provider shall be exclusively responsible for discharging of any tax and VAT liability arising out of the remuneration for the Services provided under the Contract.

5. Regulatory Body Registration and Notice

- 5.1. The Provider warrants and represents:-
 - 5.1.1 that its holds all requisite regulatory registration required for provision of this Service;
 - 5.1.2 that it holds and will continue to hold the requisite registration during the existence of this Contract;
 - 5.1.3 that it holds and will continue to hold the necessary licence or other document enabling the Provider to provide the Service.

5.2 The Provider must notify the Council:

5.2.1 of any formal notice received from any Regulatory Body relating to the provision of the Service; or

5.2.2 any order, or inquiry by any Regulatory Body into any misconduct or mismanagement in relation to the carrying out of the Service by the Provider; or

5.2.3 in the event of being subject to an investigation by any Regulatory Body relating to the Service; or

5.2.4 If the Provider's registration required for provision of the Service is withdrawn or cancelled.

6. **Warranty**

6.1. The Provider acknowledges and confirms that:

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

6.1.2. it has received all information requested by it from the Council to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;

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

6.1.4. it has entered into this Contract in reliance on its own due diligence.

6.2. Except as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

6.3. The Provider warrants that:

- 6.3.1. all information, representations and matters of fact communicated to the Council by the Provider in connection with the Service including any information provided by the Provider in response to the invitation to tender are true and accurate and not misleading.
- 6.3.2. the Service, reports, documents and materials produced by or for the Provider pursuant to the Contract shall not infringe any third-party intellectual property rights;
- 6.3.3. it has full capacity and authority to enter into the Contract; and
- 6.3.4. it has obtained all necessary and required licences, consents and permits to perform the Service.

7. The Service

- 7.1. The Provider shall provide the Service with effect from the Commencement Date for the duration of the Contract Period in accordance with the Contract Documents.
- 7.2. The Provider shall perform its obligations for the duration of the Contract Period and notwithstanding
 - i. the existence of an unresolved dispute ,and or
 - ii. any failure by the Council to pay the Contract Price

The Provider shall continue to perform its obligations and shall not suspend provision of the Services unless the Provider is entitled to terminate this Contract under clause 44.2 or 44.3.

- 7.3. Where any Service is stated in the Specification to be subject to a specific KPI, the Provider shall provide the Service in such manner as will ensure that the achieved KPI is at least the, specified or target KPI.
- 7.4. Where clause 7.3 applies, the Provider shall provide records and Management Reports summarising the achieved KPI as provided for in clause 22.2.
- 7.5. Time shall be of essence where dates and period for performance of the Service are specified in the Contract Documents or substitutes for them.

8. Performance Standard and Continuous Improvement

- 8.1. The Provider shall use and shall procure the use of all reasonable skill and diligence to carry out the Service and the Service shall be carried out to the satisfaction of the Contract Officer and shall without limitation conform to:-
 - (i) these terms and conditions;

- (ii) the provisions of the Contract Documents;
 - (iii) any variation agreed in writing by the parties;
 - (iv) the requirement of any relevant British or European Union legislation, Regulation or Code of Practice;
 - (v) any professional standard which might be reasonably expected of the Provider;
 - (vi) Good Industry Practice;
 - (vii) Any representation or warranties made by the Provider orally or in writing.
- 8.2. The Provider shall comply with and give all notices required by any Act of Parliament, Regulation, bylaw and any European Union directive in provision Services
- 8.3. The Provider shall co-operate with any other Providers, Central or Local Authorities, Agencies or other organisations or bodies commissioned or appointed in relation to the Service.
- 8.4. The Provider shall immediately inform the Council in writing of anything that threatens or makes it unlikely to successfully deliver the Service or any part of it.
- 8.5. The Provider shall have an ongoing obligation throughout the Contract Period to identify new and potential improvements to the Service and shall deliver the Service in such manner as to secure continuous improvement having regard to a combination of economy, efficiency and effectiveness. The Provider shall in that regard, report to the Council every six months:
- 8.5.1. new or potential improvements to the Services including; procedure, methods, performance mechanism and customer support services;
 - 8.5.2. new or potential improvements which might result in efficiency changes in delivery of the Service that would enable service delivery at lower costs and greater benefit to the Council.
- 8.6. If the Council wishes to incorporate any improvement identified by the Contractor under clause 8.5, the Council shall send the Contractor a change request for consideration in accordance with clause 26.6.

9. **Business Continuity**

- 9.1. The Provider shall establish, implement and maintain an adequate Business Continuity Plan that will ensure delivery of the Service without stoppage at all times irrespective of adverse conditions or events.
- 9.2. In the event of the occurrence of such adverse conditions or events, the Provider shall promptly activate the Business Continuity Plan and shall immediately inform the Council.

- 9.3. The Provider shall continue to provide the affected Service in accordance with the Business Continuity Plan and shall restore the Service to normal in accordance with the Business Continuity Plan.

10. Health and Safety

- 10.1. The Provider shall comply with the Health and Safety at Work etc Act 1974 and all regulations and codes of practice made under it which relate to the provision of Services.
- 10.2. The Provider shall provide to the Council on request its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974).
- 10.3. The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Service where that incident causes personal injury or damage to property that may give rise to personal injury.
- 10.4. Where the Services are provided on Council Premises, the Provider shall comply with any health and safety measures implemented by the Council for persons working on Council's Premises.

11. Council's Premises and Assets

- 11.1. Where provision of the Service is to be carried out on Council Premise, the Provider acknowledges that it has inspected the Premise and has satisfied itself as to the suitability of the Premise for provision of the Service.
- 11.2. Subject to clause 10.4 the Council shall provide to the Provider access to such parts of the Council's Premises and such Assets as the Provider reasonably requires for the purpose of properly performing the Service.
- 11.3. The Provider shall comply with the Council's security requirement and shall keep safe and secure all Assets provided and used by the Provider in provision of the Service.
- 11.4. The Provider shall notify the Council immediately on becoming aware of any damage caused by the Provider or its subcontractors to Council Premises or any Asset of the Council.

12. The Contract Price and Payments

- 12.1. In consideration of the Provider properly performing its obligations under this Contract, the Council shall pay the Provider the Contract Price.
- 12.2. The Contract Price shall be paid in arrears upon submission of valid invoices subject to satisfactory performance. Each invoice shall have sufficient information of Services provided to allow the Council to verify the

accuracy of the invoice. Payment of the Contract Price shall be made within 30 days of receipt of the correct (undisputed) invoice.

- 12.3. Where any party disputes an amount ('disputed amount'), an amount equal to the sum not in dispute shall be paid and the dispute in respect of the disputed amount will be determined in accordance with Clause 24. Provided that the disputed amount has been disputed in good faith, interest due on the disputed amount shall not accrue until resolution of the dispute between the parties.
- 12.4. Subject to clause 12.3, interest shall be payable on the late payment of any undisputed amounts properly invoiced at the Default Interest Rate. The Provider shall not suspend the supply of the Services if any payment is overdue.
- 12.5. Any payment of interest under this Contract shall be at the Default Interest Rate from the due date for payment until the actual date of payment.

13. Overpayment and Deductions

- 13.1. Where the Council has paid in advance for Services that have not been provided by the Provider, the Council will be entitled to a refund of such payment from the Provider and the Provider shall refund such money to the Council.
- 13.2. Should the Provider fail to repay such amounts within the time limit set by the Council the outstanding amount shall bear interest on a daily basis at the Default Interest Rate from the due date for payment until the actual date of payment.
- 13.3. The Council may set off any amounts owed by the Provider under this Contract against any amount payable by the Council to the Provider under any other contract.

14. Financial Management and Auditing

- 14.1. The Provider shall maintain detailed costing information in respect of all expenditure relating to this Contract and to provision of the Service and shall maintain and retain copies of all receipts, accounting records and any relevant documents for a period of at least 6 years following completion or termination of this Contract.
- 14.2. The Provider shall permit free access at all reasonable times to all records of accounting and all relevant documents (including computerised documents and data) for inspection and audit by the Council Auditors and shall on request make available such records of accounting and all relevant documents for inspection and audit by the Council Auditors.
- 14.3. If an inspection or audit should reveal a discrepancy in the accounting records, the Provider shall immediately rectify the discrepancy. The right of

inspection in clause 14.2 above, shall remain in effect for a period of one (1) year after the termination or expiry of this Contract or until the settlement of all subsisting claims by the Council whichever is the later

- 14.4. The Provider shall take adequate measures to safeguard against fraud and theft by its directors, staff or subcontractor and shall notify the Council immediately if it has reason to suspect any irregularity or fraud has occurred or is occurring.
- 14.5. Any substantiated allegation of fraud against the Provider or its directors, may result in termination of this Contract and either the recovery or repayment of the amount of any loss sustained by the Council including the cost of making other arrangements to provide the Service.

15. Provider's Employees

- 15.1. The Provider shall engage and retain sufficient numbers of staff with the requisite skills knowledge, training, experience and abilities as shall be necessary for the proper performance of the Service.
- 15.2. The Provider shall replace promptly any staff who cease to be in the employ, or under the control of the Provider for any reason or who shall be removed from assisting in the provision of the Service, and the Provider shall ensure that such replacement shall in every way be suitable for the performance of the Service.
- 15.3. The Provider shall provide a means of identification of all staff engaged in the provision of the Service.
- 15.4. The Provider shall operate a staff disciplinary procedure in accordance with current ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on disciplinary and grievance procedures.
- 15.5. Where the Council has reasons to believe that any staff's manner of performance of the Service is below the acceptable standard or detrimental to the health of the Service User or not in the best interest of the Service User:
 - 15.5.1. The Council may by notice in writing require the Provider to remove such staff from provision of the Service; and
 - 15.5.2. The Provider shall forthwith remove such staff from the provision Service and shall immediately provide a replacement unless the Council determines otherwise;
 - 15.5.3. The Council shall in no circumstances be liable either to the Provider or such staff in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Provider shall fully indemnify the Council in respect of any claim made by such staff.
- 15.6. The Provider shall implement and maintain a whistleblowing policy which

complies with the 'Whistleblowing Arrangements Code of Practice issued by the British Standards Institute in conjunction with Public Concern at Work'.

The Policy shall :

- i. set out procedures by which staff can confidentially report concerns about illegal, unethical or otherwise unacceptable conduct and
- ii. ensure that it enables the staff to bypass the level of management at which the problem may exist.

15.7. The Provider shall comply with the provisions of the Modern Slavery Act 2015 and shall take such steps as is necessary to promote ethical business practice and policy to protect employees and workers from abuse and exploitation. The Provider shall use all reasonable endeavours to ensure that slavery and human trafficking is not taking place in its supply chains.

16. **Safeguarding Vulnerable People**

16.1. Where the Service is Regulated Activity, the Provider acknowledge that the provision of the Service is Regulated Activity and that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Service provided under this Contract, for the purposes of the Safeguarding Vulnerable Groups Act 2006.

16.2. The Provider shall

- i. ensure that all Staff engaged in provision of the Service are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service; and
- ii. monitor the level and validity of the checks under this clause for each member of staff

16.3. The Provider shall not employ any person who is barred from or whose previous conduct or records indicate that they would not be suitable to carry out the Service or who may otherwise present risk to the Service Users.

16.4. The Provider must have suitable procedures in place to protect, prevent and respond to abuse against vulnerable Service Users.

17. **Safeguarding to Prevent Terrorism**

17.1. The Provider acknowledges that, the Council has a duty under the Counter-Terrorism and Security Act 2015 ("CTSA") to have due regard to prevent people from being drawn into terrorism. The Provider shall facilitate the Council's compliance with its duty pursuant to the CTSA and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Provider should ensure that staff are appropriately trained to:

- i. understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;

- ii. be aware of extremism and the relationship between extremism and terrorism;
 - iii. know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it.
 - iv. obtain support for people who may be exploited by radicalising influences.
- 17.2. And where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police.

18. **Key Officers**

- 18.1. Each party shall appoint the persons named in the Contract as Key Officers who will be responsible for the matters allocated to such Key Officer.
- 18.2. The Key Officers shall have the authority to act on behalf of the respective party on matters for which they are expressed to be responsible.
- 18.3. Each party shall ensure that the office of any Key Officer is not vacant at any time and must promptly notify the other of any replacement.
- 18.4. The Council may require the Provider to remove any of its Key Officers whom it considers in its reasonable opinion to be unsatisfactory for any reason which has a material impact on delivery of the Service. The cost of such replacement shall be borne by the Provider.

19. **Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

19.2. On Commencement:

- 19.2.1. Where on the commencement of the Contract, staff transfer from a previous Provider, the Provider hereby acknowledges and undertakes to the Council that with effect from the Commencement Date it will become the employer of the transferring staff on the transfer of the undertaking to which the TUPE Regulations apply; and
- 19.2.2. The Provider shall indemnify and keep the Council indemnified from and against all loss incurred by the Council in connection with or as a result of any claim or demand by any transferring staff (whether in contract, tort, under statute, pursuant to European law or otherwise) arising directly or indirectly from any act, fault or omission of the Provider in respect of any transferring staff on or after the Commencement Date or any claim arising out of any change made by the Provider on or after the Commencement Date to such transferring staff's terms and conditions of employment.

19.3. On Expiry or Termination:

19.3.1. Where the TUPE Regulations apply, upon expiry or termination of the Contract, the Provider shall, before the expiry or termination of the Contract (howsoever occurring), provide the Council with a list of all staff, together with all 'employee liability' information required under Regulation 11 TUPE and any other information the Council may require, including but not limited to PAYE and national insurance records and personnel files relating to all such persons.

20. Change of Control

20.2. The Provider must notify the Council as soon as it becomes aware of the happening of any of the following Change of Control Events:

20.2.1. there is a change in the management or ownership of the Provider;

20.2.2. the merger of the Provider with any other organisation;

20.2.3. the acquisition, sale, transfer of assets or shares of the Provider;

20.2.4. if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010.

20.2.5. if a company, any changes in the structure of the Provider which the Provider may be required to notify Company House.

20.3. The Provider shall provide to the Council full details and related documentation of the transaction including where relevant any sale agreement and or Company House documentation of the transaction and the Council may require the Provider to novate the Contract.

20.4. For the avoidance of doubt, any Provider change whether by, transfer or sale of the ownership of the Provider or otherwise to a new organisation shall not discharge the Provider from its obligations under this Contract. Unless and until the Contract is novated, the Provider shall remain liable and accountable under this Contract.

21. Inspection

21.1. The Provider must allow Authorised Council officers and Council Auditors access to the Premises at any reasonable time to enter and view; inspect and observe the provision of the Service and associated records.

22. Monitoring and Performance Review

- 22.1. The Council shall undertake service performance reviews against the targets and key performance indicators in accordance with the Specification.
- 22.2. The Provider shall co-operate fully and provide all Performance Management Reports and such assistance and all other information as required under this Contract or as may be requested by the Council or Council Auditors for the purpose of:
 - i. monitoring and review of this Contract;
 - ii. the examination and certification of the Provider's accounts; and
 - iii. to enable the Council to comply with its statutory obligation of best value under the Local Government Act and other reviews as are required by any relevant law or statute.
- 22.3. The parties' Key Officers and authorised representatives shall meet to discuss and implement the outcome of such reviews.
- 22.4. If the Provider fails to meet the performance targets set out in the Specification, the Council may invoke the Default provisions in clause 42.

23. Complaints and Compliments

- 23.1. The Provider shall set up and maintain a written compliment, complaints and suggestion procedure, in accordance with the Council's compliments, complaints and suggestion procedure and shall monitor and evaluate the effectiveness of its delivery of the Service. The Provider shall make available to the Council the written compliment, complaints and suggestion procedure.
- 23.2. The Provider shall ensure that all relevant staff engaged in the provision of the Service are fully aware of the compliment complaints and suggestion procedure and shall keep detailed, accurate and complete records of all compliments, complaints and suggestions received and the responses. The detailed and complete records shall be forwarded to the Council's complaints officer at a frequency to be agreed with the Provider.
- 23.3. The Complaints Procedure:
 - 23.3.1. The complaint process shall be straight forward and easily accessible to Service Users and / or any one acting on their behalf ('the Complainant') The Provider shall ensure that the Service Users and / or representatives are aware of this procedure and shall ensure that all relevant documentation is made available on demand.

- 23.3.2. The complaint process shall be fair and transparent and shall not result in reprisals against the Service User and / or their representative.
 - 23.3.3. The Provider shall deal with all complaints in the first instance, promptly, efficiently and must investigate all complaints.
 - 23.3.4. The Complainant must be treated with respect and courtesy and the Provider shall provide all assistance as may be required by the Complainant to enable the Complainant understand the procedure or advice or where they may obtain such assistance. The Complainant must be told the outcome of the investigation of their complaint and the action taken.
 - 23.3.5. The complaint process shall be fully documented setting out the action taken, the outcome and whether or not the Complainant is satisfied. The complete and comprehensive detail shall be forwarded to the Council.
 - 23.3.6. The investigations must be carried out and the complaint resolved with 10 days of receipt of the complaint.
- 23.4. Where the complaint is not resolved or cannot be resolved under the Provider's complaints procedure, or where the Service Users or his representative so requests, the Provider shall assist the Complainant to access the Council's complaints procedure and will assist and co-operate with the Council in carrying out any investigations for the purpose of resolving the complaint
- 23.5. If a complaint is made to the Local Government Ombudsman relating to performance of Services under this Contract, the Provider shall provide all relevant information and co-operate fully with any investigation of the Local Government Ombudsman.
- 23.6. In the event of a finding of maladministration by the Local Government Ombudsman in relation to any act or omission or default of the Provider in performance of Services under this Contract, the Provider shall fully indemnify the Council for any loss suffered by the Council as a result thereof.

24. **Dispute Resolution Procedure**

- 24.1. The parties shall in the first instance attempt to resolve any disputes arising out of or relating to this Contract through negotiations between the parties' senior representatives who shall have authority to settle the dispute:
- i. either party may initiate the negotiations by written notice to the other setting out the details of the dispute;
 - ii. the nominated senior representatives shall meet within 5 Working Days and shall in good faith negotiate to resolve the dispute.

- 24.2. If the matter is not resolved within 20 Working Days of commencement of negotiations, the parties agree to settle the dispute by mediation.
- 24.3. The parties will jointly agree and appoint a mediator in accordance with the Centre for Effective Dispute Resolution (CEDR) Mediation Procedure.
- 24.4. If the dispute is not settled by mediation with 20 Working Days of commencement of mediation or such other longer number of days as may be mutually agreed after appointment of the mediator, either party may refer the dispute to the Courts.

25. Assignment and sub-contract

- 25.1. This Contract is personal to the Provider and the Provider shall not assign charge or otherwise deal with the benefit pursuant to this Contract.
- 25.2. The Provider shall not delegate or subcontract its obligations under this Contract without the prior written consent of the Council. Consent if given may be subject to reasonable conditions and such consent if given shall not relieve the Provider from its liability and obligations under this Contract.
- 25.3. Any authorised subcontract shall be in writing and in so far as it is applicable, the terms of the subcontract, shall replicate the terms of this Contract and shall procure compliance and impose the same obligations on the subcontractor including without exception compliance with all relevant legislation, Council's policy and practice in respect of procurement and adoption of quality standards in force at the time
- 25.4. The Provider shall include in such sub-contract a term which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice
- 25.5. The Provider shall at all times remain primarily accountable for the quality of the Services provided and shall remain primarily accountable and liable for quality of the Service provided under the subcontract

26. Variations

- 26.1. Save as provided in this clause 26 or otherwise provided in this Contract, any requirement for a variation shall be subject to Change Control Procedure in accordance with clause 26.6 and this Contract shall not be varied or amended unless both parties have agreed such variation or amendment in writing.
- 26.2. Notwithstanding clause 26.1 above or any other provisions of this Contract, in the event of a Change in Law, whether due to;
 - i. a General Change in Law or

- ii. a Specific Change in Law where the effect of the Specific Change in Law is reasonably foreseeable on the date of this Contract:

26.2.1. If the Council issues a variation notice pursuant to this clause 26.2 the Provider shall neither be relieved of its obligations to perform the Service in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price.

26.2.2. Any variation notice in clause 26.2 shall specify the date from which the variation shall take effect and the Contract shall as from the date specified in the notice be varied.

26.2.3. For the avoidance of doubt, the Provider shall not reject any variation to this Contract proposed by the Council where the variation is required by the Council in order to conform to a Change in Law

26.3. If a Specific Change in Law occurs during the Term other than as described in clause 26.2.ii,

26.3.1. the Provider shall as soon as reasonably practicable notify the Council of the likely effects of that change including:

- i. whether or not any changes are required to the manner of performance of the Service and
- ii. any change in the Contract Price

26.3.2. Any request to vary the manner of performance of the Service and any change in the Contract Price shall be subject to the Change Control Procedure

26.3.3. If the Provider acting reasonably considers the change (under this clause 26.3) to the Contract Price to be unacceptable it may terminate this Contract by not less than 90 days' notice in writing to the Council. For the avoidance of doubt, the Provider shall not be entitled to any claim for compensation or damages for such early termination.

26.4. Change Control Procedure

- i. If either party wishes to change the scope of the Services (including Council requests for additional services), it shall submit details of the requested change to the other in writing.
- ii. If either party requests a change to the scope or manner of execution of the Services, the Contractor shall, within a reasonable time, provide a written estimate to the Council of:
 - a. the likely time required to implement the change;
 - b. any variations to the Contract Price arising from the change;
 - c. the likely effect of the change on the delivery and performance of the Service; and

- d. any other impact of the change on the terms of this Contract.
- iii. If the Council wishes the Contractor to proceed with the change, the parties shall agree in writing the necessary variations to the Service, the Contract Price and any other relevant terms of this Contract to take account of the change and the Contractor shall implement the change as agreed.

27. Indemnity

- 27.1. Subject to clause 27.2. the Provider shall fully and properly indemnify and keep the Council indemnified against all actions, loss, damage, cost liability, expenses and damages howsoever arising whether in tort, contract, under statute or otherwise out of breach or negligence of the Provider, his agents, employee or subcontractors, in connection with the provision of the Service or supply or use of Products: for any claim made against the Council :
- i. by a third party arising out of, or in connection with, the provision of the Service or supply of the Products
 - ii. for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the provision of the Service or supply or use of the Products; and
 - iii. by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Provider, its employees, agents or subcontractors.
- 27.2. The indemnity under Clause 27.1 shall apply except insofar as the, actions, loss, damage, cost liability, expenses and damages incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council or its Representatives

28. Limitation of Liability

- 28.1. Subject to Clause 28.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
- 28.2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement
- 28.3. Subject to clauses 15.5.3, 27.1, 28.1 35.8, 38.7 and 39.3, the liability of the Provider (whether on tort contract or otherwise) shall, save in respect of

personal injury and death caused by its negligence or that of its servants agents or employees, in no case exceed the amount of insurance cover that it has in place in accordance with clause 29.

28.4. Subject to Clause 24.1 and Clause 24.6, the Council's aggregate liability to the Contractor for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall be limited in any Contract Year to £[FIGURE].

28.5. Nothing in this Contract excludes or limits the liability of either Party for:

- ii. fraud or fraudulent misrepresentation;
- iii. death or personal injury caused by that Party's negligence.

29. Insurance

29.1. The Provider shall take out and maintain in full force and effect with a reputable company during the Contract Period, at its own cost, minimum level of insurance cover as follows:

29.1.1. Public liability insurance – minimum insurance of £5,000,000 against all loss of and damage to property (real or personal or intellectual) and death or injury to persons in relation to any one claim or series of claims.

29.1.2. Employer's Liability (Compulsory Insurance) Act 1969 – minimum insurance of £10,000,000 (except where the Provider is exempt from the obligations of this Act, provided that alternative arrangements for meeting such liability will be agreed with the Council.) in relation to any one claim or series of claims

29.1.3. Professional Indemnity Insurance - (where applicable) in respect of the Provider's business with a minimum level of indemnity of £1,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or sub-contractors involved in the provision of the Service hold and maintain appropriate cover.

29.1.4. Product liability insurance (where applicable) with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and not less than £5,000,000 in aggregate for all claims arising in any year.

29.1.5. Efficacy Insurance to cover any Service or Product failure to perform (where applicable) extending either the Public Liability or Product Liability Insurance or both, the minimum value of such extended cover shall be £5,000,000.

- 29.2. The insurance cover in clause 29.1 shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death, 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.
- 29.3. The Provider shall when required by the Council produce evidence of the insurance required in the sub-clauses above. In the event that the Provider at any time fails to maintain the insurance in sub-clauses above the Council may take out and maintain such insurance and the Provider shall pay to the Council the cost and expenses so incurred by the Council.
- 29.4. The terms of the insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- 29.5. Where the insurance is a "Claims Made Policy" (ie an insurance policy with a condition whereby only claims notified to the insurer during the policy period are covered). the Provider shall hold and maintain the insurance for a minimum of 6 years following the expiry or earlier termination of the Contract.

30. Confidentiality

- 30.1. The parties acknowledge that any Confidential Information obtained from or relating to the other or any sub-contractor or the Service User is confidential information for the purposes of this Contract.
- 30.2. Subject to Clause 39 each party ('Receiving Party') shall keep the Confidential Information of the other party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party.
- 30.3. Each party and any permitted sub-contractor shall:
- 30.3.1. only use Confidential Information for the purposes of this Contract;
 - 30.3.2. not disclose any Confidential Information to any third party without the prior written consent of the other, and it may be a condition of such consent that such third party sign a confidentiality undertaking on same terms as set out in this clause;
 - 30.3.3. take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed or used other than for the purposes of this Contract by its employees, agents or sub-contractors.
- 30.4. The restrictions in this clause 30 shall continue to apply after the termination of this Contract without limit in point of time but shall not apply to Confidential Information:

- 30.4.1. which is or comes into the public domain or is subsequently disclosed to the public (otherwise than as a result of a breach of this clause 30); or
- 30.4.2. which is required to be disclosed by law; or
- 30.4.3. which was already in possession of the party (without restrictions as to its use on the date of receipt); or
- 30.4.4. which is required by any Regulatory Body to which the disclosing party is subject including without limitation the Commissioner for Local Administration;
- 30.4.5. to the extent that the Confidential Information needs to be disclosed for the proper performance of the party's obligations under this Contract.

31. Council Data and Security

- 31.1. The Provider shall not store, copy, disclose, or use Council Data except as necessary for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council. 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 the format specified by the Council.
- 31.2. The Provider shall preserve the integrity of Council Data and prevent 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.
- 31.3. 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 Council's security requirements.

32. Data Transparency and Publication

- 32.1. The parties acknowledge that except for any information which is exempt from disclosure in accordance with FOIA, EIR, GDPR and DPA, the text of these terms and conditions and Contract Documents is not Confidential Information.
- 32.2. The Council shall be responsible for determining in its absolute discretion whether the Contract Documents or any part of a Contract Document is exempt from disclosure in accordance with the provisions of the FOIA, EIR, GDPR and DPA.
- 32.3. Notwithstanding clause 30 above or any other term of the Contract, the Provider hereby gives its consent for the Council to publish this Contract and the Contract Documents in its entirety including from time to time agreed

changes to the Contract, to the general public in whatever form the Council may decide.

- 32.4. The Council may consult with the Provider to inform its decision to publish but the Council shall have the final decision in its absolute discretion and the Provider shall cooperate and provide all assistance as the Council may require.
- 32.5. Except as required by law, the Provider shall not publish this Contract or any Contract Document or make any announcement relating to this Contract or its subject matter without the prior written consent of the Council .

33. Information Sharing

- 33.1. The Council will share information on a Provider's performance of the Service with other Local Authorities and with Regulatory Bodies in matters of public interest.

34. Intellectual Property Rights

- 34.1. Nothing in this Contract shall affect the ownership of either party's Background IPR which one party agrees to make available to the other in the course of carrying out its obligations.
- 34.2. If one Party makes any of its Background IPR available to the other Party in the course of this Contract the Party receiving such Background IPR shall treat it as confidential information disclosed under Clause 30, and shall not use it for any purposes other than that for which it was made available to that party.
- 34.3. All IPR in the Specification or any specifications or instructions provided to the Provider by the Council shall remain the property of the Council.
- 34.4. Unless otherwise agreed in writing by the Council, the Result shall vest in the Council on creation and shall be the property of the Council and the Council shall have the right to unfettered use of the Result. The Provider hereby waives all moral rights to the Result and to the extent that any IPR in the result do not automatically vest in the Council, the Provider hereby assigns absolutely to the Council all title and interest in the IPR the Provider may have or hereby acquire in the Result.
- 34.5. The Provider shall not at any time sell, loan, transfer, transmit, distribute, deal with or otherwise dispose or purport to deal with the Result in any way which may adversely affect the Council's proprietary or IPR.
- 34.6. The obligations under this clause will continue to apply after the termination of this Contract without limit in point of time.

35. Equality Act and Equal Opportunities

- 35.1. The Provider shall comply with the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act (in relation to sex, race, disability, religion or belief, age etc) in:
- 35.1.1. provision of Services; and
 - 35.1.2. recruitment and management of its staff and must ensure observance of these provisions by its staff and sub-contractors employed in provision of the Service.
- 35.2. The Provider shall operate an equal opportunities policy and warrants that its equal opportunities policy complies with all statutory obligations and it shall not treat one group of people less favourably than others in relation to recruitment of staff and in provision of the Service.
- 35.3. The Provider acknowledges that in carrying out the Service, it may be regarded as a public authority and shall comply with the Council's disability equality duty under the Equality Act 2010
- 35.4. The Provider shall take all reasonable steps to support the Council in the Council's duty to prevent discrimination and to promote equality of opportunity.
- 35.5. The Provider shall in particular with regard to its employees make all reasonable adjustments to ensure that no employee is placed at a substantial disadvantage by reason of:
- i. its provision , criterion or practice or
 - ii. the physical feature of the Premise or
 - iii. a lack of provision of auxiliary aids and services.
- 35.6. Where the Service is carried out in Council Premises, the Provider shall inform the Council as soon as it is aware of any circumstances which will in any way hinder or affect an employee's ability to perform and provide the Service.
- 35.7. The Provider shall notify the Council as soon as it becomes aware of any investigation or proceedings brought against the Provider under the Equality Act in connection with this Contract and shall:
- i. allow the Council access to any relevant documents;
 - ii. permit Council officers to attend any associated meetings; and
 - iii. co-operate fully and promptly with the investigating body, court or tribunal
- 35.8. The Provider shall indemnify the Council against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Council arising out of or in connection with any investigation or proceedings under the Equality Act resulting from any act or omission of the Provider.

36. Sustainability and Social Value

36.1. Environmental Issues:

36.1.1. During performance of this Service the Provider must seek to avoid using products, substances and services that are known to be, or where there is strong evidence to suggest they could be harmful to the environment or a danger to health (employees, contractors and members of the public). Wherever possible and economically practicable, only materials from sustainable sources must be used in the performance of this contract.

36.2. Social Outcomes and Community Benefits:

36.2.1. The Council has a stated commitment to improving employment opportunities and increasing the skills and employability of its communities. The Provider shall, in the performance of this contract, consider ways in which it may be able to contribute to this objective.

37. Human Rights Act 1998

37.1. The Provider acknowledges that in performing its obligations under this Contract, it may be a public body for the purposes of the Human Rights Act 1998 (HRA) and may be subject to the same duty as the Council in the same way as if it was the Council.

37.2. The Provider shall to the extent applicable to provision of the Service, comply with the Council's HRA obligations as if it was the Council.

38. Data Protection Legislation (DPL)

38.1. The Parties shall comply with the Data Protection Legislation

38.1. With respect to the Parties' rights and obligations under this Contract, the Parties acknowledge that the Council is a Data Controller and that the Provider is a Data Processor.

38.2. The Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Contract.

38.3. The Provider shall ensure that personal and/or sensitive information is properly protected and shall implement appropriate arrangements which ensure that personal information of Service Users and employees are processed and protected in accordance with current statutory requirements.

38.4. The Provider shall:

- (a) Process the Personal Data only in accordance with written instructions from the Council to perform its obligations under this Contract and where applicable, the parameters of Appendix 1 which sets out the scope, nature and purpose of the processing;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 31 (Council Data and Security Requirements);
- (c) not disclose or transfer the Personal Data to any third party or Provider personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Council (save where such disclosure or transfer is specifically authorised under this Contract);
- (d) impose confidentiality obligations on all personnel authorised to process Personal Data.

38.5. The Provider shall ensure that any transfer of Personal Data between the Provider and the Council, is strictly controlled in accordance with the Council's information security requirements and shall ensure that processes are in place to protect this data at all times including the use of encryption where appropriate.

38.6. The Provider shall not transfer any Personal Data outside of the European Economic Area without the prior written consent of the Council and the following conditions are met:

- i. either the Council or the Provider has provided appropriate safeguards in relation to the transfer
- ii. the data subject has enforceable rights and effective remedies
- iii. The Provider has provided an adequate level of protection to the Personal Data it is transferring
- iv. The Provider complies with reasonable instructions of the Council in respect of the Personal Data it is transferring.

38.7. The Provider shall notify the Council immediately if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data;
- (ii) a request to rectify, block or erase any Personal Data;
- (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

- 38.8. The Provider shall assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the DPL with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 38.9. The Provider shall notify the Council immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- 38.10. The Provider shall at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by any applicable law to store the Personal Data;
- 38.11. The Provider shall, maintain records of processing activities to help demonstrate compliance with GDPR and shall allow access to Council Auditors pursuant to clause 14, 21 and 22.
- 38.12. The Provider shall fully and properly indemnify the Council for any breach of DPL by the Provider which renders the Council liable for any costs, fines, claims or expenses howsoever arising.
- 38.13. Where the Provider intend to engage a sub-contractor pursuant to Clause 25 and intends for that sub-contractor to process any Personal Data relating to this Contract, the Provider shall:
- i. notify the Council in writing of the intended processing by the sub-contractor;
 - ii. obtain prior written consent to the processing;
 - iii. ensure that any sub- contract imposes obligations on the sub-contractor to give effect to the terms set out in this Clause 38.

39. Freedom of Information Act 2000 (FOIA) and Environment Information Regulation 2004 (EIR)

- 39.1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR; the Provider shall:
- (a) transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (b) provide all necessary assistance and co-operation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;

- (c) shall, if required, provide and shall procure that its sub-contractors provide at the Provider's expense, all information belonging to the Council which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by the Council.

- 39.1. The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a request for Information to the extent that it is permissible and reasonably practical for it to do so and shall act in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA.
- 39.2. The Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs or is to be disclosed in response to a request for information.
- 39.3. Failure to provide such information in accordance with the terms of this Contract shall be a breach of this Contract and the Provider shall indemnify the Council for any claims, costs, damages and expenses that the Council may incur by reason of such breach including but not limited to claims, costs, damages and expenses arising directly or indirectly as a result of any decision of the Information Commissioner that such information shall be disclosed.
- 39.4. The Council shall not be liable for any loss, damage or detriment, howsoever caused, arising from disclosure of any information disclosed in compliance with a request for information under FOIA and/or the EIRs.

40. Civil Contingency

- 40.1. In times of emergency, the Provider shall support and co-operate with the Council and carry out such services as the Council may require to enable the Council comply with and carry out its duties under the Civil Contingencies Act 2004.

41. Prevention of Bribery and Corruption

- 41.1. The Provider shall :-

- 41.1.1. comply with the Bribery Act 2010 and all laws and regulations relating to anti bribery and anti-corruption;

- 41.1.2. have and shall maintain an adequate anti bribery policy to prevent the Provider and its staff from committing any Prohibited Acts and shall enforce it where appropriate.
 - 41.1.3. promptly notify the Council of any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with performance of this Contract; and
 - 41.1.4. must co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 41.2. The Council may terminate this Contract and any other contract with the Provider by written notice with immediate effect if the Provider, his employees or any person acting on his behalf (whether with or without the knowledge of the Provider) breaches the obligations under this clause.

42. Default in Performance

- 42.1. Where in the opinion of the Contract Manger the Provider fails to perform the whole or any part of the Service:
- i. with the standard of skill, care and diligence which a competent and suitably qualified person performing similar service could reasonably be expected to exercise; or
 - ii. in accordance with the Specification or any other Contract Document; or
 - iii. in accordance with any provision of this Contract,
- the Provider will be considered to be in Default.
- 42.2. The Council shall give the Provider written notice ('Default Notice'), specifying the Default.
- 42.3. Where the Default can be remedied, the Default Notice shall specify an 'Action plan' with reasonable time limits and require the Provider to correct or re-execute the Service to the satisfaction of the Contract Officer.
- 42.4. Should the Provider fail to remedy the Default as required in the Action plan, the Council may:
- i. withhold or reduce payments to the Provider in proportion to the Default or as is reasonable taking into consideration the nature of the Service; and or
 - ii. suspend provision of the Service in accordance with clause 44; and or
 - iii. terminate the Contract in accordance with clause 45 below; or
 - iv. terminate provision of part of the Services only.

43. Involvement in Organised Crime

- 43.1. The Provider must at all times conduct his business with utmost probity and transparency and must not do anything that may give rise to suspicion of involvement with Organised Crime.
- 43.2. The Provider shall immediately report to the Council and to the Police any suspicion that any person or body it has dealings with, may in any way be involved with Organised Crime.
- 43.3. The Council may terminate this Contract and any other contract with the Provider by written notice with immediate effect if the Provider, his employees or any person acting on his behalf (whether with or without the knowledge of the Provider) breaches the obligations under this clause.
- 43.4. The Council may share information of any allegation or suspicion of involvement in crime with the Police, any regulatory body or public authorities in order to ascertain or satisfy itself that the Contractor or any related body is not involved with Organised Crime.

44. Suspension

- 44.1. The Council may suspend provision of Services in order for an investigation to be carried out, where:
 - i. there are Serious Issues of Concern; or
 - ii. the Provider is in Default and has failed to remedy the Default.
- 44.2. The Council shall inform the Provider in writing of the reason for the suspension and the required cause of action and time scale for rectification of the same.
- 44.3. The suspension will remain in force unless and until the Council notifies the Provider in writing that the suspension has been removed or the Contract is terminated.

45. Termination

- 45.1. Termination by either party:
 - 45.1.1. Either party may terminate this Contract by notice in writing to the other if either party is prevented from carrying out its obligations as a result of Force Majeure for 30 days or more;
- 45.2. Termination by the Provider
 - 45.2.1. The Provider may without prejudice to any accrued rights or remedies of either party under this Contract terminate this Contract by notice in writing to the Council if the Council commits a breach and following a

reasonable notice to remedy the breach, the Council fail to remedy the breach.

45.3. Termination by the Council:

45.3.1. The Council may without prejudice to any accrued rights or remedies of either party under this Contract terminate this Contract in whole or in part forthwith by notice in writing to the Provider if the Provider:

- i. in relation to any contract with the Council, commits any offence under the Bribery Act 2010; or
- ii. fails to comply with the Default Notice in clause 42.2;
- iii. commits a breach of this Contract which breach cannot be remedied;
- iv. commits any criminal offence on the Premises;
- v. fails to operate proper Health and Safety procedures, such that the life of the Service Users or the public or staff or employees of the Council and of the Provider are at risk;
- vi. is struck off by a Regulatory Body;
- vii. If there is a Change of Control of the Provider, where such Change of Control was not notified to the Council or accepted by the Council.

45.4. Termination due to Insolvency

45.4.1. The Council may terminate forthwith by notice in writing if the Provider has:

- i. has a Liquidator, Receiver, Administrator, administrative Receiver or similar officer appointed over its assets; or
- ii. (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or
- iii. (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or
- iv. becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- v. ceases or threatens to cease to carry on its business.

45.5. Termination for Non-Compliance with Public Contracts Regulations 2015 ("the Regulations") in accordance with Section 73(1) of the Regulation.

45.5.1. The Council shall forthwith by notice in writing terminate the Contract where:

- i. the Contract has been subject to a substantive modification which would have required a new procurement procedure in accordance with Regulation 72 (9).
- ii. the Provider should not have been selected or awarded the Contract because:

- a. the Provider was at the time of such selection or award or following such selection or award is convicted of any of the offences in Regulation 57 (1) of the Regulations.
- b. the Provider is in breach of its obligations relating to the payment of taxes or social security contributions.
- iii. the Council has to terminate the Contract:
 - a. as a requirement of the Regulations or
 - b. to comply with the Regulations or
 - c. on the order of a competent Court or Regulatory Authority.

45.5.2. The Council may by notice in writing terminate the Contract where:

- i. the Provider's tender did not comply with applicable obligations in the fields of current environmental, social and labour law in accordance with Regulation 56(2) of the Regulations;
- ii. any of the situations referred to in Regulation 57(8) of the Regulations arise.

45.6. Termination due to Change in Law

45.6.1 The Council shall terminate this Contract forthwith if there is a Change in Law the effect of which is to make it unlawful for the Provider to continue provision of the Service.

46. **Co-operation between the Parties**

- 46.1. During any period of notice of termination under clause 45, both parties shall co-operate and the Provider shall provide such information and assistance as is necessary to ensure an orderly transfer of responsibility to a new organisation.
- 46.2. The Provider shall not withdraw the delivery of Service to individual Service Users either before or at the end of the period of notice until suitable alternative arrangement is made by the Council provided that where the Provider continues to provide the Service after the termination of the Contract (in whatever circumstances) the Council shall continue to make payments to the Provider at the same rate and in the same way as was applicable before the termination of the Contract.
- 46.3. The Provider shall deliver up to the Council the Result and all property belonging to Council which may be in its possession.

47. **Consequences of Termination**

- 47.1. Upon termination of this Contract for whatever reason the Provider will be paid all money due to him after taking into consideration any loss that may have been suffered and can be sufficiently evidenced by the Council; and

47.2. Where:

- ii. the Council terminates the Contract as provided in clause 45.3 or
- iii. the Provider terminates the Contract other than as provided in this Contract;

the provisions of clause 47.3 shall apply.

47.3. Where following the termination under clause 45.3. the Council has to re-tender and or re-commission the provision of the Service, the Council shall recover from the Provider the cost to the Council of the re-tender and or re-commission of the Service.

48. **Force Majeure**

48.1. If either party fails to perform its obligations under this Contract by reason of an event of Force Majeure, that party shall be relieved from liability in respect of the performance of its obligations under this Contract as are prevented by the Force Majeure event during the continuation of such event provided that it shall within 2 Working Days notify the other party in writing of the reasons for failure or stoppage and the likely duration.

48.2. The relevant party will take all reasonable steps to overcome the delay or stoppage and will provide such reasonable assistance to the other, as it is able to facilitate continuation of provision of the Service.

48.3. If either party is prevented from performance of its obligations for a continuous period in excess of 30 days:

- i. if agreed by the parties, the parties may suspend this Contract in whole or in part (upon such terms as may be agreed by the parties), or
- ii. the other party may terminate this Contract in whole or in part;

forthwith on service of written notice upon the party so prevented.

48.4. Neither party shall have any liability to the other, except that rights and liabilities which have accrued prior to such termination shall continue to subsist and for the avoidance of doubt the Council shall not be liable for payments to the Provider for services not performed by reason of an event of force majeure.

49. **Contracts (Rights of Third Parties) Act 1999**

49.1. This Contract is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

50. Waiver

- 50.1. Failure of either party to exercise any right or remedy shall not constitute a waiver of such right or remedy.
- 50.2. No waiver shall be effective unless it is communicated to the other party in writing.
- 50.3. Waiver of a default shall not (unless it expressly so provides) constitute a waiver of any future default.

51. Notices

- 51.1. Any notice, consent, acceptance or the like required or to be given under this Contract shall be in writing and shall be deemed to be given by sending to the relevant party at the address for service:
 - i. when delivered if given personally or sent by recorded delivery post;
 - ii. 3 Working days after the day of posting in the case of first class post; or
 - iii. next Working Day after sending in the case of e-mail.
- 51.2. Either party may change its address for service by serving a notice in accordance with this clause.

52. Severance

- 52.1. If any provision of this Contract shall be found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.
- 52.2. If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

53. Governing Law

- 53.1. The validity, construction and performance of this Contract shall be construed and governed by the Laws of England and Wales and each party irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

54. Entire Agreement

- 54.1. This Contract constitutes the entire agreement between the parties in respect of the Service and the parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated in this Contract.

54.2. These terms and conditions shall prevail over any terms and conditions, which emanate from the Provider.

54.3. This Contract supersedes any prior contract between the parties, whether written or oral with effect from the Commencement Date but without prejudice to any rights or remedies which have already accrued to either party as at such date.

55. Survival of Terms

55.1. Clause 19 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
Clause 30 Confidentiality,
Clause 33 Intellectual Property,
Clause 38 Data Protection Act and Information Security,
Clause 39 Freedom of Information Act and Environmental Information Regulations,
Shall survive termination of this Contract.

56. Re-tender and Information

56.1. Subject to clause 30 the Provider shall on request provide to the Council such information and data as the Council may reasonably require to enable the Council to prepare necessary documentation for the re-tender and appointment of another provider for the provision of the Service.