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|  | **Chelmsford City Council Single Stage Competitive Tendering Process** **(Procurement Act 2023)**Invitation to Tender Merchant Services[Insert procurement/contract reference number] |
|  | May 2025 |

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| **Version control** |
| --- |
| **Version number** | **Author** | **Date** | **Changes** |
| Final Template | Emma Till | 25/03/2025 |  |
| Version 1 | Vincent Hunt | 09/05/25 | Made specific to this requirement |
|  |  |  |  |

\*Add rows as required

**Contents**

[Deadline for responding to this document 4](#_Toc193792323)

[Introduction 5](#_Toc193792324)

[Introduction to the Authority 6](#_Toc193792325)

[Overview of the Authority’s requirement 7](#_Toc193792326)

[Preliminary market engagement 8](#_Toc193792327)

[The Procurement process 9](#_Toc193792328)

[Procurement timetable 10](#_Toc193792329)

[Service Levels, Service Credits and KPIs 11](#_Toc193792330)

[Contract risks 12](#_Toc193792331)

[Contract terms 13](#_Toc193792332)

[How to respond to this opportunity 14](#_Toc193792333)

[Requests for clarification 16](#_Toc193792334)

[The assessment process and award criteria 17](#_Toc193792335)

[Appendix A: Procurement terms and conditions 19](#_Toc193792336)

[Appendix B: The Authority’s detailed requirement 26](#_Toc193792344)

[Appendix C: Service Levels, Service Credits and KPIs 27](#_Toc193792345)

[Appendix D: The draft contract terms 28](#_Toc193792346)

[Appendix E: Glossary 29](#_Toc193792347)

[Appendix F: Form of tender and Associated Declarations 30](#_Toc193792348)

# Deadline for responding to this document

1. The deadline for responding to this invitation to tender is the **15th of July 2025 at 12 Noon**. The deadline for clarification questions is the **2nd of July 2025 at Noon.** See ‘Procurement timetable’ and ‘How to respond to this opportunity’.

# Introduction

1. This Procurement is being conducted in accordance with the Act using the Single Stage Competitive Tendering Procedure. This document describes how the Procurement will be conducted, including details of the associated Procurement timetable, award criteria and how to respond to this opportunity. Suppliers are strongly encouraged to read this document before preparing their submission.
2. This document has been prepared to assist Suppliers in deciding whether to submit a tender in this Procurement. **Please read this document carefully, as failure to comply with this document may result in exclusion from the Procurement and/or the rejection of any submission.**
3. This document should be read in conjunction with the Tender Notice and any other Procurement documents which have been made available at this stage of the Procurement.
4. The Authority reserves the right to issue updated versions of this document to Suppliers as and when the need arises, in order to reflect any changes to the Procurement or any other new information.
5. **Please read and ensure compliance with the Procurement terms and conditions contained in Appendix A.**
6. Common terms and expressions shall have the meanings ascribed to them in the glossary in Appendix E.
7. All references to a ‘section’ are to a section in the Act unless otherwise stated.
8. All references to a ‘paragraph’, ‘appendix’ or ‘annex’ are to a paragraph, appendix or annex of this document unless otherwise stated.
9. All references to dates and times within this document shall be interpreted in accordance with the United Kingdom time zones applicable at the date of the Procurement (i.e. GMT/BST).

# Introduction to the Authority

1. Chelmsford City Council is a second-tier Local Authority based in Essex. As Essex's first city, Chelmsford is one of the fastest-growing centres in the East of England. It has a rising population, an emerging economy and low unemployment. Beyond the city, the Chelmsford district includes the riverside town of South Woodham Ferrers and numerous villages within attractive countryside.

 Chelmsford is a popular choice for businesses and residents alike, located in the heart of Essex and a short distance from the capital via fantastic transport links. Chelmsford has a thriving community of 9,500 businesses, outstanding schools and the Times Higher Education University of the Year 2023.

The district is also home to impressive attractions including the fully restored Grade II\* listed Hylands House, Essex’s only ice rink, 9 local nature reserves, 17 Green Flag awarded parks and a vibrant events programme. Chelmsford has been awarded Purple Flag status for 10 years running for a safe and enjoyable a night out.

Our council: Chelmsford City Council serves a population of over 181,000 and visitors from beyond the district. The Councils 1,300-strong workforce of full-time, part-time and casual staff make a real difference to residents and visitors alike. ‘Our Chelmsford, Our Plan’ sets out our priorities to make Chelmsford a fairer, greener, safer and better-connected place to live, work and visit.

**Website:** [**https://www.chelmsford.gov.uk**](https://www.chelmsford.gov.uk )

**Industry:** Government Administration

**Company size:** 1,001-5,000 employees

**Headquarters:** Chelmsford, Essex

**Type:** Nonprofit

**Founded:** 1974

**Specialties:** Local Government

# Overview of the Authority’s requirement

1. Chelmsford City Council is seeking to commission Merchant Card Acquiring services, to facilitate the receipt, transfer and accounting of incoming domestic and foreign payment streams where current UK sanctions permit, from the payer,to Chelmsford City Council and Chelmsford City Council Payment Gateways to facilitate Cardholder present and Cardholder not present transactions.
2. **Contract term** - Chelmsford City Council propose to enter into a Contract with the winning Tenderer for a maximum period of 2 years with an option of extending for additional periods of up to 3 years, to give a maximum term of up to 5 years
3. **Value of the contract –** The Council have estimated the contract value to be £320K (over 2 Years) £800K (over 5 years)

# Preliminary market engagement

1. Preliminary market engagement was not undertaken for this procurement for the following reason:

# The Procurement process

1. The Council is conducting this procurement using the single-stage open procedure in accordance with the requirements of the Procurement Act 2023 for the purpose of procuring the services described in the Specification (**the Services**)

# Procurement timetable

1. The timetable for the Procurement is set out in the following table (the Procurement Timetable). Deadlines for the submission of responses to the Authority are shown in bold. Failure to meet these deadlines will result in a Supplier’s submission not being considered unless there are exceptional mitigating circumstances such as a technical failure in connection with the Portal.

|  |  |  |  |
| --- | --- | --- | --- |
| **Task Name** | **Duration** | **Start** | **Finish** |
| **Merchant Services Timeline v2 21st May 2025- all times are in working days** |  |  |  |
| **Publication of FTS notice** | **0 days** | **Wed 28/05/25** | **Wed 28/05/25** |
| **Deadline for clarification questions** | **0 days** | **Wed 02/07/25** | **Wed 02/07/25** |
| **Bidders working on their tenders** | **35 days** | **Wed 28/05/25** | **Tue 15/07/25** |
| **Tender deadline** | **0 days** | **Tue 15/07/25** | **Tue 15/07/25** |
| **Tender evaluation** | **20 days** | **Wed 16/07/25** | **Tue 12/08/25** |
| **Corporate governance supporting contract award** | **20 days** | **Wed 13/08/25** | **Tue 09/09/25** |
| **Standstill (including safety margin)** | **15 days** | **Wed 10/09/25** | **Tue 30/09/25** |
| **Contract engrossment**  | **20 days** | **Wed 01/10/25** | **Tue 28/10/25** |
| **Mobilisation** | **79 days** | **Wed 01/10/25** | **Mon 19/01/26** |
| **New contract live** | **0 days** | **Mon 19/01/26** | **Mon 19/01/26** |

1. Please note that the Authority reserves the right, in its absolute discretion, to amend the Procurement Timetable or extend any time period in connection with the Procurement. Any changes to the Procurement Timetable will be notified simultaneously to the Suppliers.

# Service Levels, Service Credits and KPIs

1. The supplier shall enable the council in conjunction with its Payment Gateways to choose and put in place an agreed settlement process, including times for the council’s end of day procedures and receipt of funds
2. The supplier shall agree with the council in conjunction with the Payment Gateways the settlement cut off time. The council will have the flexibility to set this by MID or TID to facilitate alignment of its system cut offs with the Merchant Card Acquiring Services cut offs.
3. The supplier shall ensure that the council receives Gross value of all card payments in its specified bank account in accordance with its chosen settlement day and time, preferably on day 2 after payment is taken.
4. The supplier shall provide the council with the standard terms of 30 days for payments of the invoices from the supplier.

# Contract risks

1. Chelmsford City Council is subject to the English Devolution White Paper which will lead to local government re-organisation potentially during the term of this contract. This risk is defined as a known unknown risk as we do not yet understand the implications of that potential re-organisation.

# Contract terms

1. The draft Contract that each Local Authority proposes to use is attached can be found in the document pack. By submitting a Tender, Tenderers are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.
2. If the terms of the Contract render the proposals in the Tenderer's Tender unworkable, the Tenderer should submit a clarification in accordance with paragraph 31 and the Council will consider whether any amendment to the Contract is required. Any amendments shall be published through the Clarifications Log and shall apply to all Tenderers. Where both the amendment and the original drafting are acceptable and workable to the Council, the Council shall publish the amendment as an alternative to the original drafting. Tenderers should indicate if they prefer the amendment; otherwise the original drafting shall apply. Any amendments which are proposed, but not approved by the Council through this process, will not be acceptable and may be construed as a rejection of the terms leading to the disqualification of the Tender.
3. following documents shall form part of the Contract between the Council and the Service Provider(s):
* Contract and its schedules.
* Specification.
* [A pricing model (as completed by the Service Provider).]
* [Responses to method statement questions] (as completed by the Service Provider).
* A list of commercially sensitive information (as completed by the successful Tenderer(s))

# How to respond to this opportunity

1. All documents comprising the Tender must be completed and uploaded to the Delta eSourcing portal by the **15th of July 2025 at Noon.** The deadline for clarification questions is the **2nd of July 2025 at Noon.**
2. All tenders will be scored after the successful completion of the Procurement Specific Questionnaire and the information requested on the Central Digital Platform.
3. The following requirements must be adhered to when submitting Tenders:

The pages of the Tender documents must be numbered sequentially as "Page [x] of [xx]" and include the date and title of the document on each page of the main body.

Any additional pre-existing material which is necessary to support the Tender should be included as schedules with cross-references to this material in the main body of the Tender. Cross-references to this ITT should also be included in the Tender whenever this is relevant.

Where documents are embedded within other documents, Tenderers must upload separate copies of the embedded documents.

The Tender must be in English and drafted in accordance with the drafting guidance set out in this ITT.

Each Tender must be uniquely named or referenced.

The Tender must be fully cross-referenced.

A list of supporting material must be supplied.

No page of word limits have been set for tender submissions for this opportunity

1. The Tender must be clear, concise and complete. The Council reserves the right to mark a Tenderer down or exclude them from the procurement if its Tender contains any ambiguities, caveats or lacks clarity. Tenderers should submit only such information as is necessary to respond effectively to this ITT. Tenders will be evaluated on the basis of information submitted by the Deadline
2. The Tenderer must upload a duly executed Form of Tender. Please complete the relevant form of tender documents for each contract. Where the Tenderer is a company, the Tender must be signed by a duly authorised representative of that company. Where the Tenderer is a consortium, the Tender must be signed by the lead authorised representative of the consortium, which organisation shall be responsible for the performance of the Contract. In the case of a partnership, all the partners should sign or, alternatively, one only may sign, in which case they must have and should state that they have authority to sign on behalf of the other partner(s). The names of all the partners should be given in full together with the trading name of the partnership. In the case of a sole trader, they should sign and give their name in full together with the name under which they are trading.
3. Each Tenderer must make themselves aware of all the documents that make up this tender pack. Some appendices may form part of this invitation to tender document whilst others are individual documents. The following documents should be reviewed and completed and returned.

|  |  |
| --- | --- |
| **Documents** | **Notes** |
| Invitation to Tender (this document) | This document also includes the following appendices:  |
| Appendix B – The authorities detailed requirement  |  |
| Appendix D – Draft Contract Terms |  |
| Appendix F – Form of Tender and Associated Declarations  |  |
| Appendix G Bid Back Financial Appendix (Pricing Schedule)  |  |
| Appendix H- Standard Selection Questionnaire |  |

1. All prices quoted are to be exclusive of Value Added Tax
2. Tenders submitted after the deadline will be disqualified.
3. This procurement exercise will be conducted exclusively using the Delta e-sourcing platform
4. Please ensure you are registered on the Central Digital Platform. More information can be found here: <https://www.gov.uk/government/publications/procurement-act-2023-short-guides/suppliers-how-to-register-your-organisation-and-first-administrator-on-find-a-tender-in-three-easy-steps-html>

# Requests for clarification

1. Any requests for clarification relating to the Procurement must be submitted via the Delta eSourcing system, no later than the deadline in the Procurement Timetable at paragraph [15] above to allow the Authority sufficient time to respond prior to the closing date for receipt of submissions. The Authority will endeavour to respond to requests for clarification submitted in accordance with these requirements as soon as possible through publishing the Tenderers' questions and the Council's response to them on the e-sourcing system (Clarifications Log).
2. The Authority reserves the right not to answer any requests for clarification submitted after the deadline set out in the Procurement Timetable at paragraph [15] above or submitted via any means other than the Portal.
3. Where the Authority considers any requests for clarification to be relevant to the proper functioning of the Procurement, it will transmit to all other Suppliers (without reference to the identity of the Supplier which submitted the clarification question) the clarification question raised and the Authority's response, with the exception of those deemed confidential as provided below.
4. If a Supplier considers that its request for clarification should be treated as confidential and not disclosed to other Suppliers, it must communicate this and the reason why to the Authority at the time of the submission of that clarification request. The Authority will advise the Supplier in advance of providing the clarification response if it considers that all or any part of the request for clarification cannot be treated as confidential, and will provide an opportunity for the Supplier to withdraw such aspects of the request for clarification.
5. In such circumstances, the Supplier may either submit an amended request for the clarification to be treated as confidential, which would be considered by the Authority in the same manner as the original request, or raise a new request to be treated as a non-confidential request for clarification.
6. It is the responsibility of each Supplier to monitor all clarifications issued by the Authority. The Authority accepts no liability for any Supplier's failure to keep abreast of clarifications issued. Tenderers are advised not to rely on communications from the Council in respect of the Services or ITT unless they are made in accordance with these instructions

# The assessment process and award criteria

37. Any Contract(s) awarded as a result of this procurement will be awarded on the basis of the offer that is the most advantageous tender to the Council (MAT). Whilst price will be a key factor the Council will also consider quality measured through scored method statements and the pass/ fail questions as described below.

  The Award Criteria (Award Criteria) are:

|  |  |  |  |
| --- | --- | --- | --- |
| **Criteria**   |   | **Scoring**   | **Notes**  |
| 1  | Bidder info and bidding model  | Info Only   | To be completed via the Central Digital Platform.   |
| 2  | Grounds for mandatory and discretionary exclusion   | Pass/Fail   | To be completed via the Central Digital Platform and Procurement Specific Questionnaire  |
| 3  | Additional Questions including Insurances   | Pass/Fail   | Insurance needs to be place by contract start date.   |
| 4  | Technical / Quality Criteria   | 60%  | Scored using 0-5 scoring guide.  |
| 5  | Pricing Criteria   | 40%  |   |

Scores are arrived at following the application of the Evaluation Criteria (**Evaluation Criteria**) set out below to the Tenderer's Tender.

Tenderers are required to submit a Tender strictly in accordance with the requirements set out in this ITT, to ensure the Council has the correct information to make the evaluation. Evasive, unclear or hedged Tenders may be discounted in evaluation and may, at the Council's discretion, be taken as a rejection by the Tenderer of the terms set out in this ITT.

 The following scoring matrix will be used to mark each Technical/ Quality section of the Tender response.

Technical/ Quality Criteria will be scored out of 5 and multiplied to the percentage weighting available:

|  |  |
| --- | --- |
| SCORE  | Scoring guide  |
| 5  | The submission is judged to be excellent and the supporting information is of the highest quality  |
| 4  | The submission is judged to be very good and the supporting information is of a high quality  |
| 3  | The submission is judged to be good and the supporting information is of good quality but is lacking in several key areas.  |
| 2  | The submission is judged to be adequate and the supporting information is of a reasonable quality but lacks detail and would need clarification  |
| 1  | The submission is judged to be poor and the supporting information is very weak and will constitute a fail.  |
| 0  | The submission is judged to be unacceptable and will constitute a fail.   |

Where a submission includes a quality section that attracts an overall score of less than 50% of the total marks available or, includes a criterion that is scored zero, then this will lead to the Tender being excluded from further consideration.

In all instances Tenders that are unable to meet the required timescales will be excluded from further scoring.

**Pricing Criteria 40% weighting**

Tenderers are asked to provide a price breakdown for this project detailing all costs to the Council. Please provide your pricing as outlined in the Bid Back Financial Appendix.

The total in cell reference I38 “Total first year contract proxy cost for financial scoring purposes” will be used for financial scoring purposes.

The Council will take into account the cost of changing supplier in evaluating the tender. The Council has estimated this as £50,000.

Bid prices will be scored:

On a comparative basis with the lowest bid receiving 100% of the available marks. [All other bids will be compared [against that lowest bid].  Thus:

Your score= **Lowest Value for Cell I38 multiplied by 40%**

 **Your Value for Cell I38(+£50,000**

**if there is a change of supplier)**

Due to the Term of this contract, The Parties acknowledge that inflation may affect the prices of works and equipment over the life of the Contract. To mitigate this impact, the Payment Plan, shall be adjusted annually in line with the Consumer Price Index (CPI) issued by the UK Bureau of Statistics, under the guidance of the National Statisticians Committee for Advice on Standards for Economic Statistics. This adjustment shall occur on each anniversary of the Commencement Date, based on the CPI for the previous year

**IMPORTANT: A pricing schedule must be submitted for a compliant tender**

1. The City Council reserves the right to investigate and disregard abnormally low tenders.

**Quality Criteria (60% Weighting)**

**Technical or quality evaluation**

The technical evaluation will be scored in accordance with the table on the following page.

|  |
| --- |
| **Quality Criteria** |
| No. | Method Statement | Maximum Marks Allocated % |
| 1. | Describe how you would deliver the service entirely in compliance with the specification covering cash accounting, audit and cash flow and other aspects | 10% |
| 2. | Describe what measures you would put in place to protect the Council from service outages and how you would restore the service should an outage occur (business continuity arrangements) | 10% |
| 3. | Describe how you would report management information to the Council on a timely basis | 10% |
| 4 | Describe how you would mobilise the service to commence on a timely basis and in a high quality manner | 10% |
| 5 | Describe the contact arrangements which you would put in place so that Council officers would be able to contact you including reliable out of hours contact arrangements should there be an emergency and for contract management meetings | 10% |
| 6 | Describe how you manage your supply chain so that software and hardware suppliers work so as to satisfy the requirements of this contract | 10% |

# Appendix A: Procurement terms and conditions

## Procedural requirements

1. This document together with all other associated documents provided to Suppliers in connection with this Procurement contain procedural requirements which Suppliers must follow. Failure to comply with or follow any procedural requirement may result in the exclusion of the Supplier from the Procurement at the Authority’s sole discretion.

## Central Digital Platform

1. Suppliers that wish to participate in this Procurement are responsible for ensuring that the Central Digital Platform contains complete, accurate and up-to-date information about their organisation and any Associated Suppliers which are relevant for the purposes of this Procurement. Suppliers must notify the Authority immediately if it is unable to register on the Central Digital Platform and/or provide accurate and up-to-date information via the Central Digital Platform. More information can be found here: <https://www.gov.uk/government/publications/procurement-act-2023-short-guides/suppliers-how-to-register-your-organisation-and-first-administrator-on-find-a-tender-in-three-easy-steps-html>

### Transparency

1. Suppliers should note that, in accordance with general transparency obligations and procurement law obligations under the Act, the Authority routinely publishes details of its procurement processes and awarded contracts. This includes, but is not limited to, the contract value, the identity of the successful Supplier, compliance with payment obligations and contract performance. Compliance with these obligations may involve the Authority taking steps without consultation with Suppliers. Where required under the Act, a copy of the contract will be published (subject to making any reasonable and proportionate redactions permitted under the Act).
2. Where required, the Authority will disclose on a confidential basis any information it receives from Suppliers during the Procurement to any third party engaged by the Authority for the specific purpose of assessing or assisting the Authority in assessing the Supplier’s submission. In providing such information the Supplier consents to such disclosure.

## Modifying the Procurement

1. Neither the Tender Notice, this document nor any information given as part of the Procurement shall be regarded as a commitment or representation on the part of the Authority (or any other person) to enter into a contractual agreement.
2. The Authority reserves the right to cancel the Procurement at any point and/or to choose not to award any contract [or lot] as a result of this Procurement. [Any decision by the Authority not to award a lot does not prevent the Authority from awarding the remaining lots].
3. Suppliers will remain responsible for all costs and expenses incurred by them, their staff, and their advisers or by any third party acting under their instructions in connection with this Procurement. For the avoidance of doubt, the Authority is not liable for any costs or expenditure resulting from any cancellation or amendment of this Procurement.
4. The Authority reserves the right at any time:

a. to issue amendments, modifications or additional information to any documentation which forms part of this Procurement, including the Procurement terms and conditions contained in this Appendix A

b. to require a Supplier to clarify their proposal(s) and/or tender submission in writing and/or provide additional information – failure by a Supplier to respond adequately may result in their tender submission being rejected

c. to alter the Procurement Timetable for this Procurement always allowing reasonable time for bidder interraction

d. to rewind and re-run any part of the Procurement on the same or alternative basis

e. to amend the Procurement as described herein, including the number of stages and the number of Suppliers to be selected at any stage

f. Request Tenderers to submit, supplement, clarify or complete relevant information or documentation where it appears to be incomplete, erroneous or missing.

g. Seek clarification in respect of any part of a Tenderer's submission

h. Disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT.

i. Disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT

j. Reject a Tender that is abnormally low

k. Disqualify any Tenderer that is guilty of serious misrepresentation or of negligently providing misleading information in relation to its Tender, expression of interest, the SQ or the tender process

l. Not award a contract to the Tenderer submitting the most advantageous Tender where it has established that the Tender does not comply with applicable obligations in the fields of environmental, social and labour law established by national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24 as amended from time to time

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## Confidentiality and publicity

1. Save to the extent made publicly available by the Authority, the information in this document (together with all attachments and any other information communicated to Suppliers during the Procurement) is made available on the condition that it is treated as confidential information by the Supplier and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except in order to comply with legal obligations or for the purpose of enabling a submission to be made to the Authority, provided that such person has given an undertaking prior to the receipt of the relevant information (and for the benefit of the Authority) to keep such information confidential.
2. Suppliers must not take part in any publicity activities with any part of the media about this Procurement without obtaining the express prior written agreement of the Authority. When requesting prior written agreement, Suppliers are required to detail the proposed media coverage including format and content of any publicity.

### Freedom of information and environmental information

1. The Authority is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). All information submitted to the Authority may be disclosed in response to a request made pursuant to the FOIA or the EIR.
2. In respect of any information submitted by a Supplier that it considers to be commercially sensitive, the Supplier should:

a. clearly identify which information is considered commercially sensitive and complete the table contained within Appendix F

b. explain the potential implications of disclosure of such information

c. provide an estimate of the period of time for which the Supplier considers that such information will remain commercially sensitive

1. The Authority will endeavour to:

a. hold confidential all information submitted by a Supplier that it identifies as being commercially sensitive

b. consult with a Supplier about commercially sensitive information before making a decision on any FOIA requests and EIR requests received

1. Suppliers should note, however, that the final decision on any FOIA request and EIR request rests with the Authority, subject to applicable law. Even where information is identified as commercially sensitive, unless an exemption/exception provided for under the FOIA/EIR is applicable, the Authority will be obliged to disclose that information in response to a request. Accordingly, the Authority cannot guarantee that any information marked ‘commercially sensitive’ will not be disclosed.

## Requirements on sub-contractors and consortium

1. If requested to do so by the Authority, a Supplier will be required to enter into a legal arrangement with other members of a consortium or with any parties which are relied on in order to satisfy the conditions of participation relating to this Procurement (in accordance with section 72 of the Act). Acceptance of this request shall be considered a mandatory requirement and failure to accept the same may result in the Supplier’s exclusion from the Procurement.

## Parent company guarantee or other securities

1. The Authority reserves the right to require a parent company guarantee or alternative equivalent form of security should the Supplier be successful in this Procurement
2. Where the Supplier’s parent company is incorporated outside the United Kingdom, the Authority will require a legal opinion from an independent firm of lawyers practising in that jurisdiction (at the Supplier’s own cost and expense) as to the capacity/authority of the parent company to enter into the parent company guarantee and the enforceability of the terms of the parent company guarantee in the relevant overseas jurisdiction.
3. Notwithstanding the above, the Authority may specify minimum contractual financial security requirements as appropriate having regard to the financial assessment undertaken during this Procurement. Where the Authority specifies any financial security requirements, acceptance of the requirements shall be considered a mandatory condition and failure to accept the same may result in the Supplier’s exclusion from the Procurement.

## Non-collusion, non-canvassing

1. Any attempt by a Supplier or their advisers to influence the Procurement in any way may result in the exclusion of the Supplier, without prejudice to any other civil or legal remedies available to the Authority and without prejudice to any criminal liability that such conduct by a Supplier may attract.
2. Specifically, Suppliers must not directly or indirectly at any time:

a. devise or amend the content of their submissions in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, subcontractor, consortium member insurance provider or provider of finance

b. enter into any agreement or arrangement with any other person as to the form or content of any other submission or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other submission

c. enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a response in this Procurement

d. canvass any employees, members or agents of the Authority in relation to this Procurement

e. attempt to obtain information from any of the employees, members or agents of the Authority or their advisors concerning another Supplier or submission

f. carry out any other co-operation or collusion with another Supplier or any other person which the Authority considers capable of undermining fair competition

1. Suppliers are required to complete and return Appendix F which includes Certificate of non-collusion and non-canvassing noting that the Authority will be entitled to rely on the information provided in the certificate.

### Conflicts of interest

1. Suppliers are responsible for ensuring that no actual, potential or perceived conflicts of interest (within the meaning of the Act) exist between themselves and the Authority or its advisers. Suppliers must notify the Authority immediately of any actual, potential or perceived conflict of interest. [DN: The Authority should include information on their process for dealing with supplier conflicts of interest.]
2. In the event of any actual, potential or perceived conflict of interest, the Authority shall in its absolute discretion decide on the appropriate course of action. The Authority reserves the right to:

a. exclude any Supplier that fails to notify the Authority of an actual, potential or perceived conflict of interest, or where an actual conflict of interest exists

b. request further information from any Supplier and require any Supplier to take reasonable steps to mitigate a conflict of interest. This may include requiring any Supplier to enter into a specific conflict of interest agreement with the Authority. Failure to do so may result in the Supplier being excluded from participating in, or progressing as part of, the Procurement process

1. The Authority strongly encourages Suppliers to contact the Authority as soon as possible using the Portal should it have any concerns regarding actual, potential or perceived conflicts of interest.

### Conflict assessments

1. The Authority confirms that, prior to the issue of the Tender Notice in this Procurement, a conflict assessment has been prepared in accordance with the Act.

### Intellectual property

1. Suppliers are reminded that all intellectual property rights, including copyright, in the documents and materials supplied by the Authority and/or its advisers in this Procurement, in whatever format, belong to the Authority, its advisers or the relevant owner/licensor. Suppliers shall not copy, reproduce, distribute or otherwise make available any part of these documents to any third party (except for the purpose of preparing a submission) without the prior written consent of the Authority. All documentation supplied by the Authority in relation to this Procurement must be returned or destroyed on demand, without any copies being retained by Suppliers.

### Anti-competitive behaviour

1. Suppliers are reminded of their obligations under applicable competition laws. The Authority may require evidence from Suppliers that their arrangements are not anti-competitive and reserves the right to require any Supplier to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.
2. Any evidence of anti-competitive behaviour may result in a Supplier being disqualified from the Procurement. The Authority also reserves the right to refer any suspected breaches of applicable competition laws to the relevant authorities including, but not limited to, the Competition and Markets Authority and the Serious Fraud Office.
3. Suppliers should note that anti-competitive behaviour may result in the Supplier being excluded from bidding for contracts under Schedule 7, Paragraph 7 of the Act. Where a relevant decision has been made by the Competition and Markets Authority under the Competition Act 1998, the Supplier may also be excluded from bidding for contracts under Schedule 6, paragraph 41 and may be added to the debarment list and/or be liable for civil and/or criminal penalties.

### Contract

1. A tender submission is an offer to enter into a contract on the terms of the contents of the submission. Notification of an award decision does not constitute acceptance by the Authority. Any document submitted by a Supplier shall only have contractual effect when it is contained within an executed written contract.
2. The Supplier’s final tender submission must remain valid for acceptance for a period of 90 days from the date of its submission or until any procurement challenge/s have been resolved.

### Supplier withdrawal

1. Suppliers may withdraw from the Procurement at any time before the [final tender] submission deadline by providing written notification to the Authority [via the Delta eSourcing Portal].

### Modifying your [final tender]

1. Suppliers may modify their submitted [final tenders] prior to the submission deadline. (The Authority will not open ([final tenders] until after the submission deadline set out in the Procurement Timetable.)

### Supplier eligibility

1. Suppliers are reminded that the eligibility requirements in this document, Tender Notice and all other associated tender documents apply to the Procurement at all times.
2. The Authority reserves the right to require any Supplier to provide such further information as the Authority may require (and for the avoidance of doubt, the Authority may make multiple requests) as to any issue addressed in the [ITT], including, but not limited to, the economic and financial standing of the Supplier at any stage of the Procurement and prior to the notification of the award decision and/or the award of the contract.
3. The Authority must be notified in writing via the Portal promptly of any changes in the information that the Supplier has provided in its response to this Procurement (including but not limited to arrangements in relation to any Associated Suppliers) at any point before the entry into the Contract so that the Authority may assess whether the Supplier continues to satisfy the relevant conditions of participation and should continue to qualify for participation in the Procurement. For the avoidance of doubt, the Authority reserves the right to take such action as it deems appropriate in the light of its assessment of the updated information, including (but not limited to) excluding the Supplier concerned from the Procurement.

### Supplier warranties

1. In responding to this invitation, the Supplier warrants, represents and undertakes to the Authority that:

a. it understands and has complied with the conditions set out in this document

b. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Authority by the Supplier, its staff or agents in connection with or arising out of the Procurement are true, complete and accurate in all respects, both as at the date communicated and as at the date of the submission of the response to this document

c. it has made its own investigations and undertaken its own research and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the invitation and has not submitted its response in reliance on any information, representation or assumption which may have been made by or on behalf of the Authority (with the exception of any information which is expressly warranted by the Authority)

d. it has full power and authority to respond to this document and to perform the obligations in relation to the contract and will, if requested, promptly produce evidence of such to the Authority

1. Suppliers should note that the potential consequences of providing incomplete, inaccurate or misleading information include that:

a. the Authority may exclude the Supplier from participating in this Procurement

b. the Supplier may be excluded from bidding for contracts under Schedule 7, Paragraph 13 of the Act

c. the Authority may rescind any resulting contract under the Misrepresentation Act 1967 and may sue the Supplier for damages

d. if fraud or fraudulent intent can be proved, the Supplier may be prosecuted and convicted of the offence of fraud by false representation under section 2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both) – if there is a conviction, then the Supplier may be excluded from bidding for contracts under Schedule 6, Paragraph 15 of the Act and may be added to the debarment list

### Third parties

1. Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

### Applicable law

1. The laws of England and Wales are applicable to this Procurement.
2. Suppliers must agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute arising out of or in connection with this Procurement.

### Warning and Disclaimer

1. While the information contained in this ITT is believed to be correct at the time of issue, neither the Council nor its advisors will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, this ITT (including its appendices) and in respect of any other written or oral communication transmitted (or otherwise made available) to any Tenderer. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Council.
2. If a Tenderer proposes to enter into a Contract with the Council, it must rely on its own enquiries and on the terms and conditions set out in the Contract(s) (as and when finally executed), subject to the limitations and restrictions specified in it.
3. Neither the issue of this ITT, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Council (or any other person) to enter into a contractual arrangement

# Appendix B: The Authority’s detailed requirement

**Overview**

Chelmsford City Council would like to issue a tender proposal to secure merchant acquirer services.

The supplier is required to provide Merchant Card Acquiring services, to facilitate the receipt, transfer and accounting of incoming domestic and foreign payment streams where current UK sanctions permit, from the payer, to Chelmsford City Council and Chelmsford City Council Payment Gateways to facilitate Cardholder present and Cardholder not present transactions.

The supplier will also need to provide chip and pin terminals where required.

**Objectives**

* To secure value for money services.
* To provide cost savings.

**REQUIREMENT**

1. Chelmsford City Council wish to process transactions from the

following cards: MasterCard (Credit & Debit), Visa (Credit & Debit),

Electron, Maestro and Solo. If any additional card issuers enter the

market place, the Council will discuss their specific requirements in

that regard as and when necessary. The Council does not accept

American Express cards or Diners Cards. The successful bidder will

have to be able to operate with the following

gateways: Opayo, Elavon, Worldpay and Barclaycard EPDQ.

2. The supplier must assign individual merchant numbers to each outlet specified by the council, this is currently a total of 29 merchants.

* The supplier must be able to provide new merchant numbers as and when required by the council

3. as part of the contract the supplier must be able to supply terminals to the various outlets across the council, the council currently uses 19 terminals.

If a terminal is no longer required by a Council during the course of the contract, the Council must be able to return the device to the Supplier without incurring any further related charges. Terminals must meet the latest and most up to date security requirements for such terminals throughout their usage pursuant to any contract award made as a result of this procurement. In addition, the Supplier of the services must:

* provide a high-level of customer support (e.g. providing named

contacts) and procedures for dealing with equipment failure;

* provide terminals which are easy to use and have clear and easily

decipherable readouts (with control totals for different card types and

overall value of transactions collected);

* ensure that there is a clear audit trail in all card processing

documentation;

* provide, as a minimum, monthly billing and an ‘End of Day’ analysis of

daily card transactions for each terminal;

* provide, as a security measure, for the omission of certain digits from

credit/debit card numbers in readable print outs; and

4. The Supplier must also be able to:

* support ‘customer not present’ transactions;
* support the processing of transactions over the internet;
* process card refunds to ‘customer present’ and ‘customer not present
* provide on-site training if required
* Be regulated by the Financial Conduct Authority.

**Duration and Price**

The contract will be for a period of 2 years with an option to extend for a

further period or periods up to a total of 3 years taking the contract term to a

maximum period of 5 years.

The Contract Prices will remain fixed for the initial 2 year period. This

does not include changes to fees due to regulatory changes which will need

to be notified by the successful bidder in writing to the Council at least 30

days before the fees are to be increased.

The successful bidder will be required to demonstrate

improvements relevant to the service and/or price reductions before an

individual Council will consider any such extension.

**Settlement**

* The supplier shall enable the council in conjunction with its Payment Gateways to choose and put in place an agreed settlement process, including times for the council’s end of day procedures and receipt of funds
* The supplier shall agree with the council in conjunction with the Payment Gateways the settlement cut off time. The council will have the flexibility to set this by MID or TID to facilitate alignment of its system cut offs with the Merchant Card Acquiring Services cut offs.
* The supplier shall ensure that the council receives Gross value of all card payments in it’s specified bank account in accordance with its chosen settlement day and time on day 2 after payment is taken.
* The supplier shall provide the council with the standard terms of 30 days for payments of fees and charges.

**Contract Management**

The contract will be managed by the Council and review meetings will

be held annually with the Council. The review meetings will enable the

Council and the successful bidder to review performance of the contract,

discussing matters which may include but not be limited to;

* A review of the amount of business transacted under the contract as

per the management information (see more below);

* Feedback from end users;
* Complaints of poor performance and agreement of actions to address;
* Consideration of any improvements or developments;
* Any changes in key personnel, processes, or delivery;

If there are significant performance issues then the Council has the option to

cancel the contract by giving three months’ notice.

If any change to the contract is deemed necessary, the Council may request

an ad-hoc meeting with the successful bidder as appropriate.

The successful bidder will provide a named relationship manager who will

attend meetings with the Council.

**Management Information**

The successful bidder will send the Council a monthly invoice for all

merchant numbers detailing the charges for each individual merchant number.

The successful bidder shall provide management information on an ad hoc

basis relevant to all card payment activity undertaken by all individual

Council merchants, which will include:

* Sales volumes and value per payment type, face to face, telephone

and internet payments;

* Sales Volumes and income by card type;
* Charges per card Type in total.

All information provided will need to show monthly figures.

# Appendix C: Service Levels, Service Credits and KPIs

1. All cash received must be paid into the Council’s designated accounts within 48 hours of receipt
	1. Should payment be late the Council will be able to charge Bank of England Base Rate plus 4% on any sums outstanding
2. Credit payments authorised to customers will be actioned within 1 hour of the live transaction
3. Management information should be available within 1 working hour of the service request with the option of satisfying this requirement through the availability of a secure internet portal
4. Any card machines ordered will be delivered within 1 working day of the request being made
5. The supplier will attend monthly contract management meetings with the option of these being via Teams or a similar communications system
	1. Should the service experience severe quality problems the Council has the option of convening a physical meeting in Chelmsford the next working day

# Appendix D: The draft contract terms

This agreement is dated [DATE]

PARTIES

(1)[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Supplier)**

(2) **Chelmsford City Council** of Civic Centre, Duke St, Chelmsford CM1 1JE (**Customer)**

**BACKGROUND**

(A)The Supplier is in the business of providing Merchant Acquirer Services.

(B)The Customer agrees to obtain, and the Supplier agrees to provide services on the terms set out in this agreement.

**Agreed terms**

1.Interpretation

The following definitions and rules of interpretation apply in this agreement.

**1.1Definitions**.

**Affiliate**: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

**Applicable Data Protection Laws**: all Applicable Laws relating to the protection of personal data and the privacy of individuals, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and [the guidance issued by the Information Commissioner or any other relevant regulatory authority and applicable to the Services.

**Applicable Laws**: all applicable laws, statutes, regulations [and codes] from time to time in force.

**Business Day**: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours**: the period from 9.00 am to 5.00 pm on any Business Day.

**Change**: a change to the scope, nature, volume or execution of the Services under this agreement.

**Change Control Note:** the written record of any Change agreed or to be agreed by the parties under Clause 7.

**Charges**: the fees payable for the Services, as set out in Schedule 2.

**Confidential Information**: all information (however recorded or preserved) that one party or any of its Affiliates (discloser) discloses or makes available to the other party or any of its Affiliates (recipient) in connection with this agreement and which is designated as confidential or would be regarded as confidential by a reasonable businessperson. It includes the terms of this agreement, the Customer Personal Data, the Shared Personal Data] and any information of a confidential nature relating to the business, operations, customers, suppliers, plans, processes, products, trade secrets or know-how of the discloser. It does not include information that:

* is or becomes generally available to the public (other than as a result of the recipient's breach;
* was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality agreement with the discloser or otherwise prohibited from disclosing the information to the recipient;
* the parties agree in writing is not confidential or may be disclosed.

**Contract Manager**: the Customer Contract Manager or Supplier Contract Manager, as the case may be.

**Contract Year**: each 12-month period starting on the Effective Date and an anniversary of it.

**contro**l: has the meaning given in section 1124 of the Corporation Tax Act 2010, and controls, controlled and the expression change of control shall be interpreted accordingly.

**Customer Contract Manager**: the Customer's principal point(s) of contact for managing the Services on behalf of the Customer, being the (or each) individual identified as such in Schedule 3 or any replacement individual(s) appointed under Clause 11.1.

**Customer Equipment**: any equipment, including tools, systems, cabling or facilities, provided by or on behalf of the Customer to the Supplier and which is used directly or indirectly in the supply of the Services, including any items specified in Schedule 1.

**Customer Materials**: all documents, information, [software,] items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services[, including the items provided pursuant to Clause 6.1(c)].

**Customer Personal Data**: any personal data which the Supplier processes in connection with this agreement on behalf of the Customer.

**Deliverables**: all documents, products[, designs, software, reports, specifications, plans] and other materials or items of any kind provided or to be provided as part of or in connection with the Services, including any deliverables specified in Schedule 1.

**Effective Date**: has the meaning given in Clause 2.1.

**Employment Regulations**: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) [and all other Applicable Laws in any applicable jurisdiction regulating the automatic transfer of employment on a service provision change.

**Intellectual Property Rights**: patents, [utility models,] rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up [and trade dress], goodwill and the right to sue for passing off [or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, or to claim priority from, those rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Key Milestone Date**: a Milestone Date which is identified as "key" in Schedule 1 [or by the written agreement of the parties.

**Key Personnel**: the individuals identified as key personnel in Schedule 3 or any replacement individuals appointed by the Supplier pursuant to Clause 5.3.

**Losses**: all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, awards, expenses and costs (including all interest, penalties, legal costs calculated on a full indemnity basis and reasonable professional costs and expenses.

**Mandatory Policies**: the Customer's business policies and codes listed] in Schedule 4, as updated by notification to the Supplier from time to time].

**Milestone**: any event, task or phase of the Services described as a milestone in Schedule 1.

**Milestone Date**: a date by which a Milestone is to be completed, as set out in Schedule 1.

**Regulator**: each person having regulatory or supervisory authority over all or any part of this agreement or the Customer's business.

**Relevant Requirements**: all Applicable Laws relating to the prevention of bribery and corruption, fraud [and OR , modern slavery and human trafficking etc.

**Replacement Services**: any services which are identical or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Customer internally or by any Replacement Supplier.

**Replacement Supplier**: any third party supplier of Replacement Services appointed by the Customer from time to time.

**Services**: the services set out in Schedule 1, including all services, functions and responsibilities which are incidental or ancillary to those services or required for their proper and lawful performance.

**Shared Personal Data**: has the meaning given in Clause 13.4.]

**Supplier Equipment**: the hardware, tools, systems, cabling, devices or other equipment used by the Supplier or its subcontractors in the supply of the Services, including any items specified in Schedule 1 but excluding any items which are provided by the Customer.

**Supplier Contract Manager**: the principal point of contact for managing the Services on behalf of the Supplier, being the individual identified in Schedule 3 or any replacement individual(s) appointed by the Supplier under Clause 11.1.

**Supplier Materials**: all documents, information, software, items and other materials in any form created prior to the Effective Date or wholly outside the scope of this agreement by the Supplier or its suppliers or licensors and which are used to perform the Services or provided or made available to the Customer in connection with this agreement.

**Supplier Personnel**: all employees, workers, agents, consultants, contractors and other representatives of the Supplier, or any of its subcontractors, who are engaged in the performance of this agreement from time to time, and Supplier Person means any of them.

**Term**: has the meaning given in Clause 2.1.

**Termination Assistance Period**: the period starting on the earlier of three months before the expiry of this agreement or the date of notice of termination of this agreement by either party and ending three months after expiry or termination.

**Third Party Materials**: all documents, information, software, items and other materials in any form belonging to a third party (other than an Affiliate of either party) which the Supplier uses or wants to use in connection with the Services [and which are only made commercially available on standard terms that are not typically negotiated.

**UK GDPR**: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**VAT:** value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings do not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular.

1.7 This agreement is binding on, and enures to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party include that party's personal representatives, successors and permitted assigns.

1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision:

(a)is a reference to it as amended, extended or re-enacted from time to time OR it is in force as at the date of this agreement; and

(b)includes all subordinate legislation made from time to time under that legislation or legislative provision.

1.9 A reference to writing or written excludes fax but not email.

1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or that other agreement or document, in each case as varied from time to time.

1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

**2.Commencement and duration**

2.1This agreement starts when it has been signed by all the parties (**Effective Date)** and continues, unless terminated earlier in accordance with Clause 19 (Termination), until third anniversary of the Effective Date] (Term) when it terminates automatically without notice.

2.2The Supplier shall provide the Services to the Customer in accordance with this agreement from the Effective Date].

**3.Non-exclusivity and Customer Affiliates**

3.1The supply of Services under this agreement is not an exclusive arrangement. The Customer may purchase services that are the same as or similar to the Services from any third party or provide them itself.

3.2The Customer's Affiliates may receive Services under this agreement.

3.3The Customer may require the Supplier to enter into a written agreement with any of its Affiliates that incorporates the terms of this agreement and creates a direct relationship between the Supplier and the Affiliate (Adoption Agreement). Alternatively, the Customer may require the Supplier to provide Services to an Affiliate without an Adoption Agreement in which case:

(a) the Customer shall procure that the Affiliate complies with the terms of this agreement as if it were a party to this agreement in place of the Customer;

(b) the Customer shall be liable for the acts and omissions of the Affiliate as if they were its own acts and omissions;

(c) the Supplier shall invoice the Affiliate for the Charges and other costs and expenses incurred in relation to the Services provided to the Affiliate;

(d) the Supplier shall deal with the Affiliate as if it were a party to this agreement in place of the Customer. The Affiliate shall have the same rights as the Customer under this agreement and may enforce its terms against the Supplier; and

(e) the Customer may, as agent and trustee, enforce the terms of this agreement on behalf of any of its Affiliates and for this purpose the Customer may recover the Affiliate's Losses as if they were its own. In any case in which the Customer does enforce any term in this agreement on behalf of an Affiliate under this Clause 3.3(e), that Affiliate may not exercise its rights under Clause 3.3(d).

**4.Supplier's responsibilities**

4.1The Supplier shall:

(a) provide the Services and Deliverables in accordance with the terms and conditions of this agreement;

(b) ensure that the Services and Deliverables conform to the specifications, requirements and standards set out in Schedule 1 and that the Deliverables are fit for any purpose expressly or implicitly made known to the Supplier by the Customer;

(c) perform the Services with [the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade OR the care, skill and diligence expected from a supplier [highly OR reasonably and suitably] skilled and experienced in providing services similar to the Services;

(d) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services, are of the [best quality OR standard expected of a market-leading provider of similar services] and are free from defects in workmanship, installation and design [in all material respects;

(e) co-operate with the Customer in all matters relating to the Services, and comply with the Customer's [reasonable] instructions [as to the performance of the Services];

(f) provide the Customer with information, advice and training as reasonably required by the Customer to make effective use of the Services;

(g) maintain all licences, consents and permissions needed to supply the Services in accordance with this agreement[, excluding any licences, consents and permissions that the Customer has agreed in writing to maintain;

(h) hold all Customer Materials in safe custody at its own risk and maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisations;

(i) take good care of the Customer Equipment in its possession or control;

(j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;

(k) notify the Customer in writing immediately on the occurrence of a change of control of the Supplier;

**Performance deadlines**

4.2 Time is of the essence in relation to any Milestone Dates for the Supplier OR The Supplier shall perform the Services and deliver the Deliverables in accordance with the Milestone Dates.] If the Supplier fails to meet a Milestone Date, then (without prejudice to the Customer's right to terminate this agreement and any other rights or remedies that the Customer may have:

(a) the Supplier shall, until the Customer exercises its rights under Clause 4.2(d)(i), take all additional steps necessary to perform the Services and deliver the Deliverables as soon as possible after the missed Milestone Date and at no additional cost to the Customer;

(b) the Customer may withhold payment for the delayed Services or Deliverables until the Supplier remedies the delay;

(c) the Supplier shall pay the Customer, as liquidated damages

(d) if the Milestone Date is a Key Milestone Date, or the Supplier fails to perform any Services or deliver any Deliverables within five Business Days of the missed Milestone Date,] the Customer may:

(i) refuse to accept any subsequent performance of the delayed Services or supply of the delayed Deliverables which the Supplier attempts to make;

(ii) purchase substitute services or deliverables from elsewhere and reclaim from the Supplier any additional costs it incurs; and

(iii) require the Supplier to immediately refund any sums previously paid by the Customer in respect of the delayed Services or Deliverables.

4.3 The Supplier shall pay the liquidated damages under Clause 4.2(c) on demand or the Customer may deduct them from its payments to the Supplier. The liquidated damages payable under Clause 4.2(c) shall start to accrue on the day after the missed Milestone Date and shall continue to accrue until:

(a) the Supplier completes the performance of the delayed Services or delivers the delayed Deliverables;

(b) the Customer exercises its rights under Clause 4.2(d)(i) or terminates this agreement;

(c) the accrued liquidated damages equal the maximum sum set out in Clause 4.2(c); or

(d) this agreement expires,

whichever is earlier. The parties confirm that these liquidated damages are reasonable and proportionate to protect the Customer's legitimate interest in timely performance.

**Service reviews**

4.4 The Supplier shall inform the Customer Contract Manager in writing on completion of each Milestone. The Customer may review the Work Item to determine if it conforms in all material respects to the requirements of this agreement, including any specifications or acceptance criteria set out in Schedule 1, and provide the Supplier with written approval of the Work Item or a written statement of errors to be corrected.

4.5 The Customer shall not unreasonably withhold or delay its approval of a Work Item. If the Customer puts any Work Item into commercial use or does not inform the Supplier in writing of any errors within five Business Days of being informed that that Work Item is complete under Clause 4.3, the Work Item is deemed to be approved by the Customer.] If the Customer approves the Work Item with minor errors, the Supplier shall correct those minor errors promptly [and in any event in accordance with any timescales reasonably specified by the Customer.

4.6 If the Customer provides a written statement of errors, the Supplier shall correct the errors in the Work Item at no additional cost to the Customer. The Supplier shall do so within 25% of the duration of the original timeframe for provision of the Work Item OR five Business Days after receiving the Customer's statement of errors and inform the Customer Contract Manager in writing when the corrections are complete. The approval process in Clause 4.4 and Clause 4.5 shall then be repeated. If the Supplier fails to correct the errors by the Deadline, the Customer may (without prejudice to any other rights or remedies it may have:

(a) require the Supplier to repeat the process to correct errors in this Clause 4.6;

(b) approve the Work Item subject to [a reasonable deduction from the Charges to reflect the errors in the Work Item and the delays caused by the Work Item not being compliant when first completed OR any conditions that the Customer reasonably determines [provided that the conditions may not, without the Supplier's prior written consent, increase its obligations or restrict its rights or remedies under this agreement]. If all the relevant conditions have not been met within the period specified by the Customer, the Customer may exercise its rights in Clause 4.6(c) and Clause 4.7]; or

(c) finally refuse to approve the Work Item and refuse any subsequent performance which the Supplier attempts to make.]

4.7 If the Customer finally refuses to approve a Work Item under Clause 4.6(c), it may, without prejudice to any other rights or remedies it may have do one or more of the following:

(a) refuse to pay for the Work Item and require the Supplier to immediately refund any sums previously paid to the Supplier for that Work Item; and

(b) purchase substitute services or deliverables from elsewhere [and reclaim from the Supplier any additional costs it incurs].]

4.8 Approval by the Customer of any Work Item does not mean that the Customer has varied or waived its requirements for any part of the Services. Approval is without prejudice to any rights or remedies of the Customer under the terms of this agreement or in law.

4.9 All Supplier property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for damage to any of the Supplier's property located on the Customer's premises, with the Customer's prior written consent, which is due to the negligent act or omission of the Customer.

**5. Supplier Personnel**

5.1 The Supplier shall ensure that the Supplier Personnel:

(a) have suitable skills and experience to enable them to perform the tasks assigned to them [and have been adequately trained in the provision of the Services];

(b) hold all licences, permits, visas and consents required for the proper performance of this agreement, including the right to work in all relevant jurisdictions, and have been properly screened and vetted by the Supplier to ensure they are fit for the positions that they are in;

(c) observe all health and safety rules and regulations and all reasonable security requirements that apply from time to time at the Customer's premises they access [and that have been communicated to the Supplier under Clause 6.1(e); and

(d) are in sufficient number to enable the Supplier to fulfil its obligations under this agreement.

5.2 If the Customer (acting reasonably) believes that any Supplier Person is not performing the Services properly or effectively or is disruptive to the Customer's business, the Customer may require the Supplier to remove that Supplier Person from the Customer's account and ensure they cease to be involved in the Services. The Supplier shall promptly do so at its cost and without any material interruption to the Services.

5.3The Supplier shall:

(a) use the Key Personnel in the provision of the Services [and procure that the Key Personnel spend the percentage of their working hours set out in Schedule 3 in the provision of the Services];

(b) promptly inform the Customer of the absence (or the anticipated absence) of any of the Key Personnel [(other than for short-term absences of [two] weeks or less)] and, if required by the Customer, provide a suitably qualified, temporary replacement for that individual; and

(c) not remove or replace OR use its [best OR reasonable] endeavours not to remove or replace] any Key Personnel during the Term provided that the Supplier may do so if:

(i) requested to do so by the Customer under Clause 5.2;

(ii) the person is on maternity leave, paternity leave, shared parental leave, or long-term sick leave;

(iii) the person is suspended for misconduct;

(iv) the element of the Services in respect of which the Key Person was engaged has been completed [to the Customer's reasonable satisfaction;

(v) the person [resigns from their employment with the Supplier or] ceases to be employed by the Supplier; or

(vi) the Supplier obtains the prior [written] approval of the Customer, not to be unreasonably withheld or delayed;

(d) obtain the prior [written] approval of the Customer [(approval not to be unreasonably withheld or delayed)] to any replacement for a Key Personnel member OR ensure that any replacement for a Key Personnel member has the qualifications and experience to carry out the tasks assigned to the Key Personnel member being replaced;

(e) use [all] reasonable endeavours to] ensure that the role of each of its Key Personnel is not vacant in terms of a permanent representative for more than ten Business Days; and

(f) bear all costs and expenses associated with the appointment, removal or replacement of Key Personnel, including time spent by any replacement familiarising themselves with the Supplier's duties under this agreement.

5.4 During the Term, the Supplier shall provide, within 5 days of the Customer's request, any information reasonably requested by the Customer relating to the way in which the Services are organised, including:

(a) the number of Supplier Personnel engaged in providing the Services;

(b) the [average weekly] percentage of their working hours spent by each Supplier Person on the Services; and

(c) a description of the nature of work undertaken by each Supplier Person.

5.5 Each party shall comply with its obligations in Schedule 6.

**6. Customer's obligations**

6.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services;

(b) provide access to the Customer's premises and other facilities as may reasonably be requested by the Supplier[, and agreed with the Customer [in writing] in advance,] for the purposes of the Services;

(c) provide to the Supplier all documents, information, items and materials required under Schedule 1 [or otherwise reasonably required by the Supplier for the purpose of providing the Services];

(d) provide the Customer Equipment to the Supplier by the dates and in the manner prescribed in Schedule 1;]

(e) inform the Supplier of all health and safety and security requirements that apply from time to time at [any of] the Customer's premises which the Supplier will require access to. The Customer's requirements as at the Effective Date are set out in Schedule 4; and

6.2 The Supplier cannot rely on the Customer's breach of this agreement to excuse any failure in the Supplier's performance unless:

(a) the Supplier promptly notifies the Customer in writing [and in reasonable detail] of the Customer breach and its effect or anticipated effect on the Services;

(b) the obligations that the Supplier cannot perform are directly [and materially] impacted by the Customer's breach; and

(c) the Supplier uses all reasonable endeavours to continue to provide the affected obligations in accordance with this agreement.

6.3 The Supplier cannot rely on a notice given under Clause 6.2(a) in respect of any failure in the Supplier's performance which occurs before the Customer's receipt of that notice.]

6.4 The Customer may challenge any notice received from the Supplier under Clause 6.2

(a) if it believes, in its reasonable opinion, that the breach notified to it should not have an adverse effect on the Supplier performing its obligations in accordance with this agreement. Any resulting dispute regarding the occurrence or impact of the notified breach may be referred by either party for resolution in accordance with Clause 34. Any failure by the Customer to challenge a notice from the Supplier under Clause 6.2(a) does not mean that the Customer accepts that it is in breach or that any breach excuses any failure in the Supplier's performance.

**7. Change control**

7.1 Either party may submit a written request for Change to the other party in accordance with this Clause 7, but no proposed Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.

7.2 If the Customer wishes to make a Change:

(a) the Customer shall submit a written request to the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Control Note; and

(b) the Supplier shall, within five Business Days of receiving the Customer's request at Clause 7.2(a), provide a Change Control Note to the Customer.

7.3 If the Supplier wishes to make a Change, it shall send a Change Control Note to the Customer.

7.4 A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:

(a) the title of the Change;

(b) a description of the Change;

(c) details of the effect of the proposed Change on:

(i) the Services;

(ii) the Charges;

(iii) the timetable for the Services; and

(iv) any other term of this agreement.

7.5 The Supplier may only reject a request for Change from the Customer under Clause 7.2(a) if the Supplier can demonstrate to the Customer's reasonable satisfaction that:

(a) the proposed Change would require this agreement to be delivered in a way that infringes any Applicable Law; or

(b) it does not have the technical skill or capacity to implement the proposed Change.

7.6 If the parties:

(a) agree to the terms of a Change Control Note, they shall sign it and that Change Control Note will amend this agreement; or

(b) are unable to agree a Change Control Note, either party may require the disagreement to be dealt with in accordance with Clause 34.

7.7 Each party bears its own costs in relation to compliance with the procedure in this Clause 7.

**8.Charges and payment**

8.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.

8.2 Where the Charges are calculated on a time and materials basis:

(a) the Supplier's fee rates for each individual person are set out in Schedule 2;

(b) daily fee rates are calculated on the basis of an eight-hour day, worked during Business Hours; [and]

(c) the Supplier shall not be entitled to charge on a pro rata basis for part days worked by the Supplier Personnel during Business Hours, unless it has the Customer's prior written consent to do so;

(d) if the Customer has agreed in writing in advance, the Supplier may charge for specific work outside Business Hours by Supplier Personnel at the overtime rates set out in Schedule 2[, pro-rated to reflect the hours worked]. The Supplier may not charge for work done outside Business Hours in any other circumstances; and]

(e) the Supplier shall ensure that all Supplier Personnel complete time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.

8.3 The Customer shall reimburse the Supplier for the following costs and expenses which are excluded from the Charges:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier Personnel in connection with the Services, provided that:

(i) the Supplier obtains the Customer's prior written approval before incurring any expenses exceeding £1,000 OR any expenses over £3,000 in any calendar month]; [and]

(ii) any expenses are incurred in accordance with the Customer's expenses policy, as set out in Schedule 4 and updated from time to time on written notice to the Supplier; and]

(b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services provided that those items and their cost are specified in Schedule 2 or approved by the Customer in writing before being incurred by the Supplier.

8.4 Except as otherwise provided in this agreement, the Supplier shall bear its own costs and expenses incurred in performing its obligations under this agreement.

8.5 The Supplier shall invoice the Customer for the Charges on the schedule specified in Schedule 2. If no schedule is specified, the Supplier shall invoice the Customer at the end of each month for Services performed OR approved by the Customer under Clause 4 during that month. Each invoice must:

(a) set out how any Charges which are not fixed price have been calculated;

(b) be accompanied by management information to verify the accuracy of the invoice;

(c) explicitly refer to the Customer's purchase order number (if any); and

(d) contain any other information reasonably requested by the Customer.]

8.6 The Supplier shall invoice the Customer monthly in arrears for expenses and third party costs. [The Supplier shall ensure that expenses and third party costs are passed through to the Customer at cost, with no mark-up.

8.7 The Customer has no obligation to:

(a) pay any Charges invoiced more than three months after they should have been invoiced under this agreement; or

(b) reimburse the Supplier for any expenses or third party costs invoiced to the Customer more than [NUMBER] months after they were incurred.

8.8 The Supplier shall provide the Customer with any documents and other information reasonably requested by the Customer to verify the accuracy of the Supplier's invoices. This includes time sheets for Supplier Personnel and invoices and receipts for expenses and third party costs.

8.9 The Customer shall pay each undisputed invoice submitted to it by the Supplier within [30] days of receipt to a bank account nominated in writing by the Supplier. The Customer may reduce its payment of the invoiced amount by 10% if it pays the invoice within five days of receipt.

8.10 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:

(a) the Customer shall notify the Supplier in writing of the disputed amount(s) as soon as reasonably practicable;

(b) the Supplier shall provide all evidence as may be reasonably necessary to verify the disputed invoice;

(c) the Customer's failure to pay the disputed amount(s) shall not be deemed to be a breach of this agreement;

(d) the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice;

(e) the parties shall [seek to resolve the items in dispute in accordance with Clause 34 OR use reasonable endeavours to resolve the items in dispute promptly;

(f) to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then the Supplier may charge interest on that amount at the rate specified in Clause 8.11 from the [original due date for payment OR date that the dispute is resolved] until the date of payment; and

(g) once the dispute has been resolved, where either party is required to make a balancing payment or issue a credit note, it shall do so within [NUMBER] Business Days of the resolution of the dispute.

8.11 If the Customer fails to make a payment due to the Supplier under this agreement by the due date, then, without limiting the Supplier's remedies under Clause 19, the Supplier may [charge (and the Customer shall pay) interest on the overdue sum from the due date until payment of the overdue sum OR notify the Customer of its intention to charge interest on that overdue sum. If the Customer fails to pay the overdue sum within [NUMBER] Business Days of receiving that notice, the Supplier may charge (and the Customer shall pay) interest on the overdue sum from the due date until the date of actual payment]. Interest under this Clause 8.11 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.12 All sums payable to the Supplier under this agreement are exclusive of VAT, and the Customer shall, in addition, pay an amount equal to any VAT chargeable on those sums subject to receipt of a valid VAT invoice.

8.13 The Customer may, at any time[, without notice to the Supplier,] set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

**9. Audit**

9.1 The Supplier shall maintain complete and accurate records of, and supporting documents for:

(a) all amounts chargeable to the Customer[; and

(b) all activities carried out,

under this agreement. These records shall be retained for access by the Customer during the Term and for 12 months afterwards.

9.2 The] Supplier shall allow the Customer (and its auditors and professional advisers) access to the Supplier's premises, personnel, systems and relevant records as may reasonably be required to verify that:

(a) the Charges and any other sums charged to the Customer under this agreement are accurate[; and]

(b) the Services are being provided, and all obligations of the Supplier are being performed, in accordance with this agreement].

9.3 The Supplier shall provide the Customer (and its auditors and professional advisers) with all reasonable co-operation, access and assistance in relation to each audit. The Customer and its auditors and professional advisers may take copies of any records which they reasonably require for the audit.]

9.4 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

9.5 The Customer shall provide at least five Business Days' notice of its intention to conduct an audit, and may not audit the Supplier more than once in a Contract Year, unless the Customer has reasonable grounds to suspect fraud or a material problem with the provision of the Services or the calculation of amounts charged to the Customer.] Any audit shall be conducted during Business Hours.

9.6 If any audit reveals that the Customer has been overcharged, the Supplier shall immediately refund the amount of the overcharge to the Customer. If any audit reveals that the Customer has been undercharged, the Supplier may invoice the Customer for the amount of the undercharge and the Customer shall pay that invoice in accordance with Clause 8.9.

9.7 Each party shall bear its own costs and expenses of any audit unless the audit reveals:

(a) an overcharge of more than five percent of the amounts being audited[; or

(b) material non-compliance by the Supplier with any of its obligations under this agreement,

in which case the Supplier shall reimburse the Customer, on demand, for all its reasonable costs incurred in the course of the audit.

9.8 If any audit results in the Supplier bearing the costs under Clause 9.7 (a materially non-compliant audit), the restrictions on the frequency of audits in Clause 9.5 shall no longer apply and the Customer may audit the Supplier as frequently as it chooses for a period of 12 months after the last day of the materially non-compliant audit OR until the completion of an audit that is not a materially non-compliant audit.

9.9 The Supplier is not obliged to grant access to any third party auditor or professional adviser until that third party signs a confidentiality agreement with the Supplier in which it undertakes to protect the Supplier's Confidential Information on substantially the same terms and conditions as set out in Clause 14 of this agreement. All information obtained by the auditor may be disclosed to the Customer.

9.10 The Customer may, in addition to or instead of requiring rights of access under Clause 9.2, require the Supplier to provide detailed answers to queries in relation to the Services, the Charges, or any other amounts charged to the Customer under this agreement and copies of any associated documents or materials. The Supplier shall provide the information requested under this Clause 9.10 promptly following the Customer's request.]

**10. Intellectual Property Rights**

10.1 The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials. The Customer grants to the Supplier a non-exclusive, royalty-free, non-transferable (except in accordance with Clause 22.1) licence to use, copy and modify the Customer Materials during the Term for the sole purpose of providing the Services to the Customer. The Supplier cannot sublicense the Customer Materials to any third party [(other than permitted subcontractors under Clause 22)] without the Customer's prior written consent.

10.2 The Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding any Customer Materials contained within them.

10.3 Subject to Clause 10.5, the OR The] Supplier grants to the Customer a non-exclusive, royalty-free, transferable, [perpetual and irrevocable licence, with the right to grant sublicences in accordance with Clause 10.4, to use, copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and Deliverables in its business.

10.4[The Customer may sub-license the rights granted in Clause 10.3 to its Affiliates[, customers, suppliers and [OTHER THIRD PARTIES].]

10.5 The Supplier shall not include in the Deliverables any Third Party Materials that cannot be licensed to the Customer on the terms of Clause 10.3 unless their inclusion and licence terms are approved in writing in advance by the Customer. The Supplier shall grant to the Customer a licence to use any Third Party Materials approved by the Customer for inclusion in the Deliverables on the terms (including parties, costs and restrictions on use) approved by the Customer.

10.6 The Supplier assigns to the Customer, immediately on creation, with full title guarantee, all Intellectual Property Rights in the Deliverables (excluding any Customer Materials[, Supplier Materials] [or Third Party Materials] contained within the Deliverables [with the Customer's prior written approval.

10.7 The Supplier and its licensors shall retain ownership of all Supplier Materials. [The Supplier shall not include any Supplier Materials in the Deliverables unless their inclusion has been approved by the Customer in writing in advance.] The Supplier grants to the Customer a non-exclusive, royalty-free, transferable, perpetual and irrevocable licence (with the right to grant sublicences) to use, copy and modify the Supplier Materials for the purpose of receiving and using the Services and the Deliverables.

10.8 The Supplier shall not include in the Deliverables any Third Party Materials that cannot be assigned to the Customer under Clause 10.6, or licensed to the Customer on the terms of Clause 10.7, unless their inclusion and licence terms are approved in writing in advance by the Customer. The Supplier grants to the Customer a licence to use any Third Party Materials approved by the Customer for inclusion in the Deliverables on the terms (including parties, costs and restrictions on use) approved by the Customer.

10.9 The Customer grants the Supplier a non-exclusive, royalty-free, non-transferable (except in accordance with Clause 22.1) licence to use, copy and modify, during the Term, the Deliverables assigned to the Customer under Clause 10.6 (Assigned Materials) for the sole purpose of providing the Services to the Customer in accordance with this agreement. The Supplier cannot sublicense the Assigned Materials without the Customer's prior written consent.

10.10 The Supplier shall, to the maximum extent permitted by Applicable Law, obtain waivers of all moral rights in the Deliverables (excluding any Customer Materials and Third Party Materials contained within them) to which any person is now, or may at any future time be, entitled to under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any similar legislation from time to time in force anywhere in the world. [The Supplier shall obtain the Customer's prior written approval before incorporating into the Deliverables any Third Party Materials in which moral rights cannot be waived.

10.11 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all further acts and things and execute (or procure the execution of) all other documents as the Customer may from time to time require for the purpose of securing for the Customer all right, title and interest in and to the Intellectual Property Rights, assigned or licensed to the Customer under this agreement.

**11. Contract managers and governance**

11.1 Each party shall appoint its Contract Manager(s) to:

(a) oversee the delivery and receipt of the Services on a day-to-day basis;

(b) be the principal point(s) of contact for the other party in connection with managing the relationship between the parties; and

11.2 Each party's Contract Manager(s) shall have the authority to make decisions and act on its behalf in connection with the operation of this agreement (including by signing Change Control Notes.

11.3 Each party shall designate its Contract Manager(s) in writing to the other party. Each party may replace its Contract Manager(s) at any time by giving reasonable prior written notice to the other party of the replacement(s)

11.4 Unless otherwise stated in this agreement, the Customer Contract Manager(s) shall be the only person(s) authorised to make decisions and enter into binding commitments on behalf of the Customer in connection with this agreement.

11.5 If any person that is not identified as a Customer Contract Manager gives any instruction or endeavours to make any commitment that purports to bind the Customer in connection with this agreement, the Supplier shall not carry out that instruction or take any steps to meet that commitment unless authorisation is obtained from a Customer Contract Manager. Any costs, expenses or liabilities arising from the Supplier's failure to comply with this Clause 11.5 shall be borne by the Supplier.

11.6 The parties will hold review meetings at least once every [quarter] (or on any other frequency as may be agreed in writing) to discuss the operation of this agreement and the performance of the Services at which they will be represented by their Contract Managers.

11.7 The parties agree to be transparent with each other in connection with this agreement and accordingly will raise any issue without delay.

11.8 If a service or performance issue arises, the Supplier shall promptly work to remedy the issue even where it considers that the issue may have been caused in whole or in part by the Customer or a third party and shall not seek to obtain any admission from the Customer as a pre-condition to rectifying the relevant issue.

**12. Compliance with laws and policies**

12.1 In performing its obligations under this agreement, the Supplier shall comply with:

(a) all Applicable Laws; and

(b) the Mandatory Policies.

12.2 The Customer shall give the Supplier not less than ten days' notice of any change to the Mandatory Policies, including the introduction of any new Mandatory Policy, before the change takes effect. The Supplier shall comply with the change from the date it takes effect, provided that if any change to the Mandatory Policies would materially increase the Supplier's obligations or costs under this agreement, the Supplier may, within ten days of the Customer's notice, request a proportionate increase to the Charges in accordance with the procedure in Clause 7 OR notify the Customer that it objects to the change in which case the change shall not take effect with regard to the Supplier. The Customer shall not unreasonably withhold or delay its consent to the Supplier's request to increase the Charges OR The Customer may, within five days of receipt of the Supplier's notice objecting to a change, terminate this agreement with immediate effect by notifying the Supplier. [The Supplier cannot exercise its rights under this Clause 12.2 where the change to the Mandatory Policies reflects a change in Applicable Law that:

(a) generally affects the supply of services similar to the Services; or

(b) would have been reasonably foreseeable on the Effective Date by an experienced supplier performing services similar to the Services.

12.3 The Supplier warrants and represents that neither it, nor to the best of its knowledge any of the Supplier Personnel or any of its suppliers involved in performing the Services (Associated Persons):

(a) has committed an offence under any of the Relevant Requirements; or

(b) has been or is the subject of any investigation, inquiry, or enforcement proceedings by any governmental, administrative, or regulatory body regarding any offence or alleged offence under the Relevant Requirements.

12.4 The Supplier shall promptly notify the Customer if, at any time during the Term, its circumstances, knowledge, or awareness changes such that it would not be able to repeat the warranties set out in Clause 12.3 at the relevant time.

12.5 The Supplier shall not do or omit to do any act which would cause the Customer to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

12.6 The Supplier shall ensure that its subcontractors are required to comply with the policies and procedures which are adequate to ensure compliance with the Relevant Requirements. The Supplier shall be directly liable to the Customer for any failure to do so by any of those subcontractors.

12.7 The Supplier shall immediately notify the Customer if it has reason to believe that it or any of its Associated Persons is in receipt of a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement.

12.8 Within six months of the Effective Date, and annually thereafter, the Supplier shall provide the Customer with a written statement, signed by an officer of the Supplier, certifying compliance with the Relevant Requirements by the Supplier and all its Associated Persons [to the best of its knowledge.

**13. Data protection**

13.1 For the purposes of this Clause 13, the terms Commissioner, controller, data subject, personal data, personal data breach, processor and processing shall have the meaning given to them in Applicable Data Protection Law.

13.2 Each party shall comply with all Applicable Data Protection Laws in its processing of personal data under or in connection with this agreement. This Clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

13.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:

(a) the Supplier shall process the personal data set out in Paragraph 1 of Schedule 5 as a processor on behalf of the Customer;

(b) the Supplier and Customer shall act as joint controllers in respect of the personal data and processing activities set out in Paragraph 3 of Schedule 5.

13.4 Without prejudice to Clause 13.2, where one party (Data Discloser) shares personal data with the other party (Data Recipient) as controllers (Shared Personal Data), the Data Recipient shall:

(a) only process the Shared Personal Data for the purposes set out in Schedule 5 or otherwise agreed in writing by the parties (Agreed Purposes);

(b) not retain or process the Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.

13.5 Without prejudice to Clause 13.2, each party shall:

(a) ensure that it has all necessary notices and lawful bases in place to process the Shared Personal Data for the Agreed Purposes;

(b) give full information to any data subject whose Shared Personal Data may be processed under this agreement of the nature of that processing;

(c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Shared Personal Data and against accidental loss or destruction of, or damage to, Shared Personal Data; and

(d) provide reasonable assistance to the other party in complying with Applicable Data Protection Laws in relation to the Shared Personal Data, including by:

(i) promptly informing the other party about the receipt of any data subject rights request that relates to the other party's processing;

(ii) providing the other party with reasonable assistance in complying with any data subject rights request; and

(iii) notifying the other party without undue delay on becoming aware of any personal data breach in relation to the Shared Personal Data [and doing all things reasonably necessary to assist the other party in mitigating the effects of the personal data breach].

13.6 In relation to the Customer Personal Data, Paragraph 1 of Schedule 5 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

13.7 Without prejudice to Clause 13.2, the Supplier shall, in relation to Customer Personal Data:

(a) process that Customer Personal Data only on the documented written instructions of the Customer, which are set out in Paragraph 1 of Schedule 5, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing unless prohibited from doing so by those Applicable Laws. The Supplier shall immediately inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;

(b) ensure that it has in place appropriate technical and organisational measures[, including those in Paragraph 1.1(g) of Schedule 5, to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including as appropriate:

(i) the pseudonymisation and encryption of Customer Personal Data;

(ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;

(iii) the ability to restore the availability of and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and

(iv) a process for regularly assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

(c)ensure that:

(i) access to Customer Personnel Data is restricted only to those Supplier Personnel who need access to perform the Services; and

(ii) all Supplier Personnel who have access to or process Customer Personal Data are obliged to keep the personal data confidential;

(d) promptly assist the Customer[, at the Supplier's expense], in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner or other Regulators. In particular, the Supplier shall promptly notify the Customer if it receives any complaint, notice or communication (whether from a data subject, the Commissioner or any other Regulator or third party) which relates to processing of Customer Personal Data;

(e) notify the Customer without undue delay (and no later than [TIMESCALE]) after becoming aware of a personal data breach;

(f) at the written direction of the Customer, delete or return to the Customer all Customer Personal Data when it is no longer needed to perform the Services and in any event on termination or expiry of this agreement, unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. The Supplier shall procure that any third party to which the Supplier has disclosed the Customer Personal Data does the same and shall certify to the Customer in writing that it has complied with this Clause 13.7(f). [If the Supplier is required by Applicable Law to continue to process any Customer Personal Data, the Supplier shall promptly notify the Customer of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for that specific purpose. All requirements set out in this Clause 13 shall continue to apply to any Customer Personal Data for as long as that Customer Personal Data is processed by the Supplier.] For the purposes of this Clause 13.7(f) the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

(g) maintain complete and accurate records and information to demonstrate its compliance with Applicable Data Protection Laws and this Clause 13 and make them available to the Customer on request. The Supplier shall allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor to demonstrate its compliance with Applicable Data Protection Laws and this Clause 13. The requirements of Clause 9 apply to any audits under this Clause 13.

13.8 The Supplier shall not engage a third party to process any Customer Personal Data without the prior written consent of the Customer, not to be unreasonably withheld or delayed. The Supplier shall:

(a) ensure that the terms on which it appoints any third party processor comply with Applicable Data Protection Laws and are consistent with the obligations imposed on the Supplier in this Clause 13; and

(b) remain responsible for the acts and omissions of that third party as if they were the acts and omissions of the Supplier.

13.9 The Supplier shall not carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK or EEA, including processing Customer Personal Data on equipment situated outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the Supplier:

(a) ensures that the processing is compliant with Applicable Data Protection Laws, including by ensuring an adequate level of protection for the Customer Personal Data; and

(b) complies with any reasonable instructions notified to it by the Customer with respect to the processing of the Customer Personal Data.

13.10 The Supplier shall not do anything which may cause the Customer to be in breach of Applicable Data Protection Laws or damage its reputation with data subjects.

**14. Confidentiality**

14.1 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

(a) use that Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (Permitted Purpose); or

(b) disclose that Confidential Information in whole or in part to any person, except as permitted by Clause 14.2 [or Clause 14.3].

14.2 Each party may disclose the other party's Confidential Information:

(a) to [those of] its [and its Affiliates'] employees, officers, representatives, independent contractors, subcontractors and advisers who need to know that information for the Permitted Purpose (Representatives). Each party shall ensure that its Representatives comply with confidentiality obligations which are substantially equivalent to those set out in this Clause 14; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible [and, where notice of disclosure is not prohibited, it takes into account the reasonable requests of the other party in relation to the content of the disclosure.

14.3 The Customer may disclose the Supplier's Confidential Information [(excluding Confidential Information concerning the Charges and other notified restricted information to any actual or potential Replacement Supplier to the extent reasonably necessary to plan for an exit from this agreement or to facilitate the smooth transition of the Services to a new supplier, provided that the Customer ensures any recipient of Confidential Information under this Clause 14.3 complies with confidentiality obligations which are substantially equivalent to those set out in this Clause 14.

14.4 The provisions of this Clause 14 shall continue to apply [after termination or expiry of this agreement OR for a period of [five] years after termination or expiry of this agreement.

**16. Warranties and indemnities**

16.1 Each party warrants and represents to the other party that:

(a) it has full power and authority to enter into this agreement and fulfil its obligations under it;

(b) this agreement is executed by its duly authorised representative;

(c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect its ability to meet and carry out its obligations under this agreement; and

(d) its obligations under this agreement constitute its legal, valid, and binding obligations.

16.2 The Supplier warrants and represents that all written statements and representations made by the Supplier as part of the procurement process are true and accurate except to the extent that the Supplier has otherwise disclosed to the Customer in writing before the date of this agreement.

16.3 The Customer warrants and represents that the Customer Materials do not infringe the Intellectual Property Rights or any other rights of any third party. The Customer shall not be liable under this Clause 16.3 to the extent that the infringement arises from:

(a) changes made to the Customer Materials without the Customer's prior written consent; or

(b) the use of the Customer Materials for a purpose or in a manner not authorised by the Customer in writing.

16.4 The Supplier warrants, represents and undertakes that:

(a) subject to Clause 16.6, the supply, receipt, and use of the Services and Deliverables shall not infringe the Intellectual Property Rights or any other rights of any third party;

(b) it is not, and shall not become, subject to any contractual obligation which is likely to have a material adverse effect on its ability to perform its obligations under this agreement; and

(c) it shall not do anything that could reasonably be considered to bring the Customer into disrepute or damage its reputation.

16.5 The Supplier shall indemnify [the Customer OR each Indemnified Person] against all Losses incurred by the [Customer OR Indemnified Person] as a result of:

(a) any claim that the supply, receipt or use of any of the Services or Deliverables infringes the Intellectual Property Rights or any other rights of any third party; [and]

(b) any claim by any person, or any action (including any investigation) by a Regulator or governmental authority, arising out of or in connection with the Supplier's failure to comply with the Relevant Requirements or breach of Clause 12.5; and]

(c) any claim by any person, or any action or investigation by a Regulator, arising out of or in connection with the Supplier's failure to comply with Applicable Data Protection Laws or breach of Clause 13.

In this Clause 16.5, Indemnified Persons mean the Customer and each of its Affiliates [and each of its and their directors, officers, employees, agents and licensees], and Indemnified Person means any of them.

16.6 The Supplier shall not be liable under the warranty in Clause 16.4(a) or the indemnity in Clause 16.5(a) to the extent that the actual or alleged infringement arises directly from:

(a) any changes made to the Deliverables by the Customer [or any of its licensees] without the Supplier's prior written consent, which shall not be unreasonably conditioned, withheld or delayed; or

(b) the [use of the] Customer Materials [in accordance with the Customer's instructions][, provided that the Supplier shall not be relieved of liability where it knew or suspected (or should have known or suspected) that the use of any Customer Materials may result in infringement but did not notify the Customer.

16.7 If a third party brings a claim against [the Customer OR any Indemnified Person], or notifies [the Customer OR any Indemnified Person] of its intention to do so, and that claim may reasonably be considered likely to give rise to a liability under an indemnity in this Clause 16 (Claim), the Customer shall[, or shall procure that the Indemnified Person shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

(b) subject to Clause 16.8, allow the Supplier, at its own cost, to conduct all negotiations and proceedings in relation to the Claim and to settle or compromise the Claim, provided that the Supplier may not settle or compromise the Claim [without the prior written consent of the [Customer OR Indemnified Person] (consent not to be unreasonably withheld) OR unless it involves only the payment of money by the Supplier and includes a complete release of the [Customer OR Indemnified Person]];

(c) provide the Supplier with reasonable information, assistance and co-operation in responding to and defending the Claim, subject to the Supplier's compliance with Clause 16.9(c); and

(d) not, subject to Clause 16.8 and the Supplier's full compliance with Clause 16.9, make any admission of liability, settlement or compromise relating to the Claim without the Supplier's prior written consent (not to be unreasonably conditioned, withheld or delayed)[, provided that the [Customer OR Indemnified Person] may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier), but without obtaining the Supplier's consent, if [the full and final settlement of the Claim comprises only the payment of money and] the [Customer OR Indemnified Person] [reasonably] believes that failure to settle the Claim would be prejudicial to it in any material respect.

16.8 If the Supplier does not assume control over the defence of a Claim within [NUMBER] days of receipt of the notice under Clause 16.7

(a), the Customer or the Indemnified Person may defend the Claim in any way it deems appropriate at the Supplier's expense.

16.9 If the Supplier assumes control over the defence of a Claim, the Supplier shall:

(a) defend the Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Customer [or any of its Affiliates] into disrepute;

(b) have regard to the interests and reputation of the [Customer OR Indemnified Person] in its conduct of the Claim;

(c) reimburse the [Customer OR Indemnified Person] for any costs incurred under Clause 16.7(c);

(d) ensure that the [Customer OR Indemnified Person] is granted access to all relevant documents connected with the Claim and keep the Customer or the Indemnified Person informed, at regular intervals, regarding negotiations, litigation and other material matters concerning the Claim; and

(e) allow the Customer or the Indemnified Person] to join in the defence of the Claim with counsel of its choice at its own expense.

16.10 The failure of the Customer to comply with the indemnification procedures in Clause 16.7 does not relieve the Supplier of any obligation to indemnify the [Customer OR Indemnified Person].]

16.11 If a payment due from the Supplier under Clause 16.5 is subject to tax (whether by way of direct assessment or withholding at its source), the amount of the payment shall be increased to ensure that the net receipt, after tax, to the beneficiary of the indemnity is the same as it would have been were the payment not subject to tax.

**17. Insurance**

17.1 During the Term [and for a period of six years after the expiry or termination of this agreement, the Supplier shall maintain in force adequate insurance, with reputable insurance companies, to cover its potential liabilities under or in connection with this agreement, including:

(a) public liability insurance with a limit of no less than £10 Million per claim; and

(b) professional indemnity insurance with a limit of no less than £ 2 Million for claims arising from a single event or series of related events in a single calendar year].

17.2 The Supplier shall produce to the Customer on request a certificate of insurance from each of its insurers evidencing the insurance required by this agreement [and a receipt for the current year's premium in respect of each insurance.

**18. Limitation of liability**

18.1 The following definitions apply in this Clause 18:

(a) default: any act or omission resulting in one party incurring liability to the other; and

(b) liability: every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), or otherwise.

18.2 Nothing in this agreement limits or excludes:

(a) either party's liability for:

(i) deliberate or wilful default;

(ii) death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;

(iii) fraud or fraudulent misrepresentation;

(iv) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;

(v) any liability that cannot legally be limited or excluded;

(b) Supplier's liability under Clause 16.5(a) or Clause 16.5(b)] of this agreement; or

(c) the Supplier's OR either party's] liability under the indemnities in Schedule 6.

18.3 Subject to Clause 18.2, the Supplier's total liability:

(a) for damage to customer property shall not exceed £1 Million for any one default or series of connected defaults. Customer property means premises, equipment or other property (but excluding data) owned, controlled or occupied by the Customer [or any of its Affiliates] and which are made available for use by the Supplier or any of its suppliers;

(b) under or for each breach of] Clause 13 and [under OR for each claim by the Customer or any Indemnified Person under the indemnity in Clause 16.5(c) shall not exceed £1 Million; and

(c) for all other loss or damage [arising from defaults occurring within any Contract Year]shall not exceed £ 1 Million or the greater of £ 1 Million and 150% of the Charges paid or payable under this agreement in that Contract Year.

18.4 Subject to Clause 18.2, the Customer's total liability arising from defaults occurring within any Contract Year shall not exceed £ 1 Million or the greater of 100% of the Charges paid or payable under this agreement in that Contract Year.

18.5 The caps on each party's liabilities shall not be reduced by:

(a) payment of an uncapped liability;

(b) amounts paid under Clause 4.2(c)

(c) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

18.6 Subject to Clause 18.2 and Clause 18.7, neither party shall have any liability for loss of profits or indirect or consequential loss.

18.7 Clause 18.6 does not exclude any liability the Supplier may have for:

(a) sums paid by the Customer to the Supplier pursuant to this agreement in respect of any Services not provided in accordance with this agreement;

(b) wasted expenditure;

(c) reasonable] costs and expenses [necessarily] incurred by the Customer in remedying the Supplier's default[. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials];

(d) reasonable] costs incurred by the Customer in procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this agreement;

(e) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the Supplier's default. For these purposes, third party claims include demands, fines, penalties, actions, regulatory investigations or proceedings;

(f) the loss of anticipated savings [in respect of [INDICATE SOURCE OF SAVINGS]]; and

**19. Termination**

19.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by notifying the other party if:

(a) the other party commits a material breach of any term of this agreement that:

(i) is not capable of remedy, or

(ii) if capable of remedy, is not remedied within a period of [NUMBER] days by the other party after being notified to do so;

(b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;

(h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(j) a creditor or encumbrancer of the other party 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 other party's assets and that attachment or process is not discharged within [14] days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 19.1(c) to Clause 19.1(j) (inclusive); [or]

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business[; or]

(m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

19.2 For the purposes of Clause 19.1(a), material breach includes:

(a) a breach of any of the obligations set out in Clause 12, Clause 13 or [CLAUSE NUMBER]; and

(b) a breach that has a serious effect on the benefit the terminating party would otherwise derive from this agreement.]

19.3 Without affecting any other right or remedy available to it, the Customer may terminate this agreement with immediate effect by notifying the Supplier if:

(a) the Supplier fails to meet Milestone Dates on [NUMBER] or more occasions;]

(b) the Customer finally refuses to approve any Work Item under Clause 4.6(c)) on three or more occasions [in any 12 month period,

(c) the Supplier commits a breach of any performance related clause leading to failure of the performance;

(d) there is a change of control of the Supplier provided that:

(i) the Customer has a bona fide concern that the Supplier will not be able to continue to provide the Services and perform its other obligations under this agreement in accordance with its terms after the change of control; and

(ii) the Customer gives notice to terminate within [three] months of the later of the date on which the change of control takes place and the date on which the Customer becomes aware of the change of control having taken place].

19.4 The Customer may terminate this agreement for convenience, in whole or in part, by giving not less than three months' notice to the Supplier provided that the Customer may not give notice to terminate under this Clause 19.4 during the initial three months of the Term.

19.5 Either party may terminate this agreement where it has the right to do so under Clause 12.2 or Clause 21.7.

20. Obligations on termination and survival

20.1 On termination or expiry of this agreement, the Supplier shall immediately (or on any alternative timeframe specified by the Customer for the purposes of Clause 20.2:

(a) deliver to the Customer all Deliverables, whether or not then complete;

(b) return to the Customer all of the Customer Equipment and other customer property in the possession or control of the Supplier or any Supplier Personnel;

(c) cease using (and return or destroy if required by the Customer) all Customer Materials and Customer Confidential Information in the possession or control of the Supplier or any Supplier Personnel;

(d) comply with the requirements of Clause 13.7(f) in relation to Customer Personal Data; and

(e) remove any Supplier Equipment from the Customer's premises.

20.2 During the Termination Assistance Period, the Supplier shall provide all information and assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any Replacement Supplier appointed by it, including by:

(a) providing access to materials, data and personnel used in the performance of the Services;

(b) providing reasonable assistance in support of any market testing or proposed procurement that the Customer may wish to carry out in relation to Replacement Services; and

(c) co-operating with the Customer and any Replacement Supplier to enable an orderly handover of the Services].

20.3 Subject to Clause 20.4, the Customer shall reimburse the Supplier's reasonable, additional costs of carrying out its obligations under Clause 20.2 provided that:

(a) the Supplier shall not charge the Customer for supplying reports or information already within its possession or control;

(b) any costs are incurred at the rates set out in Schedule 2];

(c) any costs over £1,000 are approved in advance in writing by the Customer before being incurred by the Supplier; and

(d) the Supplier provides the Customer on request with any information needed to verify the costs to the Customer's reasonable satisfaction.

20.4 If the Customer terminates this agreement under Clause 19.1[, Clause 19.3(a), Clause 19.3(b) or Clause 19.3(c)], the Supplier shall bear its own costs in carrying out its obligations under Clause 20.2.

20.5 Survival

(a) Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect, including Drafting note, Information on resourcing (optional clause), Clause 9, Clause 10, Clause 13.7(f), Clause 13.7(g), Clause 14, [Clause 15,] Clause 16.5 to Clause 16.11, [Clause 17], Clause 18, Clause 20 and Clause 34.

(b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.

**21. Force majeure**

21.1 Force Majeure Event means [any circumstance not within a party's reasonable control including:

(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination, or sonic boom;

(e) any law or action taken by a government or public authority, including imposing an export or import restriction, quota, or prohibition;

(f) collapse of buildings, fire, explosion or accident; [and]

(g) any labour or trade dispute, strikes, industrial action or lockouts (other than by the staff of the party seeking to rely on this clause or those of its subcontractors or Affiliates;

(h) interruption or failure of utility service.

21.2 Subject to Clause 21.4, a party (Affected Party) shall not be liable for any failure or delay in performing any of its obligations under this agreement for so long as, and to the extent that, its performance is [directly] prevented, hindered or delayed by a Force Majeure Event.

21.3 For so long as the Affected Party's liability in relation to any of its obligations is suspended under Clause 21.2, the other party shall not be liable for any failure or delay in performing its corresponding obligations. To the extent that Services are not provided during a Force Majeure Event, the Supplier shall not charge the relevant Charges for those Services.

21.4 Clause 21.2 shall only apply if the Affected Party:

(a) as soon as reasonably practicable after the start of the Force Majeure Event [but no later than [NUMBER] days from its start], notifies the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement;

(b) took reasonable precautions to prevent or minimise the Force Majeure Event, including by implementing and complying with an effective business continuity plan, except where compliance with the business continuity plan is itself affected by the Force Majeure Event; and

(c) uses all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations (including by accepting non-contractual performance by the other party, provided this causes no material commercial detriment to the Affected Party and can achieve the same result as contractual performance would have done in all material respects).

21.5 The Affected Party shall keep the other party informed of its endeavours under Clause 21.4(c) and their outcome promptly on request.

21.6 If the Supplier is relieved from providing any Services under this clause, it shall co-operate with any efforts that the Customer may make to obtain alternative supplies of those Services.

21.7 If the Affected Party has not resumed full performance of any obligations suspended under Clause 21.2 within 21 days after the start of the Force Majeure Event, the other party may terminate this agreement by giving [not less than 14 days' written notice to the Affected Party.

**22. Assignment and other dealings**

22.1 The Supplier shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Customer [(not to be unreasonably withheld or delayed).

22.2 The Customer may at any time assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement[, provided that it gives prior notice to the Supplier].

22.3 The Customer consents to the Supplier subcontracting the elements of the Services identified in Schedule 3 to the subcontractors identified in Schedule 3.

22.4 Where the Supplier subcontracts any of its obligations under this agreement, the Supplier remains responsible for the performance of this agreement and liable for all acts and omissions of its subcontractors as if they were its own.

22.5 The Customer may withdraw its consent to using a subcontractor, by giving [reasonable prior] notice to the Supplier, where, in the Customer's reasonable opinion:

(a)the acts or omissions of the relevant subcontractor have caused or materially contributed to the [Supplier being in breach of this agreement OR Customer having the right to terminate this agreement under Clause 19.1(a)[, Clause 19.1(b)][, Clause 19.3(a)] [or Clause 19.3(b)];

(b)the acts or omissions of the subcontractor have brought the Customer into public disrepute, whether or not those acts or omissions relate to the Services; or

(c) the continued use of that subcontractor will have a material adverse effect on the provision of the Services or the Customer's business or reputation.

22.6 Unless otherwise agreed by the Customer in writing, the Supplier shall ensure that each subcontract includes:

(a) equivalent obligations and restrictions on the subcontractor to those imposed on the Supplier under this agreement by [Clause 12 OR Clause 12.1,] [Clause 13 OR Clause 13.7, Clause 13.8 and Clause 13.9,]Clause 14;

(b) a prohibition on any further subcontracting without the Supplier's prior written consent. The Supplier must obtain the Customer's prior written consent (not to be unreasonably withheld or delayed) before granting its consent to further subcontracting; and

(c) any additional terms that the Customer reasonably requires as a condition of granting its consent to any subcontract.

**23. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives) [and expressly states that it is amending this agreement.

**24. Waiver**

24.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed to be a waiver of any subsequent right or remedy.

24.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**25. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**26. Severance**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

**27. Entire agreement**

27.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, and understandings between them, whether written or oral, relating to its subject matter.

27.2 Subject to Clause 16.2, each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.]

27.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

**28. Conflict**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement prevail.

**29. Announcements**

No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other party [(consent not to be unreasonably withheld or delayed)], except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

**30. No partnership or agency**

30.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.

30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**31. Third party rights**

31.1 Unless it expressly states otherwise [(including in Clause 3.3(d) and Clause 16.5)],] this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

31.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]

**32. Notices**

32.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the following address (or an address substituted in writing by the party to be served:

(i) for notices to the Customer: [ADDRESS].

(ii) for notices to the Supplier: [ADDRESS].

32.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by [pre-paid first-class post or other] next working day delivery service, at [9.00 am] on the [second] Business Day after posting; or

(c) if sent by email, at the time of transmission or, if this time falls outside Business Hours, when Business Hours resume.

32.3 This Clause 32 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**33. Counterparts**

33.1 This agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.

33.2 Transmission of an executed counterpart of this agreement, but for the avoidance of doubt not just a signature page, or the executed signature page of a counterpart of this agreement] by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed "wet ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement made, each party shall on request provide the other with the "wet ink" hard copy original[s] of their counterpart.

**34. Dispute resolution procedure**

34.1 If a dispute arises out of or in connection with this agreement or its performance, validity or enforceability (Dispute), then[, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

(a) either party shall notify the other of the Dispute, setting out its nature and full particulars (Dispute notice), together with relevant supporting documents. On service of the Dispute notice, the Finance Director of the Customer and Commercial Director of the Supplier shall attempt in good faith to resolve the Dispute;

(b) if the Finance Director of the Customer and Commercial Director of the Supplier are for any reason unable to resolve the Dispute within [30] days of service of the Dispute notice, the Dispute shall be referred to the Chief Executive of the Customer and Chief Executive Officer of the Supplier who shall attempt in good faith to resolve it; and

(c) if the officers as per clause (b) above are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within ten days of service of the Dispute notice, the mediator shall be nominated by the President of CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the Dispute to mediation. A copy of the ADR notice should be sent to CEDR ; and

(d) unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

34.2 The start of mediation shall not prevent the parties starting or continuing court proceedings in relation to the Dispute.

34.3 If for any reason the Dispute is not resolved within 30 days of the start of the mediation, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 36.

**35. Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.

**36 .Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

**SCHEDULE 1**

Services

 Note: Services

1.Services

SERVICES TO BE PROVIDED

2.Deliverables

[DELIVERABLES TO BE PROVIDED]

3.Milestones and Milestone Dates

[MILESTONES AND MILESTONE DATES]

4.Key Milestone DatesDATES

5.Requirements, specifications and standards

REQUIREMENTS, SPECIFICATIONS AND STANDARDS FOR THE SERVICES

6.[Acceptance criteria][]

ACCEPTANCE CRITERIA

7.Customer Materials

SPECIFY

8.Customer Equipment

SPECIFY

9.Supplier Equipment

SPECIFY

**SCHEDULE 2**

Charges, costs and payment

1.Charges

 Note: Charges

1.1Fixed price

(a)The total charges for the [Services OR [PART OF THE SERVICES CHARGED ON A FIXED PRICE BASIS]] are £[AMOUNT].

(b)The[se] charges are calculated as follows: [CALCULATION METHOD].

1.2Time and materials

(a)The [Services OR [RELEVANT PART OF THE SERVICES]] shall be charged on a time and materials basis as follows:

(i)The [daily OR hourly] rates for the Supplier Personnel are: [SPECIFY]

(ii)The weekend and overtime rates for the Supplier Personnel are: [SPECIFY]

2.Invoicing schedule

2.1The Supplier shall invoice the Customer for the Charges on the following schedule: [SPECIFY].

3.Third party materials and services

3.1The following materials and services procured from third parties shall be invoiced to the Customer in addition to the Charges: [DETAILS].

**SCHEDULE 3**

Supplier's Key Personnel, Subcontractors and Contract Managers

1.Supplier's Key Personnel[

Key Personnel member

Minimum percentage of working hours allocated to Services

[NAMES AND TITLES OF RELEVANT EMPLOYEES]

2.Supplier Contract Manager(s)

NAME:

3.Subcontractors

Permitted subcontractors

Services subcontracted

4.Customer Contract Manager(s)

NAME:

**SCHEDULE 4**

Mandatory Policies

 Note: Mandatory Policies

The Mandatory Policies are:

Supplier Code of Conduct.

Modern Slavery and Human Trafficking Policy.

Environmental, Social and Governance Policy.

Ethics and Anti-Bribery Policy.

Expenses Policy.

Health and Safety Policy.

Security Policy.

**SCHEDULE 5**

Personal Data

 Note: Personal data

1.Particulars of processing

1.1The following sets out the details of the Supplier's processing as a processor:

(a)Scope

(b)Nature.

(c)Purpose of processing

(d)Duration of processing.

(e)Types of personal data.

(f)Categories of data subject

(g)[Technical and organisational measures. [SPECIFY.

 Note: Technical and organisation measures (optional)

**SCHEDULE 6**

TUPE NOT Used

**SCHEDULE 7**

**Service Levels, Service Credits and KPIs**

1. The supplier shall enable the council in conjunction with its Payment Gateways to choose and put in place an agreed settlement process, including times for the council’s end of day procedures and receipt of funds
2. The supplier shall agree with the council in conjunction with the Payment Gateways the settlement cut off time. The council will have the flexibility to set this by MID or TID to facilitate alignment of its system cut offs with the Merchant Card Acquiring Services cut offs.
3. The supplier shall ensure that the council receives Gross value of all card payments in its specified bank account in accordance with its chosen settlement day and time, preferably on day 2 after payment is taken.
4. The supplier shall provide the council with the standard terms of 30 days for payments of the invoices from the supplier.

**SCHEDULE 8**

**CUSTOMER’S Invitation to Tender (ITT)**

**SCHEDULE 9**

**Supplier’s Successful Tender**

**IN WITNESS TO THE ABOVE this Agreement has been executed on the date first above mentioned**

Signed by the authorised Director for and on behalf of [NAME OF SUPPLIER]

....................

Director

In presence of the Witness

Witness Name and Signature

Witness Address

Signed by the duly authorised Director of Chelmsford City Council (“the **Customer**”)

....................

Director

End of Document

# Appendix E: Glossary

| **Defined term** | **Definition** |
| --- | --- |
| Act | means the Procurement Act 2023. |
| Associated Suppliers | means a Supplier who is associated with another Supplier if either (a) the Suppliers are submitting a tender together, or (b) the Authority is satisfied that the Suppliers will enter legally binding arrangements to the effect that the Supplier will sub-contract the performance of all or part of the Contract to the other, or the other Supplier will guarantee the performance of all or part of the Contract by the Supplier (as set out in section 22(9) of the Act). |
| Authority | means [insert organisation title] |
| Central Digital Platform | means the online system defined by regulation 5(2) of the Procurement Regulations 2024 (SI 2024 No. 692). |
| Competitive Tendering Procedure  | means the Competitive tendering procedure as defined by section 20 of the Act. |
| Contract | means the contract to be entered into by the Authority with the successful Supplier. |
| Key Performance Indicators or KPIs | means the key performance indicators (KPIs) set out in Appendix C. |
| Portal | means the [insert title of portal] portal used by the Authority for the purposes of this Procurement and which can be accessed here: [insert link to portal].  |
| Procurement | This Competitive Flexible Procedure procurement process. |
| Procurement Timetable | The timetable for this Procurement as set out in this document. |
| Service Credits | means the service credits set out in Appendix C. |
| Service Levels | means the service levels set out in Appendix C  |
| Supplier or Suppliers | means a supplier or suppliers (as the case may be) participating in the Procurement |
| Tender Notice | means the tender notice with reference [insert reference] published on [insert date] on the Central Digital Platform |

**Appendix F: Form of Tender & Associated Declarations**

To: Chelmsford City Council

Civic Centre, Duke Street, Chelmsford CM1 1JE

**Ref:** CCC/2025/

**Opportunity for: Chelmsford City Council** –

**1.** I/We have read the information provided in your Invitation to Tender and subject to and upon the terms and conditions contained in the Form of Contract, I/we offer to execute and complete the ‘*service detail’* as outlined in our tender.

**2. Terms and Conditions**. I/We agree that this tender and any contract which may result, shall be based upon the documents listed below, and that the Buyer is the Chelmsford City Council.

**2.1** The contract documents as shown in the Invitation to Tender.

**2.2** The prices to be inserted in the Contract shall be those shown in the pricing schedule/rate card of our tender; or, if the Council selects an alternative proposal, then the prices shown in the document outlining that proposal.

**2.3** In other sections of the Contract information provided in [document name] - Additional Information Required by the Council, will be included.

**2.4** Any qualifications set out by us in [document name] - Qualifications, shall also apply, although we understand that making a qualification may result in your disregarding our tender in total.

**3.** I/We confirm that this [final tender] will remain valid for 90 days from the date of this form of tender or until any procurement challenge/s have been resolved.

**4.** I/We confirm that the contract shall be valid upon acceptance and signature by both parties of the Contract Documents. And I/We hereby undertake to enter into a contract within fourteen days of being requested to do so.

**5.** I/We confirm that the construction, validity, performance and execution of any contract that may result from this tender shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

**6.** I/We confirm to bear all cost incurred by me/us in connection with the preparation and submission of this Tender and to bear any further costs incurred by me/us prior to the award of any contract.

**7.** I/We confirm that any other terms or conditions of contract or any general reservation which may be printed on any correspondence emanating from me/us in connection with this tender

**8**.I/We confirm that we accept the terms of the draft Contract as issued with the Invitation to submit final tenders.

**9**. I/We understand that the Authority reserves the right to accept or refuse this [final tender] in accordance with the Procurement Act 2023 and/or the [invitation to submit final tenders]

**10**. We confirm that all information supplied to the Authority and forming part of this [final tender] and any previous submissions is true and accurate.

I/We confirm that the Supplier, together with all Associated Suppliers:

• are registered on the Central Digital Platform

• have ensured their information contained on the Central Digital Platform is true and accurate

**11**. I/We confirm and undertake that if any of such information becomes untrue or misleading that I/we shall notify the Authority immediately and update such information should this be required.

**12**. I/We confirm that I/we are authorised to commit the Supplier to the contractual obligations contained in the [invitation to submit final tenders] and the draft Contract.

**13.** I/We understand that non-compliance with the requirements of the [invitation to submit final tenders] or with any other instructions given by the Authority may lead to me/us being excluded by the Authority from (further) participation in the Procurement.

**14.** I/We, the undersigned, tender and offer to provide the Contract as listed below, which is more particularly referred to in the [invitation to submit final tenders] supplied to me/us for the purpose of tendering for the provision of the Contract and on the terms of the draft Contract.

Included within this document are the following:

Checklist for tenderers

List all documents to be submitted.

| **Document number** | **Document name** | **Included (Y/N)** |
| --- | --- | --- |
|  | Appendix F: Form of tender |  |
|  | Procurement Specific Questionnaire  |  |
|  | Quality Criteria Response |  |
|  | Pricing Schedule |  |

**Note:** If Suppliers do not provide all of the items in the checklist, this may result in the response being treated as non-compliant and therefore rejected

|  |  |
| --- | --- |
| **Signature** |  |

|  |  |
| --- | --- |
| **Name (print)** |  |

|  |  |
| --- | --- |
| **Position** |  |

|  |  |
| --- | --- |
| **Supplier name** |  |

|  |  |
| --- | --- |
| **Date** |  |

**Chelmsford City Council Associated Declarations**

1. ***Freedom of Information Act / Disclosure***

Chelmsford City Council, as every public authority, is subject to the Freedom of Information Act 2000 (“the Act”) which gives a right of access to information held by them.

Details of the Council’s policy can be found at: <https://www.chelmsford.gov.uk/your-council/accessing-council-information/make-an-foi-or-eir-request/>

As part of our duty under the Act, when a Freedom of Information request is received, we may have to disclose information that forms part of your tender or associated documentation unless an exemption applies as defined by the Act.

There are, for example, exemptions:

- against disclosing information where that would constitute an actionable breach of confidence

- against disclosing trade secrets

- against disclosing information likely to prejudice any person’s commercial interests (and this includes the Council’s commercial interests).

The Council will be mindful of the potential commercial risks to you as a prospective supplier and will comply with its obligations of confidentiality where they arise, subject to its legal obligations.

**If you consider that any of the information you submit to the Council should not be disclosed because of its sensitivity, then this should be stated with the reason for believing it to be exempt in accordance with the Act.**

This appendix should be read in conjunction with the relevant paragraphs relating to freedom of information (FOIA) and environmental information (EIR) in the Procurement terms and conditions of the ITT document.

I declare that I wish the following information to be designated as commercially sensitive:

|  |
| --- |
|  |

The reason(s) it is considered that this information should be exempt under FOIA and EIR is:

|  |
| --- |
|  |

The period of time for which it is considered this information should be exempt is:

|  |
| --- |
|  |

|  |  |
| --- | --- |
| **Signature** |  |

|  |  |
| --- | --- |
| **Name (print)** |  |

|  |  |
| --- | --- |
| **Position** |  |

|  |  |
| --- | --- |
| **Supplier name** |  |

|  |  |
| --- | --- |
| **Date** |  |

The Council will then, in future, seek to consult with you in considering any Freedom of Information request received, before replying to the request within the mandatory timescales.

It should be noted, however, that disclosure is assumed to be required under the law unless an exemption under the Act can be applied and, subject to the enforcement role of the Information Commissioner, the Council must make a judgment as to the applicability of any exemption on the basis of all the facts in its possession, including its assessment as to whether there is a public interest in such disclosure.

***2. Certificate of non-collusion and canvassing***

Prospective contractors shall not, in connection with this or any other Procurement:

1. Offer any inducement, fee, gift or reward to any Council officer or Member of the Council, or any person acting as an adviser to the Council in connection with the Procurement;
2. Do anything which would constitute a breach of the Bribery Act 2010;
3. Canvass any Council officer or Member about this Procurement; or
4. Contact any Council officer or Member or agent of the Council or any person acting as an adviser to the Council about any aspect of the Procurement for the purpose of soliciting information.

Apart from requests for clarification made via Delta e-sourcing and enquiries made to the named procurement officer in respect of this process, any contact with other persons will be regarded as prima facie evidence of canvassing.

***1. Non-Collusion***

Contractors must not disclose, or discuss any aspect of, the tender documents published by the Council or its own response to those documents, with any other contractor. Any such collusion may constitute an infringement of Chapter 1 Prohibition contained in section 2 (1) of the Competition Act 1998.

***2. Conflicts of Interest***

Contractors are reminded of their obligation to disclose actual, potential and perceived conflicts of interest to the Council as soon as they become aware of them.

***3. Changes in Circumstances***

Contractors are subject to an on-going obligation, throughout the procurement process, to notify the Council of any material changes in its circumstances. This includes (but is not limited to) changes to the ownership and significant reductions in financial or operating capacity. The Council should be notified of any change as soon as it becomes apparent.

***4. Confidentiality Undertaking***

All information provided by the Council in relation to this tender and concerning Council operations and activities is made available on condition that it is treated as confidential. It should not be disclosed, copied, reproduced, distributed or passed to any other person at any time. The only exception is disclosure for the express purpose of enabling a tender submission. E.g. disclosure to insurers who are required to provide professional guidance. Any disclosure of this kind should be recorded, and confidentiality assured.

This undertaking will continue to apply at all times and to all parties.

If you wish to discuss any element of this document this, please contact the Councils Procurement Manager on 01245 606774

We acknowledge, understand and agree to abide by all the above statements.

This declaration must be signed by an authorised signatory.

***3. Safeguarding***

Chelmsford City Council have adopted a Safeguarding Children and Vulnerable Adults Policy, as a commitment to protecting vulnerable people.

Our policy is relevant to

* our employees
* our elected members
* any consultants, contractors and agency staff working for us
* members of the public volunteering with us
* organisations, companies and individuals who are suppliers to us

On signing this declaration contractors are confirming that they have read, understood and agreed to the Councils safeguarding statement which can be accessed here: <https://www.chelmsford.gov.uk/communities/safeguarding/>

|  |  |
| --- | --- |
| **Signature** |  |

|  |  |
| --- | --- |
| **Name (print)** |  |

|  |  |
| --- | --- |
| **Position** |  |

|  |  |
| --- | --- |
| **Supplier name** |  |

|  |  |
| --- | --- |
| **Date** |  |