



## Flitwick Town Council

### **Code of Conduct**

Note to supplier - All pages, as issued must be returned within your Quotation submission. Please do not remove any pages from this quotation document as all pages, method statements, supporting documents and appendices will form the final contract.

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## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

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

**Abnormally Low Tenders:** Tenders that require investigation in regard to their sustainability.

**Bribery Act:** the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Catastrophic Failure:** any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority

**Change:** any change to this agreement including to any of the Services.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for changing this agreement, as set out in clause 14.1-14.9.

**Charges:** the charges which shall become due and payable by the Authority to the Supplier in respect of the Services provided in accordance with the provisions of this agreement.

**Commencement Date:** the date of this agreement.

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

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b. any information developed by the parties in the course of carrying out this agreement;
- c. Personal Data;
- d. any Commercially Sensitive Information.

**Contract Representatives:** the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in the Contract Particulars

**Corporate policies:** The Supplier shall comply with all Council policies as set out in clause 37.

**Data Controller:** shall have the same meaning as set out in the Data Protection Legislation.

**Data Processor:** shall have the same meaning as set out in the Data Protection Legislation.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

**Data Subject:** shall have the same meaning as set out in the Data Protection Legislation.

**Default Notice:** is defined in Clause 5.2.

**Dispute Resolution Procedure:** the procedure set out in Clause 15.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Exit Management Plan:** the plan set out in the Contract Particulars

**Extension period:** shall have the meaning given to it in Clause 3.1.

**FOIA:** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any circumstance not within a party's reasonable control including, without limitation:

- 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 without limitation 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 (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

**GDPR:** the General Data Protection Regulation ((EU) 2016/679).

**Health and Safety Policy:** the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

**Indexation:** is defined in clause 38

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date.....and ending on the.....(do not include extension periods).

**Insolvency Event:** where:

- a. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
- b. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party];

- c. 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 Supplier (being a company, limited liability partnership or partnership) [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];
- d. 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 if an administrator is appointed, over the Supplier (being a company);
- e. the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- f. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- g. the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- h. a creditor or encumbrancer of the Supplier 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 such attachment or process is not discharged within 14 days;
- i. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); [or]
- j. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business[; or]
- k. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring 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, 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, and rights to claim priority from, such 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 Personnel:** those personnel identified in the Contract Particulars for the roles attributed to such personnel, as modified pursuant to Clauses 9 and 10.

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

**Management Reports:** the reports to be prepared and presented by the Supplier in

accordance with the specification to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs

**Modern Slavery Act:** the Modern Slavery Act 2015 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**Payment Plan:** the plan for payment of the Charges as set out in the RFP.

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**Prohibited Act:** the following constitute Prohibited Acts:

- a. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- b. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- c. committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority;
- d. any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Remediation Notice:** a notice served by the Authority in accordance with Clause 25.1(a).

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

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

**Representatives:** means, in relation to a party, its employees, officers, representatives and advisors.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Supplier Party:** the Supplier's agents and contractors, including each Sub-Contractor.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Sub-Contract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Supplier.

**Term:** the period of the Initial Term as may be varied by:

- a. any Extension Period; or
- b. the earlier termination of this agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this agreement.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

**Variations:** a request to the Supplier to make any reasonable alteration to the Contract or any Order pursuant thereto (herein referred to as a 'Variation')

**Working Day:** Insert required working days, i.e. **Monday to Friday**, .....excluding any public holidays in England and Wales.

**Working Hours:** the period from, insert expected working hrs .....am to .....pm on any Working Day.

**1.1** Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

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

**1.3** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

**1.4** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.5** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

**1.6** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

**1.7** A reference to **writing** or **written** includes delivered by hand or by pre-paid post, emailed and by fax.

**1.8** Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

**1.9** A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

## **COMMENCEMENT AND DURATION**

### **2. TERM**

**2.1** This agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. EXTENDING THE INITIAL TERM**

**3.1** Written notice of such intention before the expiry of the Initial Term or Extension Period is required.

**3.2** If the Authority gives such notice, then the Term shall be extended by the period set out in the notice.

**3.3** If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of Clause 29 shall apply.

## **4. DUE DILIGENCE AND SUPPLIER'S WARRANTY**

**4.1** The Supplier acknowledges and confirms that:

**(a)** the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;

**(b)** it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to Clause 4.1(a);

**(c)** it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant



details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and

(d) it has entered into this agreement in reliance on its own due diligence.

**4.2** Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

**4.3 The Supplier:**

(a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any Selection questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and

(b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

**4.4** Nothing in this Clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

**THE SERVICES**

**5. SUPPLY OF SERVICES**

**5.1** The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.

**5.2** In the event that the Supplier does not comply with the provisions of Clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

**6. SERVICE STANDARDS**

The Supplier shall provide the Services, or procure that they are provided:

(a) with reasonable skill and care and in accordance with Best Industry Practice;

(b) in all respects in accordance with the Authority's policies.

(c) in accordance with all applicable Law.

**7. COMPLIANCE**

**7.1** The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:

- (a)** all applicable Law regarding health and safety; and
- (b)** the Health and Safety Policy whilst at the Authority Premises.

**7.2** Without limiting the general obligation set out in Clause 6, the Supplier shall (and shall procure that the Supplier's Personnel shall):

**(a)** perform its obligations under this agreement in accordance with:

**(i)** all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

**(ii)** the Authority's equality and diversity policy (which can be found on the Authority's website

**(iii)** any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law;

**(b)** take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

**(c)** at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## **CHARGES AND PAYMENT**

### **8. PAYMENT**

**8.1** The supplier shall supply the Services described in the Specification in accordance with the terms and conditions of this agreement.

**8.2** Pricing Schedule, the Charges:

**(a)** shall remain fixed during the Term; and

**(b)** is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier's Personnel.

**8.3** The Supplier shall invoice the Authority for payment of the Charges in accordance

with the RFP. All invoices shall be directed to the Authority's Payments Team and shall contain such information as the Authority may inform the Supplier from time to time.

**8.4** The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

**8.5** Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

(a) provisions having the same effect as Clause 8.1 to Clause 8.4 of this agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clause 8.1 to Clause 8.4 of this agreement.

In this Clause 8.5, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

**8.6** The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

**8.7** Where any party/Authority disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 15.

## **STAFF**

### **9. CONTRACT REPRESENTATIVES**

**9.1** Each party shall appoint the persons named as such in the Contract Particulars as the individuals who shall have the authority to act on behalf of their respective party.

**9.2** The Supplier shall not remove or replace any of the Contract Representatives unless:

(a) requested to do so by the Authority;

(b) the person is on long-term sick leave;

(c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;

- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Authority.

**9.3** The Supplier shall inform the Authority of the identity and background of any replacements for any of the Contract Representatives as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

**9.4** Each party shall ensure that the role of each of its Contract Representatives is not vacant (in terms of a permanent representative) for more than 30 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

**9.5** The Authority may require the Supplier to remove, or procure the removal of, any of its Contract Representative whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

**9.6** If the Supplier replaces the Contract Representative as a consequence of this Clause, the cost of effecting such replacement shall be borne by the Supplier.

## **10. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

**10.1** At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel comply with all of the Authority's policies.

**10.2** The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

**10.3** The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The

Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

## **11 TUPE AND RE-TENDERING**

**11.1** In the event of expiry or termination of this Contract or whenever reasonably requested by the Authority in preparation for tendering arrangements the Supplier will provide the Authority with such assistance as the Authority may require and provide at no cost to the Authority any information the Authority (whether on its own account or on behalf of any potential or confirmed Replacement Supplier) may request in relation to the Employees including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.

**11.2** The Supplier authorises the Authority to pass any information supplied to any Replacement Supplier or potential Replacement Supplier and the Supplier will secure all necessary consents from relevant Employees in order to do this.

**11.3** The Supplier will keep the Authority and any Replacement Supplier indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

## **12. REPORTING AND MEETINGS**

**12.1** The Supplier shall provide the Management Reports in the form and at the intervals set out in the specification.

**12.2** The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in the Specification and the Supplier shall, at each meeting, present its previously circulated Management Reports.

## **13. MONITORING**

**13.1** The Authority may monitor the performance of the Services by the Supplier

**13.2** The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in Clause 13.1 at no additional charge to the Authority.

## **14. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT**

**14.1** Any requirement for a Change shall be subject to the Change Control Procedure. Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in Clauses 14.1-14.9

**14.2** Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.

**14.3** Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

**14.4** Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this clause 14, shall be undertaken entirely at the expense and liability of the Supplier.

## PROCEDURE

**14.5** Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:

- (a) no further action being taken; or
- (b) a request to change this agreement by the Authority; or
- (c) a recommendation to change this agreement by the Supplier.

**14.6** Where a written request for a Change is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.

**14.7** A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.

**14.8** Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:

- (i) the timetable for the provision of the Change;
- (ii) the personnel to be provided;
- (iii) the Charges;
- (iv) the Documentation to be provided;
- (v) the training to be provided;
- (vi) working arrangements;
- (vii) other contractual issues;

(i) the date of expiry of validity of the Change Control Note;

(j) provision for signature by the Authority and the Supplier; and

(k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement will be apportioned.

**14.9** A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

## **15. DISPUTE RESOLUTION**

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

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

(b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the Mediation Procedure. Unless otherwise agreed between the parties. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later 90 days after the date of the ADR notice.

**15.2** No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

**15.3** Each party shall be responsible for their own costs in relation to the dispute resolution process with equal sharing of third party costs.

## **16. SUB-CONTRACTING AND ASSIGNMENT**

**16.1** Subject to Clause 16.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier subcontract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably

withheld.

**16.2** In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

(a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

(b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

(c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Contract Representative.

**16.3** The Authority shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

**16.4** Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:

(a) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

## **LIABILITY**

### **17. INDEMNITIES**

**17.1** The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable Law by the Authority or its Representatives (excluding any Suppliers Personnel).

### **18. LIMITATION OF LIABILITY**

**18.1** Subject to Clause 18.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

**18.2** Notwithstanding the provisions of Clause 18.1, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:



**(a)** sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;

**(b)** wasted expenditure;

**(c)** additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

**(d)** losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;

**18.3** Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

**18.4** Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

**(a)** fraud or fraudulent misrepresentation;

**(b)** death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);

**(c)** breach of any obligation as to title implied by statute; or

**(d)** any other liability for which may not be limited under any applicable law.

## **19. INSURANCE**

**19.1** The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum levels of cover:

**(a)** public liability insurance with a limit of indemnity of not less than £(5,000,000) in relation to any one claim or series of claims;

**(b)** employer's liability insurance with a limit of indemnity of not less than £(5,000,000) in relation to any one claim or series of claims; (except for sole traders)

**(c)** professional indemnity insurance with a limit of indemnity of not less than £(5,000,000) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

**19.2** The Supplier shall give the Authority, prior to the commencement date, copies of all insurance policies referred to in this clause

**19.3** The terms of any insurance or the amount of cover shall not relieve the Supplier

of any liabilities under the agreement.

**19.4** The Supplier shall hold and maintain the Required Insurances for a minimum of 12 Months following the expiration or earlier termination of the agreement.

## **INFORMATION**

### **20. FREEDOM OF INFORMATION**

**20.1** The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

(d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

**20.2** The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**20.3** Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

**20.4** The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

### **21. DATA PROCESSING**

**21.1** Both parties will comply with all applicable requirements of the Data Protection

Legislation. This *Clause* is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this *Clause*, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

**21.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Supplier is the Data Processor. Appendix A – GDPR (if applicable) 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.

**21.3** Without prejudice to the generality of Clause 21.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

**21.4** Without prejudice to the generality of Clause 21.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Authority unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall promptly notify the Authority before processing the Personal Data, unless prohibited by the Applicable Laws;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

**(iv)** the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

**(d)** notify the Authority immediately if it receives:

**(i)** a request from a Data Subject to have access to that person's Personal Data;

**(ii)** a request to rectify, block or erase any Personal Data;

**(iii)** receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

**(e)** assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

**(f)** notify the Authority immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

**(g)** at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;

**(h)** maintain complete and accurate records and information to demonstrate its compliance with this Clause 21 and allow for audits by the Authority or the Authority's designated auditor pursuant to Clause 23;

**21.5** The Supplier shall indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from, or in connection with, any breach of the Supplier's obligations under this Clause 21.

**21.6** Where the Supplier intends to engage a Sub-Contractor pursuant to Clause 16 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

**(a)** notify the Authority in writing of the intended processing by the Sub-Contractor;

**(b)** obtain prior written consent to the processing;

**(c)** ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this Clause 21.1-21.8

**21.7** Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this Clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification

scheme (which shall apply when incorporated by attachment to this agreement).

**21.8** The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **22. CONFIDENTIALITY**

**22.1** Subject to Clause 22.2, each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 22.1- 22.4

**22.2** The obligation to maintain confidentiality of Confidential Information does not apply to any confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

**22.3** A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the

obligations set out in this Clause 22.

**22.4** The provisions of this Clause 22 shall survive for a period of 7 years from the Termination Date.

## **23. AUDIT**

**23.1** During the Term and for a period of 3 years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

- (a)** to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (b)** to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with Clause 21 (Data Processing) and Clause 20 (Freedom of Information) and any other legislation applicable to the Services;
- (c)** to carry out the audit and certification of the Authority's accounts;
- (d)** to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (e)** to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

**23.2** Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this Clause 23 more than once in any calendar year.

**23.3** The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the delivery of Services.

**23.4** Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a)** all information requested by the above persons within the permitted scope of the audit;
- (b)** reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the contract provision; and
- (c)** access to the Supplier's Personnel.

**23.5** The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention,

to conduct an audit.

**23.6** The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

## **24. INTELLECTUAL PROPERTY**

**24.1** In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier's Personnel:

(a) in the course of performing the Services; or

(b) exclusively for the purpose of performing the Services, shall vest in the Authority on creation.

**24.2** The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **TERMINATION**

### **25. TERMINATION FOR BREACH**

**25.1** The Authority may terminate this agreement with immediate effect by the service of written notice on the Supplier in the following circumstances:

(a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this Clause 25.1 if the Supplier has failed to remedy such breach within 14 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;

(b) if a Catastrophic Failure has occurred;

(c) if there is an Insolvency Event.

**25.2** the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

- (a) The Agreement is subject to a substantial modification which requires a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 (“the Regulations”);
- (b) It can be demonstrated that the Contractor has, at the time of contract award been in one of the situations referred to in Regulation 57(1) of the Regulations including as a result of the application of Regulation 57(2) of the Regulations and should therefore have been excluded from the procurement procedure;
- (c) It can be demonstrated that this Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations of Treaties and the Public Contracts Directive of the EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

**25.3.** The Authority may terminate this agreement in accordance with the provisions of Clause 26 and Clause 28.

**25.4** If this agreement is terminated by the Authority pursuant to this Clause 25, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.

## **26. TERMINATION ON NOTICE**

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving 3 months’ written notice to the Supplier.

## **27. FORCE MAJEURE**

**27.1** Neither party will be liable for any delay in or from performing any of its obligations under this agreement by circumstances beyond its reasonable control. The party in delay shall notify the other party as soon as reasonably practicable, in writing of the reason, likely duration and the effect on its ability to perform any of its obligations under the agreement; and use all reasonable endeavours to mitigate any such effect.

## **28. PREVENTION OF BRIBERY**

**28.1** The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier’s Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred,



suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

**28.2** The Supplier shall not during the Term:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

**28.3** The Supplier shall during the Term:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under Clause 28.3(a) and make such records available to the Authority on request.

**28.4** The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 28.1 and/or Clause 28.2, or has reason to believe that it has or any of the Supplier's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

**28.5** If the Supplier makes a notification to the Authority pursuant to Clause 28.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 23.

**28.6** If the Supplier is in Default under Clause 28.1 and/or Clause 28.2, the Authority may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or

**(b)** immediately terminate this agreement.

**28.7** Any notice served by the Authority under Clause 28.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

## **29. CONSEQUENCES OF TERMINATION OR EXPIRY**

**29.1** On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.

**29.2** On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier Contract Representatives shall certify full compliance with this clause.

**29.3** Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, Clause 17 (Indemnities), Clause 18 (Limitation of Liability), Clause 19 (Insurance), Clause 20 (Freedom of Information), Clause 21 (Data Processing), Clause 22 (Confidentiality), Clause 23 (Audit), Clause 25 (Termination for Breach) and this Clause 29 (Consequences of termination), shall remain in full force and effect.

**29.4** 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 the agreement which existed at or before the Termination Date.

## **GENERAL PROVISIONS**

### **30. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **31. SEVERABILITY**

31.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

31.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **32. PARTNERSHIP OR AGENCY**

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

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

## **33. PUBLICITY**

The Supplier shall not:

**(a)** make any press announcements or publicise this agreement or its contents in any way; or

**(b)** use the Authority's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

## **34. NOTICES**

**34.1** Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative 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 fax to its main fax number or sent by email to the address specified in the tender documentation.

**34.2** Any notice shall be deemed to have been received:

**(a)** if 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 at its principal place of business (in any other case); or

(b) sent by email to the address provided in the tender documentation.

**34.3** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

## **35. JURISDICTION**

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

## **36. ABNORMALLY LOW TENDERS**

**36.1** If, for a given contract, tenders appear to be abnormally low in relation to the services, works or services, the Authority shall, before it may reject those tenders, investigate the elements of the tender which it considers to be unsustainable. If the council's investigations determine the bid to be unsustainable, the council may reject the tender from the process.

## **37. CORPORATE POLICES**

**37.1** The Supplier shall comply with all Council policies and rules, such as, but not limited to:

- (a) equality and diversity policies;
- (b) sustainability;
- (c) information security rules;
- (d) Safeguarding policies;
- (e) whistleblowing and confidential reporting policies; and all site rules relevant to the fulfilment of the Supplier's obligations

NB: Suppliers are responsible for ensuring they always refer to the most up to date Council policies, which can be found on the council's website

## **38. INDEXATION**

**38.1** The parties agree that the Supplier may review and adjust the charges set out in this Agreement annually on the anniversary of the Commencement Date if annual increases in the Consumer Prices Index, or any successor index published by the Office for National Statistics or any successor organisation exceed 0.5% over any

consecutive twelve month period causing the costs associated with providing the Services incurred by the Supplier to increase, to be by no more than the rate of such annual increase. The Supplier shall give the Council not less than one month's prior notice in writing of the proposed changes.

### **39. VARIATIONS**

**39.1** The relevant Contract Manager may, at any time, by written notice, request the Supplier to make any reasonable alteration to the Contract or any Order pursuant thereto (herein referred to as a 'Variation'). In the event of a Variation being required, the relevant Authority Contract Representative shall instruct the Supplier to state in writing its ability to meet the requirements of the Variation and the effect such Variation will have on the cost of the Contract. The Supplier shall respond within fourteen (14) days from receipt of the relevant Contract Manager's instructions or such other period as may be agreed.

**39.2** Notwithstanding any data with regard to the value and/or volume of the Service or commissions, whether set out in the Specification or otherwise (which is only given as a guide) the Authority gives no guarantee and accepts no liability as to the actual values or volumes which will be placed with the Supplier. The Authority shall in no circumstances be liable to the Supplier for any consequential or financial loss of any kind whatsoever arising therefrom.

### **40. KPI's**

**40.1** Where any Service is stated in –the specification to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

**40.2** If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within the specification.

**40.3** The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in –the specification.

### **41. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT**

**41.1.1** The supplier shall ensure that all work carried out by its staff or Sub-contractor staff is voluntary and workers shall have the freedom to terminate their employment at any time without penalty, given notice of reasonable length.

**41.1.2** The Supplier shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour.

**41.1.3** The supplier shall ensure that its Staff and Sub-contractor Staff shall not be charged any fees or costs for recruitment, directly or indirectly, in whole or in part, including costs associated with travel, processing official documents and work visas in both home and host countries.

**41.1.4** The supplier shall not confiscate or withhold staff identity documents or other valuable items, including work permits and travel documentation as a means to force staff employment or to restrict their freedom of movement.

**41.1.5** The Supplier warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world and that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

**41.2** The supplier shall:

**41.2.1** make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offenses anywhere around the world.

**41.2.2** shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions where applicable;

**41.2.3** shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;

**41.2.4** shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;

**41.2.5** Shall not use the threat of physical abuse, sexual violence, harassment and intimidation against an employee's or sub-contractor's family members, or close associates.

**41.2.6** shall not use or allow child or slave labour to be used by its Sub-contractors;

**41.2.7** shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the authority, the Buyer and Modern Slavery Helpline.

## **Staff payment**

**41.3** The Supplier shall:

**41.3.1** ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment and shall be provided all legally mandated benefits;

**41.3.2** ensure that all Supplier Staff are provided with written Information in a language that they understand about their employment conditions in respect of wages, the particulars of their wages for the pay period concerned each time that they are paid, working hours and other working and employment conditions before they enter employment.

**41.3.3** Wage payments shall be made at regular intervals and directly to staff, in accordance with national law, and shall not be delayed, deferred, or withheld.

**41.3.4** Only deductions, advances, and loans authorised by national law are permitted and shall only be taken with the full consent and understanding of staff.

**41.3.5** All staff shall retain full and complete control over their earnings.

**41.3.6** not make deductions from staff wages:

(a) as a disciplinary measure

(b) to keep workers tied to the employer or to their jobs

(c) without expressed permission of the worker concerned;

**41.3.7** record all disciplinary measures taken against its staff; and

**41.3.8** ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

### **Staff hours of Work**

**41.4** The Supplier shall:

**41.4.1** ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;

**41.4.2** that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 37 hours per week unless the individual has agreed in writing;

**41.4.5** All overtime shall be purely voluntary, unless part of a legally recognised collective bargaining agreement.

**41.4.6** Supplier staff shall not be required to work overtime under the threat of penalty, dismissal, or denunciation to authorities, a disciplinary measure, or for failure to meet production quotas.

**41.4.7** The supplier will ensure that the use of overtime is used responsibly, taking into account:

(a) the extent;

(b) frequency; and

(c) hours worked;

by individuals and by the Supplier Staff as a whole;

**41.4.8** The total hours worked in any seven day period shall not exceed 52 hours, working hours may only exceed 52 hours in any seven day period in exceptional circumstances where all of the following criteria are met:

(a) this is allowed by national law;

(b) this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce; appropriate safeguards are taken to protect the workers' health and safety; and

(c) the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

**41.4.9** All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

Staff Freedom of movement:

**41.5.1** The supplier shall ensure that staff's freedom of movement shall not be unreasonably restricted, staff shall not be physically confined to the workplace or any related premises, nor should a mandatory residence in employer-operated facilities be made as a condition of employment

**41.5.2** The supplier shall ensure that staff are not subjected to coercive or any other means or behaviour to restrict staffs' freedom of movement or personal freedom.