

SHORT BREAKS FOSTER CARE OVERNIGHT SERVICE

between

BOROUGH OF TELFORD AND WREKIN

and

PARTY 2

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THIS AGREEMENT is dated

PARTIES

- (1) **BOROUGH OF TELFORD & WREKIN** of Darby House, Lawn Central, Telford, TF3 4JA (**Council**).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Supplier**).

BACKGROUND

- (A) The Council sought proposals for the provision of Short Breaks Foster Care Overnight Service by means of a public tender exercise. The Council placed a contract notice **[REFERENCE]** on **[DATE]** seeking expressions of interest from potential providers for the provision of planned overnight short breaks to resident children and young people aged 5-17, with disabilities.
- (B) The Council has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule 5.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure:

- (a) [a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.]
- (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council.

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 Schedule 7.

Charges: the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date: the date of this agreement.

Commercially Sensitive Information: the information listed in Schedule 11 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 Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Consistent Failure: shall have the meaning set out in Part 1 of Schedule 2.

Contract Year: a period of 48 months, commencing on the [Commencement Date OR [INSERT DATE OF SERVICE COMMENCEMENT]].

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council for use in providing the Services [as identified in Schedule 12].

Council's Premises: the premises identified in Schedule 12 and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

Data Subject: as defined in the Data Protection Legislation.

Data Protection Legislation means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) [and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party].

Default Notice: is defined in Clause 5.2.

[Disaster: an event defined as a disaster in the Disaster Recovery Plan.]

[Disaster Recovery Plan: a plan which sets out the procedures to be adopted by the Supplier in the event that [INSERT WHAT DISASTER RECOVERY PLAN IS TO COVER] by reason of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Disaster Recovery Plan at the date of this agreement being set out in Schedule 6.]

Dispute Resolution Procedure: the procedure set out in clause 20.

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 Schedule 9.

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

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

Health and Safety Policy: the health and safety policy of the Council 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.

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

Initial Term: the period commencing on the Commencement Date and ending on the [NUMBER] anniversary of the Commencement Date.

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 that other party (being a company) 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 if 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; (i) 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;
- (f) 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;
- (g) 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 (a) to (g) (inclusive);

- (h) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

KPIs: the key performance indicators set out in Schedule 2.

Key Personnel: those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 13.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply;

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 17 and Schedule 5 [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: means the Council's anti-slavery and human trafficking policy http://www.telford.gov.uk/downloads/file/5264/anti-slavery_and_human_trafficking_policy and as updated by the Council and notified to the Service Provider from time to time.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service [including without limitation all [INSERT DETAILS OF SPECIFIC CONSENTS REQUIRED (IF ANY)]]].

[**Payment Plan:** the plan for payment of the Charges as set out in Schedule 4.]

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined 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 Council a financial or other advantage to:
 - (i) induce that 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;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council.
- (d) any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

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 Council in accordance with clause 30.1(a).

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

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

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.

[Service Failure: a failure by the Supplier to provide the Services in accordance with any Target KPI.]

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.

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 3.

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.

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.

Target KPI: the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 2.

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

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

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

Termination Payment Default: is defined in Schedule 4.

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

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall 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) and that person's legal and personal representatives, successors and permitted assigns.

- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes e-mail.
- 1.10 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.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the **1/7/2025 Commencement Date** and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Council may extend this agreement beyond the Initial Term by a further period or periods of up to 4 years (Extension Period). If the Council wishes to extend this agreement, it shall give the Supplier at least **6** months' written

notice of such intention before the expiry of the Initial Term or Extension Period.

- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Council 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 34 shall apply.

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

- 4.1 The Supplier acknowledges and confirms that:
 - (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.1(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) 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 Council in respect of any information which is provided to the Supplier by the Council 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) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

- 4.4 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall provide the Services to the Council with effect from the [Commencement Date OR [Service 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 Council may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

6. KPI'S

- 6.1 Where any Service is stated in Schedule 2 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 such specific Target KPI.
- 6.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 2.
- 6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 17.
- 6.4 [In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Council may have, the provisions of clause 12 shall apply.]

7. SERVICE STANDARDS

Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with [the best practice prevailing in the [INSERT INDUSTRY RELEVANT TO TYPE OF SERVICES BEING PROVIDED] industry from time to time];
- (b) in all respects in accordance with the Council's policies set out in Schedule 1; and
- (c) in accordance with all Applicable Laws.

8. COMPLIANCE

- 8.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 8.3 The Supplier 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 Council Premises.
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 Without limiting the general obligation set out in clause 7, the Supplier shall (and shall procure that the Supplier's Personnel shall):
 - (a) perform its obligations under this agreement (including those in relation to the Services) 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 Council's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
- (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- (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 Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

9. COUNCIL'S PREMISES AND ASSETS

- 9.1 The Council shall, subject to clause 8 and clause 14 [and the provisions of the [lease **OR** licence] set out in Schedule 12], provide the Supplier (and its Sub-Contractors) with access to such parts of the Council's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
- 9.2 The Council shall provide the Supplier with such accommodation and facilities in the Council's Premises as is specified in Schedule 12 or which is otherwise agreed by the parties from time to time.
- 9.3 Subject to the requirements of clause 34 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Council shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Council's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 9.4 The Supplier shall ensure that:
- (a) where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Supplier's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;
 - (c) any Council Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not

removed from Council Premises unless expressly permitted under this agreement or by the Council's Authorised Representative.

9.5 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Supplier as a debt.

9.6 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

10. [DISASTER RECOVERY]

10.1 The Supplier shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

10.2 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:

- (a) implement the Disaster Recovery Plan;
- (b) continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

To the extent that the Supplier complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 6 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.]

CHARGES AND PAYMENT

11. PAYMENT

11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Supplier [in accordance with the Payment Plan].

11.2 The Supplier shall invoice the Council for payment of the Charges at [the end of each calendar month OR at the time the Charges are expressed to be payable in accordance with the Payment Plan]. All invoices shall be directed to

the Council's Authorised Representative. [Any such invoices shall take into account any Service Credits which have been accrued in the previous period.]

- 11.3 Where the Supplier submits an invoice to the Council in accordance with clause 11.2, the Council will consider and verify that invoice within 10 days.
- 11.4 The Council 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 Council has determined that the invoice is valid and undisputed.
- 11.5 Where the Council fails to comply with clause 11.3, the invoice shall be regarded as valid and undisputed 10 days after the date on which it is received by the Council.
- 11.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
 - (a) provisions having the same effect as clause 11.3 to clause 11.5 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 11.3 to clause 11.5 of this agreement.

In this clause 11.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council 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.

Where any party 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 20.

- 11.7 Subject to clause 11.7, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 30.4 for failure to pay undisputed charges.
- 11.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 11.9 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by

the Council for five years from the end of the Contract Year to which the records relate.

- 11.10 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.
- 11.11 If The Council wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Council) against any amount due to the Supplier pursuant to clause 11.11 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Council's reasons for withholding or retaining the relevant Charges.
- 11.12 The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

STAFF

12. KEY PERSONNEL

12.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

12.2 The Supplier shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Council;
- (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 Council's satisfaction;
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Council.

12.3 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be

identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.

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

12.5 If the Supplier replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Supplier.

13. **[OTHER] PERSONNEL USED TO PROVIDE THE SERVICES**

13.1 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 Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.

13.2 The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

13.3 The Supplier shall replace any of the Supplier's Personnel who the Council 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.

13.4 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 Council as the Council 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.

13.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or

management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

14. [SAFEGUARDING CHILDREN AND VULNERABLE ADULTS]

Commented [A1]: Leave in if appropriate to service provision

14.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006

14.2 The Supplier shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
- (b) monitor the level and validity of the checks under this clause 15.2 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

14.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

14.4 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15.14 have been met.

14.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to [the service users OR children OR vulnerable adults].]

15. TUPE

The parties agree that the provisions of Schedule 10 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

16. REPORTING AND MEETINGS

- 16.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 5.
- 16.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Supplier shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format set out in that Schedule.

17. MONITORING

- 17.1 The Council may monitor the performance of the Services by the Supplier.
- 17.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Council.

18. CHANGE CONTROL, [BENCHMARKING] AND CONTINUOUS IMPROVEMENT

- 18.1 VARIATION – No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Authorised Representative [quarterly] in the first Contract Year and once every [six] months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the [quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.
- 18.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 19.3 shall be addressed by the parties using the Change Control Procedure.

19. DISPUTE RESOLUTION

- 19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then 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 service of the Dispute Notice, the Dispute shall be referred to the Council's **[SENIOR OFFICER TITLE]** and the Supplier's **[SENIOR OFFICER TITLE]** who shall attempt in good faith to resolve it; and
 - (c) if the Council's **[SENIOR OFFICER TITLE]** and the Supplier's **[SENIOR OFFICER TITLE]** 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 CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than **[NUMBER]** days after the date of the ADR notice.
- 19.2 The commencement of mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under clause 45 which clause shall apply at all times.
- ## 20. SUB-CONTRACTING AND ASSIGNMENT
- 20.1 Subject to clause 21.3, neither party shall assign, novate 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 sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.
- 20.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Council 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 Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 20.3 The Council shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
- 20.4 Provided that the Council has given prior written consent, the Supplier shall be entitled to novate the agreement where:
 - (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
 - (b) 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

21. INDEMNITIES

The Supplier shall indemnify and keep indemnified the Council 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 Council or its Representatives (excluding any Supplier's Personnel).

22. LIMITATION OF LIABILITY

- 22.1 Subject to clause 23.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 22.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

22.3 Subject to clause 23.1 and 23.4, the Supplier's total aggregate liability:

- (a) is unlimited in respect of:
 - (i) the indemnities in Clause 24;
 - (ii) any breach of clause 33;
 - (iii) [the Supplier's wilful default; and]
 - (iv) [OTHERS.]

22.4 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;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

23. INSURANCE

23.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as per the limits listed below:

- (a) Public liability insurance with a limit of indemnity of not less than £10m (ten million pounds) in relation to any one claim or series of claims;
- (b) Employer's liability insurance with a limit of indemnity of not less than £5m (five million pounds) **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;]
- (c) [professional indemnity insurance with a limit of indemnity of not less than £1 (one million pounds) 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;]
- (d) [product liability insurance with a limit of indemnity of not less than £[INSERT AMOUNT] in relation to any one claim or series of claims.]]

(the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

23.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate

that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 23.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 23.5 [The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.]

INFORMATION

24. FREEDOM OF INFORMATION

- 24.1 The Supplier acknowledges that the Council 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 Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Council 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 Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.
- 24.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Council 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 Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

25. DATA PROTECTION

- 25.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 26 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 26, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) 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. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- 25.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. [Schedule 13 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].
- 25.3 Without prejudice to the generality of Clause 26.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 25.4 Without prejudice to the generality of Clause 26.1, 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 documented written instructions of the Council [which are set out in Schedule 13], unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, 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 Council has been obtained and the following conditions are fulfilled:

(i) the Council 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 Council with respect to the processing of the Personal Data;

(d) notify the Council immediately if it receives:

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

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

(iii) 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 Council in responding to any request from a Data Subject and in ensuring compliance with the Council'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 Council without undue delay 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 Council, 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 26 and allow for audits by the Council or the Council's designated auditor pursuant to Clause 29 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

25.5 The Supplier shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier's obligations under this Clause 26.

25.6 Where the Supplier intends to engage a Sub-Contractor pursuant to Clause 21 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

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

(b) obtain prior written consent from the Council to the processing;

(c) enter into a written agreement incorporating terms which are substantially similar to those set out in this Clause 26.

25.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this Clause 26 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 replaced by attachment to this agreement).

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

26. CONFIDENTIALITY

26.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

26.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 25.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
 - (d) by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
 - (e) to enable a determination to be made under clause 20;
 - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (g) by the Council to any other department, office or agency of the Government; and
 - (h) by the Council relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 26.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

27. AUDIT

- 27.1 During the Term and for a period of 6 years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services ;
 - (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
 - (c) to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 26 (Data Protection), clause 25 (Freedom of Information), clause 50 Modern Slavery and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Council's accounts;
 - (g) 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 Council has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

- (i) to ensure that the Supplier's quality, environmental, ethical and health and safety procedures and systems are adequate to perform the services or provide the goods in accordance with this agreement and the Modern Slavery Policy and for that purpose shall be entitled to have access to the Supplier's premises and to any premises of the Supplier's sub-contractors or agents where the [services are being performed] [Goods are being produced] [during normal working hours on giving reasonable notice to the Supplier.]
- 27.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 28 more than twice in any calendar year.
- 27.3 The Council 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 Services.
- 27.4 Subject to the Council's obligations of confidentiality, the Supplier shall on demand provide the Council 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 controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's Personnel.
- 27.5 The Council shall endeavour to (but is not obliged to) provide at least [15] days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 27.6 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 Council for all the Council's reasonable costs incurred in the course of the audit.
- 27.7 If an audit identifies that:
 - (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Supplier the amount of the under-payment [less the cost of audit incurred by the Council if this was due to a default by the Supplier in relation to invoicing] within 20 days.

28. INTELLECTUAL PROPERTY

- 28.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
- shall vest in the Council on creation.
- 28.2 The Supplier shall indemnify the Council 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 Council's acts or omissions.

TERMINATION

29. TERMINATION FOR BREACH

- 29.1 The Council may terminate this agreement in whole or part 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 Council may only terminate this agreement under this clause 30.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
 - (b) if a Consistent Failure has occurred;
 - (c) if a Catastrophic Failure has occurred;
 - (d) if there is an Insolvency Event.

- (e) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
 - (f) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 29.2 The Council may terminate this agreement in accordance with the provisions of clause 32 and clause 33.
- 29.3 If this agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
- 29.4 The Supplier may terminate this agreement in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.
- 30. **NOT USED**
- 31. **FORCE MAJEURE**
- 31.1 Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 31.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
 - (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 31.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 31.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.

- 31.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 31.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 31.7 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than **[3]** Working Days.

32. PREVENTION OF BRIBERY

- 32.1 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.
- 32.2 The Supplier shall not during the term of this agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Council or any of the Council'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.
- 32.3 The Supplier shall during the term of this agreement:
- (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 33.3(a) and make such records available to the Council on request.

32.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of clause 33.1 and/or clause 33.2, 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.

32.5 If the Supplier makes a notification to the Council pursuant to clause 33.4, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 28.

32.6 If the Supplier is in Default under clause 33.1 and/or clause 33.2, the Council 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.

32.7 Any notice served by the Council under clause 33.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

33. CONSEQUENCES OF TERMINATION

33.1 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 Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier.

- 33.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Supplier shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Supplier's [Authorised Representative or Chief Executive Officer] shall certify full compliance with this clause.
- 33.3 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

34. [NON-SOLICITATION]

Neither party shall (except with the prior written consent of the other) during the term of this agreement[, and for a period of one year thereafter,] solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.]

35. 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.

36. 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.

37. SEVERABILITY

- 37.1 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.

- 37.2 If 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.

38. PARTNERSHIP OR AGENCY

- 38.1 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.
- 38.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

39. THIRD PARTY RIGHTS

- 39.1 No one other than a party to this agreement shall have any right to enforce any of its terms.

40. PUBLICITY

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council'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 Council, which shall not be unreasonably withheld or delayed.

41. NOTICES

- 41.1 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
- 41.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt;

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

41.3 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. For the purposes of this clause, "writing" shall include e-mail.

42. ENTIRE AGREEMENT

42.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it [AND REFER TO ANY OTHER NECESSARY DOCUMENTS OR REPRESENTATIONS] constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

43. NOT USED

44. GOVERNING LAW

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

45. JURISDICTION

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).

46. NATIONAL MINIMUM WAGE

46.1 On or before the anniversary of the commencement of the Contract each year the Supplier shall provide to the Council a certificate signed by a director of the Supplier certifying that it has complied with all statutory obligations under the National Minimum Wage Act 1998 (as amended).

46.2 The Council shall have the right to terminate this Agreement by way of written notice and with immediate effect where:

- (a) The Supplier fails to comply with its statutory obligations under the National Minimum Wage Act 1998 (as amended) with regards to the

Supplier's eligible employees and to keep records required by the National Minimum Wage Regulations 1999

- (b) The Supplier fails to provide the certificate described at 46.1
- (c) The Supplier fails within 10 Working Days (when requested to do so by the Council) to provide an anonymised random sample of employee payments (the size of sample to be set at the Council's sole discretion) demonstrating that the National Minimum Wage has been paid and in particular, demonstrating that travel time under Regulation 15 and training under Regulation 19 of the National Minimum Wage Regulations 1999 have been taken into account when doing so
- (d) The Supplier shall report to the Council any involvement with an Employment Tribunal or Employment Appeal Tribunal or Whistleblowing which is occasioned by the Supplier's or its Sub-Contractor's potential breach of the Minimum Wage legislation within 10 Working Days.

47. **COMPLIANCE WITH THE COUNTER-TERRORISM AND SECURITY ACT 2015 AND THE (RISK OF BEING DRAWN INTO TERRORISM) (GUIDANCE) REGULATIONS 2015**

47.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and guidance relating to Counter Terrorism including but not limited to the Counter-Terrorism and Security Act 2015 and the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements ;
- (c) comply with the Council's code and plan for compliance with the Relevant Requirements.
- (d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under The Counter-Terrorism and Security Act 2015 and the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 48.1(b), and will enforce them where appropriate;
- (e) promptly report to the Council any behaviours or actions or other activity of any kind observed, perceived or suspected by the Supplier in connection with the performance of this agreement which may be in breach of the Relevant Requirements and/or the Relevant Policies;

- (f) within one month of the date of this agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Supplier, compliance with this clause 48.47 by the Supplier and all persons associated with it under clause 48.2. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.
- 47.2 The Supplier shall ensure that any person associated with the Supplier who is performing services [or providing goods] in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 48 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.
- 47.3 Breach of this clause 48 shall be deemed a material breach under clause 30 (Termination for Breach).
- 47.4 For the purpose of this clause 48, the meaning of adequate procedures shall be determined in accordance with the Relevant Requirements and the Relevant Policies. For the purposes of this clause 48 a person associated with the Supplier includes [but is not limited to] any subcontractor of the Supplier.

49. IR35

- 49.1 Since April 2017 there are changes to the way the current intermediaries legislation (known as IR35) is applied to off-payroll working in the public sector. Where the rules apply, people who work in the public sector through an intermediary will pay employment taxes in a similar way to employees.

The Council reserves the right to carry out the Employment Service Status test to determine your status in accordance with HMRC guidance and deduct and make payment of tax and National Insurance contributions accordingly.

50 MODERN SLAVERY

- 50.1 The Supplier undertakes, warrants and represents that:
 - (a) neither the Supplier nor any of its officers, employees, agents or subcontractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

- (b) it shall comply with the Modern Slavery Act 2015 and the Council's Modern Slavery Policy
- (c) it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Supplier's obligations under this Clause
- (d) such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.

Any breach of this Clause 2 by the Supplier shall be deemed a material breach of the agreement and shall entitle the Council to terminate the agreement.

50.2 The Supplier shall carry out an [annual] audit [using an independent third party auditor] to monitor its compliance with the Modern Slavery Policy.

50.3 The Supplier shall prepare and deliver to the Council no later than [DATE] each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

50.4 The Supplier shall conduct a programme of regular training for its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the Modern Slavery Policy.

50.5 The Supplier shall keep a record of all training offered and completed by its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the Modern Slavery Policy and shall make a copy of such records available to the Council on request.

50.6 The Supplier shall indemnify defend and hold harmless the Council and its directors, officers and employees in full and on demand from and against any and all liabilities, claims, fines, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting from a breach of the Modern Slavery Policy.]

50 MODERN SLAVERY

50.1 The Supplier undertakes, warrants and represents that:

- (a) neither the Supplier nor any of its officers, employees, agents or subcontractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (a "MSA Offence"); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(b) it shall comply with the Modern Slavery Act 2015 and the Council's Modern Slavery Policy

(c) it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Supplier's obligations under this Clause

a. such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.

Any breach of this Clause 2 by the Supplier shall be deemed a material breach of the agreement and shall entitle the Council to terminate the agreement.

50.2 The Supplier shall indemnify defend and hold harmless the Council and its directors, officers and employees in full and on demand from and against any and all liabilities, claims, fines, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting from a breach of the Modern Slavery Policy.

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

EXECUTED AS A DEED

by affixing the **COMMON SEAL** of the)
BOROUGH OF TELFORD & WREKIN)

in the presence of :)

Signature:

[NAME]
[TITLE]

Name (in block capitals)

Executed by)
[NAME OF SUPPLIER])

in the presence of:)

Signature:

[NAME]
[TITLE]

Name (in block capitals)

In the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

.....
.....

Occupation of Witness:

SCHEDULE 1 Specification

SCHEDULE 2 Performance regime

PART 1. KPI'S

2. THE KPIs

- 2.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	KPI category (Red/ green)
		[NUMBER]%	
		[NUMBER]%	
		[NUMBER]%	

- 2.2 The Supplier shall monitor its performance against each Target KPI and shall send the Council a report detailing the Achieved KPIs in accordance with Schedule 5.

PART 3. Consistent failure

1. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean:

(a) a failure to meet

- (i) 5 or more of the Target KPIs labelled ["Red"] in a rolling [INSERT NUMBER] month period; or
- (ii) 10 or more Target KPIs labelled ["Green"] in a rolling [INSERT NUMBER] month period.]
- (iii) **OR**
- (iv) [[INSERT NUMBER] or more Target KPIs in a rolling [INSERT NUMBER] month period.]]
- (v) **[AND/OR]**

(b) [the Supplier being liable to pay £[INSERT NUMBER] to the Council in Service Credits in respect of [two consecutive months].]
[AND/OR]

(c) [the Council serving [INSERT NUMBER] Remediation Notices in a rolling [INSERT NUMBER] month period or [INSERT NUMBER] Default Notices in a rolling [INSERT NUMBER] period.]
[AND/OR]

(d) [the Supplier repeatedly breaching 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.]

SCHEDULE 3 Supplier's Tender

SCHEDULE 4 Charges and payment

1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

2. CHARGES BASED ON A FIXED PRICE

Service	Monthly cost (£)
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
TOTAL	[INSERT FIGURE TO BE CHARGED TO COUNCIL]

3. CHARGES BASED ON HOURLY RATES

Hours of service in invoice period	Hourly rate (£)
[Up to 100]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]
[101-200]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]
[201-300]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]

4. PAYMENT TRIGGERED BY MEETING MILESTONES

Workstream	Milestone	Date completion expected	Charge payable on completion (£)
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]

5. MENU PRICING

Type of Fixed Cost	Charges (£)
[INSERT TYPE OF SERVICE TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]

[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]

6. PAYMENT PLAN

[INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE Supplier AND WHEN THEY WILL BE DUE FOR PAYMENT]

7. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of £[AMOUNT] have been overdue for payment for a period of [60] days or more, the Council will have committed a Termination Payment Default.

SCHEDULE 5 Contract management

1. AUTHORISED REPRESENTATIVES

1.1 The Council's initial Authorised Representative:

[INSERT DETAILS]

1.2 The Supplier's initial Authorised Representative:

[INSERT DETAILS]

2. KEY PERSONNEL

[INSERT DETAILS]

3. MEETINGS

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

4. REPORTS

4.1 Type

4.2 Contents

4.3 Frequency

4.4 Circulation list

5. REQUIRED ANNUAL INFORMATION CHECKS:

[Insurances (and premiums paid) (clause 24.2)]

[Certificate of compliance with Anti Bribery Policy (clause 33.3b)]

[Certificate of compliance with National Minimum Wage (clause 47.1)]

[Certificate of compliance with Counter Terrorism Regulations (clause 48.1f)]

[Annual Slavery and Human Trafficking report (clause 50)]

SCHEDULE 6 [Disaster recovery]

SCHEDULE 7 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Supplier sees a need to change this agreement, the Council 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 paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council 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.
- 1.4 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 Schedule 7, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Discussion between the Council 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 Council; or
 - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for an amendment is received from the Council, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.4 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 Council and the Supplier; and
- (k) details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this agreement under clause 29.1(f)(e) will be apportioned.

2.5 For each Change Control Note submitted by the Supplier the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this agreement.

SCHEDULE 8 NOT USED

SCHEDULE 9 Exit

SCHEDULE 10 TUPE

1. If the Council has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Business Days following written request (unless otherwise agreed in writing) provide the Council with anonymised details of Staff engaged in the provision of the relevant Services (the Staff List) who may be subject to TUPE. The Council shall be permitted to use and disclose the Provider's Staff List for informing any Tenderer or other prospective Replacement Provider for any services which are substantially the same type of services (or any part thereof) as the Services. On reasonable request by the Council the Provider shall provide the Council or at the request of the Council, the Replacement Provider, with access (on reasonable notice and during normal working hours) to such employment records necessary (and provide copies) as the Council reasonably requests.
2. The Provider warrants that the Providers Staff List will be true and accurate in all material respects.
3. The Provider must indemnify and keep indemnified the relevant Commissioner and at the Co-ordinating Commissioner's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.
4. During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its sub-contractors do not, without the prior written consent of the Council, in relation to any persons engaged in the provision of the Services or the relevant Service:
 - a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
 - b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor by more than 5% (except in the ordinary course of business);
 - c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
 - d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.

5. The Provider shall indemnify and keep indemnified the Council and, at the Council's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:
- (a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor;
 - (b) claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Council or new provider under TUPE; and/or
 - (c) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Council or new provider.
6. The Council must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:
- a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
 - b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
 - c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.

SCHEDULE 11 Commercially Sensitive Information

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS
COMMERCIALY SENSITIVE]

SCHEDULE 12 Council's Premises and Assets

[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR
LICENCES TO BE INSERTED ANY COUNCIL ASSETS]

SCHEDULE 13 Data Processing Agreement

[IF REQUIRED, APPEND A COPY OF THE COUNCIL'S DATA PROCESSING AGREEMENT]