

DEVON COUNTY COUNCIL (1)

and

THE SUPPLIER (2)

**STANDARD TERMS AND CONDITIONS FOR THE
PURCHASE OF SERVICES**

**RELATING TO THE OPERATION OF 18 HOUSEHOLD
WASTE RECYCLING CENTRES (HWRCs) and 2 WASTE
TRANSFER STATIONS**

CONTRACT DETAILS – Contract Reference no CP-2565-24 Contract for the operation of 18 Household Waste Recycling Centres (HWRCs) and 2 Waste Transfer Stations	
Supplier	[Add name of Supplier]
Supplier's Address for Notices:	[Add registered office address of Supplier]
Representatives:	<p>The Authority: []</p> <p>Supplier: []</p> <p>or such other person as is notified by a party to the other in writing.</p>
Commencement Date:	1 April 2026
Initial Term: (Clause 2.2)	From and including the Commencement Date until 31 March 2031
Extension Period: (Clause 2.2)	Subject to mutual agreement of both parties, the Agreement may be extended by a period or periods up to a total maximum extended period of five (5) years.
Extension Period Notice: (Clause 2.2)	Three (3) Months
Other documents to form part of this Agreement (Definition of Agreement)	<p>Invitation to Tender</p> <p>Supplier's Response to Invitation to Tender</p> <p>The Tender Clarifications</p> <p><u>Recycling Centres</u></p> <p>Schedule A1.1 – Specification</p> <p>Schedule A1.2 – Performance Standards Framework for the operation of 18 Household Waste Recycling Centres</p> <p>Schedule A2.1 – Standard Terms and Conditions</p> <p>Schedule A2.2 – Special Terms and Conditions for the operation of 18 Household Waste Recycling Centres</p> <p>Schedule A3 – Contract Rates</p> <p>Schedule A4 – Not Used</p> <p>Schedule A5 – Acceptable Condition of Plant</p>

	<p>Schedule A6 – Contract Signs</p> <p>Schedule A7 – Site Sample Leases & Location Plans</p> <p>Schedule A8 – RC Standard Forms</p> <p>Schedule A9 – Jointly Agreed Sites' Conditions</p> <p>Schedule A10- Parent Company Guarantee or Performance Bond</p> <p>Appendix B1 – The Authority's Network of Recycling Centres</p> <p>Appendix B2 – Sites' Indicative Waste Tonnages</p> <p>Appendix B3 – Not Used</p> <p>Appendix B4 – Sites' Permits & Planning Info</p> <p>Appendix B5 – Sites' Inventories</p> <p>Appendix B6 – Sites' Engineering Info</p> <p>Appendix B7 – ERF Output Specification & Waste Acceptance Protocol (Exeter)</p> <p>Appendix B8 – ERF Output Specification & Waste Acceptance Protocol (MVV)</p> <p><u>Crowndale Waste Transfer Station</u></p> <p>Schedule C1.1 – Specification</p> <p>Schedule C1.2 – ERF Output Specification & Waste Acceptance Protocol (CWTS)</p> <p>Schedule C1.3 – Performance Standards Framework for the operation of Crowndale Waste Transfer Station</p> <p>Schedule A2.1 – Standard Terms and Conditions</p> <p>Schedule A2.3 – Special Terms and Conditions for the operation of Crowndale and Punchbowl Waste Transfer Stations</p> <p>Schedule A3 – Contract Rates</p> <p>Schedule C4 – Payment Mechanism</p> <p>Appendix Ci – CWTS Indicative Tonnages</p> <p><u>Punchbowl Waste Transfer Station</u></p> <p>Schedule P1.1 – Specification</p> <p>Schedule P1.2a – ERF Output Specification & Waste Acceptance Protocol (Exeter ERF)</p>
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	<p>Schedule P1.2b – ERF Output Specification & Waste Acceptance Protocol (Plymouth ERF)</p> <p>Schedule P1.3 – Performance Standards Framework for the operation of Punchbowl Waste Transfer Station</p> <p>Schedule A2.1 – Standard Terms and Conditions</p> <p>Schedule A2.3 – Special Terms and Conditions for the operation of Crowndale and Punchbowl Waste Transfer Stations</p> <p>Schedule A3 – Contract Rates</p> <p>Schedule P4 – Payment Mechanism</p> <p>Appendix Pi – PWTS Indicative Tonnages</p>
<p>Liability Limit</p> <p>(Clause 19.4)</p>	<p>£ 10 million</p>
<p>Insurance:</p> <p>(Clause 20)</p>	<p>Insurance of all Authority's Premises, Authority's Assets and their contents</p> <p>Public liability insurance: £ 10 million.</p> <p>Employer's liability insurance: Statutory minimum.</p> <p>Vehicle's motor insurance: Against such risks as may be required by Law to an appropriate Level</p> <p>Environmental Liability Insurance (if not included within public liability insurance): £5 million</p> <p>The Supplier shall ensure that the Authority's interest is noted on each insurance policy, or that a generic interest clause has been included.</p>
<p>Schedule 1 - Optional Clauses to apply:</p> <p>(Clause 40)</p>	<p>The following clauses shall apply to this Agreement:</p> <ul style="list-style-type: none"> • Optional Clause 3 – Social Networking and Internet • Optional Clause 6 – Key Performance Indicators
<p>Schedule 2 – Supply of Goods</p> <p>(Clause 40)</p>	<p>Schedule 2 (Supply of Goods) shall not apply to this Agreement.</p>
<p>Schedule 3 – TUPE</p>	<p>Schedule 3 (TUPE) shall apply to this Agreement.</p>

Schedule 4 – Data Protection	Schedule 4 (Data Protection) shall apply to this Agreement.
Special Conditions:	<p>Special Conditions shall apply to this Agreement.</p> <ol style="list-style-type: none"> 1. Special Terms and Conditions for the operation of 18 Household Waste Recycling Centres (Schedule A2.2) 2. Special Terms and Conditions for the operation of Punchbowl Waste Transfer Station, and Crowndale Waste Transfer Station (Schedule A2.3) 3. Additions to clause 23 (TERMINATION) <p><u>Definitions:</u></p> <p>Consistent Service Failure: as defined within:</p> <ol style="list-style-type: none"> a) Schedule A1.2 Performance Standards Framework for the operation of 18 Household Waste Recycling Centres b) Schedule C1.3 Performance Standards Framework for the operation of Crowndale Waste Transfer Station c) Schedule P1.3 Performance Standards Framework for the operation of Punchbowl Waste Transfer Station <p>1) New sub clause 23.9 (Consistent Service Failure)</p> <p>23.9 Without prejudice to the Authority's other rights and remedies under this Agreement, the Authority may terminate this Agreement or any part of this Agreement relating to any of the Authority's Premises by serving written notice on the Supplier with effect from the date specified in such notice where there is a Consistent Service Failure.</p> <p>2) New sub clause 23.10 (Withdrawal – No Fault)</p> <p>23.10 Without prejudice to the Authority's other rights and remedies, the Authority shall have the right to withdraw any of the Authority's Premises from the Agreement at any time, and terminate any part of this Agreement relating to any of the withdrawn Authority's Premises subject to the Authority giving a minimum of six (6) Months' written notice to the Supplier for the withdrawal of the Authority's Premises.</p> <p>Where the Authority withdraws any of the Authority's Premises pursuant to sub clause 23.10, the terms of this Agreement will cease to apply to that particular Authority's Premises from the date the Authority's Premises is withdrawn.</p> <p>3) New sub clause 23.11 (Termination - No Fault)</p> <p>23.11 Without Prejudice to the Authority's other rights and remedies, the Authority shall have the right to terminate this Agreement at any time by giving a minimum of twelve (12) Months' written notice to the Supplier.</p>

4) New sub clause 23.12 (**TERMINATION COMPENSATION-NO FAULT**)

23.12 Where the Authority terminates this Agreement or any part of this Agreement pursuant to sub clause 23.10 or sub clause 23.11, the Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of the termination under sub clause 23.10 or sub clause 23.11.

23.12.1 The Authority shall consider the list referred to in clause 23.12 and if it agrees with the sum representing the direct loss which the Supplier is seeking to recover it shall notify the Supplier in writing and shall pay such sum to the Supplier within 30 Working Days from the date that termination takes effect. In the event that the Authority disagrees with the list referred to in clause 23.12 the remaining provisions of this clause 23.12 shall apply.

23.12.2 An Expert is a person appointed in accordance with this clause to resolve a dispute between the parties as to the sum the Supplier is seeking to recover from the Authority pursuant to clause 23.12.

23.12.3 The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of his appointment.

23.12.4 If the parties are unable to agree on an Expert or the terms of his appointment within seven Working Days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the Centre for Effective Dispute Resolution (**CEDR**) to appoint an Expert of repute with experience in assessing compensation claims and for the CEDR to agree with the Expert the terms of his appointment.

23.12.5 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

23.12.6 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

- a) either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- b) this clause shall apply to the new Expert as if he were the first Expert appointed.

23.12.7 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.

23.12.8 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

23.12.9 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary)

	<p>instructing professional advisers to assist him in reaching his determination.</p> <p>23.12.10 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.</p> <p>23.12.11 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the sum the Supplier is seeking to recover from the Authority pursuant to clause 23.12. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.</p> <p>23.12.12 In determining the sum the Supplier is seeking to recover from the Authority pursuant to clause 23.12, the Expert shall take into account the following:-</p> <ul style="list-style-type: none"> a) redundancy payments for the Supplier's Personnel that have been or will be reasonably incurred by the Supplier as a direct result of termination of this Agreement. b) an amount equal to the capital expenditure reasonably incurred in providing infrastructure for the delivery of the Service to be calculated pro rata to the proportion of the Contract Term remaining assuming the Agreement has been priced to ensure full recovery of capital expenditure within the Contract Term. c) reasonable costs incurred by the Supplier in early termination of all third party leasing agreements in relation to the Service. d) any premium or cancellation fee paid or payable in respect of the Required Insurances which the Supplier has paid or is committed to pay to maintain the Required Insurances for the period following termination minus any sums recoverable from the insurers on cancellation of the policies. e) any other direct costs reasonably incurred in winding up of operations necessary as a result of the termination. f) the Supplier's profit which shall be limited to 12 months from the date that termination takes effect. g) any other direct losses suffered by the Supplier, provided that the Supplier has taken all reasonable steps to minimise and mitigate such losses. <p>23.12.13 The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.</p> <p>23.12.14 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.</p>
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	23.12.15 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.
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AN AGREEMENT MADE BETWEEN:

- (1) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD ("**the Authority**")
- (2) **THE SUPPLIER** whose identity and address for service is set out in the **Contract Details** ("**the Supplier**")

each a **Party** and together the **Parties**.

BACKGROUND

- (A) The Authority is a local authority and a best value authority with duties and powers to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness pursuant to Part I of the Local Government Act 1999.
- (B) The Authority has advertised for providers of the Services (as defined in Clause 1.1 below) and, following a tender process, has selected the Supplier to provide the Services to the Authority.
- (C) The Agreement sets out the terms and conditions on and subject to which the Supplier will provide the Services to the Authority.

SECTION A: PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement.

Affected Party has the meaning given to the term in Clause 21.2.

Agreement means the agreement concluded between the Authority and the Supplier for the provision of the Services comprising of the Clauses of this agreement, the Schedules of this agreement, the Contract Details, the Invitation to Tender (including, for the avoidance of doubt, its Appendices), the Specification, the Supplier's Tender Response, the Tender Clarifications and any other documents listed in the Contract Details.

Appropriate Supplier means a supplier who is not an excluded supplier, and could have been relied on in place of a supplier to satisfy any Conditions of Participation.

Audit Agents means:

- (a) the Authority's statutory and regulatory auditors and any other auditors appointed by the Authority; and
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.

Authorised Subcontracts means any subcontracts or subcontracting arrangements set out by the Supplier in the Supplier's Tender Response.

Authority Assets means any assets, equipment or other property which is owned by the Authority, and which is or may be used in connection with the provision or receipt of the Services.

Authority Data means any data (including any Personal Data relating to Service Users), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those),

embodied in any medium, that are supplied to the Supplier by or on behalf of the Authority, or which the Supplier is required to generate, collect, process, store or transmit pursuant to this Agreement.

Authority's Premises means any Authority premises 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.

Authority Representative means the person appointed by the Authority and identified in the Contract Details with authority to act on behalf of the Authority in relation to all matters set out in, or in connection with, this Agreement.

Change of Control means any change of control within the meaning of Section 1124 of the Corporation Tax Act 2010.

Charges means the charges for the provision of the Services set out in or otherwise calculated in accordance with the Supplier's Tender Response.

Commencement Date means the date the Agreement starts as set out in the Contract Details.

Conditions of Participation means any conditions in relation to the Supplier's legal and financial capacity or technical ability to perform the Agreement specified in the procurement process in respect of this Agreement (if any).

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all Personal Data.

Contract Details means the front sheet to this Agreement which sets out the particulars of the Agreement.

Contract Term means the period commencing on the Commencement Date and ending at the expiry of the Initial Term or on the expiry of any Extension Period or on earlier termination of this Agreement in accordance with its terms.

Contract Year means a period of 12 Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Default means any failure by the Supplier to perform its material obligations under this Agreement.

Disclosing Party means a Party which discloses or makes available directly or indirectly its Confidential Information.

Dispute means any dispute, issue, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, issue, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve a matter by reference to the Dispute Resolution Procedure.

Dispute Resolution Procedure means the dispute resolution procedure set out in Clauses 13.2 to 13.9.

Domestic Law means the law of the United Kingdom or part of the United Kingdom.

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed

information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012(SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.

DPA 2018: means the Data Protection Act 2018.

EIR means the Environmental Information Regulations 2004 and any subordinate legislation 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 regulations

Excludable means any of the circumstances set out in Schedule 7 of the Procurement Act 2023 applies.

Excluded means that any of the circumstances set out in Schedule 6 of the Procurement Act 2023 applies.

Extension Period means any agreed extension period as set out in the Contract Details.

Extension Period Notice means the period of notice to be given by the Authority to the Supplier in writing to extend this Agreement as set out in the Contract Details.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 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 the Freedom of Information Act 2000.

Force Majeure Event means war, natural flood, strike or lockout (other than a strike or lockout which is limited to the Supplier's Personnel), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the Parties which could not have been reasonably foreseen or avoided, but excluding:

- (c) any industrial action occurring within the Supplier
- (d) any industrial action occurring from any subcontractor for which the Supplier is responsible for

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

Freedom of Information Officer means the Authority's Information Governance Manager who has responsibility for managing the Authority's compliance under the FOIA and EIR.

General Anti-Abuse Rule means:

- (e) the legislation in Part 5 of the Finance Act 2013; and
- (f) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

Guidance means any applicable guidance or directions with which the Supplier is bound to comply.

Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).

Initial Term means the period specified in the Contract Details.

Intellectual Property means all intellectual property of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property 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.

Intellectual Property Rights means any and all rights relating to Intellectual Property.

Invitation to Tender means the invitation to tender for the supply of the Services by which the Supplier was selected to supply the Services to the Authority.

Key Performance Indicators means the factors or measures against which the Supplier's performance of the Agreement can be assessed by the Authority during the Contract Term, if any, and where applicable detailed in Optional Clause 6.

Key Subcontractor means an organisation on which the Supplier relied in order to meet one or more Conditions of Participation in relation to the Agreement.

Law means 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 must comply.

Losses means all losses, liabilities, damages, demands, charges, costs, expenses (including legal and other professional charges and expenses), litigation, settlement, judgement interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **Loss** shall be construed accordingly.

Month means a calendar month.

Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services (which shall include any listed in the Specification).

Occasion of Tax Non-Compliance means:

- (g) any tax return of the Supplier, submitted to a Relevant Tax Authority on or after 1 October 2012, found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (h) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

Performance Levels means the performance levels against which the Authority will monitor the Services supplied by the Supplier, if any, and where applicable, as set out in the Specification.

Personal Data means as defined in the Data Protection Legislation.

Procurement Legislation means the Procurement Act 2023 together with any supporting legislation or regulations, as may be updated, supplemented or replaced from time to time.

Prohibited Act means:

- (i) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or its members, 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;
- (j) 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;
- (k) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (l) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

Protected Characteristics has the meaning set out in Clause 27.1.

Recipient shall mean the Party which receives or obtains directly or indirectly Confidential Information.

Relevant Tax Authority means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return.

Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Replacement Supplier means any entity with which the Authority contracts (or proposes to contract) to provide services similar to all or any of the Services upon the expiry or termination of all or any part of this Agreement for any reason.

Representatives mean the Authority Representative and the Supplier Representative and **Representative** shall mean either one of them as the context so requires as identified in the Contract Details.

Request for Information shall have the meaning set out in the FOIA or the EIR as relevant.

Required Electronic Form means a form that:

- (a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice), and
- (b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution,

as may be updated from time to time in accordance with the Procurement Legislation.

Required Insurance means the insurances to be taken out by the Supplier in accordance with Clause 20.1.

Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional provider of services (similar to the Services to a customer like the Authority) and such a supplier seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws.

Senior Representatives has the meaning given to the term in Clause 13.2.3.

Sensitive Commercial Information means any information which constitutes a trade secret or would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.

Service Users means users who consume or benefit from the Services.

Services means the whole of the services or any of them to be provided by the Supplier, as identified in the Specification pursuant to this Agreement from time to time.

Specification means the specification of the Services or specification of the Services and the Goods as applicable (set out in the Invitation to Tender).

Subcontract means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplier all or any part of the Services.

Subcontractor means any third party with whom the Supplier enters into a Subcontract.

Successor Body shall have the meaning given to that term in Clause **Error! Reference source not found..**

Supplier's Equipment means any equipment belonging to the Supplier which is used by the Supplier in the supply of the Services to the Authority.

Supplier Personnel means all directors, officers and employees of the Supplier engaged in the performance of the Supplier's obligations under this Agreement.

Supplier Representative means the person appointed by the Supplier and identified in the Contract Details, with authority to act on behalf of the Supplier in relation to all matters set out, or in connection with this Agreement.

Supplier's Tender Response means the Supplier's response to the Authority's Invitation to Tender for the award of this Agreement to deliver the Services.

Tender Clarifications means any pre-bid clarifications raised with the Authority and any post-bid clarifications raised with the Supplier.

Transparency Code shall have the meaning given to that term in Clause 16.3.

UK GDPR shall have the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

Value Added Tax or **VAT** means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time.

Working Day any day other than a Saturday, Sunday or public holiday in England and Wales

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 words in the singular include the plural (and vice versa) and words importing a gender includes the other gender and the neuter;
 - 1.2.2 references to a person include an individual, Supplier, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
 - 1.2.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.4 any phrase introduced by the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding those terms;
 - 1.2.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly unless expressly stated otherwise in this Agreement;
 - 1.2.6 references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement and references in any Schedule, to the paragraphs and parts are, unless otherwise specified, references to the paragraphs and parts of the Schedule or the part of the Schedule in which the references appear;
 - 1.2.7 the Schedules form part of this Agreement; and
 - 1.2.8 headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.3 If there is any conflict between the provisions of this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 any Special Conditions set out in the Contract Details;
 - 1.3.2 the remainder of the Contract Details;
 - 1.3.3 Schedule 3 (TUPE);
 - 1.3.4 Schedule 4 (Data Protection);
 - 1.3.5 Schedule 1 (Optional Clauses);
 - 1.3.6 the Clauses;
 - 1.3.7 Schedule 2 (Supply of Goods);
 - 1.3.8 the Specification;
 - 1.3.9 any other documents listed in the Contract Details;
 - 1.3.10 the Tender Clarifications;
 - 1.3.11 the Invitation to Tender;
 - 1.3.12 the Supplier's Tender Response.

2 CONTRACT TERM AND EXTENSION

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term.
- 2.2 If the Authority wishes to extend this Agreement beyond the Initial Term by an Extension Period (the "Extended Term") (or any Extended Term agreed under this Clause), it shall give the Supplier a minimum of the Extension Period Notice in writing before the expiry of the Initial Term or the Relevant Extended Term as the case may be. If the Authority gives the Extension Period Notice, the parties shall negotiate in good faith to agree the Extended Term prior to the expiry of the Initial Term. If the Authority does not wish to extend this Agreement beyond the Initial Term or the parties cannot agree the Extended Term, this Agreement shall expire on the expiry of the Initial Term.

3 DUE DILIGENCE

- 3.1 Subject to Clause 3.2, the Supplier acknowledges that it is the Supplier's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it:
- 3.1.1 has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority 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;
 - 3.1.2 has received all information requested by it from the Authority pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 3.1.3 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 Authority pursuant to Clause 3.1.2;
 - 3.1.4 has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - 3.1.5 has entered into this Agreement in reliance on its own due diligence alone.
- 3.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4 WARRANTIES

- 4.1 Each Party represents and warrants that:
- 4.1.1 it has full capacity and authority to enter into and to perform its obligations under this Agreement;
 - 4.1.2 there are no actions, suits or proceedings or regulatory investigations before any court, administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;
 - 4.1.3 in entering into this Agreement, it has not committed any Prohibited Act or contravened any Relevant Requirements.
- 4.2 The Supplier represents and warrants that as at the Commencement Date:
- 4.2.1 (as appropriate) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

- 4.2.2 it has obtained all Necessary Consents;
 - 4.2.3 it is not Excluded;
 - 4.2.4 it is not Excludable or in the event that it is Excludable, that all material information has been provided to the Authority in respect of the circumstances and the Authority has exercised its discretion under the Procurement Legislation to enter into this Agreement notwithstanding those circumstances;
 - 4.2.5 all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to the Commencement Date and separately warrants to inform the Authority in the event there are any changes to such information during the Contract Term; and
 - 4.2.6 shall promptly notify the Authority in writing if it becomes aware, during the performance of this Agreement, of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Performance Levels or Key Performance Indicators (as may be specified in the Contract Details and Schedules to this Agreement).
- 4.3 Each of the representations and warranties set out in Clauses 4.1 to 4.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement. For the avoidance of doubt, the occurrence of further circumstances under which the Supplier is Excluded or Excludable shall be separate from any circumstances notified prior to the date of this Agreement unless and to the extent that the Authority would reasonably be expected to be aware of those circumstances prior to entry into this Agreement.
- 4.4 Save as expressly set out in this Agreement, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

SECTION B: THE SERVICES

5 THE SERVICES

- 5.1 The Supplier shall commence the provision of the Services on the Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Agreement.
- 5.2 The Supplier shall at all times during the Contract Term perform the Services under this Agreement in accordance with:
- 5.2.1 all applicable Law and Guidance;
 - 5.2.2 the Required Professional Standard;
 - 5.2.3 the Specification;
 - 5.2.4 the Performance Levels and Key Performance Indicators (as the case may be);
 - 5.2.5 all relevant rules, codes, policies, procedures and standards of the Authority which may be referred to in the Specification;
 - 5.2.6 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.5.
- 5.3 The Supplier shall:

- 5.3.1 pay proper regard to (and, where appropriate, ensure compliance with) the statutory duties of the Authority insofar as the Supplier is required to perform such statutory duties on the Authority's behalf;
- 5.3.2 at all times allocate sufficient resources with the appropriate professional expertise to provide the Services in accordance with this Agreement;
- 5.3.3 obtain and maintain, throughout the Contract Term, all Necessary Consents;
- 5.3.4 as far as reasonably practicable minimise any disruption to the Authority's operations when providing the Services; and
- 5.3.5 co-operate with the Authority in all matters relating to the supply of the Services and comply with all the Authority's reasonable instructions.

6 EMPLOYEES

- 6.1 The Supplier shall at all times ensure that, in respect of the Supplier Personnel engaged in the provision of the Services:
 - 6.1.1 each of such Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 6.1.2 there is an adequate number of the Supplier Personnel to properly provide the Services; and
 - 6.1.3 all of the Supplier Personnel, who require access to the Authority's Premises in connection with the provision of the Services, comply with the relevant Authority policies relating to access and/or use of the Authority's Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Supplier and the Supplier is provided with copies of such policies.
- 6.2 The Authority reserves the right to refuse to admit (acting reasonably) to the Authority's Premises any person employed or engaged by the Supplier (including any Subcontractor) where admission would, in the reasonable opinion of the Authority:
 - 6.2.1 present a risk to the Authority or to Service Users; or
 - 6.2.2 would be a threat to the security or operations of the Authority.
- 6.3 Where the Authority exercises its right to refuse admission to any person employed or engaged by the Supplier pursuant to Clause 6.2, the Authority shall notify the Supplier in writing of such refusal without delay, including the identity of the person who has been refused such admission and the Authority's reasons for refusing admission to such person.

7 AUTHORITY'S PREMISES AND ASSETS

- 7.1 Where the Supplier (and its Subcontractors) are required by the Authority to access parts of the Authority's Premises, for the purposes only of properly providing the Services, then the Authority shall provide such necessary access to the Authority Premises to the Supplier for this purpose.
- 7.2 In the event of the expiry or termination of the Agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier's Equipment. All such equipment shall be promptly removed by the Supplier.
- 7.3 The Supplier shall ensure that:

- 7.3.1 where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Representative's reasonable directions regarding the security of the same;
- 7.3.2 only those of the Supplier Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
- 7.3.3 any Authority Assets used by the Supplier are maintained (or restored at the end of the Contract Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this Agreement or by the Authority's Representative.
- 7.4 The Supplier assumes responsibility, and shall indemnify the Authority for losses which may be recoverable by the Authority for damage to real or personal property, including to any Authority's Premises (including where necessary all costs of replacement or reinstatement) and any loss of use of any property caused by an act or omission of the Supplier its agents or Subcontractors and/or the Supplier Personnel.
- 7.5 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Subcontractors to any Authority Assets, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

SECTION C: PAYMENT AND TAXATION

8 CHARGES AND INVOICING

- 8.1 The Supplier shall comply with the Authority's Procure to Pay requirements as set out in the Invitation to Tender.
- 8.2 In consideration of the provision of the Services by the Supplier in accordance with this Agreement, the Authority shall pay the Charges to the Supplier.
- 8.3 The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable as set out in the Specification or as otherwise agreed with the Authority. All invoices shall be submitted electronically by e-mail in the Required Electronic Form directed to the Authority's "Central Accounts Payable Team": to accountspayable-mailbox@devon.gov.uk. For the avoidance of doubt, any attachments must be in the form of PDF or TIF attachments.
- 8.4 Where the Supplier submits an invoice to the Authority in accordance with Clause 8.3, the Authority will consider and verify that invoice in a timely fashion.
- 8.5 The Authority shall pay the Supplier any sum due under such invoice no later than a period of thirty (30) days from the date of which the Authority has determined that the invoice is valid and undisputed or if later, the day on which the payment falls due in accordance with the invoice. Such invoice shall:
 - 8.5.1 be an electronic invoice issued in the Required Electronic Form, or
 - 8.5.2 set out the following minimum required information:
 - (a) the name of the invoicing
 - (b) a description of the goods, services or works supplied,
 - (c) the sum requested,
 - (d) a unique identification number . and

(e) purchase order number

and meets any other requirement set out in this Agreement.

8.6 Where the Supplier enters into any Subcontract, the Supplier shall include in that Subcontract:

8.6.1 provisions having the same effect as Clauses 8.4 and 8.5.2 of this Agreement; and

8.6.2 a provision requiring the counterparty to that Subcontract to include, in any subcontract which it awards, provisions having the same effect as Clauses 8.4 and 8.5.2 of this Agreement.

8.7 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

8.8 The Authority may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier.

8.9 The Supplier acknowledges that the Authority is required to publish a payments compliance notice if during the relevant reporting period (as defined in the Procurement Legislation):

8.9.1 the Authority made a payment under the Agreement; and/or

8.9.2 a sum owed by the Authority under the Agreement became payable.

8.10 The Supplier acknowledges that such payments compliance notices shall contain specific information about the Authority's compliance with its obligations under clause 8.5. The Supplier shall not seek to prevent the Authority complying with its obligations pursuant to clause 8.9.

9 VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE

9.1 Charges are stated exclusive of VAT. Where VAT is chargeable in respect of any of the Services, the Supplier shall calculate the amount of VAT to be paid by the Authority at the applicable prevailing rate, which shall be added to the Charges and paid by the Authority following the submission of a VAT invoice by the Supplier in respect of the same.

9.2 The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement.

9.3 If, at any point during the Contract Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

9.3.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

9.3.2 promptly provide to the Authority:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D: CONTRACT GOVERNANCE

10 GOVERNANCE

- 10.1 The Parties shall comply with the provisions of the Specification in relation to the management and governance of this Agreement.

11 RECORDS AND AUDIT ACCESS

- 11.1 The Supplier shall keep and maintain for a period of six (6) years after the expiry of the Contract Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it and the amounts paid by the Authority.
- 11.2 The Supplier shall keep the records and accounts referred to in Clause 11.1 above in accordance with good accountancy practice.
- 11.3 The Supplier shall afford the Authority or the Audit Agent (or both) such access to such records and accounts as may be reasonably required from time to time during the Contract Term and for a period of six (6) years after the expiry of the Contract Term.
- 11.4 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to this Agreement; save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Audit Agent is outside of the control of the Authority.
- 11.5 Subject to the Authority's rights of confidentiality, the Supplier shall, on demand, provide the Audit Agent with all reasonable co-operation and assistance in relation to each Audit, including:
- 11.5.1 all information requested by the Audit Agent within the scope of the Audit;
 - 11.5.2 reasonable access to sites controlled by the Supplier and to the Supplier's Equipment; and
 - 11.5.3 access to the Supplier Personnel.
- 11.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 11, unless the Audit reveals a default by the Supplier, in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.
- 11.7 The Authority reserves the right to visit unannounced any of the Supplier's offices or premises for the purpose of ensuring the Supplier is complying with all of or any of its obligations under this Agreement.

12 SCRUTINY/CABINET ATTENDANCE AND PERFORMANCE UNDER KEY PERFORMANCE INDICATORS

Security/Cabinet attendance

- 12.1 Where the value of the Services to be supplied under the Agreement exceeds one hundred thousand pounds (£100,000) in value, during the Contract Term and for a period of six (6) years after termination or expiry of the Agreement, the Authority reserves the right to require the Supplier to:
- 12.1.1 provide all reasonable assistance for the purposes of answering the Authority's questions pertaining to the operation of the Agreement (including but not limited to the Supplier's performance of the Agreement); and,
 - 12.1.2 attend the Authority's Scrutiny Committee and/or Cabinet as and when reasonably required by the Authority,

and the Supplier shall comply with any such requirements. Wherever possible, the Authority will aim to give the Supplier reasonable advanced notice if the Supplier's attendance is required at the Authority's Scrutiny Committee and/or Cabinet.

If, pursuant to Clause 12.1 the Authority requires the Supplier to attend the Authority's Scrutiny Committee and/or Cabinet following termination or expiry of the Agreement, the Authority shall reimburse the Supplier for reasonable travel costs incurred.

Performance

12.2 Separate from, and irrespective of, any publication by the Authority pursuant to clause 12.4, if:

12.2.1 the Supplier has breached the Agreement, and

12.2.2 the breach results in:

- (a) termination (or partial termination) of the Agreement,
- (b) the award of damages, or
- (c) a settlement agreement between the Supplier and Authority

12.3 then the Supplier acknowledges that the Authority is required under section 71(5) of the Procurement Legislation (except in relation to light touch contracts) to publish information stipulating that section 71(5) of the Procurement Legislation applies, the circumstances giving rise to its application and any other information specified in relation to the Procurement Legislation and the

Supplier shall not seek to prevent the Authority from complying with its obligations in relation to such publication.

12.4 Separate from, and irrespective of, any publication by the Authority pursuant to clause 12.2, if the Authority considers that the Supplier:

12.4.1 is not performing the Agreement to the Authority's satisfaction,

12.4.2 has been given proper opportunity to improve performance, and

12.4.3 has failed to do so

the Supplier acknowledges that Authority is required by the Procurement Legislation (except in relation to light touch contracts) to publish information stipulating that section 71(5) of the Procurement Legislation applies, the circumstances giving rise to its application and any other information specified in relation to the Procurement Legislation. The Supplier shall not seek to prevent the Authority from complying with its obligations in relation to such publication.

13 DISPUTES

13.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the procedure set out in Clauses 13.2 to 13.8 below.

13.2 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

13.2.1 the Dispute shall be referred, by either Party, to the Representatives for resolution;

13.2.2 if the Dispute cannot be resolved by the Representatives within 14 days after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a "Dispute Notice") that a Dispute has arisen; and

- 13.2.3 within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Chief Executives (or equivalent senior officer) of the Parties ("**Senior Representatives**") for resolution.
- 13.3 If the Senior Representatives are unable, or fail, to resolve the Dispute within 14 days of the reference to the Senior Representatives pursuant to Clause 13.2.1, the Parties may with the agreement of the other Party attempt to resolve the Dispute by mediation in accordance with Clause 13.4.
- 13.4 If, within 21 days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this Clause 13.4:
- 13.4.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
- 13.4.2 both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including any contract in, or substantially in, the form of CEDR's Model Mediation Contract for the time being in force; and
- 13.4.3 to the extent not provided for by such contract of the MMP:
- (a) the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator;
 - (b) unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and
 - (c) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.
- 13.5 If and to the extent that the Parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
- 13.6 Nothing in this Clause shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
- 13.7 Without prejudice to the Authority's right to seek redress in court, the Supplier shall continue to provide the Services and to perform its obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause.
- 13.8 Where a Dispute has been referred to mediation under this Agreement and the Supplier is in a related dispute with a Subcontractor which is substantially the same as the matter referred to mediation hereunder, the Parties consent to the joinder of such Subcontractor as a party to the mediation (subject to such Subcontractor having agreed to be subject to the same or substantially the same obligations as those imposed on the Parties by Clauses 13.2 to 13.7 and to the reference of such related dispute to the mediator appointed hereunder and further agree that the mediator shall have power to order the consolidation of such mediation proceedings and/or to order the holding of concurrent mediation sessions).
- 13.9 The Parties shall continue to perform their obligations under this Agreement in accordance with its terms until any Dispute has been resolved.

SECTION F: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in any materials provided by the Authority to the Supplier for the purposes of this Agreement shall remain the property of the Authority but the Authority hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 14.2 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
- 14.2.1 in the course of performing the Services; or
- 14.2.2 exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 14.3 The Supplier shall indemnify the Authority against all claims, actions, and Losses (arising from or incurred by reason of any infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

15 DATA PROTECTION

- 15.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 15 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

16 CONFIDENTIALITY AND TRANSPARENCY

Confidentiality

- 16.1 Subject to Clause 16.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their personnel from making any disclosure to any person of any matters relating thereto.
- 16.2 Clause 16.1 shall not apply to any disclosure of information:
- 16.2.1 required by any Law, provided that Clause 17 (Freedom of Information) shall apply to any disclosures required under the FOIA or the EIRs;
- 16.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Agreement;
- 16.2.3 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 16.1;
- 16.2.4 by the Authority of any document to which it is a party and which the Parties to this Agreement have agreed contains no Confidential Information;
- 16.2.5 to enable a determination to be made under Clause 13 (Disputes);
- 16.2.6 which is already lawfully in the possession of the Recipient, prior to its disclosure by the Disclosing Party, and the Disclosing Party is not under any obligation of confidence in respect of that information;

- 16.2.7 by the Authority to any other department, office or agency of the government, provided that the Authority informs the Recipient of any duty of confidence owed in respect of the information.

Transparency

- 16.3 The Supplier acknowledges that the Authority is required to comply with The Code of Recommended Practice on Data Transparency for Local Authorities published by The Department for Communities and Local Government under section 2 of the Local Government Planning and Land Act 1980 (the "**Transparency Code**") and the provisions of the Procurement Legislation.
- 16.4 The Supplier acknowledges that the Authority may be required to publish this Agreement (with the exception of any Sensitive Commercial Information), including from time to time agreed changes to this Agreement, to the general public in accordance with the Transparency Code and the Procurement Legislation provided that, in doing so:
- 16.4.1 the Authority shall where reasonably practical, seek to consult with the Supplier prior to publishing the Agreement in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and
- 16.4.2 the Supplier shall provide reasonable assistance to the Authority to enable the Authority to publish this Agreement.
- 16.5 The Supplier acknowledges that the Authority may (acting in accordance with the Transparency Code and/or the Procurement Legislation) be obliged to disclose or publish information:
- 16.5.1 without consulting with the Supplier; or
- 16.5.2 following consultation with the Supplier and having taken its views into account,
- 16.5.3 provided always that where Clause 17.4.1 applies, the Authority shall, in accordance with any relevant recommendations of the Transparency Code, take reasonable steps, where appropriate, to give the Supplier advance notice or, failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

17 FREEDOM OF INFORMATION

- 17.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with this legislation.
- 17.2 The Supplier shall and shall procure that its Subcontractors shall:
- 17.2.1 transfer any Request for Information to the Authority's Freedom of Information Officer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- 17.2.2 provide the Authority with a copy of all Information in its possession or power, in the form that the Authority requires, within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- 17.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 17.3 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority's Freedom of Information Officer.

- 17.4 The Supplier acknowledges that the Authority may (acting in accordance with the Freedom of Information Code of Practice (issued under section 45 of the FOIA, dated 4 July 2018) (“**Code**”)) be obliged under the FOIA or the EIRs to disclose Information:
- 17.4.1 without consulting with the Supplier; or
 - 17.4.2 following consultation with the Supplier and having taken its views into account,
 - 17.4.3 provided always that where Clause 17.4.1 applies, the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice or, failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 17.5 The Supplier shall ensure that all Information produced in the course of the Agreement, or relating to the Agreement, is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 17.6 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 17.4.

18 PUBLICITY

- 18.1 Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Agreement in any way without the Authority's prior written consent.
- 18.2 The Authority shall be entitled to publicise this Agreement in accordance with any legal obligation on the Authority, including any examination of this Agreement by the Audit Agent or otherwise.
- 18.3 The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

SECTION G: LIABILITIES AND INSURANCE

19 LIABILITY

- 19.1 Nothing in this Agreement shall limit or exclude the Supplier's or the Authority's liability for:
- 19.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - 19.1.2 fraud or fraudulent misrepresentation;
 - 19.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - 19.1.4 any other liability which cannot be limited or excluded by applicable Law.
- 19.2 Nothing in this Agreement shall limit or exclude:
- 19.2.1 the Supplier's liability under Clause 9.2 (VAT indemnity), Clause 14.3 (IPR indemnity), any indemnities provided pursuant to Schedule 4 (Data Protection), Clause 28 (Human Rights Act indemnity) and Schedule 3 (TUPE indemnities) and no amounts awarded or agreed to be paid under those Clauses or Schedule shall count towards the cap on the Supplier's liability;
 - 19.2.2 the Supplier's liability for damage to real or personal property, including to any Authority's Premises (including where necessary all costs of replacement or reinstatement) and any

loss of use of any property caused by an act or omission of the Supplier, its agents, Sub contractors, and/or the Supplier Personnel; or

19.2.3 the Authority's liability under Schedule 3 (TUPE indemnities).

19.3 Subject to Clauses 19.1, 19.2 and 19.6, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

19.4 Subject to Clause 19.1 and Clause 19.2, the Supplier's total aggregate liability to the Authority, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall, in no event, exceed the amount in each Contract Year as set out in the Contract Details.

19.5 Notwithstanding the provisions of Clause 19.3 but subject always to Clause 19.4, the Supplier assumes responsibility for the following losses which may be recoverable by the Authority:

19.5.1 the Authority's additional operational and administrative costs and expenses caused by the act or omission of the Supplier;

19.5.2 the Authority's wasted expenditure or charges reasonably incurred by the Authority caused by the act or omission of the Supplier;

19.5.3 any loss or corruption to or alteration of any Authority Data; and

19.5.4 losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceedings by any third party (including any Subcontractor, Supplier Personnel, regulator, Service User or customer of the Authority) against the Authority caused by the act or omission of the Supplier.

19.6 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

20 INSURANCE

20.1 Without prejudice to Clause 19 (Liability), the Supplier shall at its own cost effect and maintain in force (with reputable insurance companies) such policies of insurance with the minimum levels of cover as set out in the Contract Details (the **Required Insurances**).

20.2 Following a written request of the Authority (acting reasonably) for the same, the Supplier shall provide the Authority with:

20.2.1 copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Authority shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and

20.2.2 evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.

20.3 Without prejudice to the Authority's other rights under this Agreement, if, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Supplier.

20.4 The Authority shall immediately notify the Supplier of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Supplier is responsible and shall provide the Supplier with all information and assistance it may reasonably require in order for the Supplier to effectively manage such claim.

SECTION H: REMEDIES AND RELIEF

21 FORCE MAJEURE

- 21.1 Subject to the remaining provisions of this Clause 21, neither Party shall in any circumstances be liable to the other Party for any delay, or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
- 21.2 In the event that either Party (the "**Affected Party**") is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:
- 21.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and the extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
 - 21.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - 21.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 21.3 The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 21.4 As soon as practicable, following the Affected Party's notification pursuant to Clause 21.2, 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.
- 21.5 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 prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
- 21.6 The Authority may, during the continuation of any Force Majeure Event, terminate this Agreement by written notice to the Supplier in the event that a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.

22 CONTINUED PERFORMANCE

- 22.1 Save as may be required to give effect to the granting of relief from obligations under Clause 21 (Force Majeure), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of termination, or natural expiry, of this Agreement until the termination or expiry of this Agreement becomes effective in accordance with the relevant provision.

SECTION I: TERMINATION AND EXIT MANAGEMENT

23 TERMINATION

Termination on Default

- 23.1 Irrespective of any publication or otherwise of any notices pursuant to section 71(5) of the Procurement Legislation, the Authority may terminate this Agreement by serving written notice on the Supplier with effect from the date specified in such notice where the Supplier commits a Default and:

- 23.1.1 the Supplier has not remedied the Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 23.1.2 the Default is not, in the reasonable opinion of the Authority, capable of remedy.

Termination for Repeated Breaches

- 23.2 The Authority may terminate this Agreement by serving written notice on the Supplier with effect from the date specified in such notice where the Supplier repeatedly breaches any of the terms and conditions 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 and conditions of this Agreement. For the avoidance of doubt, the Authority's rights pursuant to this clause **Error! Reference source not found.** are not affected by or contingent on the publication or otherwise of any notices pursuant to section 71(5) of the Procurement Legislation.

Termination for Catastrophic Failure

- 23.3 Irrespective of any publication or otherwise of any notices pursuant to section 71(5) of the Procurement Legislation the Authority may terminate this Agreement by serving written notice on the Supplier, with effect from the date specified in such notice, where the Supplier takes any action in relation to the Services, this Agreement or otherwise which:
 - 23.3.1 in the reasonable opinion of the Authority has or may cause significant harm to the reputation of the Authority, or
 - 23.3.2 in the reasonable opinion of the Authority has or may cause significant harm to a Service User.

Termination pursuant to the Procurement Legislation

- 23.4 Without prejudice to any other right or remedy the parties may have, in the event that section 78(2) of the Procurement Legislation applies, the Authority may terminate this Agreement on written notice to the Supplier.

Termination on Insolvency, Change of Control, and Breach of Warranties

- 23.5 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement with immediate effect by giving written notice to the Supplier if:
 - 23.5.1 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;
 - 23.5.2 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 the Supplier;
 - 23.5.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for, or in connection with, the winding up of the Supplier (being a company) other than 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 the Supplier;

- 23.5.4 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);
 - 23.5.5 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;
 - 23.5.6 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;
 - 23.5.7 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
 - 23.5.8 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 Supplier's assets and such attachment or process is not discharged within 14 days;
 - 23.5.9 any event occurs, or proceeding is taken, with respect to the Supplier, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 23.5.1 to Clause 23.5.8 (inclusive); or
 - 23.5.10 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 23.6 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate this Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:
- 23.6.1 being notified that a Change of Control has occurred; or
 - 23.6.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control;
- but shall not be permitted to terminate where the prior written approval of the Authority was granted before the Change of Control.
- 23.7 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement with immediate effect by giving written notice to the Supplier if any warranty given by the Supplier in Clause 4 (Warranties) of this Agreement is found to be untrue or misleading.
- 23.8 If this Agreement is terminated by the Authority for cause then subject to Clause 19.4, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies against any such loss or costs which the Authority may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement services.

24 CONSEQUENCES OF EXPIRY OR TERMINATION

- 24.1 The termination or expiry of this Agreement shall not affect:
- 24.1.1 the continuing rights and obligations of the Parties pursuant to Clauses 11 (Records and Audit Access), 15 (Data Protection) and Schedule 4 (Data Protection), 16 (Confidentiality and Transparency), 17 (Freedom of Information), 19 (Liability), 20 (Insurance), 23 (Termination) and this Clause 24 (Consequences of Expiry or Termination) and any other provision of this Agreement that expressly, or by implication, is intended to come into or continue in force after the termination or expiry of this Agreement; and
 - 24.1.2 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Agreement.

- 24.2 Six (6) Months prior to the end of the Contract Term (or earlier upon the Authority's request), irrespective of whether the Agreement is re-tendered or not, the Supplier shall submit to the Authority the Authority Data and Intellectual Property held by the Supplier in respect of this Agreement which the Authority may reasonably need for future reference or to maintain performance of this Agreement internally or through another Supplier. Such data shall be supplied electronically in the relevant Microsoft product (which is the Authority's standard software currently) or in such other electronic product as may be the Authority's standard at the time, and in e-gif compliant format (if applicable).
- 24.3 As a separate obligation to Clause 24.2, on or before the expiry of the Contract Term, the Supplier shall procure that the Authority Assets, the Authority Data and all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered forthwith to the Authority or at the Authority's request, to a Replacement Supplier, and the Supplier Representative shall certify full compliance with this clause.
- 24.4 The Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority, or, at the Authority's request, a Replacement Supplier.
- 24.5 In the event that the Agreement is terminated pursuant to clause **Error! Reference source not found.** to 23.4 (inclusive) on less than six (6) months' notice, for the purposes of this clause 24, the Supplier shall comply with the obligations under clauses 24.2 to **Error! Reference source not found.** (inclusive) as soon as reasonably practicable following receipt of the relevant notice.
- 24.6 The Supplier acknowledges that the Authority is required to publish a contract termination notice (with the exception of user choice contracts) in respect of the Agreement setting out the information specified pursuant to the Procurement Legislation and the Supplier shall not seek to prevent the Authority from complying with its obligations in this regard.

SECTION J: COMPLIANCE WITH LAWS

25 HEALTH AND SAFETY

- 25.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- 25.1.1 all applicable Law regarding health and safety; and
 - 25.1.2 the Authority's health and safety policy.
- 25.2 The Supplier shall notify the Authority, as soon as practicable, of any health and safety incidents or material health and safety hazards on any premises, where the Services are being provided, of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

26 ENVIRONMENTAL

- 26.1 The Supplier shall:
- 26.1.1 when working on premises where the Services are being provided, perform this Agreement in accordance with the Authority's environmental policy, which is committed to the prevention of pollution, reduction of CO2 emissions, minimising the environmental impacts associated with all activities, products and services of the Authority's business;
 - 26.1.2 follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured and delivered in ways that are appropriate from an environmental protection perspective; and

- 26.1.3 comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this Agreement.

27 EQUAL OPPORTUNITIES

- 27.1 The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation ("the **Protected Characteristics**") and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 27.2 The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in section 149 of the Equality Act 2010 in the execution of the Agreement.
- 27.3 The Supplier shall take all reasonable steps to secure the observance of Clauses 27.1 and 27.2 by all servants, employees or agents of the Supplier and all Suppliers and Subcontractors employed in the execution of the Agreement.
- 27.4 The Supplier shall demonstrate to the Authority that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 27.1 and 27.2.
- 27.5 If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 27.6 The Authority reserve the right to test the Supplier's equality performance through the life of the Agreement. The Supplier shall cooperate with the Authority regarding the provision of date and/or access for site visits as reasonably required by the Authority.

28 HUMAN RIGHTS ACT 1998

- 28.1 The Supplier shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify the Authority against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Authority for breach of statutory duty under the Act attributable to the Supplier.

29 PREVENTION OF FRAUD AND BRIBERY

- 29.1 The Supplier represents and warrants that, as at the Commencement Date, neither it, nor to the best of its knowledge, any of the Supplier Personnel have at any time prior to the Commencement Date:
- 29.1.1 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
- 29.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
- 29.2 The Supplier shall not during the Contract Term of this Agreement:
- 29.2.1 commit a Prohibited Act; and/or
- 29.2.2 do or suffer anything to be done which would cause the Authority to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 29.3 The Supplier shall during the Contract Term of this Agreement:

- 29.3.1 establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- 29.3.2 keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Authority on request.
- 29.4 The Supplier shall, as soon as reasonably practicable, notify the Authority in writing if it becomes aware of any breach of Clause 29.2.1 and/or 29.2.2, or has reason to believe that it has:
 - 29.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/ or
 - 29.4.2 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
 - 29.4.3 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 connected with this Agreement has committed, or attempted to commit, a Prohibited Act.
- 29.5 If the Supplier makes a notification to the Authority pursuant to Clause 29.4, the Supplier shall respond promptly to the Authority's reasonable enquiries and cooperate with any investigation carried out by the Authority (acting reasonably) in respect of such notification.
- 29.6 If the Supplier is in breach of Clauses 29.1 and/or 29.2 the Authority may by notice:
 - 29.6.1 require the Supplier to remove from performance of this Agreement any member of staff or Subcontractor whose acts or omissions have caused the breach; or
 - 29.6.2 immediately terminate this Agreement.
- 29.7 Any notice served by the Authority under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the person who the Authority reasonably believes has committed the Prohibited Act and the action that the Authority requires the Supplier to take as a result (including, where relevant, the date on which this Agreement shall terminate).

SECTION K: MISCELLANEOUS AND GOVERNING LAW

30 NON-SOLICITATION OF AUTHORITY EMPLOYEES AND OFFICERS

- 30.1 In order to protect the legitimate business interests of the Authority, the Supplier covenants with the Authority that it shall not (except with the prior written consent of the Authority):
 - 30.1.1 attempt to solicit or entice away; or
 - 30.1.2 solicit or entice away,

from the employment or service of the Authority the services of any officers or employees of the Authority other than by means of a advertising campaign open to all-comers and not specifically targeted at such staff of the Authority.
- 30.2 The Supplier shall be bound by the covenant set out in Clause 30.1 during the term of this agreement, and for a period of 6 months after termination or expiry of this Agreement.
- 30.3 If the Supplier commits any breach of this Clause 30, the Supplier shall, on demand, pay to the Authority a sum equal to 6 months' basic salary that was payable by the Authority to the Authority

officer or employee in question, plus the reasonable recruitment costs incurred by the Authority in replacing such person.

31 COMPLAINTS/LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

- 31.1 The Supplier shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the Authority, members of the public or otherwise) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Authority's Representative at all reasonable times during normal working hours.
- 31.2 The Supplier shall provide the Authority with all reasonable cooperation and assistance in relation to any investigation by the Local Government and Social Care Ombudsman in connection with the performance by the Supplier of the Services under this Agreement.
- 31.3 Without prejudice to any other obligation set out in this Agreement, in the event that the Supplier receives any complaint, notice or communication from a third party in connection with the Services, it will immediately notify the Authority in writing to Customer Relations & Information Governance Team, County Hall, Room 120, Topsham Road, Exeter, EX2 4QD and provide the Authority with full co-operation and assistance dealing with such complaint, notice or communication.

32 MODIFICATIONS

- 32.1 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties and is expressed to be for the purpose of such amendment or variation.
- 32.2 The Supplier acknowledges that the Authority may be required to publish details of any agreed modification, together with a copy of the modified Agreement (save for any Sensitive Commercial Information) and shall not seek to prevent the Authority complying with its publication obligations under the Procurement Legislation.

33 ASSIGNMENT AND OTHER DEALINGS

- 33.1 Subject to Clause **Error! Reference source not found.** and Clause 33.3, neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 33.2 Upon any local government reorganisation and the Authority ceasing to exist in accordance with the Local Government and Public Involvement in Health Act 2007 and any other relevant legislation including any Order made by the Secretary of State, all rights, obligations and liabilities under this Agreement will transfer in accordance with the same to the Successor Body identified therein.
- 33.3 With the exception of any Authorised Subcontracts, the Supplier may not Subcontract any part of this Agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed). The Supplier shall ensure that any Subcontractor that performs any part of the Services pursuant to this Clause 33 shall be fully supplied with all relevant information about the Supplier's obligations under this Agreement.
- 33.4 The Supplier shall notify the Authority of any change to the details of a Subcontractor (and Authorised Subcontracts if requested by the Authority) as soon as reasonably practicable. In respect of Key Subcontractors, the Supplier shall not be entitled to replace a Key Subcontractor or terminate a Key Subcontractor's appointment without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 33.5 Notwithstanding any subcontracting permitted under this Clause 33, the Supplier shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.
- 33.6 The Supplier shall notify the Authority in writing within three (3) Working Days of any changes that have occurred in relation to a Key Subcontractor including whether the Key Subcontractor has been

placed on the debarment list under the Procurement Legislation or whether a new excludable ground has arisen in respect of the Key Subcontractor in accordance with the Procurement Legislation, together with reasonable supporting information. Failure by the Supplier to notify the Authority accordingly and/or providing the Authority with information that is incomplete, inaccurate or misleading in relation to any Key Subcontractor shall entitle the Authority to terminate the Agreement and such termination shall be deemed to be termination under clause **Error! Reference source not found.** due to Default on the part of the Supplier.

- 33.7 The Authority is entitled to terminate the Agreement in the event that a Key Subcontractor becomes Excluded or Excludable provided that the Authority shall notify the Supplier and allow the Supplier a reasonable opportunity to replace the relevant Key Subcontractor (whose identify shall be approved by the Authority, such approval not to be unreasonably withheld or delayed). Where the Supplier has exercised its right to replace the Key Subcontractor with an organisation which is not Excluded or Excludable, the Authority's right to terminate under this clause 33.7 will not apply.

34 ENTIRE AGREEMENT

- 34.1 This Agreement, the schedules and the documents referred to in it, constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 34.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 34.3 Nothing in this Clause 34 shall exclude any liability in respect of misrepresentations made fraudulently.

35 WAIVER AND CUMULATIVE REMEDIES

- 35.1 A waiver of any right or remedy under this Agreement, or by Law, is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
- 35.2 A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- 35.3 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

36 SEVERANCE

- 36.1 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.
- 36.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

37 FURTHER ASSURANCES

- 37.1 At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

38 RELATIONSHIP OF THE PARTIES

- 38.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

39 THIRD PARTY RIGHTS

- 39.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 39.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

40 NOTICES

- 40.1 Any notice or other communication, given to a Party under or in connection with this Agreement, shall be in writing marked for the attention of the Party's Representative and shall be 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).
- 40.2 Any notice or communication shall be deemed to have been received:
- 40.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
 - 40.2.2 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 or at the time recorded by the delivery service.
- 40.3 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.

41 GOVERNING LAW AND JURISDICTION

- 41.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales
- 41.2 Subject to Clause 13 (Disputes), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

42 OPTIONAL CLAUSES AND SCHEDULES

- 42.1 The following Clauses, set out in Schedule 1 (Optional Clauses), relating to:
- 42.1.1 Price Variation;
 - 42.1.2 Safeguarding and Improper Conduct;
 - 42.1.3 Social Networking/Internet;
 - 42.1.4 Collaborative Procurement – Right of Other Bodies to Participate;

42.1.5 Quotation Process

42.1.6 Key Performance Indicators

shall only apply if specifically stated in the Contract Details.

- 42.2 If specifically stated in the Contract Details, where the Services supplied include the supply of Goods, then the provisions of Schedule 2 (Goods) shall apply to the supply of the Goods in addition to the terms and conditions of this Agreement.
- 42.3 If specifically stated in the Contract Details, then the provisions of Schedule 3 (TUPE) shall apply to this Agreement.
- 42.4 If specifically stated in the Contract Details, then the provisions of Schedule 4 (Data Protection) shall apply to this Agreement.

SCHEDULE 1–OPTIONAL CLAUSES

Only those Optional Clauses listed in the Contract Details shall apply to this Agreement.

1 PRICE VARIATION

- 1.1 One Month prior to each anniversary of the Commencement Date, the Supplier may apply to the Authority for an increase in Charges. Charges may only be adjusted in accordance with:
- 1.1.1 the price variation formula set out in an Appendix (Financial Submissions) of the Supplier's Tender Response; and
 - 1.1.2 following written evidence from the Supplier that the relevant change in cost has taken place.
- 1.2 The Authority shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. The Authority shall notify the Supplier of its decision in writing and any adjustments shall apply to this Agreement with effect from the next anniversary of the Commencement Date.
- 1.3 Both parties agree to act reasonably and in good faith in the operation of this Clause.

2 SAFEGUARDING AND IMPROPER CONDUCT

- 2.1 For the purposes of this Paragraph, capitalised terms shall have the same meaning as provided under the Safeguarding Vulnerable Groups Act 2006 or the meaning given to such term where it is defined elsewhere in this Agreement.
- 2.2 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 Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 2.3 The Supplier shall
- 2.3.1 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; and
 - 2.3.2 monitor the level and validity of the checks under this Paragraph 2.3 for each member of Supplier Personnel;
 - 2.3.3 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;
 - 2.3.4 at the Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Supplier Personnel comply with its policy;
 - 2.3.5 ensure adequate training is annually provided to Supplier Personal on the prevention of improper conduct, identifying incidents and reporting processes; and
 - 2.3.6 comply with all the Authority's safeguarding procedures
- 2.4 The Supplier warrants that at all times for the purposes of this Agreement 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.

- 2.5 The Supplier shall immediately notify the Authority of any information it reasonably requests to enable it to be satisfied that the obligations of this Paragraph 2 have been met.
- 2.6 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 Service Users, or children or vulnerable adults.

3 SOCIAL NETWORKING AND INTERNET

- 3.1 The Supplier is only permitted to use social media platforms to market or deliver the Services when the Authority has given prior written approval to do so.
- 3.2 If, subject to Paragraph 3.1 above, the Supplier uses social media platforms to market or deliver the Services, all Supplier Personnel who administer them must ensure they are used in a professional context and have undertaken eSafety training.
- 3.3 If the Supplier uses social media platforms to market or deliver the Services, a risk assessment must be undertaken and can be requested by the Authority at any time.
- 3.4 The Supplier must have a social networking and/or social media policy and guidance for all Supplier Personnel.
- 3.5 Subject to Paragraph 3.1, if in the course of providing the Services the Supplier uses social media platforms or any other medium to offer any information society services to children, the Supplier shall comply with all applicable requirements of the Data Protection Legislation, including those set out at Article 8 of the UK GDPR, and without limitation shall:
- 3.5.1 use consent as the justification for the processing of Personal Data relating to any child of an age lower than the relevant threshold specified in the Data Protection Legislation applicable from time to time only where such consent is given or authorised by the holder of parental responsibility over the child; and
 - 3.5.2 make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

4 COLLABORATIVE PROCUREMENT – RIGHT OF OTHER BODIES TO PARTICIPATE

- 4.1 For the purposes of this Clause, "**Partner Organisation**" means such other contracting authorities as are named in the relevant Find a Tender Notice (or Contracts Finder Notice or Invitation to Tender if no contract notice is published).
- 4.2 The Parties agree and acknowledge that the Authority enters into this Agreement for itself and for the benefit of Partner Organisations.
- 4.3 In addition to the specific Services expressly required to be provided to the Authority pursuant to this Agreement, any Partner Organisation, with the prior written consent of the Authority (which consent the Authority may, in its absolute discretion, refuse), may require the provision by the Supplier of any of the Services under this Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in Paragraph 4.4 below.
- 4.4 If and to the extent that any such additional Services under this Agreement are required to be provided by the Supplier to any Partner Organisation:
- 4.4.1 each and every such Partner Organisation shall enter into a specific contract with the Supplier for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Agreement (but not the provisions of this Paragraph 4);

4.4.2 any non-substantial amendments to the terms and conditions in this Agreement agreed between the Supplier and the Partner Organisation shall be clearly set out in such specific contract; and

4.4.3 in order to enter into a specific contract with the Supplier, the Partner Organisation may, in accordance with relevant public procurement regulations, consult the Supplier in writing requesting the Supplier to supplement the Supplier's Tender Response as may be necessary.

4.5 The Authority does not guarantee that any Partner Organisation will require the Supplier to provide any additional Services under this Agreement or otherwise and nothing in this Agreement shall give the Supplier a right to receive such requirement for additional Services.

4.6 The Authority shall not in any circumstances be liable to the Supplier or any Partner Organisation for payment or otherwise in respect of any such additional Services required to be provided by the Supplier to any Partner Organisation.

4.7 It shall be the responsibility of any Partner Organisation to satisfy itself that entering into any contract with the Supplier under Paragraph 4.4.1 above does not breach any relevant public procurement regulations, or its own contracting rules and procedures.

5 QUOTATION PROCESS

5.1 The Authority has run a quotation process in order to select the Supplier to provide the Services to the Authority. Accordingly, all references in this Agreement to the term "tender" or "Tender" shall be interpreted as "quotation", "Quotation" or "Quote" (as the context requires).

6 KEY PERFORMANCE INDICATORS

6.1 The Supplier acknowledges that at least once in every period of twelve months during the Contract Term and on termination of this Agreement, the Authority will:

6.2 assess performance against the Key Performance Indicators, and

6.3 publish information specified in the Procurement Legislation in relation to that assessment.

6.4 The Key Performance Indicators that apply under clause 6.1 are

a) Residual Diversion Target Rates as detailed in clauses 106 (9) and (10) of Schedule A1.1 (Specification)

b) Re-Use Target Rate as detailed in clause 106 (12) of Schedule A1.1 (Specification)

c) Monthly Service Report requirements as detailed in clause 106 (6) of Schedule A1.1 (Specification). This is also a Performance Standard (ref: 3.5) within Schedule A1.2 (Performance Standard Framework).

SCHEDULE 2- SUPPLY OF GOODS

1 DEFINITIONS

In this Schedule, unless the context requires otherwise, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement:

Deliver means hand over the Goods to the Authority at the Delivery Location and on the Delivery Date, which shall include unloading and any other specific arrangements set out in the Specification or subsequently agreed in writing between the Parties. **Delivered** and **Delivery** shall be construed accordingly.

Delivery Date means the date by which the Goods must be delivered to the Authority, as specified in the Specification or as subsequently agreed in writing between the Parties.

Delivery Location means the address for delivery of the Goods by the Supplier as specified in the Specification or as subsequently agreed in writing between the Parties.

Goods means the whole of the Goods or any part of them to be provided by the Supplier as identified in the Specification pursuant to this Agreement from time to time.

2 THE GOODS

2.1 In consideration of the Authority's agreement to pay the Charges, the Supplier shall supply the Goods to the Authority subject to and in accordance with the terms and conditions of this Agreement.

2.2 The Supplier shall ensure that the Goods:

2.2.1 correspond with their description and the Specification and any descriptions given in the Supplier's Tender Response;

2.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority expressly or by implication, and, in this respect, the Authority relies on the Supplier's skill and judgement;

2.2.3 free from defects in materials and workmanship and remain so for twelve (12) Months after Delivery;

2.2.4 be free from design defects; and

2.2.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods.

2.3 The Supplier shall supply the Goods in accordance with the Specification.

2.4 In supplying the Goods, the Supplier shall co-operate with the Authority on all matters relating to the supply of the Goods and comply with all the Authority's reasonable instructions.

3 DELIVERY

3.1 The Supplier shall ensure that:

3.1.1 the Goods are properly packed and secured in such a manner as to enable them to reach their Delivery Location in good condition;

3.1.2 each Delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods where applicable), special storage instructions (if any) and, if the Goods are being Delivered by instalments, the outstanding balance of Goods remaining to be Delivered; and

3.1.3 if the Supplier requires the Authority to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

3.2 The Supplier shall deliver the Goods to the Authority:

3.2.1 on or by the Delivery Date;

3.2.2 at the Delivery Location; and

3.2.3 during the Authority's normal business hours or as otherwise agreed by the Authority.

3.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and the Authority has signed for the Delivery.

3.4 The Supplier shall not deliver the Goods in instalments without the Authority's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Authority to the remedies set out in Paragraph 4.

4 REMEDIES

4.1 If the Goods are not Delivered on the Delivery Date, or do not comply with the undertakings set out in Paragraph 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Authority may exercise any one or more of the following remedies:

4.1.1 to terminate this Agreement in accordance with Clause 23;

4.1.2 request the Supplier, free of charge, to Deliver substitute Goods within the timescales specified by the Authority;

4.1.3 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense and the Authority shall be entitled to a full refund on those Goods or part of Goods duly returned;

4.1.4 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid); and

4.1.5 to buy the same or similar Goods from another supplier and to recover from the Supplier any costs incurred by the Authority in obtaining substitute goods from another supplier.

4.2 This Paragraph shall also apply to any repaired or replacement Goods supplied by the Supplier.

4.3 The Authority's rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.

5 TITLE AND RISK

5.1 Title and risk in the Goods shall pass to the Authority upon Delivery.

5.2 The Supplier warrants that:

5.2.1 it has full, clear and unencumbered title to all the Goods;

5.2.2 at the Delivery Date of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Authority. On Delivery the Authority shall acquire a valid and unencumbered title to the Goods.

SCHEDULE 3– TUPE

1. INTERPRETATION

The definitions in this paragraph apply in this Agreement:

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from any Third Party Employer to the Supplier or Subcontractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Subcontractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Supplier by virtue of the application of TUPE.

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

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.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Supplier or Subcontractor to the Council or any Replacement Supplier.

Staffing Information: in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Supplier's Final Staff List: the list of all the Supplier's and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Supplier's Provisional Staff List: the list prepared and updated by the Supplier of all the Supplier's and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Supplier or Subcontractor by virtue of the application of TUPE.

Third Party Employer: a Supplier engaged by the Council to provide some or all of the Services to the Council before the Effective Date and whose employees will transfer to the Supplier on the Effective Date.

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

2. TRANSFER OF EMPLOYEES TO THE SUPPLIER ON THE EFFECTIVE DATE

- 2.1 The Council and the Supplier agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Third Party Employees shall transfer to the Supplier or Subcontractor. The Supplier shall comply and shall procure that each Subcontractor shall comply with their obligations under TUPE.
- 2.2 The Supplier shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
 - (a) any proposed changes to terms and conditions of employment the Supplier or Subcontractor may consider making on or after the Effective Date;
 - (b) any of the employees informing any Third Party Employer they object to being employed by the Supplier or Subcontractor; and

- (c) any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Supplier or Subcontractor may consider taking on or after the Effective Date.

- 2.3 The Supplier shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Supplier or any Subcontractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
- 2.4 The Supplier shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Supplier or any Subcontractor of the Supplier envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier will give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.5 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 2, to the extent necessary to ensure that any Third Party Employer shall have the right to enforce the obligations owed to, and indemnities given to, the Third Party Employer by the Supplier or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Supplier shall and shall procure that any Subcontractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Supplier shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Subcontractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete

and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Subcontractor's personnel named are Relevant Employees.

- 3.4 The Council shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Supplier warrants to the Council and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 3.6 The Supplier shall and shall procure that any Subcontractor shall ensure at all times that it has the right to provide the TUPE Information under the DPA.
- 3.7 The Council regards compliance with this paragraph 3 as fundamental to the Agreement.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Subcontractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.9 In the six (6) months prior to termination of this Agreement, the Supplier shall not and shall procure that any Subcontractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent (such consent not to be unreasonably withheld).
- 3.10 The Supplier shall indemnify and keep indemnified in full the Council and any Replacement Supplier against all Employment Liabilities relating to:
 - (a) any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Supplier and/or any Subcontractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 3.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.12, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

SCHEDULE 4 – DATA PROTECTION

1. Interpretation

The definitions in this paragraph apply in this Agreement:

Agreed Purposes:

- Handling of compliments, queries, representations and complaints.
- Waste Acceptance Policy/Policies enforcement/processes.
- Trade waste disposal enforcement/processes.
- For the prevention of crime, anti-social behaviour and the resolution of disputes.
- For the enforcement of DCC Policies/operational procedures related to Household Waste Recycling Centres.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation.

Data Discloser: a party that discloses Shared Personal Data to the other party.

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

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement, and contracted providers, District and Unitary Councils, the Environment Agency, members of Parliament, other Government departments and agencies including law enforcement agencies.

Shared Personal Data: the personal data to be shared between the parties under paragraph 2.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) personal data relating to Data Subjects making complaints, compliments and or representations relating to the Service.
- b) personal data relating to Devon County Council staff, that is shared with the Supplier for the purposes of contract management.
- c) personal data relating to the Supplier's staff that is being shared with Devon County Council for the purposes of the council responding to complaints, compliments and or representations relating to the Service.
- d) personal data contained within any recordings such as CCTV or body worn cameras, that may be shared with Permitted Recipients for the prevention and detection of crime, or for the apprehension or prosecution of offenders.
- e) Personal data relating to Data Subjects relating to Waste Acceptance Policy/Policies enforcement/processes, trade waste disposal enforcement/processes, DCC Policies/operational procedures and for the prevention of crime, anti-social behaviour and the resolution of disputes related to the Service.

2. Data Protection

- 2.1 **Shared Personal Data.** This paragraph sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this paragraph as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 2.2 **Effect of non-compliance with Data Protection Legislation.** Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 2.3 **Particular obligations relating to data sharing.** Each party shall:
- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information as required under article 13 and article 14 of the UK GDPR to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data and shall provide written notice to the other if it becomes aware of a personal data breach involving Shared Personal Data.
 - (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 2.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject rights request;
- (c) provide the other party with reasonable assistance in complying with any data subject rights request;
- (d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2.4 and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a personal data breach, and the regular review of the parties' compliance with the Data Protection Legislation.

2.5 **Indemnity.** Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.