

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**and**

**[ ]**

This Contract is dated 2023

Parties

1. **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire, SG6 3JF (Council).
2. **[ ]** incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ](Contractor).

**North Hertfordshire District Council**

# Service Standard Terms and Conditions

**General Provisions**

1. Definitions and Interpretations
	1. The following definitions and rules of interpretation in this clause apply in this Contract.

**Achieved KPIs**: in respect of any Service in any measurement period, the standard of performance actually achieved by the Contractor in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 3).

**Assigned Employees**: any employee or Staff member who immediately prior to the Relevant Transfer Date is engaged wholly or mainly in connection with the discharge of the Services and is assigned to the organised grouping of resources and employees to the Services which are the subject of transfer in accordance with the TUPE Regulations and who shall transfer by the virtue of the application of the TUPE Regulations to the Replacement Contractor.

“**Approval” and “Approved**”: means the written consent of the Contract Manager.

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

**Authorised Representatives**: the persons respectively designated as such by the Council and the Contractor.

1. The Council's Authorised Representative: [INSERT DETAILS]
2. The Contractor's Authorised Representative: [INSERT DETAILS].

**Commercially Sensitive Information**: the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss.

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

1. any information that would be regarded as confidential by a reasonable businessperson relating to: (i) the business, affairs, customers, Contractors or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
2. any information developed by the parties while carrying out this Contract;
3. Personal Data;
4. any Commercially Sensitive Information.

**Contract**: the agreement between the Council and the Contractor consisting of this Contract including, the Specification, Invitation to Tender, the Contractor’s Tender and any other documents (or parts thereof) specified by the Council.

**Contract Manager**: the person authorised by the Council to administer the Contract on its behalf.

**Contract Period**: the period of duration of the Contract in accordance with clause 2.1.

**Contract Price**: the price as set out in Schedule 1 (Pricing), payable by the Council to the Contractor for its full and proper performance of the Contract.

**Contractor's Tender**: the tender submitted by the Contractor and other associated documentation set out in Schedule 4.

**Council Property**: any property belonging to the Council other than real property, issued or made available to the Contractor.

**Council Premises**: any location under the control of the Council where the Goods are to be delivered and/or the Services are to be performed, as specified in the Specification.

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

**Data Protection Legislation:** allapplicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (DPA), the retained EU Law version of the General Data Protection Regulation *(EU) 2016/679*) now known as the UK GDPR and all other UK legislation and regulatory requirements which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any guidance and codes of practice issued and applicable to a party.

**Data Subject**: as defined in the Data Protection Legislation.

**Default**: any breach of the obligations of either Party or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with the Contract and in respect of which such Party is liable to the other or the required accumulation of default points in accordance with schedule 3 (Performance Monitoring and KPI’s).

**Dispute Resolution Procedure**: the procedure set out in Clause 29.

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

**Equipment**: means the Contractor’s equipment, plant, materials, etc. used in performing the Contract.

**Exit Management Plan**: the plan set out in Schedule 5.

**Expiry Date**: means  **[ ]****.**

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

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

1. acts of God, flood, drought, earthquake or other natural disaster;
2. epidemic or pandemic;
3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations;
4. nuclear, chemical or biological contamination or sonic boom;
5. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
6. collapse of buildings, fire, explosion or accident; and
7. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Contractor's workforce or the workforce of any Subcontractor of the Contractor).

**Goods**: any goods supplied by the Contractor or its Sub-Contractors under the Contract.

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

**IDTA**: the International Data Transfer Agreement as amended and updated by the Information Commissioner’s Office as an adequate safeguard under article 46 of the UK GDPR for restricted transfers of Personal Data outside of the UK.

**Insolvency Event**: where:

1. the Contractor 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; or
2. the Contractor 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 Contractor with one or more other companies or the solvent reconstruction of that other party; or
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 Contractor (being a company, limited liability partnership or partnership); or
4. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company, partnership or limited liability partnership); or
5. the holder of a qualifying floating charge over the assets of the Contractor (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; or
6. a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor; or
7. the Contractor (being an individual) is the subject of a bankruptcy petition or order; or
8. a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 30 days; or
9. any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
10. the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
11. the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

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

**KPIs**: the key performance indicators set out in Schedule 3.

**Law**: any legal provision the Contractor must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, byelaw, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere.

**Personal Data**: as defined in the Data Protection Legislation.

**Protected Characteristic**: those characteristics as set out in section 4 of the Equality Act 2010

**Relevant Transfer Date**: any date upon which a Relevant Transfer takes effect;

**Relevant Transfer**: a relevant transfer for the purposes of the TUPE Regulations at any time during this Contract or at the end of this Contract or on the date of early termination of this Contract;

**Replacement Contractor**: any third party appointed by the Council from time to time to provide or deliver all or any of the functions or services which are substantially similar to any of the functions or services, or received in substitution for any of the functions or services, following the expiry, termination or partial termination of this Contract whether those functions or services are provided by the Council internally and/or by any third party;

**Services**: the services to be provided as specified in the Specification including, where the context so admits, any materials, articles or goods to be supplied thereunder.

**Specification**: the description of the Services to be provided under the Contract and attached as Schedule 2 (Specification).

**Staff**: all persons employed by the Contractor to perform the Contract together with the Contractor's servants, agents and sub-contractors used in the performance of the Contract.

**Staff 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.

**Standard Contractual Clauses:** the standard contractual clauses for the transfer of Personal Data outside of the UK which satisfy the appropriate safeguards requirements in article 46 of the UK GDPR when making a restricted transfer in the absence of an adequacy regulation as amended and updated by the Information Commissioner’s Office from time to time comprising the latest version of the IDTA and UK Addendum and as set out in Schedule 7.

**Sub-Contract**: any contract or agreement, or proposed contract or agreement, between the Contractor and a third party pursuant to which that third party agrees to provide to the Contractor the Services or any part of the Services.

**Sub-Contractor**: a third party that enters into a Sub-Contract with the Contractor.

**Tax**: Value Added Tax, customs duties and any other taxes or duties.

**Tender Response**: the Contractor’s submission in response to the Council’s invitation to tender for the Services and contained in Schedule 4.

**Term**: the period commencing on the Commencement Date and ending on the Expiry Date.

**TUPE Information**” means the details of:

1. the total number of Assigned Employees;
2. the age of all Assigned Employees;
3. in relation to each member of Staff, his employment status and what role he performs;
4. the total payroll bill (i.e. total taxable pay and allowances including employer’s contributions to pension schemes) of all Assigned Employees;
5. in relation to each Assigned Employee:
6. identity, age and gender;
7. the terms and conditions of his employment pursuant to the Employment Rights Act 1996 including but not limited to length of continuous employment, any contractual notice period, sick leave provisions and holiday entitlement. In addition to any contractual redundancy entitlement, remuneration, overtime and premium rates, benefits, customary practices and any agreed pay rises and when they are to take effect;
8. any outstanding or potential liability for past breaches of contract of employment;
9. any outstanding or potential statutory liability;
10. information of any court or tribunal case, claim or action brought against the Contractor within the previous 2 years or that the Contractor has reasonable grounds to believe that it may bring against the Council arising out of his employment with the Contractor, together with any outstanding disputes of a material nature;
11. information of any disciplinary or grievance procedures taken against or by him (as appropriate) within the previous 2 years in circumstances where the ACAS code of practice on disciplinary and grievance procedures applies;
12. information of any collective agreement which applies to him; and
13. any other information relating to the Assigned Employees as may reasonably be required by the Council for the purposes of the application of the TUPE Regulations;

**TUPE Regulations**: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or modified from time to time).

**UK Addendum**: the UK Addendum to the EU standard contractual clauses as amended and updated by the Information Commissioner’s Office as an adequate safeguard under article 46 of the UK GDPR for restricted transfers of Personal Data outside of the UK.

**Working** **Day**: Monday to Friday, excluding any public holidays in England and Wales unless otherwise specified in the Specification.

**Working Hours**: the period from [ ] to [ ] on any Working Day.

* 1. Except as otherwise provided in the Contract, no notice or communication from one Party to the other shall be valid under the Contract unless made in writing.
	2. Save as the Council otherwise directs, the Contractor is deemed to have inspected the Premises before tendering so as to understand the nature and extent of the Contract and be satisfied in all matters connected with its performance.
	3. The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Council by the Contractor and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.
	4. The Contractor shall cooperate and act in good faith with any of the Council’s contractors if appropriate and reasonably required to ensure proper performance of the Services.
	5. Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Council and the Contractor.
	6. References to either “Contract” or “Agreement” mean Contract and Agreement.
	7. A reference to this Contract or to any other Contract or document is a reference to this Contract or such other Contract or document as varied from time to time.
	8. References to clauses and schedules are to the clauses and schedules of this Contract and references to paragraphs are to paragraphs of the relevant schedule.
	9. If there is any conflict or inconsistency between the provisions in the main body of this Contract and the schedules, such conflict or inconsistency shall be resolved by giving preference to the relevant schedule.
	10. A reference to writing or written includes fax and email.
1. **Commencement and Duration**
	1. The Contract shall take effect on the Commencement Date and shall expire automatically on the Expiry Date, unless otherwise terminated or extended in accordance with this Contract.
	2. The Contract may be extended by the Council (being the "**Extension Period**"), at the absolute discretion of the Council, on giving the Contractor at least 1 months’ written notice before the end of the Contract Period. Time is not of the essence. The Contract may be extended any number of times and for any duration provided the cumulative duration of all extensions does not exceed [ ] years.Nothing in this Contract prevents the Council from extending this Contract if permitted to do so by law or the Council’s Standing Orders.
2. **Council Property**
	1. Council Property issued free of charge to the Contractor shall remain the property of the Council and shall be deemed in good condition unless the Contractor notifies the Council otherwise within seven days of receipt.
	2. The Contractor shall keep secure and in good condition all Council Property and shall use it solely in connection with the Contract and for no other purpose without prior Approval. The Contractor shall be liable for any loss or damage, unless the Contractor demonstrates that such was caused by the negligence or default of the Council. The Contractor shall return Council Property to the Council on demand.

**Statutory Obligations and Regulations**

1. **Prevention of Corruption**
	1. The Contractor shall not offer or give to any employee, agent, servant or representative of the Council any gift or consideration as an inducement or reward for doing or refraining from doing any act in relation to obtaining or executing this Contract or any other contract with the Council. The Contractor is referred to criminal offences under the Bribery Act 2010.
	2. The Contractor shall not enter into this Contract if in connection with it commission has been paid or agreed to be paid to any employee or representative of the Council by the Contractor or on the Contractor’s behalf, unless particulars of any such commission and the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.
	3. If the Contractor or its employees, servants, sub-Contractors, Contractors or agents or anyone acting on the Contractor's behalf, commits such an offence in relation to this or any other contract with the Council, the Council has the right to:
2. terminate the Contract and recover from the Contractor any loss suffered by the Council resulting from the termination;
3. recover from the Contractor the value of any such gift, consideration or commission; and
4. recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this Condition, whether or not the Contract has been terminated.
	1. In exercising its rights under this Clause, the Council shall act reasonably with regard to the gravity of the prohibited act and the identity of the person performing it, and where appropriate, shall consider action other than termination of the Contract.
5. **Legislation**

* 1. In providing the Services, the Contractor shall comply with all applicable Laws (including public procurement laws), enactments, orders, regulations and other similar instruments, and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom.
	2. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment. The Contractor shall take all reasonable steps to secure the observance of this clause by all servants, employees or agents of the Contractor and all Contractors and sub-contractors employed in the execution of the Contract. The Contractor acknowledges that the Council is subject to a public sector equality duty under section 149 of the Equality Act 2010 (the Equality Act) and to this end, and if the Contractor is discharging a public function on behalf of the Council, agrees to:
1. Eliminate unlawful discrimination, harassment, victimisation and any other conduct

prohibited by the Equality Act.

1. Advance equality of opportunity between people who share a Protected

Characteristic and people who do not share it.

1. Foster good relations between people who share a Protected Characteristic and

people who do not share it.

* 1. No person who is not a Party to the Contract (including any employee, officer, agent, representative, or sub-contractor of either the Council or the Contractor) may enforce any term of the Contract which expressly or by implication confers a benefit on him, without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 5.
	2. The Contractor shall, when working on the Council’s Premises, perform the Contract in accordance with the Council’s environmental policy. The Contractor shall also:
1. read and understand the commitments made by the Council in its Environmental Policy;
2. assist the Council to achieve its strategic aims and objectives in relation to the environment through their provision of goods or services; and
3. ensure that all goods and services provided comply with relevant environmental legislation.
	1. The Council shall promptly notify the Contractor of any health and safety hazards, particularly if arising at the Council’s Premises or Premises, which may affect the Contractors performance of the Contract.
	2. The Contractor shall comply with the Council’s Health and Safety measures in respect of Staff and other persons working on the Council’s Premises, and shall notify the Council immediately of any incident occurring in the performance of the Contract on the Council’s Premises that causes personal injury or damage to property which could give rise to personal injury.
	3. The Contractor shall take all necessary measures to comply with the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to Staff and other persons working on the Premises in performing the Contract.
	4. The Contractor shall adopt and maintain a whistle-blowing policy which enables staff to blow the whistle on any suspected offence as described or referred to in sections 1 to 4 of the Modern Slavery Act 2015 and the Contractor shall also fully comply with all applicable requirements under the Modern Slavery Act 2015.

**Protection and Information**

1. **Data Protection Act**

 **Information Governance – General Responsibilities**

* 1. The Contractor acknowledges that the Data Protection Legislation will include the UK GDPR, DPA, and all other UK legislation and regulatory requirements which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any guidance and codes of practice issued and applicable to a party and will ensure that it complies with the requirements of the Data Protection Legislation.
	2. For the purposes of this section, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing” shall have the meaning prescribed under the Data Protection Legislation.
	3. The Parties also acknowledge their respective obligations arising under the Data Protection Legislation and must assist each other as necessary to enable each other to comply with these obligations. The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
	4. a systematic description of the envisaged processing operations and the purpose of the processing;
	5. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
	6. an assessment of the risks to the rights and freedoms of Data Subjects; and
	7. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
	8. The Contractor undertakes to:
1. treat as confidential all Personal Data which may be derived from or be obtained in the course of the Services or which may come into the possession of the Contractor or a Staff member, servant or agent or Sub-Contractor of the Contractor as a result or in connection with the Services;
2. provide all necessary precautions to ensure that all such information is treated as confidential by the Contractor, its Staff members, servants, agents or Sub-Contractors;
3. ensure that it, its Staff members, servants, agents and Sub-Contractors are aware of the provisions of the Data Protection Legislation and that any personal information obtained in the course of the performance of this contract shall not be disclosed or used in any unlawful manner;
4. indemnify the Council against any loss arising under the Data Protection Legislation caused by any action, authorised or unauthorised, taken by the Contractor, its Staff members, servants, agents or Sub-Contractors;
5. have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their obligations under this Contract to keep Personal Data and information secure and confidential in accordance with Data Protection Legislation; and
6. only process Personal Data on documented instructions from the Council (including with regard to transfers of any Personal Data outside the United Kingdom unless the Contractor is required by law to process the Personal Data, in which case it must inform the Council of the relevant legal requirement before Processing the Personal Data in such a way (unless the legal requirement prohibits the Contractor from providing such information to the Council on public interest grounds).
	1. The Parties acknowledge that the appropriate Standard Contractual Clauses will be used (where appropriate) for restricted transfers of Personal Data outside the UK as defined in the applicable Data Protection Legislation.

 **The Contractor as Data Processor**

* 1. The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the Data Protection Legislation and each of the Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with this Contract.
	2. Notwithstanding the general obligations in Clause 6, where the Contractor is processing Personal Data as a Data Processor for the Council the Contractor shall:
1. process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Council in writing;
2. comply with all applicable Laws;
3. process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor’s obligations under this Contract or as is required by Law or any regulatory body;
4. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
5. ensure that it is able to demonstrate that Staff members, servants, agents or Sub-Contractors associated with the performance of this Contract are aware of their personal responsibilities under the Data Protection Legislation to maintain the security of the Personal Data controlled by the Council;
6. take reasonable steps to ensure the reliability of its Staff, servants, agents and Sub-Contractors who may have access to the Personal Data;
7. ensure that Personal Data is not be copied for any purpose other than that agreed with the Council; and
8. ensure that Personal Data shall be deleted or returned to the Council at the end of this Contract or when requested by the Council. Such instruction to be made in writing.
	1. The Contractor shall permit the Council (subject to reasonable and appropriate confidentiality requirements), to inspect and audit the Contractor’s data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract and shall:
9. not Process, cause or permit the Personal Data to be transferred outside of the United Kingdom without the prior written consent of the Council;
10. ensure that all Staff, servants, agents and Sub-Contractors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this section;
11. ensure that none of the Staff, servants, agents and Sub-Contractors publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council;
12. not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council;
13. notify the Council within two (2) Working Days:

* + 1. if it receives a request from a Data Subject to have access to that person’s Personal Data; or
		2. if it receives a complaint or request relating to the Council’s obligations under the Data Protection Legislation; or
		3. of any breach or potential breach of this section (Data Protection).
	1. The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
	2. The Contractor agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Contractor or its Staff members, servants, agents or Sub-Contractors to comply with any of its obligations under this section.

**Responsibilities when engaging Sub-Contractors**

* 1. Subject to the Council’s prior written consent, if the Contractor is to require any Sub-Contractor to process Personal Data on its behalf, the Contractor must ensure that the Sub-Contractor contracts on terms which are substantially the same as those set out in this section.
	2. The provision of this section shall apply for the duration of the Contract and indefinitely after its expiry.

#### Confidentiality

* 1. The Contractor acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents, is the property of the Council. Each Party:
1. shall treat all Confidential Information as confidential and safeguard it accordingly;
2. shall not disclose any Confidential Information to any third party without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract; and
3. shall not use any Confidential Information otherwise than for the purposes of this Contract.
	1. If considered necessary by the Council, the Contractor shall ensure that all Staff, advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Contract.
	2. Nothing in this Condition shall prevent the Council disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal, or any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation.
	3. Except with the written consent of the other Party, neither Party shall make any press announcements or publicise the Contract in any way. Both Parties shall take all reasonable steps to ensure observance of this Clause by their employees, agents, advisors, sub-contractors and consultants.
	4. This Clause 7 shall apply during this Contract and indefinitely after its expiry or termination. If the Contractor fails to comply with this Clause, the Council may terminate this Contract by notice in writing with immediate effect.

#### Contractor’s Staff

* 1. The Contractor shall comply with all reasonable requirements of the Council while on the Council’s Premises, and shall ensure that all its employees, agents, servants and sub-contractors comply with such requirements. The Council reserves the right to refuse admission to its Premises to any member of Staff or any person employed or engaged by a sub-Contractor, agent or servant of the Contractor, whose admission or continued presence the Council considers undesirable.
	2. If the Council gives the Contractor notice that any person is not to be involved in performing this Contract, the Contractor shall take all reasonable steps to comply and shall replace such person with another suitably qualified person and ensure that any pass issued to the person removed is surrendered.
1. **Intellectual Property Rights**
	1. The Services shall not infringe the Intellectual Property Rights of any third party and the Contractor shall indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may incur as a result of or in connection with any breach of this Clause.
	2. The Contractor shall obtain Approval before using any material in performing the Contract which is or may be subject to third party Intellectual Property Rights. If approval is given by the Council, the Contractor shall obtain from the owner of the rights a non-exclusive licence for the Council or, if itself a licensee of those rights, shall grant the Council sub-licence to use, reproduce, modify, adapt and enhance the material subject to such rights. Such licence shall be perpetual and irrevocable and shall be granted at no cost to the Council.
	3. All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:
	4. furnished to or made available to the Contractor by the Council shall remain the property of the Council; and
	5. prepared by or for the Contractor for use in performing this Contract shall belong to the Council, and the Contractor shall not, and shall ensure that its employees, servants, agents, Contractors and sub-contractors shall not, (except when necessary for performing the Contract) without prior Approval, use or disclose such Intellectual Property Rights, or any other information which the Contractor may obtain in performing the Contract, except information which is in the public domain.
	6. The Contractor shall forthwith notify the Council of any claim, demand or action brought against the Contractor for infringement of any Intellectual Property Right in connection with the Contract.
	7. If a claim, demand or action for infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall at its own expense and subject to the consent of the Council (not to be unreasonably withheld) either:
	8. modify any or all of the Services without reducing their performance or functionality, or substitute alternative Services of equivalent performance and functionality, so as to avoid any infringement, provided that the terms herein shall apply mutatis mutandis to such modified Services or substitute Services; or
	9. procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.
	10. At the termination of the Contract the Contractor shall immediately return to the Council all materials, work or records held, including any back up media.
	11. The provisions of this Clause 9 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
2. **Audit**
	1. During the Term and for a period of two years after the Termination Date, the Council (acting by itself or through its representatives) may conduct an audit of the Contractor, including for the following purposes:
		1. to verify the accuracy of charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all Contractors (including Sub-Contractors) of the Services;
		2. to review the integrity, confidentiality and security of any data relating to the Council or any service users;
		3. to review the Contractor's compliance with the Data Protection Legislation and the FOIA, in accordance with Clause 6 (Data Protection) and Clause 11 (Freedom of Information) and any other legislation applicable to the Services;
		4. to review any records created during the provision of the Services;
		5. to review any books of account kept by the Contractor in connection with the provision of the Services;
		6. to carry out the audit and certification of the Council's accounts;
		7. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
		8. to verify the accuracy and completeness of the management reports delivered or required by this Contract.
	2. Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Contractor has not complied with its obligations under this Contract, the Council may not conduct an audit under this clause 10 more than twice in any calendar year.
	3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
	4. Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
		1. all information requested by the above persons within the permitted scope of the audit;
		2. reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
		3. access to the Contractor personnel.
	5. The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
	6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Contractor in which case the Contractor shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
	7. If an audit identifies that:
		1. the Contractor has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Council about the charges, proposed charges or the Contractor’s costs, then the remedial plan shall include a requirement for the provision of all such information;
		2. the Council has overpaid any charges, the Contractor shall pay to the Council the amount overpaid within 30 days. The Council may deduct the relevant amount from the charges if the Contractor fails to make this payment; and
		3. the Council has underpaid any charges, the Council shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Contractor in relation to invoicing within 30 days.

#  Freedom of Information

* 1. The Contractor acknowledges that the Council may at its absolute discretion disclose information pursuant to the Code of Practice on Freedom of Information dated 15th November 2017, the FOIA and the Environmental Information Regulations. The Contractor shall at its expense assist the Council in complying and shall, and shall procure that its sub-contractors shall:
1. transfer any Request for Information to the Council as soon as practicable after receipt and in any event within twoWorking Days of receiving a Request for Information;
2. provide the Council with copies of all Information in its possession or power in the form the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
3. provide all assistance reasonably requested by the Council in responding to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.
	1. The Council shall determine at its absolute discretion whether any information:
4. is exempt from disclosure in accordance with the Code of Practice on Freedom of Information dated 15th November 2017, the FOIA or the Environmental Information Regulations 2004;
5. is to be disclosed in response to a Request for Information.
	1. The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so by the Council.
	2. The Contractor shall ensure that all information relating to the Contract is retained for disclosure and shall permit the Council to inspect such records on request.
	3. The Contractor acknowledges that any lists of Confidential Information provided by it are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information.
	4. The Contractor acknowledges that the Council is subject to the Re-Use of Public Sector Information Regulations 2015 and as such the Council has legal responsibilities to allow re-use of public sector information in accordance with those Regulations. The Council shall not authorise re-use of information which is exempt from disclosure under the FOIA and the EIR or any re-use of information where the Contractor owns the Intellectual Property Rights in that information, unless re-use is required by Law and/or compliance with a Court order.

**Control of the Contract**

1. **Assignment and Sub-Contracting**
	1. The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.
	2. The Contractor shall be responsible for the acts and omissions of its Sub-Contractors.
2. **Waiver**
	1. The failure of either Party to insist upon strict performance of any provision of the Contract, or to exercise any right or remedy, shall not constitute a waiver of that right or remedy and shall not diminish the obligations established by this Contract.
	2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
	3. A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
3. **Severability**
	1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
	2. If any provision or part-provision of the Contract is deemed deleted under clause 14.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
4. **Monitoring of Contract Performance**
	1. Contract review meetings will be held between the Contract Manager and the Contractor at regular intervals specified in advance by the Council to monitor the Contractor’s performance both on the Contract as a whole and against any performance targets specified in Schedule 3 (Performance Monitoring and KPI’s). The Contractor shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required at no additional cost to the Council.
	2. The Contractor shall monitor its performance in the delivery of the Services in accordance with any procedures set out in Schedule 2 (Specification) and Schedule 3 (Performance Monitoring and KPI’s) and provide all information required therein in the format required.
	3. Provided that the Contractor is given reasonable notice of the same, the Contractor shall attend meetings where an issue related to the Services, goods or works is to be considered unless an emergency situation arises, as determined by the Contract Manager in which case the Contractor may be required to attend a meeting with the Contract Manager at short notice.
5. **Time of Performance**
	1. Time of performance is of the essence of the Contract. The Contractor shall perform the Services in accordance with the Specification. The Council may by written notice require the Contractor to execute the Services in such order as the Council decides.

**Payment and Contract Price**

1. **Contract Price and Payment**
	1. In consideration of performing its obligations under the Contract, the Contractor shall be paid by the Council the Contract Price. Unless agreed otherwise by both Parties, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for the Services provided to the satisfaction of the Council.
	2. No variation in the Contract Price or extra charges shall be made without the Council’s prior written consent. If the cost to the Contractor of performing the Contract changes as a result of new legislation or regulation made after commencement of the Contract, any variation to the Contract Price will be assessed on an individual basis. Such variation will not be allowed if such legislation or regulations were made public prior to the commencement of the Contract.
	3. The Council shall pay the Contractor, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Services provided under the Contract. Unless agreed otherwise by both Parties, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for the Services provided to the satisfaction of the Council.
	4. Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.
	5. The Council may, without prejudice to its other rights, reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately.
	6. Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

(a) provisions having the same effect as this Clause 17; and

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

1. **Recovery of Sums Due**
	1. The Council may deduct any sum of money recoverable from or payable by the Contractor (including any sum in respect of a breach of this Contract) from any sum then due under this Contract, or which may become due under this Contract or under any other agreement or contract with the Council.
	2. Any overpayment by the Council to the Contractor, whether of the Contract Price or of Tax, shall be a sum of money recoverable by the Council from the Contractor.

**Liabilities**

1. **Indemnity and Insurance**
	1. Notwithstanding any other provision of this Contract, neither party limits or excludes its liability for:
2. fraud or fraudulent misrepresentation;
3. death or personal injury caused by its negligence (or the negligence of its personnel, agents or Sub-Contractors);
4. breach of any obligation as to title implied by statute; or
5. any other liability for which may not be limited under any applicable law.
	1. The Contractor shall keep indemnified the Council against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities whatsoever in connection with the Contract in respect of any death or personal injury, or loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor. This Clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors.
	2. The Contractor shall maintain with a reputable insurance company an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor’s performance of the Contract, including death or personal injury, loss of or damage to property, or any financial loss arising from advice the Contractor may give or fail to give.
	3. The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
	4. The Contractor shall produce for the Contract Manager, on request, copies of all insurance policies referred to in this Condition, or other evidence confirming the cover given by those policies, with receipts or other evidence of payment of the latest premiums due under those policies.
	5. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. The Contractor shall be responsible for determining the amount of insurance cover that will enable the Contractor to satisfy any liability referred to in this Clause 19.
	6. For all matters to which this Clause 19 applies, the insurance cover shall be a sum not less than:
6. Public liability insurance cover – £[ ] in relation to any one claim or series of claims.
7. Product liability cover – £[ ] in relation to any one claim or series of claims.

Or such greater sum as the Contractor may choose in respect of any one claim or series of claims.

* 1. The Contractor shall exhibit to the Council forthwith upon demand satisfactory evidence that it has taken out such insurance. If the level of cover is considered too high for the type of risk being covered then a risk assessment should be carried out before a lower level is considered/agreed and verified by the Council’s Risk service area.
1. **Warranties and Representations**
	1. The Contractor warrants and represents that:
2. the Contractor has the full capacity, authority, and necessary consents (including, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by an authorised representative of the Contractor;
3. the Contractor shall discharge its obligations hereunder with all due skill, care and diligence, and in accordance with its own internal procedures;
4. all obligations of the Contractor pursuant to the Contract shall be performed by appropriately experienced, qualified and trained Staff with due skill, care and diligence;
5. the Contractor is not in default in paying any taxes, or in filing, registering or recording any document, or under any legal or statutory requirement in which default might have a material adverse effect on its business, assets or financial condition or its ability to perform this Contract; and
6. the Contractor does not have any conflict of interest that may affect or compromise its ability to perform the Services in the Council’s best interest and in accordance with the requirements of this Contract.

**Default, Disruption and Termination**

1. **Termination on change of control and insolvency**
	1. The Council may terminate the Contract by notice in writing with immediate effect if:
2. there is an Insolvency Event; or
3. the Contractor undergoes a change of control, within the meaning of sections 450 and 451 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Contract; or
4. the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
	1. The Contractor shall notify the Contract Manager immediately of any change of control. The Council may exercise its right under clause 21.1 within six months of being notified of any change of control, unless it has agreed in advance to this change of control.
5. **Termination on Default**
	1. The Council may terminate the Contract or any part thereof by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:
6. the Contractor has not remedied the Default to the satisfaction of the Council within 30 days, or such other period as may be specified by the Council to do so, after issue of a written notice specifying the Default and requesting it to be remedied (**a Remediation Notice**); or
7. the Default is not capable of remedy (for the avoidance of doubt the accumulation of default points under Schedule 3 shall be deemed a Default not capable of remedy); or
8. the Default is a fundamental breach of the Contract.
	1. The Council may terminate the Contract immediately if the Contractors fails to comply with any of its obligations under the Modern Slavery Act 2015.
9. **Termination on Notice**

#### The Council shall be entitled to terminate the Contract in respect of all or part only of the services by giving one month written notice to the Contractor, in which event the Council shall not be liable for payment for services not delivered, loss of anticipated profits or any consequential loss.

#### Consequences of Termination

* 1. If the Council terminates the Contract or any part thereof under Clause 22, and makes other arrangements for the provision of the Services, the Council may recover from the Contractor the cost of such other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. Where the Contract is terminated under Clause 22, no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.
	2. However the Contract is terminated (in whole or in part) or on the expiry of the Term, the provisions of the Exit Management Plan shall come into effect and the Contractor shall co-operate fully with the Council to ensure an orderly migration of the Services.
	3. The Contractor shall cooperate with the Council regarding any future re-procurement of the Services which shall include but not be limited to the following:-
1. Providing the Council with all documents, data and information necessary to inform bidders in any re-procurement and to procure third party consent to the transfer of such data, documents and information
2. Novation of contracts necessary for the continuation of the Services
3. The transfer of any leases, permits, contact numbers or licenses necessary for the continuation of the Services
4. Handover of depots and relevant assets
5. Undertaking any repairs and maintenance to depots and assets as required under this Contract in accordance with any schedule of dilapidations or reasonable instructions of the Contract Manager.
6. Immediate provision of TUPE Information and continuous updates to such information in accordance with the Contract.
	1. Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry shall remain in full force and effect.
	2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the Termination Date.
7. **Recovery upon Termination**
	1. Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Council accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
	2. At the end of the Contract Period the Contractor shall forthwith deliver to the Council on request all Council Property in its possession or control, or in the possession or control of any Contractors or sub-contractors and in default of compliance with this Clause the Council may recover possession thereof and the Contractor grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Contractors or sub-contractors where any such items may be held.
	3. The Contractor shall co-operate with the Council and any new contractor appointed by the Council to continue or take over the performance of the Contract free of charge in order to ensure an effective handover of all work then in progress.
	4. On termination or expiry of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Contractor shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Contractor shall certify full compliance with this clause.
8. **Break Clause**

[ ]

1. **Force Majeure**
	1. Neither Party shall be liable to the other Party for any delay in or failure to perform the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. However, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. If any such event prevents either Party from performing its obligations under the Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.

**Disputes and Law**

1. **Governing Law**
	1. This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
2. **Dispute Resolution**
	1. The Parties shall attempt in good faith to negotiate a settlement to any dispute in connection with the Contract within 30 days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the Finance Director (or equivalent) of each Party.
	2. If the dispute cannot be resolved pursuant to Clause 29.1, the dispute shall be referred to mediation pursuant to clause 29.4 unless the Council considers the dispute is not suitable for resolution by mediation or the Contractor does not agree to mediation.
	3. Performance of the Contract shall not be suspended, ceased or delayed by reference of a dispute to mediation and the Contractor shall comply fully with the Contract at all times.
	4. The procedure for mediation is as follows:
3. A neutral mediator (“Mediator”) shall be agreed between the Parties or, if they are unable to agree within 14 days or if the agreed Mediator is unable or unwilling to act, either Party may apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator.
4. The Parties shall within 14 days of the appointment of the Mediator meet with him to agree a programme for the exchange of all relevant information and a structure for negotiations. The Parties may at any stage seek guidance from CEDR on procedures.
5. Unless otherwise agreed, all negotiations connected with the dispute and any agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
6. Any settlement of the dispute shall be stated in writing and shall be binding on the Parties once signed by their Authorised Representatives.
7. Failing agreement, either Party may invite the Mediator to provide a non-binding but informative opinion, to be provided without prejudice and not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
8. If the Parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute may be referred to the Courts unless referred to Arbitration in accordance with the Arbitration Act 1996.
9. **Notice**
	1. Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
10. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
11. sent by fax to its main fax number or sent by email to the Authorised Representatives.
	1. Any notice shall be deemed to have been received:
12. if delivered by hand, at the time the notice is left at the proper address;
13. if sent by pre-paid first-class post or other next working day delivery service, at 10.00 am on the second Working Day after posting; or
14. if sent by fax or email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when working hours resume.
	1. 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.
15. **Modern Slavery**
	1. The Modern Slavery Act came into force in 2015 and enforces protection against slavery and trafficking in the UK. It requires business over a certain size threshold (currently £36 million) to disclose each year what action they have taken to ensure there is no modern slavery in their business or supply chains. During the life of the Contract, the Council will (where applicable), require you to provide a statement on how you are complying with the act.
16. **Anti-Terrorism Regulations**
	1. In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Contractor will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
	2. The Contractor represents and warrants that neither it, nor to the best of its knowledge any of its officers, employees or other persons associated with it, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.
	3. The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of Clause 32.1 or Clause 32.2, or has reason to believe that it has or any officer, employee or any other persons associated with it have:
	4. been subject to an investigation or prosecution which relates to an alleged infringement of Clause 32.
	5. 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.
	6. Where the Contractor or any of its officers, employees or other persons associated with it breaches any of the acts mentioned in Clause 31.1 or clause 31.2 commits any offence under the Terrorism Act 2000 with or without the knowledge of the Contractor in relation to this Contract, the Council shall be entitled:
17. To terminate the Contact with immediate effect by written notice to the Contractor and recover from the Contractor the amount of any loss resulting from the termination; and
18. To recover from the Contractor any other loss sustained as a result of any breach of this Clause 32, whether or not the Contract has been terminated.
	1. The Contractor shall have due regard to the need to prevent people from being drawn into terrorism in accordance with Section 26 of the Counter-Terrorism and Security Act 2015. In respect the Contractor shall ensure its staff and personnel have the relevant training in order to understand:
19. What radicalisation means;
20. Why people may be vulnerable to being drawn into terrorism;
21. What is meant by “extremism”;
22. The relationship between extremism and terrorism;
23. The measures that are available to prevent people from becoming involved in terrorism and how to challenge the extremist ideologue that may be associated with it: and
24. How to obtain support for people who may be being exploited by radicalising influences.

# The Services

* 1. The Contractor shall provide the Services during the Contract Period in accordance with the Council’s Specification and Tender Response. The Council may inspect performance of the Services at the Council’s Premises or Premises at any reasonable time or, on reasonable notice, at any other premises where any part of the Services is being performed.
	2. If the Council informs the Contractor that the Council considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Council.
	3. The Contractor shall reimburse the Council for all reasonable costs incurred by the Council as a direct consequence of the Contractor’s delay in performing the Contract which the Contractor had failed to remedy after being given reasonable notice by the Council.
	4. The Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council.
	5. Nothing in this Contract shall impose any liability on the Council for any liability incurred by the Contractor, except for any liability of the Council to the Contractor arising through breach of the Contract or through the negligence of the Council or its employees, servants or agents.
	6. The Services shall be carried out with reasonable skill, care and diligence. They should match the Specification and any request made by the Council to which the Contractor has agreed.
	7. In the supply of ICT hardware, software or other goods of a similar nature that requires testing and approval after commissioning no payment will be made until approval sign-off has been given by the Council’s appropriate authorised commissioning officer

### Equipment

* 1. The Contractor shall
1. provide all the Equipment necessary for the provision of the Services and shall ensure that the Council's Premises or Premises are appropriate to contain and operate the Equipment;
2. make no delivery of Equipment nor commence any work on the Council’s Premises without obtaining the Council's prior Approval;
3. maintain all Equipment on the Council’s Premises or Premises in a safe, serviceable and clean condition.
	1. All Equipment shall be at the risk of the Contractor and the Council shall have no liability for loss of or damage to any Equipment unless the Contractor demonstrates that such loss or damage was caused or contributed to by the negligence or default of the Council.
	2. The Council may at any time during the progress of the Services order in writing the removal from the Council’s Premises or Premises of any Equipment which in the opinion of the Council is hazardous, noxious or not in accordance with the Contract; and/or
	3. On completion of the Services the Contractor shall remove the Equipment, unused materials and all rubbish arising out of the Services, make good any damage caused to the Council's Premises or Premises by removal of the Equipment and leave such premises in a neat and tidy condition.

# Standard of Work

* 1. To the extent that the standard of service has not been specified in the Contract the Contractor shall use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence, and in accordance with good industry practice.
	2. The Contractor warrants and represents that all Staff assigned to the performance of the Service shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

# Remedies in the event of inadequate performance

* 1. If a complaint is received regarding the Services, the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid and may uphold the complaint or take further action in accordance with the Default, Disruption and Termination Clauses of this Contract.
	2. If the Council is of the opinion that there has been a fundamental breach of this Contract by the Contractor, or the Contractor has failed in performing its duties under the Contract, then the Council may, without prejudice to its other rights, do any of the following:

 (a) deduct from the payment to be made to the Contractor an amount which reasonably reflects the cost of the Services which the Contractor has failed to provide;

(b) without terminating the Contract, itself provide or purchase part of the Services until the Contractor demonstrates to the reasonable satisfaction of the Council that it can resume performance of such part of the Services in accordance with the Contract;

(c) terminate the Contract in respect of part of the Services only (with a corresponding reduction in the Contract Price) and itself provide or purchase such part of the Services;

1. terminate, in accordance with Section G, the whole of the Contract.
	1. The Council may charge the Contractor any cost reasonably incurred, plus reasonable administration costs, for providing or purchasing any part of the Services, to the extent that such costs exceed the sum which would otherwise have been paid to the Contractor.
	2. If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Contractor to perform the work and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 30 days or such other period as the Council may direct.
	3. In the event that the Contractor fails on one or more occasions to comply with Clause 35.4 above, and such failures materially adverse the commercial interests of the Council, then the Council may terminate the Contract by notice in writing with immediate effect.
	4. The Council may make deductions to the Contract Price in accordance with the criteria and award of default points as set out in schedule 3 (Performance Monitoring and KPI’s).
2. **Variation of Services**
	1. The Council reserves the right on giving reasonable written notice from time to time to require changes (“Variations”) to the Services.
	2. In the event of a Variation, the Contract Price may also be varied. Such Price Variation shall be calculated by the Council and agreed with the Contractor and shall fairly reflect the nature and extent of the Variation. Failing agreement, the matter shall be determined by negotiation or mediation in accordance with Clause 29.

## Offers of Employment

* 1. In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

## Professional Indemnity

* 1. The Contractor shall maintain professional indemnity insurance cover and shall ensure that all consultants involved in providing the Services maintain appropriate cover. Such insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in providing the Services with a limit of indemnity of not less than £5,000,000 for any occurrences arising out of each event or a series of related events. Such insurance shall be maintained for a minimum of 12 (twelve) years following expiration or earlier termination of this Contract.

## TUPE

* 1. If applicable, during the period of 12 months preceding the end of this Contract or immediately upon termination in accordance with this Contract, the Contractor shall:
1. as soon as reasonably practicable, at the request of the Council, fully and accurately disclose to the Council the TUPE Information in respect of any Assigned Employees which the Council and/or a prospective tenderer and/or a new provider may reasonably require and permit the Council to use the TUPE Information supplied (subject to the Council complying with its obligations under the Data Protection Legislation and appropriate obligations of confidentiality) to inform any prospective tenderer and/or new provider about the Assigned Employees. If during the period between supplying the TUPE Information and the Relevant Transfer Date there is any material change in the TUPE Information supplied or new information is discovered, the Contractor shall, as soon as reasonably practicable disclose to the Council the updated information; and
2. use all reasonable endeavours to co-operate with any other reasonable request made by the Council concerning the TUPE Information requested under Clause 1.1 and shall not, without the prior written agreement of the Council (such agreement not to be unreasonably withheld or delayed), materially alter or change any of the terms and conditions of employment or engagement of an Assigned Employee or replace any Assigned Employee or deploy any employee other than an Assigned Employee to discharge the Services or remove from the discharge of the Services any Assigned Employee or materially increase the number of persons discharging the Services.
	1. During the 12 months preceding the end of this Contract or immediately after notice to terminate this Contract for whatever reason has been given, the Contractor shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
3. vary or purport or promise to vary the terms and conditions of employment or engagement of Staff employed or engaged in connection with the Services;
4. materially increase or decrease the number of Staff employed in connection with the Services;
5. increase the remuneration of Staff;
6. assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or
7. otherwise improve terms and conditions of employment of any of its Staff without economic justification towards the end of the Contract period.
	1. The Contractor shall indemnify and keep indemnified in full the Council against all losses all losses, including all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Council in connection with or as a result of:
8. any claim or demand by any member of Staff or former member of Staff (whether in contract, tort, under statute, or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the employer in respect of any Staff member or former Staff member, or any claim relating to the period on and before the Transfer Date (and for the avoidance of doubt, this indemnity shall apply in respect of all losses, including all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the beneficiary of this indemnity in respect of the period after the Transfer Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Transfer Date);
9. any failure by the Contractor or any other employer of the member of Staff to comply with its obligations under Regulations 13 and 14 of the TUPE Regulations, or any award of compensation under Regulation 15 of the TUPE Regulations, save where such failure arises from the failure of the Council to comply with its duties under Regulation 13 of the TUPE Regulations;
10. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing Staff member(s) (or other employees of the Contractor) arising from or connected with any failure by the Contractor or any other employer of the Staff to comply with any legal obligation to such trade union, body or person; and/or
11. any claim by any person (other than an Assigned Staff member) in respect of which the Council incurs or is alleged to incur responsibility or liability as a result of the operation of the Regulations.
12. **Data Migration and Handover**
	1. Subject to Clause 40.2 below, at least 3 months before expiry or termination of this Contract (*at no cost to the Council*) the Contractor shall provide the Council with all records, data and information that the Council, or any successor contractor, reasonably requires in order to continue the Services.
	2. If any records, data or information is subject to the provisions of the Data Protection Legislation, the Contractor shall (*at no cost to the Council*) procure the necessary consents of relevant third parties to process the data for the purposes of effecting the transition of the Service from the Contractor to the Council or the Council’s successor contractor as the case may be.
	3. The Contractor shall (at no cost to the Council) novate any licences or agreements, which are necessary to continue the Services, to the Council or its successor contractor.
13. **Safeguarding**
	1. This Clause applies if the Contractor is undertaking a Regulated Activity as defined by the Safeguarding Vulnerable Groups Act 2006 or any activity concerning children or vulnerable adults which is otherwise regulated.
	2. The Contractor shall maintain and keep up to date appropriate policies on child protection. These policies shall comply with any legislative and registration/regulatory requirements, applicable guidelines and with policies, procedures and guidelines issued by the Council. The Contractor shall ensure that these policies, procedures and guidelines are communicated to staff and that appropriate training is provided to staff in relation to them.
	3. The Contractor must have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children at risk and are compliant with statutory requirements. The Contractor must be able to evidence safe and robust recruitment procedures and practice for all staff working with children at risk.
	4. The Contractor should fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking staff through the Disclosure and Barring Services (“DBS”) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each staff member when making decisions in relation to convictions revealed by the Criminal Records Check.
	5. All staff members proposed for the Services shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the staff member being employed in connection with the Services. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Contractor shall notify the Council of these immediately. The Council shall have a right to veto the employment or engagement of any staff member proposed for the Service as a result of the adverse entry/convictions. In exercising its right under this Clause, the Council shall act reasonably.
	6. The Contractor shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act 1997. When deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.
	7. The Contractor shall maintain a record of the outcome of the Criminal Records Check, in relation to each staff member where a Criminal Records Check is required, setting out the disclosure number and date the disclosure was made. The Contractor shall store the record of the disclosure securely within the Contractor’s organisation in accordance with the DPA, UK GDPR and DBS Code of Practice. The Contractor warrants to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a staff member’s name engaged or appointed in connection with the Services.

## Continuous Improvement and Innovation

* 1. The Council expects our contractors to work with us to constantly improve their service, drive innovation and create efficiencies for the future. Therefore, the Contractor will conduct annual reviews to monitor the service in relation to customer satisfaction, effects on the community and environment, equalities, improvements to service, innovation, price and quality standards. The annual reviews will not only focus on achievements made in these areas over the last year but will focus also on new ideas and proposals for the incoming year. Both the Council and the Contractor will be required to sign off on all reviews. The annual reviews shall take place on the anniversary of the Contract.

## Contract Review

* 1. This Contract is subject to continual review and as part of the process, the Council will review the Services (including any works or goods) required under the Contract. If the Council reasonably considers that the Services could be provided in a more efficient or cost effective way, the Council shall submit proposals to the Contractor to vary the Contract to accommodate changes to give effect to a more efficient or cost effective delivery of works, goods or services. In this regard the parties shall cooperate with each other and act in good faith to agree and implement changes.

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

**To be Executed Under Hand or by way of a Deed (depending on the Contract Value)**

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| --- | --- | --- |
| Signed by: North Hertfordshire District Council |  | **…………………………..****Authorised Signatory** |
| Signed by [Name of Company] |  | **……………………………****Director** |

**OR**

**EXECUTED AS A DEED** by

affixing the seal of **North Hertfordshire**

**District Council** in the presence of:

........................................................... Authorised Signatory

**EXECUTED AS A DEED** by

**[Part 2]** acting by either: two of its directors,

a director and its company secretary, or a director

in the presence of a witness:

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

**Director**

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

**Director OR Secretary**

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

**Witness**

………………………..

Name of Witness

……………………

……………………..

Address

………………………

Occupation