

Dated

2023

North Northamptonshire Council

and

[] Ltd

*In relation to
Family Hubs Workforce Skills Audit Services*

Legal Services

North Northamptonshire Council
Municipal Offices, Bowling Green Road,
Kettering, NN15 7QX
Legal Ref: 020479

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Schedules

THIS AGREEMENT is dated

2023

PARTIES

- (1) **North Northamptonshire Council** of Sheerness House, 41 Meadow Road, Kettering NN16 8TL and whose address for service is at Municipal Offices, Bowling Green Road, Kettering, NN15 7QX ("**Authority**");
- (2) **[] LTD** whose address is at [] ("**Supplier**").

BACKGROUND

- (A) The Authority sought proposals through RFQ for the provisions works skills Audit.
- (B) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.
- (C) The parties agree to comply with their respective obligations as set out within this agreement.

AGREED TERMS

1. Definitions and Interpretation

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

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 3.

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

Charges: the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in schedule 2.

Commencement Date: date of this agreement.

Commercially Sensitive Information: the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Data Processor/Data Controller/Data Subject: shall have the same meaning as set out in the Data Protection Act 2018/Data Protection Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/UK General Data Protection Regulation.

Data Protection Legislation: means the UK Data Protection Legislation (including but not limited to the Data Protection Act 2018, the Data Protection Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) the Regulation of Investigatory Powers Act 2000, and (including but not limited to the General Data Protection Regulation) relating to personal data and all other legislation and regulatory requirements in

force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Default Notice: has the meaning given in clause 4.2.

Dispute Resolution Procedure: the procedure set out in clause 10.

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.

Expiry Date: The date on which this agreement expires.

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

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

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

Initial Term: the period commencing on the Commencement Date and ending on the 3rd anniversary of the Commencement Date.

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

Material Obligation: any obligation under this contract which if breached is reasonably likely to cause the Authority loss or damage. For the avoidance of doubt, any and all requirements noted in Schedule 1 are Material Obligations.

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

PCR 2015: the Public Contracts Regulations 2015 as amended by the Public Procurement (Amendment etc.)(EU Exit) Regulations 2020 SI 1319.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018/UK General Data Protection Regulation and any other relevant legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under the Fraud Act 2006;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Authority;
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority; or
 - (v) section 117 of the Local Government Act 1972.

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

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

Remediation Notice: a notice served by the Authority in accordance with clause 20.1(a).

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

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

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

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

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

Supplier's Quote: the tender submitted by the Supplier and other associated documentation submitted in response to this agreement.

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

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

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

Subsequent Transfer: a transfer of the Services subsequent to commencement of this agreement.

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

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

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

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) (and that person's legal and personal representatives, successors and permitted assigns).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the agreement;
- (b) Schedule 1 to this agreement;
- (c) the remaining schedules to this agreement other than the Supplier's Quote;

2. Term

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

3. Extending the initial term

3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to 12 months (Extension Period). If the Authority wishes to extend this agreement, it shall give the Supplier at least 6 months' written notice of such intention before the expiry of the Initial Term or Extension Period.

3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice and on the same terms and conditions as contained in this agreement.

3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 24 shall apply.

4. Service standards and compliance

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

4.2 In the event that the Supplier does not comply with the provisions of clause 4.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a Default Notice).

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

- (a) with reasonable skill and care and in accordance with the best practice prevailing in the Supplier's industry, profession or trade;
- (b) in all respects in accordance with the Authority's policies set out in Schedule 1; and
- (c) in accordance with all Applicable Laws.

4.4 Without limiting the general obligation set out in clause 4.1, the Supplier shall and shall procure that the Supplier's Personnel shall:

- (a) Perform its obligations under this agreement (including those in relation to the Services) in accordance with:

- (i) The Equality Act 2010;
 - (ii) The Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) Any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
 - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
 - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
 - (d) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 4.6 Where applicable for the furtherance of this agreement the parties shall comply with the JCT Minor Works Contract (2016 Edition) which is incorporated into this agreement by reference.

5. Health and Safety

- 5.1 The Supplier shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement. The Authority shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Supplier in the performance of the agreement.
- 5.2 While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 5.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of the agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 5.4 The Supplier shall comply with the requirements of 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 Authority's Premises in the performance of the agreement.
- 5.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

6. Payment

- 6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier.
- 6.2 The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the terms of this agreement. All invoices shall be directed to the Authority's Representative.
- 6.3 The Authority shall pay the Charges which have become payable within 30 days of receipt of an undisputed invoice from the Supplier.
- 6.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 10. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 28 days from the date that the dispute was brought to the attention of the Authority or the date of the resolution of the dispute between the parties.
- 6.5 Subject to clause 6.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 6.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 6.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 7 years from the end of the Contract Year to which the records relate.
- 6.8 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 6.9 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement, including the Admission Agreement, or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.

6.10 If The Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to clause 6.9 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

6.11 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

7. personnel used to provide the services

7.1 At all times, the Supplier shall ensure that:

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

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

7.3 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

8. Safeguarding children and vulnerable adults

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

8.2 The Supplier shall ensure that all individuals engaged in the provision of the Services are:

- (a) subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate; and

- (b) the Supplier shall monitor the level and validity of the checks under this clause 8.2 for each member of staff.
- 8.3 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.
- 8.4 The Supplier shall immediately supply the Authority with any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 8 have been met.
- 8.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users.
- 8.6 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 9. Monitoring**
- 9.1 The Authority may monitor the performance of the Services by the Supplier as provided for in Schedule 3.
- 9.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 9.1 at no additional charge to the Authority.
- 10. Dispute resolution**
- 10.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute), then (except as expressly provided in this agreement), the parties shall follow the procedure set out in this clause:
 - (a) Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) If the Authorised Representatives fail to resolve the dispute within 14 days of service of a dispute notice, then either party, by notice in writing to the other, may refer the dispute to senior managers who shall co-operate in good faith to resolve the dispute as amicably as possible within (14 days) of service of such notice.
 - (c) If the (SENIOR OFFICER TITLES OF THE TWO PARTIES) fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of

either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within 7 days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

- 10.2 The commencement of mediation shall not prevent the parties commencing or continuing (court or arbitration) proceedings in relation to the Dispute under which this clause 12 applies at all times.

11. Indemnities

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

12. Limitation of liability

- 12.1 Subject to clause 12.5, neither party shall be liable to the other party (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 12.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 12.3 Subject to clause 12.5, the Authority's maximum aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed the total charges paid and/or payable by the Authority under this Contract.
- 12.4 Subject to clause 14.5, the Supplier's total aggregate liability:
- (a) Is unlimited in respect of:
 - (i) the indemnities given by the Supplier in (clause 11);
 - (ii) any breach of clause 6;
 - (iii) any breach of clause 19.2;
 - (iv) any breach of clause 23;

- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract, breach of statutory duty or otherwise under or in connection with this agreement, shall in no event exceed the greatest level of insurance cover available.

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

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

13. Insurance

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

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited. The Supplier shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

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

13.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

13.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

13.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

13.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

14. Sub-Contracting and assignment

14.1 Subject to clause 14.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

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

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

14.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

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

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

15. Freedom of information

15.1 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 these information disclosure requirements.

15.2 The Supplier shall and shall procure that its Sub-Contractors shall:

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within (two) Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within (five) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) 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.
- 15.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information supplied by the supplier in the tender process and/or any other Information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 15.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 15.5 The Supplier acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose Information:
 - (a) without consulting with the Supplier; or
 - (b) following consultation with the Supplier and having taken its views into account,

provided always that where clause 15.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.6 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.
- 15.7 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 15.5.
- 16. Data protection**
- 16.1 The Supplier shall (and shall procure that any of its Supplier's Personnel agents and sub-contractors involved in the provision of the agreement shall) comply with any notification

requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the agreement.

- 16.2 This agreement is in addition to and does not relieve, remove or replace a parties obligations or rights under the Data Protection Legislation.
- 16.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- 16.4 If Personal Data is processed during the term of the agreement the Supplier and the Authority shall complete the processing activities table set out in Schedule 5.

17. Confidentiality

- 17.1 Subject to clause 17.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 17.2 Clause 17.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 15.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
 - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 17.1;
 - (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
 - (e) to enable a determination to be made under clause 10;
 - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (g) by the Authority to any other department, office or agency of the Government; and
 - (h) by the Authority relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 17.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

18. Audit

18.1 The Supplier shall keep and maintain until 7 years after the agreement has been completed, or as long a period as may be agreed by the parties, full and accurate records of the agreement including:

- (a) The Services provided under it;
- (b) All expenditure reimbursed by the Authority;
- (c) All payments made by the Authority.

18.2 The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be required in connection with the agreement.

19. Intellectual property

19.1 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:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

19.2 Any Intellectual Property owned by the Authority which is furnished or made available by the Authority or on the Authority's behalf to the Supplier or the Supplier's agent for the purposes of the Supplier providing the Services shall remain vested in the Authority.

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

20. Termination for breach

20.1 The Authority may terminate this agreement (in whole or part) with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any Material Obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 20.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;
- (b) if this agreement has been substantially varied other than as permitted under regulations 72 of PCR 2015;

- (c) if the Supplier should have been excluded from the procurement process under regulations 57 of PCR 2015;
- (d) if the contract should not have been awarded because the contractor is in serious breach of its obligations under PCR 2015.

20.2 The Authority may also terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier if:

- (a) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business (or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction); or;
- (b) the Supplier ceases or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

20.3 If this agreement is terminated by the Authority such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

21. Termination on notice

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

22. Force majeure

22.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligation. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

23. Prevention of bribery

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

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

government procurement programmes or contracts on the grounds of a Prohibited Act.

23.2 The Supplier shall not during the term of this agreement:

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

23.3 The Supplier shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within 21 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 23 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

23.4 The Supplier shall during the term of this agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 23.4 (a) and make such records available to the Authority on request.

23.5 The Supplier shall immediately notify the Authority in writing if it suspects or becomes aware of any breach of clause 23.1 and/or clause 23.2, or has reason to believe that it has or any of the Supplier's Personnel have:

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

- 23.6 If the Supplier makes a notification to the Authority pursuant to clause 23.5, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation in accordance with clause 18. This obligation shall survive termination of this agreement.
- 23.7 If the Supplier is in Default under clause 23.1 and/or 23.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default: or
 - (b) terminate this agreement by written notice with immediate effect
- 23.8 Any notice served under clause 23.7 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act;
 - (c) the date on which this agreement will terminate; and
 - (d) the action that the Authority has elected to take.
- 23.9 Notwithstanding clause 10 (Dispute resolution), any dispute relating to:
- (a) the interpretation of clause 23; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 23.10 Any termination under clause 23.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

24. Consequences of termination

- 24.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination (or expiry) of this agreement including clause 11 (Indemnities), clause 13 (Insurance), clause 15 (Freedom of Information), clause 16 (Data Protection), clause 18 (Audit), clause 20 (Termination for Breach) and this clause 24 (Consequences of termination) shall survive termination or expiry of this agreement.

25. Variation

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

26. Waiver

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

of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27. Severance

27.1 If any provision or part-provision of this agreement becomes invalid, illegal or enforceable, it shall be deemed modified to the minimum extent necessary to make it is legal, valid 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.

28. Authority to enter agreement

28.1 Each party confirms it is acting on its own behalf and not for the benefit of any other person. Each party warrants its power to enter into this agreement and that it has obtained the necessary approvals to do so.

29. Third party rights

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

30. Publicity

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders.

31. Notices

31.1 Any notice (or other communication) given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

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

31.2 Any notice (or communication) shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt (or at the time the notice is left at the proper address);

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

32. Entire agreement

32.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

33. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. (No counterpart shall be effective until each party has executed at least one counterpart.)

34. Governing law and jurisdiction

- 34.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England.
- 34.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

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

NORTH NORTHAMPTONSHIRE COUNCIL

in the presence of:

.....
Authorised Signatory
Name:

Executed for and on behalf of:

[] LTD

.....
Director:

Name:

Witness:

.....

Director / Company Secretary / Witness

Name:

ADDRESS:

OCCUPATION:

Schedule 1: Specification and Contract Price

Schedule 2: Suppliers Tender Submission

Incorporated by reference but not attached hereto.

Schedule 3 Contract Management

Schedule 4 Commercially sensitive information

DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS COMMERCIALY SENSITIVE)

Schedule 5: Data Processing Activities



Updated Data
Processing Schedule

