

DATED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2024

 **WEST SUSSEX COUNTY COUNCIL**

**and**

**[INSERT NAME OF SERVICE PROVIDER]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CONTRACT**

**For the provision of a Schools Waste and Climate Education Programme in West Sussex Schools**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal Services

West Sussex County Council

County Hall

Chichester

West Sussex

PO19 1RQ

(Legal Ref: CC811.149)

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**DATED……………………day …………………………………………………………………… 2024**

PARTIES

1. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the “**Council**”);and
2. **[INSERT NAME OF SERVICE PROVIDER]** (Registered Company Number: [INSERT NUMBER] Of [INSERT REGISTERED COMPANY ADDRESS](the “**Service Provider**”)

each being referred to as a “**party**” and together “**the parties**”.

BACKGROUND

1. The Council wishes to engage the Service Provider to provide services, namely the School Waste and Climate Education Programme (as more particularly described in Schedule C).
2. The Service Provider wishes to provide such services, and is willing and able to do so in accordance with the terms and conditions of this Contract.
3. The Council has selected the Service Provider to provide the Services.

SECTION 1 – PRELIMINARY

# DEFINITIONS AND INTERPRETATION

## In this Contract, unless the context otherwise requires, the terms set out in Schedule A shall have the meanings ascribed to them in Schedule A.

## In this Contract:

### time shall, during the summer time be British summer time or otherwise Greenwich Mean Time;

### reference to any statutory provision, enactment, order, regulation of other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

### words importing one gender shall include the other; words in the singular shall include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa;

### clause, schedule and paragraph headings and notes are for ease of reference only and do not affect the interpretation of this Contract;

### a reference to a clause, schedule, section, part or appendices is a reference to a clause, schedule, section, part or appendices within this Contract unless expressly stated otherwise;

### the schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules; and

### a reference to writing or written includes email.

# COMMENCEMENT, DURATION AND EXTENT OF CONTRACT

## This Contract shall commence on the Commencement Date and unless terminated earlier in accordance with this Contract will remain in force for the Contract Period.

## No later than one (1) Month before the end of the Initial Period or before the end of any previous Extension(s) of the Contract Period (as the case may be) the Council may extend the Contract Period by a further period of twelve (12) Months up until a total of three (3) years by giving written notice to the Service Provider of its wish to extend this Contract and the required length of such extension (an “**Extension**”).

## Unless otherwise agreed by the parties, any Extension shall be on the same terms and conditions as this Contract.

# PRE-CONDITIONS

## On or before the Commencement Date the Service Provider shall:

### produce to the Council, for inspection, documentary evidence that the Required Insurances are properly in place, adequate and valid; and

### evidence of all Necessary Consents.

## If the Service Provider fails to comply with any of the provisions of clause 3.1, this shall constitute breach of a fundamental term of this Contract and the Council may (without prejudice to any other right or remedy available to it) terminate this Contract by written notice to the Service Provider having immediate effect.

# CONTRACT DOCUMENTS

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

### the conditions of this Contract;

### Schedule C (Specification);

### all other schedules attached to this Contract except the schedules listed at clauses 4.1.4 and 4.1.5;

### Schedule D, Part 2 (Clarifications);

### Schedule D, Part 1 (the Service Provider’s Tender),

save to the extent that the standards or levels of the Services set out in Schedule D (the Service Provider’s Tender) exceed those set out in Schedule C (Specification); in which case, such higher standards or levels of performance set out in Schedule D (the Service Provider’s Tender) shall prevail (to the extent necessary to achieve the performance of such higher standards or levels of performance only).

SECTION 2 – THE SERVICES

# PROVISION OF THE SERVICES

## During the Contract Period the Service Provider shall provide the Services with all reasonable care, skill, prudence and foresight and in accordance with:

### the provisions of this Contract (including the Specification);

### the requirements of all Necessary Consents;

### all applicable Laws including but not limited to the Public Sector Bodies (Wesites and Mobile Applications) (No 2) Accessibility Regulations 2018;

### Good Industry Practice;

### the KPI’s; and

### all reasonable instructions of the Contract Manager acting in good faith and in accordance with this Contract.

## The Service Provider shall, as a minimum, meet the Quality Standard(s) throughout the Contract Period.

## The Service Provider shall make the Services available 24 hours a day, seven days a week, except for

### planned maintenance carried out during the maintenance window of 10pm to 2am UK time, and

### unscheduled maintenance performed outside Working Days, provided that the Service Provider has used reasonable endeavours to give Authorised Users at least 6 hours’ notice within a Working Day, in advance.

5.4 The Service provider will, as part of the Services and at no additional cost to the Council, provide the Council with the Service Provider’s standard customer support services during Working Days in accordance with the Service provider’s Support Services Policy in effect at the time that the Services are provided. The Service Provider may amend the Support Services Policy on no less than ninety (90) days’ notice in writing to the Council and shall ensure that any amendment to the Support Services Policy does not adversely affect, reduce, or change the Support Services. If the Council does not agree to the Service provider’s updated Support Services Policy, the Council may terminate this agreement on no less than thirty (30) days’ prior written notice to the Service Provider.

# PAYMENT

## The Council shall pay the Service Provider the Contract Price in consideration for the provision of the Services in accordance with Schedule B (Payment Schedule).

# USER SUBSCRIPTIONS

## The Service Provider hereby grants to the Council a non-exclusive, non-transferable right without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Contract period for the purpose as set out in Schedule C (Specification and KPIs).

## The Council shall not knowingly:

### distribute or transmit to the Service Provider, via the Services, any Viruses;

### store, access, publish, disseminate, distribute or transmit via the Services any material which:

#### is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

#### facilitates illegal activity;

#### depicts sexually explicit images;

#### promotes unlawful violence;

#### is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

#### is otherwise illegal or causes damage or injury to any person or property;

and the Service Provider reserves the right, on no less than thirty (30) days’ prior written notice to the Council, such notice specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable the Council’s access to the Services for the duration of time that the breach remains unremedied.

## The Council shall not:

### except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:

#### attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

#### attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

### access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;

### use the Services and/or Documentation to provide services to third parties other than as set out in Schedule C (Specification and KPIs);

### subject to clause 7.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

### attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 7

## The Service Provider acknowledges that the Council does not have control over all of the Authorised Users and accepts that the Council shall not be liable for any breach of the provision of this clause 7 by Authorised Users who are not directly employed by the Council.

## The Council accepts that the Service Provider may need to take appropriate action including limiting access rights and suspending access altogether to Authorised Users who breach any of the provisions of clause 7.3 and will not hold the Service Provider liable for such action

## If the Service Provider proposes not to provide or stop providing the Services to any Authorised User under clause 7.5;

### Where reasonably possible, the Service Provider must explain to the Authorised User, taking into account any communication or language needs, the action that it is taking, when that action takes effect and when that action will be reviewed, and the reasons for it (confirming the explanation in writing within two (2) Working Days;

### The Service Provider must tell the Authorised User of the right to challenge the Service Provider’s decision through the Service Provider’s complaints procedure and how to do so;

### The Service Provider must in all cases inform the Council in writing without delay and wherever in advance of taking such action;

# VARIATIONS TO THE SERVICES

## No Variation of this Contract shall be effective unless it is in writing and signed by the parties (or their duly authorised senior representatives).

## Unless the Variation expressly provides for an increase in payment, the Contract Price shall not be increased as a result of a Variation.

SECTION 3 – REVIEW

# OFFICERS

## The Contract Manager shall liaise with and instruct the Service Provider and its Representatives regarding all matters relating to performance by the Service Provider of its obligations under this Contract and shall determine any matters or issue any notices as stipulated under this Contract.

## The Service Provider shall appoint a Service Provider’s Manager who shall be the main point of contact for the Council and shall have power to act on behalf of the Service Provider in connection with any matter relating to performance of the Services and shall exercise the rights, functions and obligations of the Service Provider under this Contract.

# MEETINGS

## The Contract Manager and Service Provider’s Manager shall hold regular meetings as set out in Schedule C (Specification and KPIs) unless agreed otherwise to review the working of this Contract.

## Such meetings shall, amongst other matters, identify ways in which either party is or may become in breach of its obligations under this Contract and any remedial action required as a result.

# NOT USED

# PERFORMANCE MONITORING

## The Services shall be subject to such monitoring systems as the Contract Manager considers appropriate to undertake including, but not limited to, the provisions of this clause 12 (Performance Monitoring).

## The Contract Manager may investigate any case where the Service Provider may have or appears to have failed to perform the Services in whole or in part in accordance with the provisions of this Contract (a “**Default**”).

## Where the Contract Manager is satisfied that in any particular case the Service Provider has committed a Default, he may instruct the Service Provider to remedy the failure (a “**Remediation Notice**”). The Remediation Notice shall:

### specify the nature of the Default; and

### instruct the Service Provider to remedy the Default within such reasonable period as the Contract Manager may determine which, unless otherwise stated, shall be twenty four (24) hours from the receipt of the Remediation Notice by the Service Provider.

## Where the Service Provider fails to comply with any Remediation Notice issued by the Contract Manager, the Contract Manager may issue a Default Notice to the Service Provider:

### specifying the nature of the Default; and

### instructing the Service Provider to remedy the Default within a reasonable period, as determined by the Contract Manager (which unless otherwise stated shall be twenty four (24) hours from the Service Provider’s receipt of the Default Notice).

## If the Service Provider fails to remedy any Default specified in a Default Notice within the reasonable period specified, the Contract Manager may either:

### issue a further Default Notice every twenty four (24) hours until the Contract Manager is satisfied that the Default concerned has been remedied; or

### following notification to the Service Provider, take action to rectify the Default itself (including by instructing an alternative provider to rectify the same) and recover its additional costs of doing so from the Service Provider as a debt.

## Without prejudice to clause 12.5, where any failure by the Service Provider to perform the Service in whole or in part in accordance with the provisions of this Contract amounts to a Persistent Default, or is one which materially and adversely affects the performance of the Services, or one which results in material damage to the reputation of the Council, notwithstanding that a Remediation Notice and/or Default Notice(s) has been issued pursuant to this clause 12 (Performance Monitoring), the Council shall be entitled, by service of notice on the Service Provider to terminate this Contract forthwith by written notice to the Service Provider.

## The Contract Manager shall use all reasonable endeavours to issue all Remediation Notices in writing. Where this is not practicable, such notices may be issued verbally (either in person or by telephone) and the issue of such Remediation Notice(s) shall be confirmed in writing (which may be an email) as soon as reasonably practicable. Default Notices shall be issued in writing.

## The response times for a Remediation Notice and / or Default Notice (as applicable) shall commence upon the date and time of transmission of the relevant notice (either verbally or in writing) by the Contract Manager.

# SERVICE PROVIDER DIRECT MONITORING

## Where the Service Provider is unable to perform the Services or any part of them at any time, the Service Provider shall immediately inform the Contract Manager and confirm the same in writing giving details of the circumstances, reasons and likely duration of the delay in provision of the Services. Provision of information in accordance with this clause 13 shall not release or excuse the Service Provider from any of its obligations under this Contract.

## The Service Provider shall develop a system for managing any complaints it receives in relation to the Services, to the satisfaction of the Contract Manager. The Service Provider shall immediately investigate any complaint it receives in relation to the Services and take appropriate corrective action. The system for dealing with complaints and the steps taken by the Service Provider shall be made available upon request to the Contract Manager for review.

# SERVICE PROVIDER’S RECORDS

## In addition to the information to be supplied to the Council in accordance with the Specification and in relation to the Contract Price, throughout the Contract Period the Service Provider shall keep and maintain such necessary data and information and shall complete or provide such assistance as the Council may reasonably require by written notice to the Service Provider to enable the Council to complete all official returns.

## The Service Provider shall provide the Council with information and data reasonably requested by the Council to enable it to be satisfied as to whether or not any terms of this Contract are being breached and/or whether the KPIs are being met in relation to the Services, within such reasonable timescale given by the Council or where no timescale is provided within no more than twenty eight (28) days of the request.

# FINANCIAL INFORMATION & AUDITS

## The Service Provider shall, as required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council to:

### comply with the Code of Practice on Local Authority Accounting in the United Kingdom 2020/21 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time); and

### examine, evaluate and be satisfied as to the Council’s minimum standards of economic and financial standing, technical and professional ability and general standing required of the Service Provider with regard to the provision of the Services.

SECTION 4 – HEALTH AND SAFETY

# HEALTH & SAFETY

## The Service Provider shall comply with and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, and all other health, safety and welfare requirements applicable to the Services including those detailed in the Specification.

## Whilst on Council Premises:

### the Service Provider shall ensure that its Representatives comply with the lawful requirements of the Contract Manager, including a requirement to monitor the Service Provider's health and safety practices periodically; and

### the Service Provider shall ensure that its Representatives observe any local arrangements for fire, health, safety, welfare, hygiene and security.

SECTION 5 – PREMISES AND ASSETS

# ASSETS

## Except as otherwise specified in the Specification, the Service Provider shall be responsible at its own cost for providing all equipment, vehicles, plant and materials necessary and/or used for the proper and efficient performance of the Services during the Contract Period (“**Service Provider’s Assets**”).

## The Service Provider shall maintain all Service Provider’s Assets in a safe condition so that they are fit for the purpose of delivering the Services and as a minimum comply with the requirements of this Contract, Law and any manufacturers servicing and maintenance requirements.

## The Service Provider shall be responsible for the security of all equipment and materials used by the Service Provider in connection with the provision of the Services and the Council shall not (as far as permitted by law) be liable for loss, damage or injury in respect of the same.

## The Service Provider shall ensure that on the Expiry Date (or as otherwise agreed) any of the Service Provider’s Assets stored or remaining at Council Premises are removed from the same.

# COUNCIL PREMISES

## The Service Provider shall only use the Council Premises for the purpose of providing the Services or as otherwise permitted by this Contract.

## The Service Provider shall comply with any reasonable directions of the Contract Manager or Representatives of the Council regarding security arrangements, use of utilities, vehicular access arrangements, parking instructions and/or procedures at Council Premises.

# SERVICE PROVIDER PREMISES

## Except for the Council Premises or as set out in the Specification, the Service Provider shall provide all other premises and/or sites necessary to provide the Services (“**Service Provider Premises**”)

SECTION 6 – WARRANTIES AND ACKNOWLEDGEMENTS

# INDEMNITY

## The Service Provider shall indemnify and hold harmless the Council and keep the Council indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:

### any claim by a third party for damage occurring as a result of the Service Provider’s performance of the Services;

### any breach of its obligations as set out in Section 8 (Personnel); or

### any breach of Law or Necessary Consents,

to the extent that any such loss, claim or liability 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 contract or Law by the Council.

# INSURANCE

## The Service Provider shall at its own cost take out and maintain the insurances listed at clause 21.2 (“**Required Insurances**”) and any other insurances required by Law with reputable insurers.

## The Required Insurances referred to above are:

### public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services;

### employer’s liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Services; and

### product liability insurance with a limit of cover of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims arising from the Services

and shall maintain such cover for the Contract Period and be effective in each case no later than the date on which the relevant risk commences.

## The Required Insurances must remain in place for the Contract Period and be effective in each case no later than the date on which the relevant risk commences.

## As and when reasonably required in writing by the Council, the Service Provider shall provide the Council with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Council that the requirements of this clause 21 are being met.

# LIMITATION OF LIABILITY

## Subject to clauses 20 (Indemnity), 22.3 and 22.4 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 this Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.

## 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 Contract.

## The Service Provider’s total aggregate liability:

### Is unlimited in respect of;

#### The indemnities in clause 26.3 (Data Protection), clause 27.1.18 (Data Processor Obligations), clause 27.9 (Security of Network and Information Systems) and clause 28.4 (Intellectual Property);

#### A Prohibited Act;

#### The Service Provider’s wilful default.

### In respect of all other 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 Agreement Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed 150% of the aggregate Agreement Price paid under or pursuant to this agreement for liability incurred in each contract year;

## Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence , or that of its employees, agents or Sub-Contractors;

### breach of any obligation as to title implied by statute; or

### any other act or omission, liability for which may not be limited under Law.

# SERVICE PROVIDER WARRANTIES

## The Service Provider warrants and represents that:

### it has full capacity and authority to enter into and to perform this Contract;

### this Contract is executed by a duly authorised Representative of the Service Provider;

### there are no actions, suits or proceedings or regulatory investigations pending or, to the Service Provider’s knowledge, threatened against or affecting the Service Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Service Provider to meet and carry out its obligations under this Contract;

### it will comply with applicable Laws and regulations and maintain all Necessary Consents, licences and registrations as applicable including the Cybersecurity Requirements;

### any information obtained by the Service Provider during the Contract Period shall only be used for the purposes contemplated under this Contract;

### once duly executed this Contract will constitute the Service Provider’s legal, valid and binding obligations;

### it has operated, and will continue to operate, in material compliance with applicable Laws and regulations; and

### it has not committed any Prohibited Act in entering into this Contract or any other agreement with the Council and will not commit any such acts in the performance of or with regard to the extension of the term of this Contract or such other agreement.

## The Service Provider shall be deemed to have satisfied itself before submitting its tender for the Services, as to the accuracy and sufficiency of any information provided by the Council. The Service Provider agrees that it has ascertained for itself the accuracy of the information and shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Service Provider’s Tender. The Service Provider shall be deemed to have satisfied itself as to the nature and extent of the risks assumed by it under the Contract including the accuracy of the rates and prices stated in Schedule C (Contract Price).

## For the avoidance of doubt the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Service Provider.

## The Service Provider is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Council acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communication facilities.

SECTION 7 - INFORMATION AND IPR

# CONFIDENTIALITY AND TRANSPARENCY

## Subject to clause 24.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

## Clause 24.1 shall not apply to any disclosure of information:

### required by Law, provided that clause 25 (Freedom of Information) shall apply to any disclosures required under the Information Laws;

### that is reasonably required by persons engaged by a party in the performance of such party’s obligations under this Contract;

### 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 24.1;

### by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;

### to enable a determination to be made under Section 9 (Dispute resolution);

### which is already lawfully in the possession of the receiving party prior to disclosure by the disclosing party;

### by the Council to any other department, office or agency of the Government; and

### by the Council relating to this Contract and in respect of which the Service Provider has given its prior written consent to disclosure.

## The Service Provider acknowledges that the Council is subject to transparency obligations which require the Council to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Service Provider hereby gives its consent for the Council to publish this Contract and its schedules and appendices in its entirety, including from time to time agreed changes to this Contract (save and except such matters as the Council is by Law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Council decides. The Service Provider shall render such assistance and cooperate with the Council to enable such publication, including, if the Council so requires, assisting the Council at no additional costs to the Council in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

## Subject to clauses 24.5, 26 (Data Protection) and 27 (Data Processor Obligations), on or before the Expiry Date the Service Provider shall ensure that all documents and / or computer records in its possession, custody or control which contain information relating to any of the Council’s Representatives, Council Premises or Council customers including any documents in the possession, custody or control of any Sub-Contractor, are delivered up to the Council or securely destroyed.

## Within fourteen (14) Working Days of receipt of a written request from the Council at any time during the Contract Period or at any time up until six (6) Months after the expiry or termination of this Contract, the Service Provider shall provide to the Council without further charge, and in the format stipulated by the Council (which may include a generic archive file) a copy of all Council Data retained in accordance with this Contract. The Council shall be entitled to transfer and migrate the Council Data onto another system.

## The parties agree that in the event that the Service Provider is required by the Council to carry out a transfer and migration of Council Data under clause 24.5 of this Contract, the Service Provider shall fully comply with the Data Protection Legislation in performing such transfer and migration and in particular shall comply with the provisions of clause 27 (Data Protection Obligations).

# FREEDOM OF INFORMATION

## The Service Provider acknowledges that the Council is subject to the requirements of the Information Laws and shall assist and fully and promptly cooperate with the Council to enable the Council to comply with its information disclosure obligations.

## The Service Provider shall, at no additional cost to the Council, co-operate promptly with the Council’s reasonable requests for assistance in complying with its disclosure obligations under the Information Laws, provided that where the Council receives a request for information relating to this Contract which the Council reasonably considers to be commercially sensitive and/or confidential, where reasonably practicable, the Council shall not disclose the same without first:

### notifying the Service Provider in writing; and

### allowing the Service Provider such reasonable opportunity as it considers appropriate (taking into account timescales set by Law) to make representations to the Council as to disclosure of such information.

## Notwithstanding any other provision of this Contract, the Council shall have absolute discretion as to whether or not to apply any exemptions under the Information Laws.

## In no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.

# DATA PROTECTION

## Both parties shall, and the Service Provider shall procure, that its Representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Contract.

## The Service Provider shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.

## The Service Provider shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Service Provider of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Service Provider or its employees, servants, agents or Sub-Contractors.

## The parties agree either:

### that the Council is the Data Controller and the Service Provider is the Data Processor, in which case clause 27 shall apply; or

###

### that the Council and the Service Provider are both Data Controllers, in which case clause 27 (Data Processor Obligations) shall be dis-applied and the Service Provider shall enter into a separate data sharing agreement with the Council, on terms stipulated by the Council.

## Where applicable, a description of the Council Data is set out at Schedule F **(Data Processing Activities).**

## The provisions of this clause 26 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

# DATA PROCESSOR OBLIGATIONS

## In respect of Personal Data that the Service Provider processes on behalf of the Council in connection with this Contract, the Service Provider shall and shall procure that its Representatives shall:

### solely process the Personal Data for the purposes of fulfilling its obligations under this Contract and in compliance with the Council’s written instructions as set out in this Contract and as may be specified from time to time in writing by the Council;

### notify the Council immediately if any instructions of the Council relating to the processing of Personal Data are unlawful;

### not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Council;

### comply with the Council’s instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Service Provider is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Service Provider shall inform the Council in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;

### take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data and ensure that all Staff used by the Service Provider to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;

### ensure that none of the Service Provider’s Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

### not engage any Sub-Contractor to carry out any processing of Personal Data without the prior written consent of the Council provided that notwithstanding any such consent the Service Provider shall remain liable for compliance with all the requirements of this Contract including in relation to the processing of Personal Data;

### ensure that obligations equivalent to the obligations set out in this clause 27 are included in all contracts between the Service Provider and permitted Sub-Contractors who will be processing Personal Data and who have been approved in accordance with clause 27.1.7;

### take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;

### upon request provide a written description of the technical and organisational measures employed by the Service Provider pursuant to clause 27.1.9 (within the timescales required by the Council) and if the Council does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Council (acting reasonably) to ensure compliance;

### taking into account the nature of the data processing activities undertaken by the Service Provider, provide, at no cost to the Council, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Council to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):

#### notifying the Council within two (2) Working Days of receipt of a request from a Data Subject exercising their rights under the Data Protection Legislation;

#### complying with the Council’s instructions in relation to complying with the Data Subject’s rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Council, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Council;

### maintain a record of the Service Provider’s processing activities in accordance with the requirements of the Data Protection Legislation;

### assist the Council, at no cost to the Council, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Service Provider and the information available to the Service Provider, including (without limitation):

#### providing information and assistance upon request to enable the Council to notify Data Security Breaches to the Information Commissioner’s and/or to affected individuals and/or to any other regulators to whom the Council is required to notify any Data Security Breaches; and

#### providing input into and carrying out Data Protection Impact Assessments in relation to the Service Provider’s data processing activities;

### ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Service Provider in connection with this Contract meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

### notify the Council immediately and in any event within twenty four (24) hours in writing if:

#### the Service Provider or any Sub-Contractor engaged by or on behalf of the Service Provider suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or

#### the Service Provider or any Sub-Contractor engaged by or on behalf of the Service Provider receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party’s compliance with the Data Protection Legislation,

and in each case the Service Provider shall provide full co-operation, information and assistance to the Council in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Council;

### upon termination of this Contract, at the discretion of and at no cost to the Council, delete securely or return all Personal Data to the Council and delete all existing copies of the Personal Data unless and to the extent that the Service Provider is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Service Provider shall notify the Council in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Service Provider, the Service Provider shall provide the Council with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.

### make available to the Council at no cost to the Council all information necessary to demonstrate compliance with the obligations set out in this clause 27 and, upon request, allow the Council, the Information Commissioner’s Office and its representatives access to the Service Provider’s Premises, records and Personnel for the purposes of assessing the Service Provider’s compliance with its obligations under this clause 27; and

### indemnify the Council from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Council and arising out of or in connection with any breach by the Service Provider or any Sub-Contractors of this clause 27.

## The provisions of this clause 27 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

# SECURITY OF NETWORK AND INFORMATION SYSTEMS

## The Service Provider warrants that the information in relation to the Supplier Security Questionnaire completed by the Service Provider as part of its tender and attached at Schedule D (Service Provider Tender and Clarification) on the security of its network and information systems is up to date and accurate and that it will update the Council immediately if there are any changes to such information.

## The Service Provider shall notify the Council immediately it becomes aware of any Incident, and respond without delay to all queries and requests for information from the Council about any Incident, whether discovered by the Service Provider or the Council, in particular bearing in mind the extent of any reporting obligations the Council may have under the Data Protection Legislation and that the Council may be required to comply with statutory or other regulatory timescales.

## The Service Provider will ensure the continuity of the Services at all times and any relevant policies referred to in paragraph 27.7.1 with a view to ensuring the continuity of any services to be provided by the Council that rely on the Services or Software.

## The Service Provider agrees to co-operate with the Council in relation to:

### any requests for information, or inspection, made by any regulator; and

### any Incident.

## The Service Provider shall (and warrants and represents that it shall) at all times in accordance with Good Industry Practice:

### implement, operate, maintain, and adhere to, appropriate policies to cover any IT issues including an incident management process which shall enable the Service Provider, as a minimum, to discover and assess Incidents, and to prioritise those Incidents, sufficient to meet its reporting obligations under paragraph 27.4; and

### mitigate against all Incidents.

## The Service Provider shall provide copies of the policies referred to in [paragraph 27.7.1](#co_anchor_a332802_1) promptly on request by the Council.

## The Service Provider shall indemnify the Council against any loss or damage suffered by the Council in relation to any breach by the Service Provider of its obligations under this agreement, which cause the Council to breach any Cybersecurity Requirements.

# INTELLECTUAL PROPERTY RIGHTS

## Save as expressly granted under this Contract, neither the Council nor the Service Provider shall acquire any right title or interest in any Intellectual Property Rights vested in or licensed to the other party prior to or independently of the performance by the relevant party of its obligations under this Contract.

## The Council retains ownership of all Intellectual Property Rights in all documents provided by the Council or Authorised Users in connection with or arising out of this Contract. The Service Provider may obtain or make at its own expense any further copies of such documentation required solely for use by the Service Provider or its representatives only as necessary to provide the Services and always subject to the provisions of clause 24 (Confidentiality and Transparency) and 26 (Data Protection).

##  The Service Provider agrees that to the extent that the Intellectual Property Rights are not pre-existing Intellectual Property Rights in accordance with clause 28.1, the Intellectual Property Rights under its reasonable control in any and all documents, drawings, designs, databases, data or other material in any format created by the Service Provider in the course of and for the purpose of providing the Services on behalf of the Council shall be assigned to the Council. The Service Provider shall execute or cause to be executed all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.

## The Service Provider confirms that it has all the rights in relation to the Services and the Documentation that are necessary.

## The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have resulted directly from the Council’s failure properly to observe its obligations under clause 22.2.

SECTION 8 – PERSONNEL

# PERSONNEL

## The Service Provider shall ensure that all individuals employed or engaged in connection with the Services are of suitable character and are appropriately qualified, trained and experienced in the area of work which they are to perform.

## The Service Provider shall ensure that there are at all times an adequate number of individuals employed or engaged to provide the Services in accordance with this Contract.

## Not used.

## The Service Provider shall ensure that its Representatives:

### are adequately supervised and informed of the aspects of this Contract applicable to them so that they can comply with the terms of this Contract;

### will be assigned to provide the Services in accordance with any specific requirement of this Contract;

### other than as permitted by this Contract, do not solicit or act in such a manner as to induce payment for performance of the Services; and

### act in a courteous and considerate manner and do not use foul or offensive language, bring with them offensive materials or consume intoxicating liquor or illegal drugs whilst either on Council Premises or while providing the Services.

# EQUAL OPPORTUNITIES AND HUMAN RIGHTS

## In the performance of the Services and in its dealings with Council employees, customers and members of the general public, the Service Provider shall comply and shall ensure that its Representatives comply with:

### the Human Rights Act 1998 as if the Service Provider were a public body (as defined in the Human Rights Act 1998);

### all Laws relating to equal opportunities; and

### the Council’s equal opportunities policies and procedures as may be adopted and amended from time to time.

# TUPE

## The parties agree that the provisions of Schedule E (Staff Transfer and Pensions) will apply during the Contract Period to any transfer under TUPE.

SECTION 9 – DISPUTE RESOLUTION

# REFERRAL TO OFFICERS AND SENIOR REPRESENTATIVES

## If any dispute arises out of or in connection with this Contract, the parties shall promptly notify each other of the matter in dispute (“**Dispute**”), which shall in the first instance be referred to the Contract Manager and the Service Provider’s Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all parties and consider all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.

## Where the Contract Manager and the Service Provider’s Manager do not achieve within fourteen (14) days of notification of a Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, then senior representatives of both parties shall meet promptly, and in any event within twenty one (21) days of notification of the Dispute, in good faith to discuss and seek to resolve the Dispute.

## The Service Provider agrees that the provision of the Services shall not be affected or suspended in the event of and during any Dispute.

# MEDIATION

## In the event that the Dispute cannot be resolved by negotiation or conciliation under clauses 32.1 and 32.2 within two (2) Months, or such other period as may be determined by the Council at its absolute discretion, both parties shall attempt to settle it by mediation.

## The procedure for mediation and consequential provisions relating to mediation are as follows:-

### a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one (1) party to the other or the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to CEDR (or any successor body) to appoint a Mediator;

### the parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

### unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

### if the parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives; and

### failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both parties.

## If the parties fail to resolve the Dispute by mediation within two (2) Months of the Mediator being appointed, or such longer period as may be agreed between the parties, then any dispute or difference between them may be referred to the courts pursuant to clause 37.22 (Governing Law and Jurisdiction).

SECTION 10 – TERMINATION

# EXPIRY & TERMINATION

## This Contract shall expire automatically on the Expiry Date unless it shall have been terminated earlier in accordance with its terms. For the avoidance of doubt the Service Provider shall not be entitled to any compensation on such expiry.

## The Council may terminate this Contract by giving not less than three (3 Months notice in writing to the Service Provider. For the avoidance of doubt the Service Provider shall not be entitled to any compensation on the expiry of any such notice of termination. The Council shall not serve notice under this clause 34.2 which expires within the first year from the Commencement Date

## The Council may terminate this Contract with immediate effect by notice in writing to the Service Provider on or at any time if the Service Provider:

### becomes Insolvent;

### commits a breach of any of its obligations under this Contract which may or will cause a health and safety risk;

### commits a material Data Security Breach in the reasonable opinion of the Council and/or materially fails to comply with its obligations at clause 26 (Data Protection) and clause 27 (Data Processor Obligations);

### commits a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Services or causes damage to the reputation of the Council, provided that if such breach is in the reasonable opinion of the Council capable of remedy, the Council may only terminate this Contract under this clause 34.3.4 if the Service Provider has failed to remedy such breach within thirty (30) days (or such shorter timescale as the Council specifies and is reasonable in the circumstances) after receipt of written notice from the Council to remedy the breach;

### commits a Persistent Default;

### commits a Prohibited Act;

### fails to achieve any KPI for two (2) consecutive Measurement Periods;

### makes an assignment or novation of this Contract in breach of clause 37.12 (Assignment or Novation) or sub contracts the Services or any part of the Services in breach of clause 37.13 (Sub-Contracting);

### breaches any of its obligations under clause 21 (Insurance)

### if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Council reasonably objects;

### commits a breach of clause 37.4 (Anti-Slavery and Human Trafficking);

### fails to provide the Services during a continuous period of seven (7) days or for a total period of ten (10) days in any three (3) Month period during the Contract Period other than as a result of a Force Majeure Event; or

### fails to obtain or loses any Necessary Consent or has any Necessary Consent varied or restricted the effect of which might reasonably be considered by the Council to have a material adverse affect in the performance of the Services.

## If a Force Majeure Event prevents either party from performing its obligations under this Contract in any material respect for a period of three (3) consecutive Months then, provided the notification requirements set out in clause 37.17 (Force Majeure) have been met, without prejudice to any accrued rights or remedies under this Contract, either party may terminate this Contract by notice in writing to the other party having immediate effect.

## The Council may terminate this Contract, in whole or in part, by giving such period of notice as the Council reasonably considers is necessary in the circumstances, in writing, to the Service Provider if it reasonably believes that any of the circumstances set out in regulation 73(1)(a) or 73(1)(c) of the Public Contracts Regulations 2015 apply, such notice to expire at any time. For the avoidance of doubt the Service Provider shall not be entitled to any compensation on such termination.

# EFFECT OF TERMINATION OR EXPIRY & DUTY TO CO-OPERATE

## Where this Contract is terminated the Council shall:

### not be required to make further payments under this Contract until the costs, loss and/or damage due under this Contract have been calculated and when such payment become due the Council shall be entitled to withhold from such payments the costs, loss and/or damages due to it under this Contract; and

### be entitled to repossess any Council Assets held by the Service Provider and to exercise a lien over any Service Provider Assets in the Council’s possession until the Service Provider has paid to the Council all costs, loss and/or damage due to the Council under this Contract.

## Notwithstanding that a party may have a right to terminate this Contract, that party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract.

## The Service Provider shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any New Service Provider undertaking such services, the same or similar to the Services.

# NOT USED

SECTION 11 – GENERAL

# GENERAL

## If the Service Provider or anyone acting on its behalf or to its knowledge (whether such person is a Service Provider Representative or a Council Representative) commits any Prohibited Act in relation to this Contract or any other agreement with the Council or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Service Provider shall promptly inform the Council of the occurrence of such Prohibited Act and render all such assistance to the Council as the Council may reasonably require in investigating such acts.

## The Service Provider agrees and confirms that the Council’s Chief Executive is authorised as persons to whom the Service Provider’s Representatives may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Representatives making a protected disclosure (as defined by that Act) shall not for that reason be subjected to any detriment or disadvantage. The Service Provider further declares that any provision in an agreement purporting to preclude any Representative from making a protected disclosure is void.

## The Service Provider acknowledges that the Council has a duty under the Counter Terrorism and Security Act 2015 (“**CTSA 2015**”) to have due regard to the requirement to prevent people from being drawn into terrorism. The Service Provider shall, and shall procure that its Representatives shall, give all reasonable assistance and support to the Council in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Service Provider shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

## In performing its obligations under the Contract, the Service Provider shall:

### comply with all applicable labour, employment, anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;

### not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

### include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 37.4; and

### notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

## Subject to Schedule E (Staff Transfer and Pensions), it is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Contract is not intended to, and does not, give to any person who is not a party to this Contract any rights to enforce any provisions contained in this Contract except for any person to whom the benefit of this Contract is assigned in accordance with clause 37.12 (Assignment).

## The provisions of this Contract are binding on any successors in title of the parties.

## All rights and duties which the Council has as a local authority or which the Council’s officers have as local authority officers including as a local planning authority and as a waste disposal authority are reserved to the Council and the Council’s officers.

## The Service Provider is required to have in place adequate and appropriate measures to ensure, where reasonably practicable, that it is able to continue providing the Services within a predetermined time in the event of a disruption (including in the event of an emergency (as defined in part 1 of the Civil Contingencies Act 2004)) which partially or completely interrupts the Service Provider’s business critical functions and which would otherwise impact the Services.

## Any notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally or by sending it by both email and registered post or recorded / signed for delivery to the appropriate address notified to each other. Any notice served personally will be deemed to have been served on the day of delivery while any notice sent by email and post will be deemed to have been served forty eight (48) hours after it was posted save where the deemed date of service falls on a day other than a Working Day in which case the date of service will be the following Working Day.

## The Service Provider and its Sub-Contractors shall not be or be deemed to be an agent of the Council and neither the Service Provider nor its Sub-Contractors shall not hold themselves out as having authority or power to bind the Council in any way other than as expressly provided by this Contract.

## Nothing in this Contract shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a contract of employment between the Service Provider and the Council.

## The Service Provider shall not assign, novate or otherwise dispose of any of its rights or benefits under this Contract other than with the prior written consent of the Council, which consent the Council may in its absolute discretion either refuse or grant either fully or subject to specified limitations.

## The Service Provider shall not be entitled to sub-contract, sub licence or otherwise dispose of the provision of the Services or any part thereof without the prior written consent of the Council.

## In the event that the Service Provider enters into any Sub-contract in connection with this Contract it shall:

### remain responsible to the Council for the performance of its obligations under this Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts and/or omissions of its Sub-Contractors;

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

### provide a copy, at no charge to the Council, of any such sub-contract on receipt of a request for such by the Contract Manager.

## No term or provision of this Contract shall be considered as waived by any party unless a waiver is given in writing by that party and specifically states that it is a waiver of such term or provision. No waiver shall be a waiver of a past or future Default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Contract unless (and then only to the extent) that it is expressly stated in that waiver.

## Each party shall use all reasonable endeavours to ensure that any formal public statements made by a party as to each other’s activities or the performance of this Contract shall only be made after consultation with the other party, except as required otherwise by law. Neither party shall make use of the other party’s logo without their express permission.

## A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to any failure or delay in performing its obligations under this Contract shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take all reasonable steps to mitigate the effect of the Force Majeure Event.

## Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

## If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

## This Contract constitutes the entire agreement between the parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 37.20 shall not exclude liability in respect of any fraudulent misrepresentation.

## Termination of this Contract for any reason shall not affect this clause 37.21 and the following clauses or sections, which shall continue in force after such termination: clause 1 (Definitions and interpretation), clause 14 (Service Provider’s Records), section 6 (Warranties and Acknowledgements), clause 24 (Confidentiality and Transparency), clause 25 (Freedom of Information), clause 26 (Data Protection), 27 (Data Processor Obligations), clause 31 (TUPE), section 9 (Dispute Resolution), section 10 (Termination), clause 37.9 (Notices), clause 37.12 (Assignment), clauses 37.13 and 37.14 (Sub-Contracting), clause 37.22 (Governing Law and Jurisdiction) and the provisions relating to disputed sums and set off in Schedule B (Payment Schedule).

## The parties agree that this Contract shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

In witness whereof the parties hereto have executed this Contract as of the day and year first herein written

SIGNED on behalf of the parties

|  |  |
| --- | --- |
| For and on behalf of **WEST SUSSEX COUNTY COUNCIL**……………………………………..Authorised Signatory |  |
| For and on behalf of **[INSERT FULL****BUSINESS NAME OF SERVICE PROVIDER]** ………………………………………..[insert] |

SCHEDULE A – DEFINITIONS

In accordance with clause 1 (Definitions and Interpretation), in this Contract the following words shall have the meanings set out below:

|  |  |
| --- | --- |
| “Authorised Users” | Means;1. The Council and its employees, agents, volunteers and independent contractors; and
2. Schools located in West Sussex and the staff, pupils and parents of those pupils. In this context, “parent” shall have the same meaning as that in section 576 of the Education Act 1996.

who are authorised by the Council to use the Services and the Documentation; |
| “Bribery Act” | means 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; |
| “Commencement Date” | means 1st August 2024, or such other date as agreed in writing between the parties; |
| “Contract” | means this Contract including and all schedules and appendices referred to herein and/or attached hereto; |
| “Contract Manager” | MeansName: Kelly HellerJob Title: Partnerships and Programmes ManagerTel: 0330 222 7713Email: Kelly.Heller@westsussex.gov.ukas the same may be replaced or delegate his/her functions from time to time and notified to the Service Provider; |
| “Contract Period” | means the Initial Period plus any Extension; |
| “Contract Price” | means the charges/fees payable by the Council in accordance with this Contract as ascertained by the sums set out in Schedule B (Payment Schedule) as amended in accordance with this Contract; |
| “Contract Year” | means any twelve (12) Month period measured from the Commencement Date or any anniversary thereof; |
| “Council Assets” | has the meaning set out at clause 18.5.2; |
| “Council Data” | means:1. the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:
2. supplied or communicated to the Service Provider by or on behalf of the Council or a customer/user of the Services;
3. inputted into the Council IT systems or the Service Providers IT system by the Council or the Council’s Representatives; or
4. which the Service Provider is required to access, generate, process, store or transmit pursuant to this Contract, whether on the Council IT systems or the Service Providers IT system; and/or
5. any Personal Data for which the Council is the Data Controller;
 |
| “Council Premises” | means any premises and / or sites owned, occupied or controlled by the Council or its Representatives (excluding the Service Provider); |
| “Cybersecurity Requirements” | all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions, applicable to either party, relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (*(EU) 2016/1148*), Commission Implementing Regulation (*(EU) 2018/151*), the Network and Information Systems Regulations 2018 (*SI 506/2018*), all as amended or updated from time to time. |
| “Data Controller” | has the same meaning as is set out in the Data Protection Legislation; |
| “Data Processor” | has the same meaning as is set out in the Data Protection Legislation; |
| “Data Protection Impact Assessment” | an assessment carried out pursuant to the Data Protection Legislation |
| “Data Protection Legislation” | means the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Investigatory Powers Act 2016, the Investigatory Powers (Interception of Businesses etc for Monitoring and Record-keeping Purposes) Regulations 2018, the Data Protection Act 2018 and the GDPR and any legislation implemented in connection with the GDPR and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable  the guidance and codes of practice issued by the Information Commissioner; |
| “Data Security Breach” | means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; |
| “Data Subject” | has the same meaning as is set out in the Data Protection Legislation; |
| “Default” | means as defined at clause 12.2; |
| “Default Notice” | means a notice issued by the Council in accordance with clause 12; |
| “Dispute” | means as defined at clause 32.1; |
| “Documentation” | means the documents made available to the Authorised Users by the Service Provider online at such web address notified by the Service Provider to the Authorised Users from time to time which sets out a description of the Services and the user instructions for the Services; |
| “Environmental Liability” | means all costs, expenses, liabilities, claims, damages, penalties or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment; |
| “Expiry Date” | means the end of the Contract Period;  |
| “Extension” | Means as defined in clause 2.2; |
| “Force Majeure Event” | means war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Service Provider’s Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the Parties which could not have reasonably been foreseen or avoided; |
| “General Data Protection Regulation” | means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; |
| “Good Industry Practice” | means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Service Provider under the same or similar circumstances at the relevant time for such exercise; |
| “Incident” | means any Virus or security incident which:1. may affect the Software or the Services;
2. may affect the Service Provider’s network and information systems, such that it could potentially affect the Council, Authorised Users or the Software or the Services; or

is reported to the Service Provider by the Customer or Authorised Users; |
| “Information Commissioner’s Office” | means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority or any successor or replacement body from time to time; |
| “Information Laws” | means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Legislation and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time; |
| “Initial Period” | Means a period of twelve (12) months from the Commencement Date; |
| “Insolvent” | means in relation to the Service Provider:1. any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);
2. a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) upon the whole or any material part of the Service Provider’s assets;
3. a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding up of the Service Provider is passed;
4. ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 Insolvency Act 1986;
5. being an individual(s), has a bankruptcy order made against him/her or compounds with his/her creditors or comes to any arrangements with any creditors; or
6. any steps are taken in respect of or relating to the Service Provider by Monitor, the Secretary of State for Health or a Trust Special Administrator pursuant to the provisions of the National Health Service Act 2006;
 |
| “Intellectual Property Rights” | means any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action; |
| “KPIs” | means the key performance indicators set out at Schedule C (Specification);  |
| “Law” | means any applicable statute or any delegated or subordinate legislation, any  duly applicable guidance, code of practice, direction, judgment or determination with which the Council and/or the Service Provider is bound to comply including the Council’s rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time; |
| “Measurement Period” | means the period over which the relevant KPI is measured, as set out at Schedule C (Specification); |
| “Mediator” | as defined in clause 33.2.1; |
| “Month” | means a calendar month; |
| “Necessary Consents” | means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents required by Law or necessary from time to time for the performance of the Services including without limitation all planning permissions and waste management licences and fees payable to the Information Commissioner’s Office, if applicable;  |
| “New Service Provider” | means any person contracted to provide service(s) to the Council that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Contract; |
| “Persistent Default” | means:1. Defaults (of the same nature) occurring three (3) or more times within a rolling three (3) Month period;
2. A single Default continuing for a period of three (3) Months or more; or
3. a series of seven (7) Defaults of any nature over a rolling twelve 12 month period,

provided that the Council has issued at least three (3) Default Notices or three (3) Remediation Notices to the Service Provider in respect of the relevant Defaults; |
| “Personal Data” | has the same meaning as is set out in the Data Protection Legislation; |
| “Prohibited Act” | means:1. directly or indirectly offering, promising or giving any person working for or engaged by the Council a financial or other advantage to:

induce that person to perform improperly a relevant function or activity; orreward that person for improper performance of a relevant function or activity;1. directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
2. committing any offence:-
3. under the Bribery Act;
4. under the Modern Slavery Act;
5. under legislation creating offences concerning fraudulent acts;
6. at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
7. defrauding, attempting to defraud or conspiring to defraud the Council; or
8. committing an offence under sub-section (2) of section 117 of the Local Government Act 1972;
 |
| “Quality Standard” | means an appropriate and current British Standards Specification or British Standard Code of Practice issued by the British Standard Institution or any similar European Union standard applying to goods or services relating to the Services or equivalent together with any additional standards set out in the Specification; |
| “Quarter” | means a consecutive period of three Months commencing on 1 April, 1 July, 1 October or 1 January and “Quarterly” shall be interpreted accordingly; |
| “Regulatory Body” | means government Departments and agencies, the European Union Commission or any other regulatory Council or body (other than the Council) including any health and safety enforcement agency, with power to regulate the Services and their respective successors and substitutes; |
| “Remediation Notice” | means as defined at clause 12.3; |
| “Representative” | means any employee, officer, worker, agent or service provider engaged by a party in connection with the Services including any Sub-Contractor; |
| “Required Insurances” | means as defined at clause 21.1; |
| “Safe Working Arrangements” | has the meaning given in clause 16.4; |
| “Services” | means the services to be provided by the Service Provider under this Contract as more particularly described in the Specification and any Variation thereto made in accordance with this Contract; |
| “Service Provider Premises” | means as defined at clause 19.1; |
| “Service Provider's Assets” | means as defined at clause 17.1; |
| “Service Provider’s Manager” | means [INSERT NAME AND CONTACT DETAILS] as the same may be replaced from time to time and notified to the Council; |
| “Service Provider’s Tender” | means the Service Provider’s tender for the Services submitted to the Council and as contained in Schedule D (the Service Provider’s Tender); |
| “Software” | means the online software applications provided by the Supplier as part of the Services; |
| “Specification” | means the specification at Schedule C detailing the Services; |
| “Staff” | means all persons employed by the Service Provider to perform its obligations under this Contract together with the Service Provider's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Contract; |
| “Sub-Contract” | means any sub-contract entered into by the Service Provider or by any Sub-Contractor for the purpose of the performance of any obligation on the part of the Service Provider under this Contract; |
| “Sub-Contractor” | means the contractors or service providers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Council; |
| “Support Services Policy” | means the Service Provider’s policy for providing support in relation to the Services as made available at such website address as may be notified to the Council and Authorised Users from time to time; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| “Variation” | means a variation of the Service or the Contract permitted under Regulation 72 of the Public Contracts Regulations and entered into in accordance with this Contract; |
| “VAT”  | means value added tax or any similar or substituted tax; |
| “Virus” | any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and |
| “Working Days” | means Monday to Friday [(09:00 – 17:00)] inclusive of each week excluding Christmas Day, Good Friday and Bank Holidays in England.  |

SCHEDULE B – PAYMENT SCHEDULE

**Part 1 – Payment DETAILS**

* 1. The annual Contract Price shall be **£[xxxx]** as calculated in Part 4 (Commercial Model) to this Schedule B (Payment Schedule);
	2. The Service Provider may monthly submit an invoice to the Council for 1/12th of the annual Contract Price, monthly in arrears.

**PART 2 – INVOICING**

* 1. The invoice referred to in Part 1 of this Schedule B shall be rendered on the Service Provider's own invoice form and shall show:
		1. an invoice date and invoice number;
		2. the period to which the invoice relates;
		3. the aspects of the Services for which payment is claimed;
		4. any VAT payable, with a breakdown showing the net figure, the VAT amount and the gross figure;
		5. a VAT registration number if VAT registered;
		6. a valid purchase order number as issued by the Council;
		7. the Service Provider’s vendor/supplier number as set out in the purchase order issued by the Council;
		8. the Service Provider’s full business name and address; and
		9. the name and address of the Council.
	2. All payments will be made in accordance with the Council’s invoicing policy[[1]](#footnote-2). Invoices shall be submitted to the Council’s Contract Manager.
	3. Where the Service Provider is submitting electronic invoices (submitted to the Council via email) for payment it shall ensure:
		1. the email contains the word 'Invoice' in the subject field;
		2. each invoice is sent as an attachment, and not within the body of the email;
		3. each attachment to the email only contains one invoice; and
		4. all invoice attachments are in PDF or TIFF format.

**PART 3 – GENERAL PAYMENT PROVISIONS**

1. 1. The Council shall notify the Service Provider in writing within thirty (30) Working Days of the date of the relevant invoice if it disputes any of the charges payable under an invoice submitted pursuant to Part 2 of this Schedule B. Such disputes shall be resolved in accordance with the provisions of section 9 (Dispute Resolution) of this Contract.
	2. 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 referred to section 9 (Dispute Resolution) of this Contract.

* 1. Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after:
1. * 1. resolution of the dispute between the Parties; or
		2. receipt of the decision of the Mediator in accordance with section 9 (Dispute Resolution) of this Contract.
	1. Either party shall pay interest on any overdue undisputed sum properly invoiced under this Contract at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.}
	2. Whenever any sum of money shall be recoverable from or payable by the Service Provider to the Council under this Contract, the same may be deducted from any sum then due or which may become due to the Service Provider under this Contract or any other contract with the Council.
	3. The Council shall pay to the Service Provider such VAT that may be chargeable by the Service Provider in connection with the provision of the Services and the Service Provider shall issue a tax invoice in respect thereof.
	4. The Service Provider shall install and implement such apparatus and systems as the Authorised Officer may reasonably require from time to time to ensure that the Council is charged for and pays only such amounts as it is obliged to under this Contract.

**PART 4 – COMMERCIAL MODEL**

[Insert Service Provider’s tender response to Commercial Model]

SCHEDULE C – SPECIFICATION AND KPIS

*[To be inserted on Award]*

SCHEDULE D – SERVICE PROVIDER QUOTE / TENDER / PROPOSAL AND CLARIFICATIONS

**PART 1 – SERVICE PROVIDER QUOTE/TENDER/PROPOSAL**

*[To be inserted on Award]*

**PART 2 – CLARIFICATIONS**

*[To be inserted on Award]*

SCHEDULE E – STAFF TRANSFER

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this Contract:

|  |  |
| --- | --- |
| “Acquired Rights Directive”  | means Directive 77/187/EEC as amended and updated. |
| “Employee Liability Information” | means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:(a) the identity and age of the employee; (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years; (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor; and (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE. |
| “Employment Liabilities” | means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses; |
| “Relevant Employees” | means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a New Service Provider by virtue of the application of TUPE; |
| “Relevant Transfer” | means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of this Contract; |
| “Replacement Services” | means any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any New Service Provider;  |
| “New Service Provider” | means any third party supplier of Replacement Services appointed by the Council from time to time; |
| “Service Provider’s Final Staff List” | means the list of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date; |
| “Service Provider’s Provisional Staff List” | means the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Council; |
| “Service Transfer Date” | means the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-contractor to the Council or any New Service Provider; |
| “Staffing Information” | means in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services; |
| “Subsequent Transfer” |  means, following the commencement of this Contract, circumstances whereby the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part from the Service Provider to the Council or New Service Provider; |
| “TUPE” | means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.  |

1.2 All other words, terms and expressions used in this Schedule E (Staff Transfer and Pensions) shall have the meanings given to them in Schedule A (Definitions) of this Contract.

**2. EMPLOYMENT EXIT PROVISIONS**

2.1 Where a Subsequent Transfer constitutes a Relevant Transfer then the Council or New Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

2.2 The Service Provider shall and shall procure that any Sub-Contractor shall:

2.2.1 on request from the Council on a date not more than six (6) months immediately preceding the expiry of this Contract and/or any review date; and/or

2.2.2 on receiving notice of termination of this Contract (on whatever grounds and in whatever circumstances) or otherwise; and/or

2.2.3 at such times as required by TUPE,

provide promptly (and in any event within fourteen (14) days of request) and at no cost to the Council, in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Service Provider shall notify the Council, within fourteen (14) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Council.

2.3 At least twenty eight (28) days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the New Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.

2.4 The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective New Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

2.5 The Service Provider warrants to the Council and any New Service Provider that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List, the Employee Liability Information and the Staffing Information (the **“TUPE Information”**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.

2.6 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

2.7 The Council regards compliance with this paragraph 2 as fundamental to this Contract. In particular, failure to comply with paragraphs 2.2 and 2.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Contract Price until such information is provided. The maximum sum that may be retained under this paragraph 2.7 shall not exceed to an amount equivalent to the Contract Price that would be payable in the three (3) month period following the Service Provider’s failure to comply with paragraphs 2.2 or 2.3, as the case may be.

2.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6 months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Council’s prior written consent, unless such changes are required by law. The Service Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

2.9 In the six (6) months prior to expiry or termination of this Contract or from the date of service of a termination notice of this Contract, the Service Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the services any supervisory or managerial personnel without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

2.10 The Service Provider shall indemnify and keep indemnified in full the Council and each and every New Service Provider against all Employment Liabilities arising from or connected with:

1. any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or
2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider and/or any Sub-Contractor),
3. any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
4. any failure by the Service Provider or any Sub-Contractor to supply or delay in supplying the Staffing Information, the Service Provider’s Provisional Staff List, the Service Provider’s Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;
5. any failure on the part of the Service Provider or any Sub-Contractor to provide the Relevant Employees with any benefit of any nature including Appropriate Pension Provision or failure to make all due payments to the Relevant Employees or Pension Fund;
6. any failure or omission of any legal or statutory obligation on the Service Provider;
7. any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of this Contract; and
8. any other obligations of or arising under this Contract,

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

2.11 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

2.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 2.2 to 2.11, to the extent necessary to ensure that any New Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the New Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

2.13 Despite paragraph 2.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

schedule f - DATA PROCESSING ACTIVITIES

|  |  |  |
| --- | --- | --- |
| **Categories of Data** | Please tick all relevant boxes and add more detail if required: |  |
|  | **Personal Data** |   |
|  | Name  | ☐ |
|  | identification number | ☐ |
|  | location data | ☐ |
|  | online identifier (email/IP address) | ☐ |
|  | Other (please insert details): |  |
|  |  |  |
|  |  |  |
|  | **Special Categories of Personal Data** |  |
|  | race | ☐ |
|  | ethnic origin | ☐ |
|  | political opinions | ☐ |
|  | religion | ☐ |
|  | trade union membership | ☐ |
|  | genetics | ☐ |
|  | biometrics (where used for ID purposes) | ☐ |
|  | health | ☐ |
|  | sex life | ☐ |
|  | sexual orientation | ☐ |
|  | **Criminal Offence Data** |  |
|  | allegations | ☐ |
|  | proceedings  | ☐ |
|  | convictions  | ☐ |
|  |  |  |
| **Categories of Data Subjects** | Please tick all relevant boxes: |  |
|  | Council service users/customers | ☐ |
|  | Council service user/customer next of kin | ☐ |
|  | Council employees | ☐ |
|  | Council employees next of kin | ☐ |
|  | Other (please insert details): |  |
|  |   |
|  |   |
|  |  |  |
| **Processing Operations** | Please tick all relevant boxes: |  |
|  | Using data provided by the Council(s) | ☐ |
|  | Collecting new data from Data Subjects | ☐ |

|  |  |  |
| --- | --- | --- |
|  | Transforming data by adding new data collected from service users/customers to data provided by the Council | ☐ |
|  | Sharing data with anyone other than the Council | ☐ |
|  | Erasure or destruction of personal data | ☐ |
|  | Other (please insert details): |  |
|  |   |
|  |   |
|  |  |  |
| **Location of Processing Operations** | Please tick one box only: |  |
|  | UK | ☐ |
|  | EEA[[2]](#footnote-3) (European Economic Area) | ☐ |
|  | Outside EEA (European Economic Area) | ☐ |
|  | If outside the EEA please provide details: |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Identity of sub-contractors** | *Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to process this data without prior written Council approval.* |
|  |  |  |
| **Purposes** | For the purpose of performing the Contract. *If you're using the data for a reason other than the purpose of delivering the contract, please amend this section accordingly and provide details here.* |
| **Duration** | Until the expiry or termination date of the Contract.*If the length of time for which data processing activities will be carried out will go beyond the expiry date of the Contract, please amend this section accordingly and detail how long these activities will go on for.* |

1. <https://www.westsussex.gov.uk/business-and-consumers/supplying-wscc-with-goods-or-services/invoicing-for-goods-and-services/> [↑](#footnote-ref-2)
2. Details of countries in the EEA are available at the following website: [www.gov.uk/eu-eea](http://www.gov.uk/eu-eea) [↑](#footnote-ref-3)