Dated 20[ ]

Essex County Council

and

[Contractor]

Goods and/or Services – MAJOR CONTRACT

Agreement Date:

Expiry Date:

memorandum of salient features

This Memorandum is for the convenience of users of the Contract and is NON-CONTRACTUAL.

If there is any discrepancy between this Memorandum and the remainder of the Contract, the remainder of the Contract will override this Memorandum.

Contact Points:

Notice of renewal or termination to be given by:

Re-procurement to be initiated on:

ECC contact points:

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Between:

1. **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex, CH1 1QU (the “**Authority**”); and
2. [ NAME OF CONTRACTOR ][[1]](#footnote-2) whose [registered office][[2]](#footnote-3) [principal place of business] is at [ ] [and whose registered company number is [ ]][[3]](#footnote-4) (the “**Contractor**”).

Recitals

1. The Authority is a local authority as defined by section 270 of the Local Government Act 1972 and is entering into this Contract in relation to the performance of its functions in relation to the provision of [ ][[4]](#footnote-5) good and/or services and pursuant to its duty under section 3 of the Local Government Act 1999 to secure continuous improvement in the way in which its functions are exercised, having a regard to a combination of economy, efficiency and effectiveness and pursuant to section 1(1) of the Local Government (Contracts) Act 1997 and all other relevant statutory powers of the Authority.
2. On [ ][[5]](#footnote-6) the Authority advertised in the Official Journal of the European Union (reference [insert OJEU number]), inviting the Contractor to submit a proposal for the [insert description of good and/or services] in accordance with its Constitution in connection with the Authority’s requirements for the provision of the Goods and/or Services.
3. On the basis of the Contractor’s response to the advertisement and a subsequent tender process, the Authority has selected the Contractor to provide the Goods and/or Services as its preferred contractor and the Contractor undertakes to provide the Goods and/or Services on the terms set out below.

**IT IS AGREED** as follows:

# DEFINITIONS AND INTERPRETATION

## In this Contract, unless otherwise provided or the context otherwise requires, capitalised terms and expressions used in this Contract shall have the meanings set out below (Definitions) or the relevant Schedule in which that capitalised term and expression appears:

"1998 Act"

means the Data Protection Act 1998;

“1999 Act”

means the Local Government Act 1999;

“Acquired Rights Directive”

means Council Directive of 12 March 2001 (2001/13/EC) or successor provisions;

“Admission Agreement”

as required by Regulation 6 of the LGPS Regulations;

“Administering Authority”

means the Administering Authority of the Essex County Council Pension Fund;

“Agreement”

means this agreement which forms the contract between the Authority and the Contractor;

“Agreement Term”

means the period from and including the Commencement Date to the Expiry Date or, if earlier, the Termination Date;

“Affected Party”

means the Party seeking to claim relief in respect of a Force Majeure Event;

“Authority Accommodation”

means [ [[6]](#footnote-7) ] from which the Services are to be provided;

“Authority Assets”

means all of the assets to be transferred from the Authority to the Contractor in accordance with clause 8 (Assets) to be used in the provision of the Services as set out in Schedule 2 (Assets);

“Authority Data”

means all data and information relating to the Authority and its activities in whatever form that information may exist (including any data and information collected, received, created, stored, processed, produced, gathered or supplied by the Contractor in the course of providing the Services) including Personal Data;

“Authority Default”

means a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) months;

“Authority Existing Employee”

means in relation to any service equivalent to any of the Services all those employees of the Authority who are assigned to the provision of that service as at the Transfer Date;

“Authority Property”

means any property belonging to the Authority or for which it is responsible excluding the Authority Accommodation;

“Authority’s Authorised Representative”

means the person appointed and authorised by the Authority in accordance with clause 7 (Authorised Representatives) to represent the Authority for the purposes of this Contract;

“Best Value Performance Plan”

means the best value performance plan which the Authority is required to prepare in accordance with its duty to ensure best value in the way in which its functions are exercised having regard to economy, efficiency and effectiveness as defined in section 6 of the 1999 Act;

“Bribery Act 2010”

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

“Business Continuity Plan”

means any plan prepared as directed in clause 25, as may be amended from time to time to the Authority’s continuing and ongoing compliance with the Civil Contingencies Act 2004;

“CEDR”

means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street London, EC4 1EU;

“Change Control Procedure”

means the change control procedure set out in Schedule 5 (Change Control Procedure);

“Code”

means the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 in substitution for the Code of Practice on Workforce Matters in Local Authority Service Contracts previously issued as ODPM Circular 3/03 Annex D;

“Code Obligations”

means the express obligations of the Contractor and any Sub-Contractor in Part 2 of Schedule 7 (Employees), which derive from the Code;

“Commencement Date”

means the date of this Agreement;

“Commercially Sensitive Information”

means the subset of Confidential Information listed in column 1 of Part 1 the Schedule 11 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 11 (Commercially Sensitive Information);

“Compensation Regulations”

means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended from time to time);

“Confidential Information”

means:

1. Information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data within the meaning of the 1998 Act; and
2. Commercially Sensitive Information;

“Contract”

means the terms and conditions below together with the Schedules and Appendices listed in the table of contents.

“Contract Term”

means the period from and including the Commencement Date to the Expiry Date or, if earlier, the Termination Date;

“Contractor Assets”

means all of the assets to be used by the Contractor in the provision of the Services except for the Authority Assets;

“Contractor Default”

means one of the following events:

1. in relation to the Contractor and/or the Parent Company:
   * 1. it is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended), but disregarding the references therein to proving it to the court’s satisfaction;
     2. it or its directors resolve to appoint an administrator of it or to apply to court for an administration order in respect of it or an application for an administration order in respect of it is made or any steps pursuant to schedule B1 of the Insolvency Act 1986 (as amended) and/or the Insolvency Rules 1986 (as amended) are taken to appoint an administrator to it or it enters administration;
     3. it or its directors request or it suffers the appointment of a Law of Property Act 1925, court appointed or other receiver or receiver manager, or similar officer over or in relation to the whole of its undertaking, property, revenue or assets or any part thereof, or any person holding security over all or any of its undertaking, property, revenue or assets takes possession of them or any part of them;
     4. it or its directors resolve to wind it up whether as a voluntary liquidation or a compulsory liquidation, or they take any steps under the Insolvency Act 1986 (as amended) and/or the Insolvency Rules 1986 (as amended) to wind it up voluntarily or to apply to the court for a winding-up order or a winding-up petition is presented against it or a provisional liquidator is appointed to it or it goes into liquidation within the meaning of that term under section 247 of the Insolvency Act 1986 (as amended);
     5. it or its directors resolve to enter into, or it enters into, or it or its directors commence negotiations, or make any requisite application to court in respect of, or if they convene meetings for the approval of, any composition, compromise, moratorium (to include a moratorium statutorily obtained, whether or not as a precursor to a voluntary arrangement under the Insolvency Act 1986 (as amended)), scheme or arrangement with its creditors or any of them, whether or not under the Insolvency Act 1986 (as amended), the Companies Acts 1985 to 2006 (as amended) or otherwise;
     6. it is dissolved, or is removed from the Register of Companies, or ceases to exist (whether or not capable of reinstatement or reconstitution) or its directors apply for it to be struck-off the Register of Companies;
     7. it is or becomes subject to, or takes or has taken against it or in relation to it, or any or all of its undertaking, property, revenue or assets, any equivalent, analogous, corresponding or similar finding, step, process or proceeding to those in this sub clause (a) in any jurisdiction, whether or not any finding, step, process or proceeding has been taken against or in relation to it, or any or all of its undertaking, property, revenue or assets in England and Wales;
2. a breach by the Contractor on any of its obligations under this Contract which materially and adversely effects the performance of the Services;
3. a breach by the Contractor of its obligation to take out and maintain the Required Insurances;
4. Not used
5. the existence of a conflict of interest on the part of the Contractor which, in the reasonable opinion of the Authority, the Contractor is unable or unwilling to resolve effectively;
6. a breach of the Contractor of its obligations in clause 36 (Assignment and Sub-Contracting;
7. where a consent, licence or approval which is material to the provision of the Services is or will no longer be available to the Contractor or Sub-Contractor;
8. breach by the Contractor of third-party intellectual property rights where the Authority reasonably expects that the consequences of such breach will substantially impede the due performance of this Contract.

“Contractor’s Authorised Representative”

means the person appointed and authorised by the Contractor in accordance with clause 7 (Authorised Representatives) to represent the Contractor for the purposes of this Contract;

“Contractor Party”

means the Contractor, its agents and employees and any Sub-Contractor and its agents and employees;

“Contractor Scheme”

means a Retirement Benefits Scheme which is established or made available to the Transferring Employees which is designed to be broadly comparable to the LGPS as applicable immediately prior to the Transfer Date;

“Contractor Scheme Actuary”

means the Actuary nominated by the Contractor from time to time for the purposes of Part 3 (Pensions) of Schedule 7 (Employees);

“Contract Year”

means the period commencing on the Commencement Date (or any anniversary of the Commencement Date) and ending twelve (12) months later;

“Convictions”

means other than in relation to minor road offences, any previous or pending prosecutions, convictions, cautions or binding over (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order) which are required to be disclosed under the Police Act 1997, and any other legislation which requires spent convictions to be disclosed;

“Day(s)”

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

“Defect(s)”

means a defect, breakdown, malfunction or failure in any goods, equipment, consumables, products or other items which may be delivered as part of or as a result of the Services under the Contract (and any failure shall include failure to comply with the performance requirements in the Contract);

“Direction”

means the Best Value Authorities Staff Transfers (Pensions) Direction 2007 made by the Secretary of State under section 101 of the Local Government Act 2003;

"Dispute"

has the meaning given to it in clause 21 (Dispute Resolution Procedure);

“Dispute Resolution Procedure”

means the procedure to deal with disputes as set out at clause 21 (Dispute Resolution Procedure);

“Employee Liability Information”

means the information listed in regulation 11(2) of TUPE;

“Environmental Information Regulations”

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

“Equality Act”

means the Equality Act 2010;

“Expiry Date”

means [ ] or such other date proposed by the Authority in accordance with clause 22.2;[[7]](#footnote-8)

“FOIA”

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Force Majeure Event”

means any cause materially affecting the performance by a Party of its obligations under this Contract arising from any act, event, omission, happening or non-happening beyond its reasonable control including, without limitation, acts of God, strikes, lock-outs or other industrial disputes, war, riot, fire, flood, or any disaster affecting either one of the Parties;

“Force Majeure Notice”

means a written notice served by the Affected Party on the other party stating that the Affected Party believes that there is a Force Majeure event;

“Future Contractor”

means any subsequent contractor who succeeds the Contractor as a provider of the Goods and/or Services and, in each case, their sub-contractors;

“Good Industry Practice”

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor in the delivery of the Services seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

“Guarantor”

means [a person or entity that agrees to be responsible for another's debt or performance under a contract, if the other fails to pay or perform ];

“Intellectual Property Rights”

means any and all patents, trademarks, service marks, copyright, data base rights, moral rights, rights in a design, know-how, confidential information, and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

“Information”

has the meaning given under section 84 of the Freedom of Information Act 2000.

“Insolvency Event of Default”

means any of the events listed in limb (a) of the definition of Contractor Default;

“Legislation”

means any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable community right within the meaning of section 2(1) of the European Communities Act 1972, bye-law, any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, or any applicable directives, codes or requirements of any regulatory body with which the Contractor is bound to comply;

“LGPS”

means the Local Government Pension Scheme (Benefits, Members and Contributions) Regulations 2007 and the Local Government Pension Scheme (Administration) Regulations 2008 in each case as amended from time to time (and separately referred to as the 2007 Regulations and the 2008 Regulations);

“LGPS Regulations”

means the Local Government Pension Scheme Regulations 1997 as amended from time to time;

“Liabilities”

means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses);

“Licence”

means the licence(s) of the Authority Accommodation to be granted by the Authority to the Contractor in accordance with clause 9 (Authority Accommodation) in the form set out at Schedule 3 (Form of Licence);

“Loss”

means all losses, liabilities, damages, costs, claims, actions, proceedings, compensation, demands, fines, awards, expenses (including reasonable legal fees and disbursements), penalties and interest;

“Material Breach”

means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of the Contract, In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding;

“Mediator”

means the independent third party appointed in accordance with clause 21 to mediate a Dispute;

“New Employees”

means the new employees to be employed by the Contractor or any sub-contractor to provide the Services and who will be working alongside the Transferring Employees;

“Party”

means a party to this Contract and “Parties” shall be construed accordingly;

“Performance Standards”

means the key performance indicators which are required by the Authority as further detailed in Schedule 1 (Output Specification);

"Personal Data"

means personal data as defined in the 1998 Act which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

“Prohibited Act”

means:

1. offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other agreement with the Authority; or

(ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other agreement with the Authority;

1. entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
2. committing any offence:

(i) under the Bribery Act 2010;

(ii) under Legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Contract or any other agreement with the Authority; or

(iv) defrauding or attempting to defraud or conspiring to defraud the Authority;

“Quality Standards”

means the quality standards published by the BSI British Standards, the National Standard Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1 (Output Specification);

“Relevant Employees”

means the employees who are subject to a Relevant Transfer or undergo a change in employer in accordance with paragraph 1.2 of Part 2 (TUPE) of Schedule 7 (Employees);

“Relevant Transfer”

means a relevant transfer for the purposes of TUPE;

**“Requests for Information”**

has the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

“Required Insurances”

means the insurances listed in Schedule 6 (Required Insurances);

“Required Outputs”

has the meaning given to it in Schedule 1 (Goods and/or Services Specification);

**“Further-transferring Employees”**

means the employees assigned to the Services immediately before the Termination Date and who on the Termination Date become employed by a Future Contractor pursuant to TUPE or an offer of employment made in accordance with the Code;

**“Goods and/or Services”**

means the whole or any part of the services set out in Schedule 1 (Goods/and or Specification) to be provided by the Contractor to the Authority under this Contract;

“Services Commencement Date”

means [ ][[8]](#footnote-9)

“Services Payment”

means the payment by the Authority to the Contractor for the provision of the Services under clause 10 (Calculation of the Services Payment) which shall be calculated in accordance with the provisions of Schedule 4 ([Payment Mechanism] [Payment Schedule]);

“Staff”

means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;

“Sub-Contractor”

means a person to whom the Contractor directly or indirectly sub-contracts any of its obligations under this Contract;

“Termination Date”

means the date of termination or expiry of this Service Contract or the date on which the Contractor ceases to provide the services or any of them to the Authority and these services begin to be provided to the Authority by a Future Contractor;

“VAT”

means Value Added Tax.

## References to Legislation, standards, guidance and policies shall be deemed to be references to such items as developed, updated, amended, and/or re-enacted and to any successor to or replacement for the same from time to time.

## Save where it is stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document.

## In this Agreement, unless the context otherwise requires:

## (a) the singular includes the plural and vice versa;

## (b) reference to a gender includes the other gender and the neuter;

## (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or government body;

## (d) a reference to any Legislation includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

## (e) the words “**including**”, “**other**”, “**in** **particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “**without** **limitation**”;

## (f) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

## (g) references to this Agreement are references to this Agreement as amended from time to time.

## Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

## References to clauses, paragraphs, Parts, Appendix, Schedules and Annexures are, unless otherwise provided, references to the clauses, paragraphs, Parts, Appendix, Schedules and Annexures to this Contract.

## In the case of conflict, the following descending order of precedence shall apply (but subject to Clause 1.7 below):

## The terms and conditions below

## The Schedules

## Appendix 1

## Appendix 2

## Schedule 17 (service specific provision) shall be of effect and shall remove or modify the terms and conditions as expressly set out therein.

## The Schedules and Appendices form part of this Agreement.

## Except as otherwise expressly provided in this Agreement , all remedies available to the Contractor or to the Authority under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

## Each obligation on the Contractor in this Agreement includes an obligation on the Contractor to procure and enforce an equivalent obligation on its staff (temporary and permanent), contractors and suppliers.

# COMMENCEMENT AND DURATION

## This Agreement and the rights and obligations of the Parties under this Agreement shall take effect on the Commencement Date.

## The Services shall commence on the Services Commencement Date and shall continue for the Agreement Term.

# not used

# THE SERVICES

## The Contractor shall provide the Services during the Agreement Term to the Authority in accordance with:

### the Authority’s requirements and the Performance Standards as set out in Schedule 1 (Goods and/or Service Specification);

### not used

### not used

### all applicable Legislation;

### the Authority’s policies and procedures as set out in Part 3 (Policies and Procedures) of Schedule 1(Goods and/or Services Specification) as the same may be updated by the Authority from time to time and as notified by the Authority to the Contractor; and

### Good Industry Practice;

## The Contractor shall deliver the Services using efficient business processes and ways of working having regard to the Authority’s obligations to ensure value for money.

## In the event that the Contractor becomes aware of any inconsistency between the requirements of clauses 4.1.1 to 4.1.4, the Contractor shall immediately notify the Authority’s Authorised Representative in writing of such inconsistency and the Authority’s Authorised Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.

## The Contractor is not given any sole or exclusive rights in relation to the provision of any of the Services.

# QUALITY MANAGEMENT

## The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Agreement , the Contractor shall agree the relevant standard of the Goods and/or Services with the Authority prior to the supply of the Goods and/or Services and in any event, the Contractor shall perform its obligations under this Agreement in accordance with the Legislation and Good Industry Practice.

## The Contractor shall ensure that all Staff supplying the Services shall do so with due skill, care and diligence and shall possess such qualifications, skill and experience as are necessary for the proper supply of the Services.

# ENVIRONMENTAL MANAGEMENT

## The Contractor shall institute and maintain in relation to its performance of the Services a system, to be agreed with the Authority, intended to improve the effect on the environment of the Services and/or their delivery.

## The Contractor shall achieve conformity with Schedule 16 (environmental) or such standards as the Authority acting reasonably shall determine as acceptable in substitution therefor.

# AUTHORISED REPRESENTATIVES

## The Authority’s Authorised Representative

### The Authority’s Authorised Representative shall be [insert name][[9]](#footnote-10) or such other person appointed pursuant to this clause 7 (Authorised Representative).

### The Authority’s Representative shall liaise with and give instructions to the Contractor and its officers, employees, agents or Sub-Contractors in relation to all matters concerning the performance by the Contractor of its obligations under this Agreement and to determine any matters or issue any notices as may be the function of the Authority’s Authorised Representative under this Agreement .

### To the extent it is reasonably possible the Authority shall not change the identity of the Authority’s Authorised Representative without first discussing the matter with the Contractor.

## The Contractor’s Authorised Representative

### The Contractor's Authorised Representative shall be [insert name ][[10]](#footnote-11) or such other person appointed to this clause 7 (Authorised Representative).

### The Contractor’s Authorised Representative shall have the power on behalf of the Contractor in connection with any matter relating to the performance of the Services and exercise the rights, functions and obligations of the Contractor under this Agreement.

### To the extent it is reasonably possible the Contractor shall not change the identity of the Contractor’s Authorised Representative without first discussing the matter with the Authority and having reasonable regard to the views of the Authority in relation to any proposed replacement.

### 7.3 Either party may appoint different Authorised Representatives for different aspects of this Agreement and each Authorised Representative may appoint in writing one or more nominees to exercise all or a specified part of the Authorised Representative’s powers.

# ASSETS

## Subject to the Authority complying with its obligations under this Agreement , the Contractor confirms that it has all the Contractor Assets necessary to implement and provide the Services in accordance with this Agreement.

## The Contractor shall be solely responsible for the cost of carriage of Contractor Assets to the Authority’s Accommodation, including off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Contractor shall be responsible for the removal and safe disposal of all relevant Contractor Assets from the Authority’s Accommodation, including the cost of packing, carriage and making good the Authority Accommodation following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

## The Contractor shall maintain, upgrade and refresh the Contractor Assets as appropriate for the continued provision of the Services in accordance with the terms and conditions of this Agreement, good industry practice and any manufacturer’s recommendations.

## All the Contractor’s property, including Contractor Assets, shall remain at the sole risk and responsibility of the Contractor, except that the Authority shall be liable for loss of or damage to any of the Contractor’s property located on Authority Accommodation which is due to the negligent act or omission of the Authority.

## Subject to any express provision of the Business Continuity Plan to the contrary, the loss or destruction for any reason of any Contractor Assets shall not relieve the Contractor of its obligation to supply the Services in accordance with this Agreement, as set out in Schedule 1 (Goods and/or Services Specification).

## Where any Authority Assets are made available by the Authority to the Contractor:

### the Authority grants the Contractor (and any Sub-Contractor) the right to access and use such Authority Assets solely to the extent for providing the Services;

### such right of access and use shall terminate automatically on the Expiry Date, or if earlier, the Termination Date (save to the extent only that the Contractor requires such rights of use to continue in order to perform its continuing obligations under this Agreement);

### the Contractor shall be responsible for the safe return of the Authority’s Assets to the Authority;

### at all times:

#### the Contractor shall ensure that the Authority Assets are used in a skilful and proper manner (and in accordance with any operating instructions issued for such Authority Assets) by properly skilled and trained persons;

#### the Contractor shall, unless otherwise agreed with the Authority, keep the Authority Assets in good repair condition and working order, serviced, cleaned and maintained;

#### whilst such Authority Assets are in the Contractor’s possession, custody or control:

##### such Authority Assets shall be at the Contractor’s sole risk and the Contractor shall procure that they are kept safe and secure in accordance with the provisions of this Agreement ; and

##### the Contractor shall ensure that the Authority Assets are only located or stored (temporarily or otherwise) in premises owned or controlled by the Authority or in premises owned or controlled exclusively either by the Contractor or by such Sub-Contractor as the Authority may agree for the purposes of this clause, (and details of any such premises shall be notified to the Authority prior to such location or storage of the Authority Assets);

### the Authority may have access to:

#### all or any of the Authority Assets for the purpose of viewing, inspecting or testing any of the Authority Assets; and

#### any Authority Data stored or recorded in any such Authority Assets.

## The Contractor shall compile and maintain a complete, accurate and up to date register of the Authority Assets and the Contractor Assets, which shall include details as to their location and condition and shall make such register available to the Authority upon reasonable request.

## Not used

# AUTHORITY ACCOMMODATION

## Any land or Authority Accommodation made available from time to time to the Contractor by the Authority in connection with this Agreement shall be made available to the Contractor on a non-exclusive Licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligation under this Agreement. The Contractor shall have the use of such land or Authority Accommodation as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

## The Contractor shall limit access to the land or Authority Accommodation to such Staff as is necessary to enable it to perform its obligations under this Agreement t and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Authority Accommodation as the Authority may reasonably request.

## The Authority shall inform the Contractor of any rules and regulations as may be in force at any time for the use of such Authority Accommodation. The Contractor shall (and shall procure that any Sub-Contractor shall) observe and comply with such rules and regulations and the Contractor shall meet the costs of making good any damage at the Authority Accommodation caused by the Contractor or any Sub-Contractor (other than fair wear and tear). For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

## The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

## Should the Contractor require modifications to the Authority’s Accommodation, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor’s expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

# CALCULATION OF SERVICES PAYMENT

## In consideration of the provision of the Contractor carrying out its obligations under this Agreement including the provision of the Services, the Authority shall pay the Services Payment to the Contractor in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 4 Payment Schedule.

## The Contractor shall ensure that each claim contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule 4.

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

## The Services Payment are exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

## The Authority shall pay any VAT on the Services Payment at the rate and in the manner prescribed by law from time to time.

## At any time during the Agreement Term (including for the avoidance of doubt, at any time before and/or after payment by the Authority to the Contractor) the Authority shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Authority to enable the Authority to validate any claim for payment made by the Contractor.

## The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this clause 10.7 shall be paid in cleared funds by the Contractor to the Authority not less than five (5) Days before the date upon which the tax or other liability is payable by the Authority.

# SERVICES PAYMENT TERMS

## The Authority shall pay the Services Payment to the Contractor within thirty (30) Days of receipt of a valid and correct invoice in accordance with the provisions of Schedule 4 Payment Schedule. In the absence of express provision in this Agreement, the Contractor may not present any invoice before delivery of the service to which it refers.

## Where the Contractor requires the payment of the Services Payment by the Authority by electronic transfer it shall complete an Electronic Purchase to Payment Form as used from time to time by the Authority and return this to the Authority’s Authorised Representative.

## If any invoice (or part thereof) referred to in clause 11.1 is disputed, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

## In the event that the Contractor enters into a sub-contract in connection with this Agreement, the Contractor shall ensure that a term is included in the sub-contract that requires the Contractor to pay all sums due under the sub-contract to the Sub-Contractor within a specified period, not exceeding thirty (30) Days, from the date of receipt of a valid invoice as defined by the terms of the sub-contract.

## Each party shall have (without prejudice to any other rights it may have) the right to set off against its liabilities to the other any liability to it of that other. If a liability is unascertainable, the party may set-off in an amount estimated by it in good faith to be the amount of that liability.

## 11.6 Where the Authority pays the Contractor in advance, any amount of funding which is over and above the activity completed by the Termination Date shall be returned to the Authority.  The Authority shall be entitled to seek repayment of such sums as a debt in the event that they are not repaid upon expiry.

# PERFORMANCE STANDARDS AND REMEDIES

## If at any time the Contractor fails to provide the Services in accordance with the Performance Standards,

### the Contractor shall:

#### accept an adjustment to the Services Payment in the manner specified in Schedule 4 (Payment Schedule);

#### arrange such additional resources as are necessary to perform the Services in accordance with the Performance Standards as early as practicable thereafter and at no additional charge to the Authority; and

#### promptly remedy any failure to meet the Performance Standards or re-perform any non-conforming Services at no additional charge to the Authority,

### the Authority shall be entitled to obtain any remedy available to it for loss or damage incurred.

# REVIEW, MONITORING AND INFORMATION

## **Review**

### The parties shall meet regularly depending on the length of the contract to review progress of the Goods and/or Services to be provided against the programme of works and any other matters, with a view to ensuring any issues are resolved quickly and the project is delivered in accordance with the key dates and specification of requirements.

## **Monitoring**

### The Contractor shall keep and maintain such necessary data and information and shall complete or provide such assistance as the Authority may reasonably require by written notice to the Contractor to enable the Authority:

#### to complete all official returns, including, but without limitation the following:

##### returns to any central government body or properly authorised agency of central government;

##### information required by the any statutory body or compliance with any statute or statutory instrument; and

##### information required pursuant to clause 28 (Equal Opportunities and Human Rights),

#### to complete its management reports on the performance of the Services;

#### to comply with the Best Value Accounting Code of Practice issued by Chartered Institute of Public Finance and Accountancy,

provided in each case the nature of such data and information and the format for the same has been agreed by the Parties.

### The Contractor shall at all times during the Agreement Term allow the Authority’s Authorised Representative and/or any elected member of the Authority access on reasonable notice during normal working hours (save in the case of emergency where no notice shall be required) to the Authority Accommodation or any other premises used by the Contractor for the provision of the Services for the purpose of:

#### monitoring and inspecting work being performed in order to provide the Services;

#### inspecting any or all records and documents in the possession custody or control or held by the Contractor in connection with the provision of the Services;

#### interviewing Contractor employees, officers, agents and any Sub-Contractors in connection with the provision of the Services; and

#### inspecting equipment (including any Contractor Assets), systems and procedures used by the Contractor to provide the Services.

## **Information**

### The Contractor shall at all times maintain separate records of the following:

#### full particulars of the costs of performing the Services, including those related to finance, investment and maintenance;

#### a summary of any of the costs referred to in clause (a), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Agreement;

#### a full record of all incidents relating to health, safety and security which occur during the term of this Agreement ;

#### not used

#### a full record of all maintenance procedures carried out during the Agreement Term;

#### the know-how necessary for the provision of the Services; and

#### such other records as the Authority may reasonably require having regard to the cost to the Contractor of maintaining and providing such records,

### The records referred to in this clause 13 shall be retained for a period of at least six (6)years after the Contractor’s obligations under this Agreement have come to an end.

### All information referred to in this clause 13 is subject to the obligations set out in clause 34 (Confidentiality).

### After the Expiry Date, the Contractor shall comply with all reasonable requests by the Authority to provide information relating to this Agreement, (irrespective of the identity of any Future Contractor of the Services).

## **Audit**

### The Contractor shall at all reasonable times (including following termination for whatever reason of this Agreement ) permit and procure for the internal and external auditors of the Authority or engaged by HM Government or to or for the Authority’s Authorised Representative (or its nominee) full access at the cost of the Contractor:

### (a) to all such locations, staff, property, records, data and Information in the possession or control of the Contractor and its agents, sub-consultants and subcontractors as in any way relate to or are or have been used in connection with the performance of the Services including (but without limitation) Authority data and information stored on a computer system operated by the Contractor and to copy such documents and remove such copies as those auditors or nominees may properly require for the purpose of testing audit and investigation on behalf of the Authority or HM Government in respect of the delivery of the Services in accordance with this Agreement and/or the requirements of Legislation notwithstanding whether such purposes relate to periods prior to the Commencement Date or require access to Information which may relate to parties other than the Authority but the Contractor may not be required to act in breach of any obligation of confidentiality lawfully undertaken prior hereto toward any third party as a condition of the supply of the Information; and

### (b) to the Contractor’s auditors both through the Contractor and directly for the purposes of certifying all information relating to the financial systems used by the Contractor for the ascertainment of the sums payable by the Authority hereunder.

### The Contractor shall provide to the Authority’s internal and/or external auditors at County Hall Chelmsford within 2 Days of request such complete and up to date files and other documents as those auditors could have inspected by personal attendance under the provisions of this Agreement and those auditors may retain and copy the same for up to 7 Days and shall return the same by making them available for collection by the Contractor at County Hall aforesaid.

### The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

### The Contractor shall keep and maintain until six (6) years after the end of the Agreement Term, or as long a period as may be agreed between the Parties, full and accurate records of this Agreement including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authorised Representative such access to those records as may be requested by the Authority in connection with the Agreement.

# WARRANTIES AND REPRESENTATIONS

## The Contractor warrants and represents that:

### it has full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and to perform each of its obligations under this Agreement ;

### it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement;

### in entering into this Agreement it has not committed any Prohibited Act;

### there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

### the Contractor is not aware, as at the Commencement Date, of anything within the reasonable control of the Contractor or a Sub-Contractor which shall or might adversely affect the ability of the Contractor to fulfil its obligations under this Agreement.

## The Contractor shall be deemed to have:

### satisfied itself as to the Authority Assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement ; and

### gathered all information necessary to perform its obligations under this Agreement and other obligations assumed, including information as to the nature and location of the Authority Accommodation.

## The Contractor shall be deemed to have satisfied itself before submitting its tender as to the accuracy and sufficiency of the rates and prices stated by it in its tender which shall (except in so far as it is otherwise provided in this Agreement) cover all its obligations under this Agreement and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its tender.

## The Contractor shall be deemed to acknowledge that the Authority places great emphasis on confidentiality, integrity and availability of Information and consequently on the security of the Authority Accommodation and the confidentiality of the Authority Data.

## The Contractor shall be responsible for the security of the Authority Data and shall at all times provide a level of security which:

## (a) is in accordance with Good Industry Practice and Law;

## (b) complies with the Authority’s ICT Standards and the Authority’s Security Policy;

## (c) meets any specific threats identified from time to time by the Authority; and

## (d) complies with applicable ISO standards and in particular ISO/IEC27001 and ISO/IEC27002.

## For avoidance of any doubt and without limiting clause 14.5, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:

#### loss of integrity of Authority Data;

#### loss of confidentiality of Authority Data;

#### unauthorised access to, use of, or interference with Authority Data by any person or organisation;

#### unauthorised access to network elements and buildings;

#### use of the Services by any third party in order gain unauthorised access to any computer resource or Authority Data;

#### loss of availability of Authority Data due to any failure or compromise of the Services; and

#### loss of confidentiality, integrity and availability of Authority Data through cyber/internet threats.

## The Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any Information whether obtained from the Authority or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

# INDEMNITY

## The Contractor shall fully and promptly indemnify the Authority against any liability to any person whatsoever, arising out of or connected with the performance of the Services or this Agreement generally, including any default, act or omission of any Staff howsoever such liability may arise.

## The Contractor shall fully and promptly indemnify the Authority: in respect of any damage caused to any land, building or chattel in ownership, occupation or possession of the Authority (including the Authority Accommodation and any other Authority Property) by any employee or agent of the Contractor (whether such damage be caused by negligence or in any other way whatsoever).

## The Contractor shall fully and promptly indemnify the Authority and all persons concerned in respect of any death and/or personal injury caused to any employee of the Authority by any by any Staff or agent of the Contractor (whether such injury be caused by negligence or any other way whatsoever).

## The Contractor shall comply with all legal and statutory requirements applicable to the provision of the Services and shall fully and promptly indemnify the Authority against all actions, claims, demands proceedings, damages, cost and expenses whatsoever in respect of any breach by the Contractor or such legal and statutory requirements.

## Notwithstanding any other provision of this Agreement, the Contractor shall fully and promptly indemnify the Authority in full without limitation of liability for any direct loss of or damage to any land, building or chattel in ownership, occupation or possession of the Authority (including the Authority Accommodation and any other Authority Property) or any third party, including intellectual property rights claims, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Authority (including legal expenses on an indemnity basis) arising from the Contractor’s negligence, any Defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

## Provided always that clauses 15.1 to 15.5 inclusive shall not apply in respect of any liability to any person, damage to any land, building or chattel or any death and/or personal injury caused solely by the Authority’s negligent or wilful act or omission or breach of this Agreement.

# LIMITATION ON LIABILITY

## The Contractor’s liability to the Authority for losses caused by a breach of the Contractor’s obligations under this Agreement (whether arising in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise) shall, subject to clause 16.3 below be limited to the contract value in any Agreement Year.

## The Authority’s liability to the Contractor for any losses caused by a breach of the Authority of its obligations under this Agreement (whether arising in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise) shall be limited to the total one of [one hundred (100%) of the actual annual Services Payment] in the Agreement Year in which the breach occurs.

## Nothing in this Agreement is to be deemed to exclude or limit either party’s liability in respect of:

### death or personal injury arising as a result of that party’s negligence, fraud or any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

### that party’s fraud or fraudulent misrepresentation;

### expenditure or charges rendered necessary; and/or

### reasonable operational and administrative costs and expenses incurred by the Authority in rectifying a breach by the Contractor, and/or in acquiring new or replacement services or systems or assets/equipment;

otherwise to the extent that such exclusion or limitation is not permitted by applicable Legislation.

## Subject always to clause 16.3 in no event shall either Party be liable to the other for:

### loss of profits, business, revenue, goodwill or anticipated savings; and/or

### indirect or consequential loss or damage.

# STAFFING

## The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority’s Accommodation:

#### any member of the Staff; or

#### any person employed or engaged by any member of the Staff

#### whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

## At the Authority’s written request, the Contractor shall provide a list of names and business addresses of all persons who may require admission in connection with the Agreement to the Authority’s Accommodation, within seven (7) Days from date of request, specifying the capacities in which that are concerned with the Agreement and giving such other particulars as the Authority may reasonably request.

## The decision of the Authority as to whether any person is to be refused access to the Authority’s Accommodation and as to whether the Contractor has failed to comply with 17.2 shall be final and conclusive.

## The Staff, engaged within the boundaries of the Authority’s Accommodation, shall comply with such rules, regulations and requirements (including those to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority’s Accommodation.

## The Contractor shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, or other relevant or equivalent legislation, or any statutory modification or e-enactment thereof.

## The Contractor will ensure that its staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, together with a Certificate of Good Conduct where applicable. The Contractor shall promptly take all steps to ensure compliance with this clause 17.6.

## If the Contractor, in the reasonable opinion of the Authority, fails to comply with 17.4, 17.5 and 17.6 the Authority will be entitled to consider that failure a Material Breach of this Agreement and may terminate this Agreement in accordance with clause 22 (Termination).

## Not used

## Not used

## Not used

## **Conduct of Staff**

17.11.1 Whilst performing the services or engaged at the Authority Accommodation the Contractor shall (and shall procure that any Sub- Contractor shall) comply with the Authority’s generally applicable policies relating to (a) the conduct of persons at the Sites or (b) security arrangements so far as such policies have been made known to the Contractor, the Sub-Contractor and/or their relevant staff whether directly or by appropriately positioned notices. The Authority (acting reasonably) may:

### (a) instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Authority shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

### (b) where the Authority has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable for any reason whether or not expressly stated as aforesaid, require the exclusion of the relevant employee from the relevant location(s).

# Not used

# not used

# not used

# DISPUTE RESOLUTION PROCEDURE

## Any dispute or difference arising out of or in connection with this Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 21.

## Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## The Parties shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with the Agreement within seven (7) Days of either Party notifying the other of the Dispute. Such efforts shall involve the escalation of the Dispute ultimately to the Chief Executive (or such other person as he may direct) of each Party..

## In the event that a Dispute is not resolved within seven (7) Days of it having been referred to a managerial level for discussion then either Party may refer it to Chief Executive or equivalent officer of each Party for resolution and the same shall meet for discussion within fourteen (14) Days thereafter or such longer period as the Parties may agree.

## If the dispute is not resolved within twenty (20) Days of escalation of the dispute in accordance with clauses 21.1 to 4, the parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.

## If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.

## The parties shall use their reasonable endeavours to conclude the mediation within [forty (40)] Days of referral of the dispute to mediation.

## If

### either Party is dissatisfied with or otherwise wishes to challenge the Mediator’s decision; or

### both Parties agree

then either Party may, within fifteen (15) Days of the conclusion of the mediation, notify the other Party of its intention to refer the dispute to litigation and for such purposes the parties agree that the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.

## Where any Dispute is referred to litigation pursuant to clause 21.8 the Courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations of the Mediator and, where appropriate, to order financial compensation to be paid by one party to the other.

## The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every recommendation of the Mediator and the Courts delivered under this clause.

# TERMINATION

## Not used.

## Not used.

## Not used.

**Contractor Default**

## Subject to clause 22.5, if a Contractor Default has occurred and the Authority wishes to terminate the Agreement it must serve a termination notice on the Contractor.

## If the Contractor Default which has occurred is an Insolvency Event of Default or a breach of clause 29 or clause 30 or if the Contractor is convicted of an offence under the Corporate Manslaughter and Corporate Homicide Act 2007 arising out of or in connection with the delivery of the Services, the Authority may in its sole discretion give notice terminating this Agreement whereupon this Contract shall terminate with immediate effect.

## The termination notice must specify:-

### the type and nature of Contractor Default that has occurred, giving reasonable details; and

### that in the case of a Contractor Default falling within limbs (b), (f) and (g) of the definition of Contractor Default this Agreement shall terminated on the day falling sixty (60) Days after the date the Contractor receives the notice, unless the Contractor puts forward an acceptable rectification programme within twenty (20) Days or rectifies the breach within thirty (30) Days of receipt of the notice; or

### that in the case of a Contractor Default (not being limbs (b), (f), and (g) this Agreement will terminate on the date falling sixty (60) Days after the date the Contractor receives the termination notice.

## If the Contractor rectifies the Contractor Default within the time period specified in the termination notice or implements the rectification programme, if applicable, in accordance with its terms, the termination notice will be deemed to be revoked and the Agreement shall continue.

## If the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice or fails to implement the rectification programme, if applicable, in accordance with its terms the Authority may give notice stating that the Agreement will terminate on the date falling seven (7) Days after the date of receipt of the notice.

**Authority Default**

## If an Authority Default has occurred and the Contractor wishes to terminate this Agreement, it must serve a termination notice on the Authority within forty five (45) Days of becoming aware of the Authority Default.

## The termination notice must specify the type of Authority Default which has occurred entitling it to terminate.

## This Agreement shall terminate on the day falling sixty (60) Days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within thirty (30) Days of receipt of the termination notice.

# CONSEQUENCES OF EXPIRY OR TERMINATION

## The Contractor and the Authority shall each carry out their respective responsibilities in accordance with this Agreement until the Expiry Date or if earlier, the Termination Date.

## Not used

## Not used.

## On termination of this Agreement howsoever arising the Contractor shall, if so requested by the Authority, (a) transfer to the Authority the whole or any part of the personal data and other Information received or acquired by the Contractor for the purposes of or in the course of the delivery of the Services, (b) destroy or erase the whole or any part of such personal data and other information retained by the Contractor and (c) destroy or erase all documents, working papers, computer disks and tapes and other materials (and all copies thereof) provided or prepared during the course of provision of the Services except in so far as retained only for the purposes of professional indemnity or legal defence.

## On termination or expiry of this Agreement , neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Agreement shall not affect the continuing rights and obligations of the Parties under clauses 13 (Review, Monitoring and Information), 15 (Indemnity), 21 (Dispute Resolution Procedure), 23 (Termination), 29 (Data Protection), 30 (Freedom of Information), 31 (Intellectual Property), 33 (Publicity), 34 (Confidentiality), 36 (Assignment and Sub-Contracting) and 48 (Law and Jurisdiction) or under any other provision of this Agreement that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination. The rights and obligations of the Parties under clauses 23 (Termination) and 31 (Intellectual Property) shall continue for a period of ten years from termination or expiry and those under clause 29 (Data Protection) shall continue without limit.

# not used

# FORCE MAJEURE

## The Contractor shall take reasonable care to ensure that in performing its obligations under the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

## The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

## Subject to the remaining provisions of this clause 25, a Party may claim relief under this clause 25 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

## The Contractor shall have a Business Continuity Plan in place, agreed with the Authority, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Contractor’s operations, and those of sub-contractors to the Contractor, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Agreement Term.

## The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

## The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to agree appropriate terms to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## If no such terms are agreed on or before the date falling one hundred and twenty (120) Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and eighty (180) Days, then either Party may terminate this Agreement by giving thirty (30) Days written notice to the other Party.

## The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

## Relief from liability for the Affected Party under this clause 25 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 25.8.

## Neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Party is prevented from carrying out obligations by that Force Majeure Event.

## Nothing in this clause 25 shall affect either any entitlement of the Authority to make deductions pursuant to Schedule 4 Payment Schedule in the period during which the Force Majeure Event is subsisting.

# INSURANCE

## Requirement for Insurance

### The Contractor shall at its own cost during the Agreement Term effect and maintain or procure the maintenance of the Required Insurances with reputable insurers or underwriters as shall fully insure and indemnify the Contractor against liability at the minimum the levels of cover set out in Schedule 6.

### Such insurance shall have the interest of the Authority endorsed (or an Indemnity to Principal clause) on the policy and the Contractor shall duly pay all premiums therefor and produce to the Authority on request receipts therefor and shall not do or suffer or permit anything to be done which might prejudice the policy.

### The Authority may require:

#### the Contractor to name the Authority as co-insured (other than employer liability and professional indemnity insurance) with any other party maintaining the Required Insurance; and

#### the Contractor to comply with any other condition in respect of the Required Insurances that the Authority considers reasonable in the circumstances.

### The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause 26 including but not limited to the name of the insurer and premium paid.

### The Contractor shall at the request of the Authority’s Authorised Representative, in the places and in a form approved by the Authority’s Authorised Representative, arrange for notices to be permanently displayed giving information as to how insurance claims in respect thereof may be made.

### The Contractor shall deal with any complaints and/or claims received from whatever source in a prompt, courteous and efficient manner. The Contractor shall acknowledge receipt of any claim within seven (7) days of receipt and shall pass full details of any claim to its insurers within twenty-one (21) days of receipt or within such shorter time as may be required under the terms of the relevant insurance. The Contractor shall keep a written record of all claims received and of the action taken in relation to such claims. Such records shall be kept available for inspection by the Authority’s Authorised Representative at all reasonable times. The Contractor shall notify the Authority’s Authorised Representative in writing within seven (7) days of all claims received and of all steps taken in response thereto.

### The provisions of clauses 26.1.5 and 26.1.6 are without prejudice to any provisions concerning claims set out in this Agreement or the Schedules.

### The Contractor shall ensure that any Sub-Contractors of the Contractor maintain like insurance cover to that required to be maintained by the Contractor under this Agreement and such other insurance cover as may from time to time be reasonably required by the Authority.

### If for whatever reason, the Contractor is in breach of this clause 26, and fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor on written demand.

### Failure to comply with the Required Insurance provisions of this Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Agreement.

### The Contractor shall inform the Authority of any material changes in the Required Insurances pursuant to this clause 26.

### The Contractor shall prior to the renewal date or the expiry date in respect of each Required Insurance deliver to the Authority for its approval (such approval not to be unreasonably withheld) a notice stating that the Contractor’s proposals for its insurances for the following period which includes details as to:

#### the proposed insurers; and

#### the terms of the policies including the proposed exclusions, the insured amounts and the policy excess.

### The Contractor shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the Agreement.

## **Reinstatement**

### All insurance proceeds received by the Contractor shall be applied to repair, reinstate, and replace each part or parts of the Authority Accommodation or Assets in respect of which the proceeds were received.

### The Authority may in its absolute discretion instruct the Contractor not to apply any insurance proceeds referred to in 26.2.1 to repair, reinstate and replace the Authority Accommodation or Assets or any part of parts thereof in which case forthwith upon receipt of the insurance proceeds the Contractor shall pay such amount to the Authority and the relevant Authority Accommodation or Assets or part thereof shall be excluded from this Agreement.

### Where insurance proceeds are to be used in accordance with this Agreement to repair, reinstate and replace any part thereof the Contractor shall carry out the work or shall procure that the work is carried out in accordance with the Authority’s requirements so that on completion of the work, the Authority Accommodation or the Assets meet the requirements of this Agreement.

# HEALTH AND SAFETY

## The Contractor and all persons (including any Sub Contractors) employed by it shall throughout the Agreement Term comply fully with the requirements of the Health and Safety at Work Etc. Act 1974, and any other acts, regulations and approved codes of practice relating to the health and safety of its Staff and other persons who may be affected by the Contractor’s work activities pursuant to this Agreement and shall in particular ensure that its activities pursuant to this Agreement shall not give rise to an offence under the Corporate Manslaughter and Corporate Homicide Act.

## The Contractor shall provide to the Authority’s Authorised Representative any information relating to the Contractor’s compliance with clause 27.1 that the Authority may reasonably request at any time.

## The Authority’s Authorised Representative shall be permitted to access at any reasonable time any premises where the Contractor is undertaking any Services under this Agreement for the purpose of carrying out an inspection of health, safety and welfare standards. The Contractor shall fully cooperate with the reasonable requests of the Authority’s health and safety adviser and shall provide access to all areas of the Services, health and safety documentation, welfare facilities, accident records, training records and certificates, equipment inspection records, statutory registers and notices, plant and equipment for the purposes of inspection. The Authority’s health and safety adviser shall be empowered to take any photographs, measurements, samples, copies of health and safety related documents etc. which he deems necessary to determine the Contractor’s compliance with health and safety legislation and best practice and as evidence of any non-compliance.

## The Contractor shall provide to the Authority’s Authorised Representative, within seven (7) Days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards relevant to the Services, which the Contractor receives from any statutory body.

# EQUALity, diversity AND HUMAN RIGHTS

## In the performance of the Services and in its dealings with service users, Authority employees and members of the general public, the Contractor shall comply and shall ensure that its employees, agents and Sub-Contractors comply with:

### The Equality Act 2010 and the Human Rights Act 1998 as if the Contractor were a public body as defined in the Human Rights Act 1998;

### all legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations and shall in particular comply with the provisions set out in Schedule 9 (Equality Requirements); and

### the Authority’s equality and diversity policies and procedures as may be adopted and amended from time to time and as notified to the Contractor.

## The Contractor acknowledges that the Authority has a ‘duty to promote’ equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons from the protected characteristic groups covered by the Equality Act: age, disability, gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The Contractor must ensure that each of its Sub-Contractors involved in delivery of the Agreement are aware of, and acknowledge, that the Authority has a ‘duty to promote’ equality.

## The Contractor shall inform the Authority’s Authorised Representative as soon as the Contractor becomes aware of any legal proceedings or complaint brought or likely to be brought against the Contractor under the legislation set out in clause 28.1.

## Where any investigation is conducted or proceedings are brought arising directly or indirectly out of the provision of the Services or any other action by the Contractor or its employees, agents or Sub-Contractors, the Authority shall be entitled to recover from the Contractor the full cost it may have incurred in such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

## **Equality & Diversity for Staff and Service Users**

## The Contractor shall at all times comply with all statutory and other requirements having the force of law when performing the Service and shall indemnify the Authority against any claims made as a result of any failure in compliance. Without prejudice to the generality of the foregoing, the Contractor shall at all times comply with the provisions of the Equality Act 2010.

## The Contractor must operate, monitor and review its equality and diversity policies, particularly in relation to employment in order to ensure good practice. The Contractor must also monitor the take up of services by groups protected under the Equality Act 2010 to ensure fair and proportionate service provision is made available, as well as address gaps in data and/or performance.

## If a complaint is made under the Equality Act 2010 about the acts or omissions of the Contractor or its employees, volunteers or agents when undertaking the provision of services for the Authority, the Contractor may be the subject of an investigation by the Authority. In such circumstances the Contractor shall make documents available and cooperate with the investigation, and to the extent that breaches of the Authority’s duties under the Equality Act 2010 are found to have occurred due to the acts or omissions of the Contractor, its employees, volunteers, or agents, then in such circumstance the Contractor shall indemnify the Authority in respect of any loss, damages/compensation, fines and costs which may be suffered or imposed and the Contractor shall pay any such loss, damages/compensation, fines or costs incurred awarded or recommended by a court of competent jurisdiction, tribunal or ombudsman.

## The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor’s compliance with this clause 28.

# DATA PROTECTION

The Contractor shall comply with its obligations under Schedule 15 (Information Handling) and the Computer Misuse Act 1990 (insofar as performance of this Agreement gives rise to obligations under it).

# FREEDOM OF INFORMATION

## The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (“FOIA”) the Environmental Information Regulations 2004 (“EIR”) and the Safeguarding Vulnerable Groups Act 2006 (“SVGA 2006”) and any subordinate legislation made under these Acts or Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation and shall assist and cooperate with the Authority (at the Contractor’s expense) to enable the Authority to comply with these Information disclosure requirements.

## The Contractor shall and shall procure that its sub-contractors shall:

### transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Days of receiving a Request for Information;

### provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

### provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA , regulation 5 of the EIR or section 37 of the SVGA 2006.

## The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

### is exempt from disclosure in accordance with the provisions of the FOIA, SVGA 2006 or the EIR;

### is to be disclosed in response to a Request for Information, and

## in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

## The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-

### without consulting with the Contractor, or

### following consultation with the Contractor and having taken its views into account.

## The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

## The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 30.4.

# INTELLECTUAL PROPERTY

## All intellectual property rights in any specifications, instructions, plans, Authority Data, drawings, databases, patents, patterns, models, designs or other material:

#### provided to the Contractor by the Authority shall remain the property of the Authority during the Agreement Term and in all reports submitted under the terms of the Agreement shall vest in the Authority unless otherwise expressly agreed or approved by the Authority’s Authorised Representative in writing;

#### prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Agreement t shall belong to the Authority on creation (subject only to any specific exceptions set out in the Agreement).

## The Contractor shall obtain all necessary approvals before using any material, in relation to the performance of the Contractor which is or may be subject to any third party intellectual property right. The Contractor shall procure that the owner of the intellectual property right grant to the Authority a non-exclusive perpetual and irrevocable licence for the purpose of the Authority’s functions and duties as a county council; or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Authority a sub-licence for the purposes mentioned. Such licence and any sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right for the Authority or to sub-licence, transfer, and novate or assign to another Authority, or replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

## It is a condition of the Agreement that the Services will not infringe the intellectual property rights of any third party and the Contractor shall during and after the Agreement Term on written demand indemnify and keep indemnified without limitation the Authority against all Liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 31 or any claim of intellectual property rights infringement arising from the Services or performance of the Contractor or Contractor’s Staff.

## The Contractor shall not at any time to make a copy, abstract, summary or précis of the whole or any part of any document, computer program or other material belonging to the Authority except when required to do so in the course of its duties in provision of the Services in which event any such item shall belong to the Authority.

## At the termination of the Agreement the Contractor shall immediately return to the Authority all materials, work or records held in relation to the Services, including any back-up media and information relating to service users.

# not used

# PUBLICITY

33.1 The Authority’s aim is for the highest standard of presentation of the image of its activities to the public, and to ensure a fair and favourable reputation for its services via effective communication to the media and the public. All information and publicity concerning the Authority’s activities, and those of the Contractor in connection with this Agreement, shall be subject to prior approval by the Authority’s Authorised Representative. The Contractor shall not:

#### advertise the fact that it is providing services to the Authority;

#### use or adapt the Authority’s corporate logo or image;

#### permit the placing or fixing of any advertising material whatsoever on or in the Authority’s Accommodation;

#### without the prior written consent of the Authority’s Authorised Representative, which shall not be unreasonably withheld or delayed.

33.2 All enquires received by the Contractor from press, radio, television or other media which may concern the Authority shall immediately be referred to the Authority’s Authorised Representative for attention by the Authority.

33.3 Both Parties shall take all reasonable steps to ensure that their employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with this clause 33.

# CONFIDENTIALITY

## Each Party:-

### shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

### shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement .

## The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:-

### is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement ;

### is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of this Agreement

## The Contractor shall ensure that:

### its staff (temporary or permanent), professional advisors and/or consultants are aware of the Contractor’s confidentiality obligations under this Agreement and that, where requested by the Authority, such staff, professional advisors and/or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement; and

### where the Services include the provision or recruitment of temporary staff for the Authority, such staff are aware that they will be required to operate in accordance with the confidentiality and intellectual property obligations undertaken by the Contractor under this Agreement (including in particular those set out in clauses 23 (termination), 29 (data protection) and 31 (intellectual property)) and the Contractor shall, if so required by the Authority, obtain and furnish to the Authority a personal undertaking from the temporary employee directly to the Authority to this effect before the employee begins work with the Authority.

## The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of this Agreement.

## The provisions of Clauses 34.1 to 34.3 shall not apply to any Confidential Information received by one Party from the other:-

### which is or becomes public knowledge (otherwise than by breach of this clause 34);

### which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

### which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

### is independently developed without access to the Confidential Information; or

### which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 30.

## Nothing in this clause shall prevent the Authority:-

### disclosing any Confidential Information for the purpose of:-

#### the examination and certification of the Authority’s accounts; or

#### any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

### disclosing any Confidential Information obtained from the Contractor:-

#### to any government department or any other contracting Authority. All government departments or contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting Authority; or

#### to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Agreement ;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

## Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

## In the event that the Contractor fails to comply with this clause, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect.

## The provisions under this clause are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

# CONFLICT OF INTEREST

If either Party becomes aware of any possible conflict of interest which may arise between the interests of the Authority and the Contractor, the Party becoming aware of such information shall as soon as reasonably possible notify the other Party and the Parties shall discuss the potential conflict and both Parties shall use all reasonable endeavours to find ways to eliminate or minimise the risk of such a conflict of interest arising and both Parties shall take such steps as may be agreed to remove or avoid the cause of such conflict of interest.

# ASSIGNMENT AND SUB-CONTRACTING

## Subject to any express provision of this Agreement , the Contractor shall not without the prior written consent of the Authority, assign all or any benefit, right or interest under this Agreement or sub-contract any of the Services.

## Notwithstanding any sub-contracting permitted under this Agreement, the Contractor shall remain responsible for the acts and omissions of its Sub-Contractors as though they were its own.

## If the Contractor intends to enter into a sub-agreement in connection with this Agreement, the Contractor shall ensure:

### that at least one potential Sub-Contractor with an operational or administrative location in the area of the Authority is invited to tender for such sub-contract on the same terms as all other entities invited to tender and that such invitation is made in the same manner as the invitation(s) to all other entities ; and

### that a term is included in the sub-contract which requires the Contractor to pay all sums due thereunder to the Sub-Contractor within a specified period from the date of receipt of a valid invoice as defined by the terms of the sub-contract not to exceed the period specified in this Agreement in Schedule 3 with respect to payment of the Contractor by the Authority

# NOT USED

# Bribery, CORRUPT GIFTS AND FRAUD

## If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with Clauses 38.2 to 38.6 below.

## If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate the Agreement by giving notice to the Contractor.

## If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and the Agreement will terminate, unless within thirty (30) Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

## If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within thirty (30) Days of receipt of such notice the Contractor terminates the relevant sub-contract and procures the performance of such part of the Services by another person.

## If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and the Agreement will terminate, unless within thirty (30) Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

## If the Prohibited Act is committed by any other person not specified in Clauses 38.2 to 38.5 above, then the Authority may give notice to the Contractor of termination and the Agreement will terminate unless within thirty (30) Days of receipt of such notice, the Contractor procures the termination of such person's employment and the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Services by another person.

## Any notice of termination under this clause shall specify:-

### the nature of the Prohibited Act;

### the identity of the party whom the Authority believes has committed the Prohibited Act; and

### the date on which the Agreement will terminate, in accordance with the applicable provision of this clause .

# complaints

The Contractor shall comply with the Authority's "Responding to Customer Complaints, Comments and Corporate Policy Document" as set out at Schedule 14.

# ENTIRE AGREEMENT

The Parties acknowledge that this Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

# NO PARTNERSHIP OR AGENCY

## Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Authority and the Contractor.

## Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

# NO WAIVER

## Failure by either Party at any time or for any period to enforce any one or more of the provisions of this Agreement or to require performance by the other Party of any of the provisions of this Agreement shall not:

### constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement ; nor

### affect the validity of the Agreement or any part thereof or the right of the Parties to enforce any provision in accordance with its terms.

## No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 46 Notices).

# SEVERANCE

## Each provision of this Agreement is severable and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.

## If any provision of this Agreement is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this Agreement would not negate the commercial intent and purpose of the Parties under this Agreement .

## If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory Authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the Parties under this Agreement.

# CHANGE CONTROL PROCEDURE

## Either Party may request a change to the Services in accordance with the Change Control Procedure.

# variation

## This Agreement can only be varied or amended provided that such variation or amendment is agreed in writing by the Authority’s Authorised Representative and by the Contractor’s Authorised Representative or such other authorised signatory in accordance with paragraph 3 of the Change Control Procedure.

# NOTICES

## Any notice required by this Agreement to be given by either Party to the other shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the following:

|  |  |  |
| --- | --- | --- |
|  | **Contractor** | **Authority[[11]](#footnote-12)** |
| **Address:** |  |  |
| **For the attention of:** |  |  |
| **Tel:** |  |  |
| **Fax:** |  |  |
| **E-mail:** |  |  |

## Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched.

# CONTRACTS (rIGHTS OF THIRD PARTIES) ACT 1999

The Parties agree that this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

# LAW AND JURISDICTION

This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises in connection with this Agreement or its formation (including non-contractual disputes or claims).

## **[[12]](#footnote-13)IN WITNESS** whereof the Parties have executed this Agreement t as a deed and delivered it on the date first written.

**Execution by the Contractor**

**[Option 1: Use where the Contractor is a limited company without a seal]**

Signed as a deed by [                       ] )

acting by [                                     ] )

Director

Director/Secretary

**[Option 2: Use where the Contractor is a limited company with a seal]**

The common seal of [                                ] )

was affixed to this deed )

In the presence of: )

Director

Director/Secretary]

**[Option 3: Use where the Contractor is a partnership or sole trader]**

Signed as a deed by [                        ] )

by [                                 ] )

duly authorised by and on behalf of )

[                                       ] )

by a deed dated [                                  ] )

in the presence of:

Witness

Signature:

Name:

Address:

Occupation:

**Execution by the Authority**

**[Option 1: Use where the Authority requires the Agreement to be sealed in accordance with its Constitution]**

The common seal of

ESSEX COUNTY COUNCIL

was hereunto affixed in the presence of

Attesting Officer

**[Option 2: Use where the Authority does not require the Agreement to be sealed in accordance with its Constitution]**

Signed on behalf of Essex County Council by

Authorised Signatory

schedule 1

**Part 1**

**Goods and/or Services Specification**

**[TO BE INSERTED ON CONTRACT AWARD]**

**Part 2**

Method Statements

# Method Statements

## The Contractor shall comply with any method statements submitted in response to the Invitation to Tender and as subsequently agreed by the Authority.

## Method statements will be required for each element of the Services. The methods statements need to be cross-referenced to the specification items to which they relate.

**Part 3**

Policies and Procedures

**9** **Authorities policies**

9.1 Essex County Council Supplier Charter



9.2 Health and Safety Manual (HSP 1.0) – Health and Safety Policy



9.3 Health and Safety Manual (HSP 9.30) - Construction Design and Management (CDM)



9.4 Health and Safety Manual (HSP 9.34) - Contractors Code of Conduct



9.5 Health and Safety Manual (HSP 9.49) - General Safety Rules for Contractors



9.6 Health and Safety Manual (HSP 9.22) – Authorisation and High Risk Permits to Work



## 9.7 Health and Safety Manual (HSP 9.14) – Management of Contractors Policy



* 1. ECC’s [Information Handling Schedule for Contracts](http://www.essex.gov.uk/Business-Partners/Supplying-Council/Documents/Information_handling_schedule.docx)
  2. ECC's Information Policy Requirements for Suppliers

**Schedule 2**

Not Used

schedule 3

Authority’s Accommodation[[13]](#footnote-14)

schedule 4

Payment Schedule

The Authority anticipates three payment stages:

* Stage 1 Design and Survey fees to be paid following sign off of final design;
* Stage 2 Supply and Installation costs, (including ground works, equipment/structures) following delivery and Authority sign off of the completed play area and;
* Stage 3 Retention payment of 5% of total contract value to be paid six months after stage 2.

schedule 5

Change Control Procedure

# Principles

## Either Party may at any time request a change to the Services in accordance with the procedure set out in paragraph 2 below.

## The obligations of the Parties shall not be effected until a change control note in the form attached to this Schedule 5 (a “**Change Control Note**”) has been signed by the authorised signatory of both Parties.

## The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or its Sub-Contractors which has not been authorised in advance by a Change Control Note.

# Procedure

2.1 The Authority and the Contractor shall discuss changes proposed by either Party to this Agreement and such discussion shall result in:

### a decision not to proceed further; or

### a written request for a change by the Authority; or

### a recommendation for a change by the Contractor.

## Where a written request for a change is received from the Authority, the Contractor shall submit two signed copies of a Change Control Note to the Authority within seven (7) Days of such request.

## A recommendation to amend this Agreement by the Contractor shall be submitted direct to the Authority in the form of two copies of a Change Control Note signed by the Contractor.

## Each Change Control Note shall contain details of the change including, where applicable:

### the title of the change;

### the originator and the date of the request or recommendation for the change;

### the reason for the change;

### full details of the change including any specifications;

### the price, if any, of the change;

### a timetable for implementation together with any proposals for acceptance of the change;

### a schedule of payments, if applicable;

### the impact, if any, of the change on other aspects of the Agreement;

### the date of expiry of validity of the Change Control Note; and

### provision for signature by the Authority if the change is agreed.

## For each Change Control Note submitted to the Authority, the Authority shall, within the period of the validity of the Change Control Note, evaluate the Change Control Note and, as appropriate:

### request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within seven (7) Days. The request for information and the information once provided shall be deemed to be part of the Change Control Note, and the Authority may approve or reject the Change Control Note upon receipt of the new information; or

### notify the Contractor of the rejection of the Change Control Note.

### A Change Control Note signed by both Parties shall constitute a variation to this Agreement in accordance with the terms of clause 44 of the Agreement.

# Authorised Signatories

## Where the change incurs no additional charges for the Authority the authorised representatives for both Parties will act as authorised signatories.

## The authorised signatory for the Authority will be the Authority’s Authorised Representative and the person(s) with appropriate delegated authority to authorise supplies and/or service orders dependant on the value of the additional charges (Refer to ECC Scheme of Delegation for Financial Management Appendix A.)

## The authorised signatory for the Contractor shall be deemed to be the Contractor’s Authorised Representative in the absence of any written notification to the contrary from the Contractor to the Authority.

### **Change Control Note**

|  |  |
| --- | --- |
| **Authority’s Agreement Tile and Reference:** |  |
| **Change Control Ref No:** |  |
| **Title of Change:** |  |
| **Details of Change:** |  |
| **Reasons for Change:** |  |
| **Impact of Change:** |  |
| **Timetable:** |  |
| **Price:** | £ |
| **Contractor’s Authorised Signatory:** |  |
| **Signed:** |  |
| **Dated:** |  |
| **Authority Response:** |  |
| **Authority’s Authorised Signatory :** |  |
| **Signed:** |  |
| **Dated:** |  |

Note: the format of the change control note may vary from time to time in circumstances where additional information is deemed necessary by the Authority or the Contractor in order to accurately reflect the nature of the change

schedule 6

Required Insurances

# Required Insurances

## Professional indemnity insurance to provide an indemnity of not less than one million pounds (£1,000,000) in respect of any one claim or series of claims arising out of one incident;

## Employer’s liability insurance to provide an indemnity of not less than ten million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident;

## Third party public liability to provide an indemnity of not less than ten million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident;

## any other insurances that may be required by law.

schedule 7

**Not Used**

schedule 8

Not Usedschedule 9

Equality Requirements

# ANTI-discrimination LEGISLATION

## In this Schedule, the “Anti-Discrimination Legislation” means:

### the Equality Act 2010;

### the Employment Rights Act 1996;

### the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;

### the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002;

### the Flexible Working (Eligibility; Complaints and Remedies) Regulations 2002;

### the Flexible Working (Procedural Requirements) Regulations 2002;

### the Employment Equality (Sexual Orientation) Regulations 2003;

### the Employment Equality (Religion or Belief) Regulations 2003;

### the Disability Discrimination Act 1995 (Amendment) Regulations 2003;

### the Disability Discrimination Act 2005;

### the Employment Equality (Age) Regulations 2006;

### any relevant Treaty, Directive, Regulation or Recommendation of the European Union;

### and for the avoidance of doubt includes any statutory modification or re-enactment and any subordinate legislation made pursuant to or associated with these pieces of legislation or any other legislation enacted which concerns discrimination in employment.

## The Contractor shall not, and shall procure that Contractor Parties shall not discriminate directly or indirectly, or by way of victimisation or harassment, or by way of failure to make a reasonable adjustment or victimisation or harassment, against any person on grounds of any characteristic protected by the Equality Act (in this Schedule the “Act”) or otherwise contravene the Act.

## The Contractor shall, and shall procure that Contractor Parties shall, for purposes of ensuring compliance with paragraph 1.2 above, in relation to staff engaged in the provision of Interim Services or Services observe as far as possible the provisions of all codes fo practice issued by the Equality and Human Rights Commission including, but not limited to, any provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy.

## The Contractor shall, and shall procure that Contractor Parties shall, in performing its/their obligations under this Agreement, comply with the provisions of the Act, as if they were a body within the meaning of Schedule 19 to the Act.

## Where in connection with this Agreement the Contractor or any Contractor Party are required to carry out work on the Local Authority’s premises or alongside the Local Authority’s employees on any other premises, they shall comply with the Local Authority’s own employment policy and codes of practice relating to equalities.

## The Contractor shall, and shall procure that Contractor Parties shall, notify the Authority’s Representative forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor or any Contractor Party under the Act.

## Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor’s performance of its obligations under this agreement being in contravention of the Act, the Contractor shall, and shall procure that the Contractor Parties shall, free of charge:

1.7.1 provide any information requested in the timescale allotted;

1.7.2 attend any meetings as required and permit any of its staff to attend;

1.7.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

1.7.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and

1.7.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

schedule 10

Not Used

**SCHEDULE 11**

Commercially Sensitive Information[[14]](#footnote-15)

Part 1 – Commercially Sensitive Contractual Provisions

|  |  |  |
| --- | --- | --- |
| **Contractual Provision** | **Time Period** | **Reason for confidentiality** |
|  |  |  |
|  |  |  |

**Pa**rt 2 – Commercially Sensitive Material

|  |  |  |
| --- | --- | --- |
| **Material** | **Time Period** | **Reason for confidentiality** |
|  |  |  |
|  |  |  |

schedule 12

Not Used

schedule 13

Not Used

schedule 14

Not Used

schedule 15

**Information Handling**

**1. Definitions and Interpretation**

1.1 In this Schedule, the following terms shall have the meaning set out below:

“Authority’s ICT Standards”

means those which the Authority applies within itself and of which it has furnished a copy to the Contractor.

“Authority’s Security Policy”

means that which the Authority applies within itself and of which it has furnished a copy to the Contractor.

“Data Protection Act”

means the Data Protection Act 1998 as amended or re-enacted from time to time and any Act substantially replacing the same.

“Information”

has the meaning given under Section 84 of the Freedom of Information Act 2000, which shall include (but is not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programs, (including the source code of any programs which the Authority has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to Information shall include reference to the medium in which it is stored.

“Information Legislation”

means the Data Protection Act, the Environmental Information Regulations and the FOIA.

“Legislation”

for the avoidance of doubt includes in particular the Information Legislation.

“Personal Data”

means personal data as defined in the Data Protection Act which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services.

**2. Resolution of Inconsistency**

2.1 The Contractor shall immediately upon becoming aware of the same notify the Authority of any inconsistency between the provisions of the Legislation and the standards, guidance and policies applicable under this schedule (or between those standards, guidance and policies) and the Authority, as soon as practicable, shall advise the Contractor which provision the Contractor shall be required to comply with (but not so as to place the Contractor in breach of any Legislation).

**3. Protection of Information**

3.1 The Contractor acknowledges that the confidentiality, integrity and availability of Information and on the security provided in relation to Information is a material element of this Agreement.

3.2 The Contractor shall and shall at all times provide a level of security which:

3.2.1 is in accordance with Good Industry Practice, Legislation and this Agreement;

3.2.2 complies with the Authority’s ICT Standards and the Authority’s Security Policy;

3.2.3 meets any specific security threats identified from time to time by the Authority; and

3.2.4 complies with applicable ISO standards and in particular ISO/IEC27001 and ISO/IEC27002.

3.3 The Contractor shall ensure that it provides comparable technical and policy coverage of security to Information as if it were being processed directly by the Authority. This shall include but not limited to the following:

3.3.1 All mobile storage systems and hardware shall be encrypted to at least industry standards.

3.3.2 All staff shall be appropriately vetted before use in the services which are the subject of this Contract.

3.3.3 All staff shall receive adequate information governance training which shall be regularly refreshed.

3.3.4 All buildings and physical environments shall be subject to appropriate physical security and protection.

3.3.5 When handling NHS data, the Contractor shall apply Safe Haven usage to at least NHS standard.

3.3.6 The Contractor shall permit access to Information by employees of the Authority only as may be specifically designated by the Authority.

3.3.7 The Contractor shall securely destroy all Information provided or created under this Agreement and no longer required to be retained in accordance with this Agreement.

3.4 The Contractor will have in place fully tested and effective disaster recovery and business continuity plans.

3.5 The Contractor shall observe the following principles when handling data.

3.5.1 Every proposed use or transfer of Personal Data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.

3.5.2. Personal Data must not be used unless it is absolutely necessary. Personal Data should not be used unless there is no alternative.

3.5.3 The minimum necessary Personal Data information is to be used. Where use of Personal Data is considered essential, each individual item of information should be justified with the aim of reducing identification.

3.5.4 Access to Personal Data should be on a strict need to know basis. Only those individuals who need access to Personal Data should have access to it, and they should only have access to the data that they need to see.

3.5.5 Those handling Personal Data - both frontline and support staff - must be aware of their responsibilities and obligations to respect personal confidentiality.

3.5.6 All persons handling Personal Data must understand and comply with the Legislation. Every use of Personal Data information must be lawful.

3.6 Any Information received by the Contractor from the Authority under this Agreement or generated by the Contractor pursuant to this Contract shall remain at all times the property of the Authority. It shall be identified, clearly marked and recorded as such by the Contractor on all media and in all documentation.

3.7 The Contractor shall not, save as required by this Agreement, without the prior written consent of the Authority disclose to any other person any Information provided by the Authority under this Agreement.

3.8 The Contractor shall advise the Authority of any intention to procure the services of any other agent or subcontractor in connection with this Agreement and shall pay due regard to any representations by the Authority in response.

3.9 The Contractor shall observe and comply with the Authority’s scheme of confidentiality levels applicable from time to time.

3.10 The Contractor shall take all necessary precautions to ensure that all Information obtained from the Authority under or in connection with this Agreement, is given only to such of the Contractor’s staff and professional advisors or consultants engaged to advise the Contractor in connection with this Contract as is strictly necessary for the performance of this Agreement, and is treated as confidential and not disclosed (without prior written approval) or used by any such staff or such professional advisors or consultants otherwise than for the purposes of this Agreement.

3.11 The Contractor shall not use any Information it receives from the Authority otherwise than for the purposes of this Agreement.

3.12 With regard to Authority Data:

3.12.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

3.12.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

3.12.3. To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Information Assets Register as set out in schedule 1.1 (Services Description).

3.12.4. The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data

3.12.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than monthly intervals.

3.12.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

3.12.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

3.12.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data in full and in not later than three Days (subject to any agreed business continuity and disaster recovery plan); and/or

3.12.7.2 in default thereof itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

3.12.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

**4. Data Protection**

4.1 The Authority is and will remain the Data Controller in relation to the personal information exchanged under or for the purposes of this Agreement, and that the Contractor will solely act as Data Processor with respect to such personal information.

4.2 All Personal Data acquired by the Contractor from the Authority shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the prior written consent of a senior manager of the Authority.

4.3 The Contractor warrants that it has given appropriate notification under the Data Protection Act under registration number [number] to undertake the subject matter of this Agreement.

4.4 The Contractor shall comply with the Data Protection Act and all relevant codes of practice issued under that Act, and in particular:

4.4.1 Personal Data shall be processed fairly and lawfully and, in particular, shall not be processed unless:

(a) at least one of the conditions in Schedule 2 of the Data Protection Act is met; and

(b) in the case of sensitive Personal Data, at least one of the conditions in Schedule 3 of the Data Protection Act is also met.

4.4.2 Personal Data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

4.4.3 Personal Data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4.4.4 Personal Data shall be accurate and, where necessary, kept up to date.

4.4.5 Personal Data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

4.4.6 Personal Data shall be processed in accordance with the rights of data subjects under the Data Protection Act.

4.4.7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

4.4.8 Personal Data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of Personal Data.

4.5 The Contractor will have in place at all times when processing Personal Data technical and organisational security measures sufficient to ensure that the Data Protection Act is complied with.

4.6 The Contractor shall indemnify the Authority against loss, destruction or processing contrary to the Data Protection Act by itself, its employees, contractors or agents.

4.7 The Contractor shall ensure the reliability and training of all its relevant staff to ensure awareness of and compliance with applicable obligations under the Data Protection Act and applicable Legislation.

4.8 The Contractor shall make available to the Authority regarding data subjects of the information processed under this Agreement upon request a copy of their personal information (Subject Access Request). This is to be provided within the statutory timeframe as identified in the Data Protection Act.

4.9 The Contractor shall immediately notify a senior manager within the Authority if it receives:

4.9.1 a request from any person whose Personal Data it holds to access his Personal Data; or

4.9.2 a complaint or request relating to the Authority’s obligations under the Data Protection Act.

4.10 The Contractor will assist and co-operate with the Authority in relation to any complaint or request received, including:

4.10.1 providing full details of the complaint or request;

4.10.2 complying with the request within the time limits set out in the Data Protection Act and in accordance with the instructions of the senior manager for the Authority; and

4.10.3 promptly providing the Service Manager with any Personal Data and other information requested by him.

4.11 In addition to the obligation undertaken in paragraph 4.4.8, the Contractor shall not further process information outside of the European Economic Area as defined by the Data Protection Act without full prior written consent from a senior manager within the Authority.

**5. The FOIA and the Environmental Information Regulations**

5.1 The Authority is subject to the provisions of the FOIA and the Environmental Information Regulations and the Contractor shall assist the Authority (at the Contractor’s expense) to enable the Authority to comply with these Acts. The Contractor acknowledges that the Authority may be obliged to disclose Information relating to this Agreement. Notwithstanding any other term of this Agreement , the Contractor hereby gives its consent for the Authority to publish this Agreement in its entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Authority decides.

5.2 The Contractor must transfer any request for information under the Information Legislation to the Authority as soon as practicable after receipt and in any event within 2 working days of receiving a request for information.

5.3 Where the Authority so requires for the purpose of compliance with the Information Legislation, the Contractor shall provide the Authority with a copy of all Information in its possession or power, in the form that the Authority require, within 10 working days (or such other reasonable period as the Authority may specify) of the Authority requesting the Information.

5.4 The Contractor shall provide all necessary assistance as requested by the Authority under paragraph 5.3 above so as to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

5.5 As between the parties, the Authority will determine at its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

5.6 In no event will the Contractor respond directly to a request for information unless expressly authorised to do so by the Authority save to acknowledge receipt (if so requested by the Authority).

5.7 The Contractor acknowledges that the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose Information without consulting with the Supplier, or following consultation with the Supplier and having taken its views into account.

5.8 The Contractor must ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure in line with the Authority’s policy on information retention periods and must permit the Authority to inspect such records as requested from time to time.

5.9 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information.

**6. Disclosures by the Authority**

6.1 Nothing in this Agreement shall prevent the Authority disclosing any Information:

6.1.1 for the purpose of the examination and certification of the Authority’s accounts; or

6.1.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

6.1.3 to any government department or any other contracting authority (as defined in The Public Contracts Regulations 2006). All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a Contractor which is not part of any government department or any contracting authority; or

6.1.4 to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Agreement provided that in disclosing information the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

**7. Accessibility of Data**

7.1 Where the Contractor is undertaking work on behalf of the Authority to develop new systems, practices or documentation in processing of data, the Contractor shall ensure that these have the ability to extract data in an accessible format.

**8. Know-how**

8.1 Nothing in this Agreement shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Information the subject of this Agreement.

**9. Information Breaches**

9.1 The Contractor shall ensure all losses or breaches of security or information are reported to the Authority within 1 working day whether actual, potential or attempted.

9.2 The Contractor will ensure all breaches are internally investigated, and appropriate remedial action taken, along with supporting the Authority in any investigation by it.

9.3 The Contractor will immediately take all reasonable steps to remedy such breach and to protect the integrity of both parties against any actual, potential or attempted breach or threat and any equivalent attempted breach in the future.

**10. Breach, termination and continuance**

10.1 The Contractor shall indemnify the Authority for any breach of the requirements of this schedule which renders the Authority liable for any costs, fines, claims or expenses under Legislation howsoever arising.

10.2 Failure on the part of the Contractor to comply with the provisions of this schedule shall entitle the Authority to terminate this Agreement with immediate effect and to recover the costs incurred in consequence as a civil debt from the Contractor.

10.3 On termination of this Agreement howsoever arising the Contractor shall when directed to do so by the Authority, and instruct all its agents and subcontractors to:

10.3.1 transfer to the Authority the whole or any part of the Personal Data and other Information received or acquired by the Contractor for the purposes of or in the course of the delivery of the services the subject of this Agreement; and

10.3.2 destroy or erase the whole or any part of such Personal Data and other Information retained by the Contractor and provide to the Authority such proof of destruction as the Authority may reasonably specify.

10.4 The provisions of this paragraph shall continue in effect notwithstanding termination of this Agreement.

schedule 16

Environmental Requirements

Essex County Council is committed to ensuring a better quality of life by conserving, developing and promoting a healthy, safe, diverse, clean and attractive environment.

*The Vision*

We recognise that our operations and statutory duties have an impact on the environment and as an organisation we have a responsibility to manage and mitigate these impacts where possible. In working towards a more sustainable future we are committed to minimising our adverse impacts and maximising the positive impacts on our environment, both within the organisation, with our partners and through the wider community.

*To ensure we move closer to fulfilling our vision we will aim to:*

* Manage the impacts of extreme weather events and reduce our contribution to the causes.
* Use our own resources efficiently, reducing wasted materials and energy, resulting in financial savings.
* Minimise the adverse environmental impact of the goods and services we procure and maximise the positive opportunities through adherence to our Procurement Strategy.
* Continually improve our environmental performance by:
  + assessing the environmental risks of our decisions;
  + carrying out reviews of Council policies and actions;
  + complying with, or exceeding, environmental legislation and regulations;
  + managing our estate to reduce financial implications of the Carbon Reduction Commitment (CRC).
* Promote sustainable management, planning, design, construction, renewables and drainage.
* Encourage other public sector partners, community groups and businesses in local environmental projects.
* Ensure all staff, Members and contractors understand the environmental impact of their actions and decisions, through awareness and education, policy reviews and encouraging them to lead by example by taking action to mitigate their environmental impacts and to share best practice.

We will deliver our vision by imbedding sustainability and environmental issues within our policies and plans.

schedule 17

Not Used

schedule 18

**Not Used**

**SCHEDULE 19**

Not Used

**SCHEDULE 20**

Not Used

1. Insert the name of the Contractor. [↑](#footnote-ref-2)
2. The Contractor’s registered office should be inserted if the Contractor is a registered company and the Contractor’s principal place of business should be inserted otherwise. [↑](#footnote-ref-3)
3. Insert the Contractor’s company registration number if the Contractor is a registered company [↑](#footnote-ref-4)
4. Insert a very brief description of the goods and/or services required. [↑](#footnote-ref-5)
5. Insert the date the requirement was advertised in the OJEU and provide a brief description of the goods and/or services advertised. This can be copied from footnote 5 [↑](#footnote-ref-6)
6. Insert the details of the Authority’s accommodation if applicable [↑](#footnote-ref-7)
7. insert the date the agreement is due to expire [↑](#footnote-ref-8)
8. Insert the date it has been agreed for the service to commence [↑](#footnote-ref-9)
9. Insert the main Authority’s Representative name [↑](#footnote-ref-10)
10. Insert the main Contractor’s Representative name [↑](#footnote-ref-11)
11. Completed as required [↑](#footnote-ref-12)
12. Choose the signing option as per the governance values or as appropriate. Contracts over £1m+ are required to be signed under seal. Legal should be responsible for contract execution. [↑](#footnote-ref-13)
13. Reference details of the Authority’s premises here. [↑](#footnote-ref-14)
14. This is to be completed as per the FOIA section of the Invitation to Tender [↑](#footnote-ref-15)