

Section C:

Terms and Conditions

3.1 General Provisions

3.1.1 Definitions and Interpretations

In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Charges” means the charges for the provision of the Contract confirmed as part of the Contractors Bid Response.

“Commencement Date” means the date of the start date of the Contract.

“Commercially Sensitive Information” means the information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or
- (b) That constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which 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 and sensitive personal data within the meaning of the DPA.

Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 3.11.3 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) Is independently developed without access to the Confidential Information.

“Contract” means this written agreement between the Council and the Contractor consisting of these clauses and any attached Schedules.

“Contractor” means the person, service area, or company with whom the Council enter into the Contract.

“Contract Period” means the period from the Commencement Date to:

- (a) The date of expiry set out in clause 3.1.3 (Initial Contract Period),
Or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract.

“Contractor Personnel” means all directors, officers, employees, agents, consultants and Contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

“Controller” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

“Data Loss Event” any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“Data Protection Impact Assessment” an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy;

“Data Protection Officer” an expert on data privacy who works independently to ensure that an entity is adhering to the policies and procedures set forth in the GDPR

“Data Subject” a natural person whose personal data is processed by a controller or processor

“Data Subject Access Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DPA 2018” means the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment” means the Contractor’s equipment, plant, vehicles, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

“Fellow Contractor” means any other Contractor or consultant engaged by the Council from time to time to carry out services on behalf of the Council and/or such other Fellow Contractor appointed by the Council from time to time and notified to the Contractor;

“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 or relevant government department in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor’s or any Sub-Contractor’s organisation; or
- (b) The failure by any Sub-Contractor to perform its obligations under any sub-Contract.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“GDPR”: the General Data Protection Regulation (Regulation (EU) 2016/679)

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means the equipment or goods sold to the Council by the Contractor in order to fulfil the requirement of this Contract.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause 3.1.3 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the

foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel” mean those persons named in the Specification as being key personnel.

“Law” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

“LED” Law Enforcement Directive (Directive (EU) 2016/680)

“Council” means Southend-on-Sea Borough Council.

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Party” means a party to the Contract.

“Personal Data” means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person

“Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed

“Premises” means the location where the provisions of the Contract are to be supplied, as set out in the Specification.

“Pricing Schedule” means the Schedule containing details of the Contract Price.

“Processor” means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.

Prohibited Act “means”

(a) offering, giving or agreeing to give to any servant of the Council 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 contract with the Council;
or
- (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;

(b) entering into this Contract or any other contract with the Council 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 Council or

(c) committing any offence:

(d) under the Bribery Act 2010, Prevention of Corruption Acts 1889-1916;

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

(f) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council;

(g) defrauding or attempting to defraud or conspiring to defraud the Council;

“Property” means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract.

“Protective Measures” appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

“Provision” means any stipulated or unstipulated requirement, element or action required for the successful provisioning of the whole Contract whether in relation to the delivery of goods or the providing of a service.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced Contractor 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 the Specification Schedule.

“Receipt” means the physical or electronic arrival of the invoice at the address of the Council detailed at clause 3.1.6 (Notices) Paragraph (Para) 3 or at any other address given by the Council to the Contractor for the submission of invoices.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and

“Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party Contractor appointed by the Council to supply any services which are substantially similar to any of the provisions of this Contract and which the Council receives in substitution for any of the provisions of this Contract following the expiry, termination or partial termination of the Contract.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Relevant Convictions” means a conviction that is relevant to the nature of the Contract or as listed by the Council and/or relevant to the work of the Council

“Schedule” means a schedule attached to, and forming part of, the Contract.

“Service Delivery Plans” means the plans relating to the provisioning of the Contract and as the same shall be amended from time to time pursuant to this Contract. The Service delivery plans relating to the Contractor will have been supplied as part of their Bid Response.

“Services” means the services to be supplied as specified in the Specification.

“Specification” means the description of the requirements to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“Specification Schedule” means the Schedule containing details of the Specification.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, Agents, Contractors and Sub-Contractors used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the Council’s procedures for the vetting of personnel and as advised to the Contractor by the Council.

“Sub-processor” any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

“Bid Documents” means the document(s) issued by the Council to the market setting out the requirements of the Contract in order to appoint a Contractor in relation to fulfil the requirements of the Contract.

“Bid Response” means the document(s) submitted by the Contractor to the Council in response to the Council’s invitation to Contractors for formal offers to fulfil the requirements of the Contract.

“Variation” has the meaning given to it in clause 3.6.3 (Variation) where means a variation to this Contract, the Specification or the Services provided requested by either party that does not amount to a material change.

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

3.1.2 The Interpretation and Construction of this Contract Shall Be Subject To The Following Provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and Councils, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

3.1.3 Initial Contract Period

The Contract shall take effect on the Commencement Date [] and shall expire automatically on [TBC], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated

3.1.4 Contractor’s Status

For the purposes of this agreement, at all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a Contract of employment, a relationship of agency or clientship or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

3.1.5 Council’s Obligations

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a Contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

3.1.6 Notices

Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), **or** by facsimile transmission **or** electronic mail. Such communications shall be addressed to the other Party in the manner referred to in clause 3.1.6 Paragraph (Para) 3.

Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

For the purposes of clause 3.1.6 (Notices) Paragraph (Para) 2, the address of each Party shall be:

(a) For the Council:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

Email:

(b) For the Contractor:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

Email:

Either Party may change its address detailed as part of this Contract by serving a notice in accordance with this clause.

3.1.7 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings; documentation and information supplied to the Council by the Contractor in connection with the supply of the Contract and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

3.1.8 Conflicts of Interest

The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.

The Council reserve the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

Neither the giving of any approval, agreement, consent, examination, acknowledgement, certification, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, nor the failure of the same shall, unless expressly stated in this Contract, limit, diminish, obviate, or reduce the Contractor's obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a Contracting counter-party and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Contractor.

3.1.9 Not Used

3.1.10 Contractors Due Diligence

The Contractor shall be deemed to have:

Satisfied itself as to the nature and extent of the risks assumed by it under this Contract;
and

Gathered all information necessary to perform its obligations under this Contract and other obligations assumed including without limitation and accordingly to have satisfied itself as to the accuracy and sufficiency of its pricing for the Contract and other financial matters set out in the Contractor's Bid Response at the Contract Date.

The Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Council on grounds that any information, whether obtained from the Council or otherwise (including information made available by the Council), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

3.1.11 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Contract as is held (or ought reasonably to be held).

The Contractor acknowledges and accepts that the Council is reliant upon the Contractor's reasonable professional skill, care and judgment and will ensure that all works in respect of which the Contractor is instructed by the Council pursuant hereto are properly, adequately and safely carried out in accordance with the Council's requirements.

Where, in the performance of the Contract, the Contractor seeks or is obliged to seek the Council's approval or agreement to any matter or thing, the giving or confirming of the same by the Council shall not in any way derogate from the duty of care owed to the Council by the Contractor pursuant to this Contract or otherwise and shall not diminish any obligation upon the Contractor's part in respect thereof.

This Contract shall not negate or diminish any duty or obligation owed to the Council by the Contractor in equity, at common law or pursuant to statute or European law.

3.2 Delivery of the Contract

3.2.1 General Requirements of the Contract

The Contractor shall provide all required aspects of the Contract throughout the full duration of the Contract Period in accordance with:

- The Contract;
- The Specification;
- The Service Delivery Plans / Method Statements;
- Good Industry Practice;
- Legislation;
- The Council's Policies;

The Contractor shall provide all required aspects of the Contract in a manner that is consistent with all current relevant health and safety precautions required to comply with Good Industry Practice and Legislation for the protection of the Contractor, its Employees and Sub-Contractors and their employees, Customers, Fellow Contractors and their employees, the Council and the Council's employees, and any other persons invited onto or visiting the Sites;

The Contractor shall provide all required aspects of the Contract so as to minimise inconvenience and disruption to the extent reasonably practicable to:

- The Council and the Council's employees;
- Fellow Contractors and their employees and Sub-Contractors; and

3.2.2 Quality Management Systems

The Contractor shall procure that all aspects of the Contract are the subject of, and are conducted in accordance with the approved quality assurance systems. 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 a standard of Provision has not been specified in the Contract, the Contractor shall agree the relevant standards relating to the Contract with the Council prior to the commencement of the Contract and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

The Contractor shall ensure that all Staff engaged in fulfilling the provisions of the Contract shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

3.2.3 Contractor's Obligations Prior to Contract Commencement Date

The Contractor shall during the Lead in Period finalise the Contractor's Service Delivery Plans in consultation with the Council.

3.2.4 Not Used

3.2.5 Not Used

3.2.6 Not Used

3.2.7 Not Used

3.2.8 Not Used

3.2.9 Not Used

3.2.10 Not Used

3.2.11 Not Used

3.2.12 Not Used

3.2.13 The Service

The Contractor shall supply all Services required as part of this Contract during the Contract Period in accordance with the Council's requirements as set out in the Specification and the full set of Terms and Conditions, as well as the stipulations of the Contract in consideration of the total and payment of the Contract Price.

However in relation to the specific supplying of Services:

The Council may inspect and examine the manner in which the Contractor undertakes the provisioning of the Services during normal operational hours on reasonable notice.

If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Services do not meet the requirements of the Contract or differ in any way from the requirements of the Contract, and this is other than as a result of a Default

By the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

The Contractor is not given any sole or exclusive rights in relation to the provision of any aspect of the Contract

3.2.14 Manner of Provisioning the Contract

The Contractor shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to fulfil its obligations in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Council Responsibilities and subject to Variation, obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licenses and permissions (statutory, regulatory Contractual or otherwise) it may require and which are necessary for the provisioning of the Contract;
 - i. ensure that it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-Contractor) to the Council which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Services by the Council;
 - ii. any products or services recommended or otherwise specified by the Contractor for use by the Council in conjunction with the Contract meet the Council Requirements; and
 - iii. the Contractor's Systems and Assets used in the performance of the Contract will be free of all encumbrances (except as agreed in writing with the Council)
- (c) minimise any disruption the Council's operations when carrying out its obligations under this Contract;
- (d) ensure that any Documentation provided by the Contractor to the Council are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (e) co-operate with the Fellow Contractors and provide reasonable information (including any Documentation), advice and assistance in connection with the provisioning of the Contract or on the expiry or termination of this Contract for any

reason, to enable the timely transition of the Contract (or any of them) to the Council and/or to any Replacement Contractor;

(f) Not Used

(g) provide the Council with such assistance as the Council may reasonably require throughout the duration of the Contract;

(h) gather, collate and provide such information and co-operation as the Council may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract;

(i) notify the Council in writing within 2 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;

(j) ensure that neither it does not embarrasses the Council or otherwise bring the Council into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Council, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract and

(k) Not Used

An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that all Sub-Contractors and Contractor Personnel also do, or refrain from doing, such act or thing.

3.2.15 Key Personnel

The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Contract to the Council.

Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the provisioning of the Contract.

The Council shall not unreasonably withhold its agreement under clauses 3.2.15 (Key Personnel) Paragraph 2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

3.2.16 Contractor's Staff

The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to have any connection to the Contract:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

The Contractor's Staff, in carrying out any duties related to the Contract, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel through the course of their duties.

The Council may, if it has reasonable grounds for believing that any person, Employee or potential Employee is or would be an Unsuitable Person, serve written notice on the Contractor requiring the Contractor to take disciplinary or other action against and/or procure (at the Contractor's own cost and expense) that such Unsuitable Person is not engaged or employed directly or indirectly in, or in connection with, the provision of the Contract or any part of the Contract and the Contractor shall forthwith comply with such request. The rights contained within this clause shall be exercised reasonably by the Council and not arbitrarily, vexatiously or capriciously. For the avoidance of doubt the Contractor shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this paragraph.

If the Contractor fails to comply with the information request in clause 3.2.16 (Contractor's Staff) Paragraph 2 within [1] Week of the date of the request and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Crown, then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

3.2.17 Inspection of Borough

Save as the Council may otherwise direct, the Contractor is deemed to have inspected the relevant areas of the Borough of Southend on Sea and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

3.2.18 Not Used

3.2.19 Council Data and Security Requirements

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

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

To the extent that Council Data is held and/or processed by the Contractor, the Contractor shall supply Council Data to the Council as requested by the Council in the format specified by the Council.

The Contractor shall preserve the integrity of Council Data and prevent the corruption or loss of Council Data at all times that the relevant Council Data is under its control or the control of any Sub-Contractor.

The Contractor shall perform secure back-ups of all Council Data and shall ensure that any up-to-date back-ups are stored in accordance with the Contractors Business Continuity and Disaster Recovery Plan.

The Contractor shall ensure that such back-ups are available to the Council (or to such other person as the Council may direct) at all times upon request.

The Contractor shall ensure that any system on which the Contractor holds any Council Data, including back-up data, is a secure system

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

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Council Data to the extent and in accordance with the requirements specified in the Contractors Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Council's notice;

and/or

- (b) itself restore or procure the restoration of Council Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified Contractors Business Continuity and Disaster Recovery Plan

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

3.2.20 Malicious Software

The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).

If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

3.2.21 Principles of Data Security

The Contractor acknowledges that the Council places great emphasis on confidentiality, integrity and availability of information and consequently on the

security of the infrastructure provisioned by the Contractor in order to fulfill its obligations in relation to this Contract and also acknowledges the need for confidentiality in relation to Council Data.

The Contractor shall be responsible for the security of their IT Environment and shall at all times ensure a level of security which:

- Is in accordance with Good Industry Practice and Law;
- meets any specific security threats to the infrastructure provisioned by the Contractor in order to fulfill its obligations in relation to this Contract;
- complies with Information Assurance Standards;
- Ensures that usability is at the forefront of design and implementation.

Without limiting paragraph 3.2.21 (Principles of Data Security) Paragraph 2 the Contractor shall at all times ensure that the level of data security employed in the provisioning of the Contract is consistent with the policies and practices of Southend-on-Sea Borough Council relating to Data Security

Either Party shall notify the other immediately upon becoming aware of any Breach of Data Security including, but not limited to an actual, potential or attempted breach, or threat to, the Data Security Plan. Upon becoming aware of any of the circumstances referred to in this paragraph, the Contractor shall immediately take all reasonable steps necessary to:

- a) Remedy such Breach of Data Security to the extent possible and protect the integrity of the IT Environment against any such Breach of Security or attempted Breach of Security;
- b) Minimize the extent of actual or potential harm caused by any Breach of Security;

- c) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- d) Supply any requested data to the Council relating to the breach within 2 Working Days and without charge (where such requests are reasonably related to a possible incident or compromise).

Such steps shall include any action or changes reasonably required by the Council.

3.2.22 Continuous Improvement

In regards the provisioning of this Contract, the Contractor must use best endeavours throughout the duration of the Contract to make arrangements in consultation with the Council to endeavour to ensure continuous improvement and to reduce costs in the way in which the Contract is provided (where possible).

Obligations, duties and responsibilities placed upon the Council by the 1999 Act (including those set out in any subordinate legislation) shall be deemed to be applicable to the Contractor in the provision of the Contract.

Any consultations, reviews, audits or any other actions as may be necessary for compliance with clause 3.2.22 (Continuous Improvement) shall be performed at no extra cost to the Council.

3.3. Payment and Contract Price

3.3.1. Contract Price

In consideration of the Contractor's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause 3.3.2 (Payment and VAT).

The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the requirements provisioned in accordance with the Contract.

3.3.2. Payment and VAT

The Council shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted weekly in arrears.

The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of costs relating to the Contract and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

Where the Contractor enters into a sub-Contract with a supplier or another Contractor (only permissible under the written approval of the Council) for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub- Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council 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 the Contract. Any amounts due under this paragraph shall be paid by the Contractor to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.

The Contractor shall not suspend the provisioning of any requirement under this Contract unless the Contractor is entitled to terminate the Contract under clause 3.8.2 Paragraph3 (Termination on Default) for failure to pay undisputed sums of money.

3.3.3. Recovery of Sums Due

Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or Contract with the Council.

Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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

All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

3.3.4. Price Adjustment

The Contract Price shall except as provided in this clause 3.3.4 apply for the Initial Contract Period. In the event that the Council agree to extend the Initial Contract Period pursuant to clause 3.6.8 (Extension of Initial Contract Period) the Council shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good

faith negotiations with the Provider (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

If the Parties are unable to agree a variation in the Contract Price in accordance with clause 3.3.4 (Price Adjustment) Paragraph One, the Contract shall terminate at the end of the Initial Contract Period.

If a variation in the Contract Price is agreed between the Council and the Provider, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

All price adjustments which would see the price of the service increased are restricted to a maximum equal to the percentage increase of the CPI within the corresponding contract year.

3.4. Statutory Obligations And Regulations

3.4.1. Prevention of Corruption

The Contractor shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other Contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such Contract.

The Contractor warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 3.4.1 (Prevention of Corruption) Paragraph One or 2, the Council may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Contract and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of those clauses.

3.4.2. Prevention of Fraud

The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Council.

The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

If the Contractor or its Staff commits Fraud in relation to this or any other Contract with the Crown (including the Council) the Council may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination,

including the cost reasonably incurred by the Council of making alternative arrangements for the provisioning of the Contract and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

- (b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause.

3.4.3. Discrimination

The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of The Equalities Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

The Contractor shall take all reasonable steps to secure the observance of clause 3.4.3 (Discrimination) Paragraph One by all Staff.

3.4.4. The Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

3.4.5. Environmental Requirements

The Contractor shall, when working on the Contract, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

3.4.6. Health and Safety

The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

While undertaking any duty pursuant to the Contract, the Contractor shall comply with all relevant health and safety measures in respect of Staff and other persons.

The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.

The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

3.4.7. Bribery Act

The Contractor undertakes to the Council that it will throughout the duration of this Contract have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor.

The Contractor shall procure that those of its Sub-Contractors that are Affiliates comply with all provisions of the Bribery Act 2010 and shall use reasonable endeavours to procure that other Sub-Contractors do likewise.

3.4.8. Not used

3.5. Protection Of Information

3.5.1. Data Protection Legislation (Inclusive of GDPR and The Data Protection Act 2018)

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor.

The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing

- operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

It is not envisaged that any Personal Data will be processed in relation to this Contract. However, on any occasion which Personal Data is processed by the Contractor under this Contract in connection with its obligations under this Contract:

- (a) If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

The Contractor shall notify* the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

*The Contractor's obligation to notify under this clause shall include the provision of further information to the Council in phases, as details become available.

Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 3.5.1 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;
- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

The data protection officer will be the Data Protection Officer for the Council.

Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause (3.5.1) such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

For the Avoidance of Doubt the prescribed methodologies put in place by the Council to anticipate and comply with the requirements of the Data Protection Act 2018 are sufficient for both Parties to abide by.

For the avoidance of doubt the type of information for which the Act looks to protect is not likely to be used in the carrying out of this contract.

3.5.2. Freedom of Information

The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

The Contractor shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

- (a) provide the Council with a copy of all Information in its possession, or power in the form that the Council require within [five] Working Days (or such other period as the Council may specify) of the Council's request; and
- (b) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

In no event shall the Contractor respond directly to a Request for Information unless expressly authorized to do so by the Council.

The Contractor acknowledges that (notwithstanding the provisions of Clause 3.5.4 (Publicity, Media and Official Enquires) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or this Contract in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where 3.5.3(Freedom of Information)(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 3.5.3 (Freedom of Information).

3.5.3. Publicity, Media and Official Enquiries

Without prejudice to the Council’s obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

Both Parties shall take reasonable steps to ensure that their servants, employees, Agents, Sub-Contractors, Contractors, professional advisors and Contractors comply with clause 3.5.5 (Security).

3.5.4. Security

The Contractor shall comply with all security requirements of pursuant to the Contract, and shall ensure that all Staff comply with such requirements.

Upon request the Contractor will be provided copies of any requested written security procedures and the Contractor upon request will be permitted an opportunity to inspect any relevant physical security arrangements.

3.5.5. Intellectual Property Rights

All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

- (a) furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; and
- (b) prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non- exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party provisioning any part of this Contract to the Council.

The Contractor shall not infringe any Intellectual Property Rights of any third party provisioning any part of this Contract and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may

suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Council; or
- (b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.

The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Council; and
- (c) shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 3.5.6 (Intellectual Property Rights) Paragraph 5 (a) or (b).

The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Contractor in connection with the performance of its obligations under the Contract.

If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use their best endeavours to:

- (a) modify any or all of the provisions of this Contract without reducing the performance or functionality of the same, or substitute alternative Provisions of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified provisions or to the substitute provisions; or
- (b) procure a licence to use and supply the provisions of this Contract, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Contractor is unable to comply with clauses 3.5.6 (Intellectual Property Rights) Paragraph7 (a) or (b) within [20] Working Days of receipt of the Contractor's notification the Council may terminate the Contract with immediate effect by notice in writing.

The Contractor grants to the Council a royalty-free, irrevocable and non-exclusive licence to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this Contract including the provisions of this Contract provided.

3.5.6. Audit

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the provisions of this Contract supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

3.5.7. Maintenance and Access to Records

The Contractor shall (and shall procure that its Key Sub-Contractors shall) at all times:

- maintain a full record of the costs of provisioning the Contract;
- upon request by the Council, provide a written summary of any of the costs relating to the Contract, including but not limited to details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Contractor.

The Contractor shall maintain or procure that detailed records relating to the delivery of the Contract and any related works (including without limitation all Project Data) are maintained, in each case in accordance with Good Industry Practice, the requirements of these terms and conditions and any applicable Legislation.

The Contractor shall have the items referred to in this Clause 3.5.8 (Maintenance and Access to Records) available for inspection by the Council (and its advisors) upon reasonable notice, and shall present a report of them to the Council as and when requested from time to time.

3.6. Control of The Contract

3.6.1. Transfer and Sub-Contracting

Except where 3.6.1 (Transfer and Sub-Contracting) Para.4 and 5 applies, the Contractor shall not assign, sub-Contract or in any other way dispose of the Contract or any part of it without prior written approval from the Council. Sub-Contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

Where the Council have consented to the placing of sub-Contracts, copies of each sub-Contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.

Notwithstanding clause 3.6.1 (Transfer and Sub-Contracting) Paragraph1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Council incurs under clause 3.3.2 (Payment and VAT) Paragraph6).

Any assignment under this clause 3.6.1 (Transfer and Sub-Contracting) Paragraph4 shall be subject to:

- (a) reduction of any sums in respect of which the Council exercises a right of recovery under clause 3.3.3 (Recovery of Sums Due);
- (b) all related rights of the Council under the contact in relation to the recovery of sums due but unpaid; and
- (c) the Council receiving notification under both clauses 3.6.1(Transfer and Sub-Contracting) Paragraph5 and 6

In the event that the Contractor assigns the right to receive the Contract price under clause 3.6.1 (Transfer and Sub-Contracting) Paragraph4, the Contractor or the Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

The Contractor shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment.

The provisions of clause 3.3.2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

Subject to clause 3.6.1 Para10, the Council may assign novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Council; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
- (c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

Any change in the legal status of the Council such that it ceases to be a Contracting Council shall not, subject to clause 3.6.1 (Transfer and Sub-Contracting) Paragraph8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 3.6.1 (Transfer and Sub-Contracting) Paragraph6 to a body which is not a Contracting Council or if there is a change in the legal status of a Council such that it ceases to be a Contracting Council (in the remainder of this clause both such bodies being referred to as the "Transferee"):

- (a) the rights of termination of the Council in clauses 3.8.1 (Termination on change of control and insolvency) and 3.8.2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

The Contractor will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract.

3.6.2. Waiver

The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 3.1.6 (Notices).

A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

Neither the giving of any approval, agreement, consent, examination, acknowledgement, certification, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, nor the failure of the same shall, unless expressly stated in this Contract, limit, diminish, obviate, or reduce the Contractor's obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or

thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

3.6.3. Variation

Subject to the provisions of this clause 3.9, the Council may request a Variation to the Specification.

The Council may request a clause 3.6.3 (Variation) by giving the Contractor a Notice of Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;

- i. allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification; or
- ii. where applicable, request that the Contractor provide further evidence of the cost implication of the change, including, where relevant, benchmarking against similar pricing structures in operation elsewhere to validate the Contractor's cost analysis and/or counter the Council's cost analysis; or
- iii. withdraw the Notice of Variation.

If the Contractor wishes to request a Variation in the Services provided by the Contractor pursuant to the terms of this Agreement and as more particularly described in the Contractor's Business Plan from time to time, it shall serve a Contractor Notice of Variation on the Council.

The Notice of Variation must as a minimum:

- set out the proposed variation in sufficient detail to enable either Party to evaluate it in full;
- specify the reasons for proposing the variation;
- request for both Parties to consult with a view to deciding whether the Council will agree to the Variation and, if so, what consequential changes the Council requires as a result;
- indicate any financial or operational implications of the Variation;
- indicate any impact on the Charges; and
- indicate if there are any dates by which a decision by the Council is critical

As soon as practicable after receiving the Contractor Notice of Variation, the parties shall meet and discuss the matters referred to in it. During their discussions the Council may propose reasonable modifications. The Contractor shall respond promptly to any suggested modifications. Within five (5) Business Days, or such longer period as the parties, acting reasonably, agree, of receipt of the Notice of Variation (or modified Notice of Variation) the Council shall notify the Contractor in writing that it accepts or rejects the Contractor Notice of Variation.

If the Council approves in writing the Notice of Variation (with or without modification) the relevant Variation shall, unless the parties otherwise agree, acting reasonably, be implemented within five (5) Business Days, or such longer / shorter period as the parties, acting reasonably, agree, of the Council's acceptance. Within this period, the parties shall consult and agree the remaining details promptly and shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the agreed Variation.

The Council is under no obligation to accept any Notice of Variation put forward by the Contractor. However if the Council rejects the Contractor Notice of Variation, it shall be obliged to give its reasons for such a rejection.

The Council cannot reject an agreed Variation which is required in order to conform to a Change in Law. Any such Variation required in relation to this paragraph must have the agreement of both parties and shall maximise cost efficiency and/or minimize the impact on the Service.

3.6.4. Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

3.6.5. Remedies in the event of inadequate performance

Where a complaint is received about the standard of the provisioning any part of this Contract or about the manner in which any provisions have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Council shall notify the Contractor, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause 3.8.2 (Termination on Default) of the Contract.

In the event that the Council are of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Council may, without prejudice to its rights under clause 3.8.2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the provisions of this Contract until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the provisions of this Contract in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the provisions of this Contract only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the provisions of this Contract; and/or
- (c) terminate, in accordance with clause 3.8.2 (Termination on Default), the whole of the Contract.

Without prejudice to its right under clause 3.3.3 (Recovery of Sums Due), the Council may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Contract by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Contract and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement provisions of this Contract.

If the Contractor fails to supply any of the Contract in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

In the event that:

- (a) the Contractor fails to comply with clause 3.6.5 (Remedies in the event of inadequate performance) Paragraph 4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause 3.6.5 (Remedies in the event of inadequate performance) Paragraph 4 above,

The Council may terminate the Contract with immediate effect by notice in writing.

3.6.6. Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

3.6.7. Monitoring of Contract Performance

The Contractor shall comply with the monitoring arrangements set out by the Council including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

The Contractor shall monitor and report its performance in the delivery of the Contract in accordance upon request by the Council in relation to the requirements of the specification and the Council shall be entitled to be provided with, validate and audit the data.

At its own discretion of the Council can amend at any time and for any reason the data it requires and the data that is to be provided to the Council from the Contractor.

Council Monitoring

The Council may elect, at its own cost, to undertake its own performance monitoring to ensure that the Contract is being provided in accordance with this Contract. The Contractor shall use its reasonable endeavours to assist the Council in such an exercise. The Council shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise and the Contractor shall have due regard to the Council's comments in relation to the future provision of the Contract.

3.6.8. Extension of Initial Contract Period

Subject to clause 3.3.4. (Price adjustment), the Parties may, by written agreement prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to one year or any part thereof. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 3.3.4(Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

3.6.9. Entire Agreement

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Bid Documents, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;

- (b) any other document referred to in the clauses of the Contract.

3.6.10. Counterparts

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

3.6.11. Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- any necessary Variation in the Contract;
- whether any Variation is required to the terms of this Contract to deal with the Qualifying Change in Law;
- whether relief from compliance with obligations is required, including the obligation of the Contractor to provide the Contract from the Commencement Date and/or meet the Specification and/or the Bid Response during the implementation of any relevant Qualifying Change in Law;
- any loss of revenue that will result from the relevant Qualifying Change in Law;
- any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Contract Period,

In each case the Party must provide in full detail the procedure for implementing the Variation in the Contract. Responsibility for the costs of implementation shall be dealt with in accordance with Clause 3.6.12 (Parties to Discuss).

3.6.12. Parties to Discuss

As soon as practicable after receipt of any notice from either Party under Clause 3.6.11 (Qualifying Change in Law), the Parties shall apply discuss and agree the issues referred to in Clause 3.6.11 (Qualifying Change in Law) and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law. In applying Clause 3.6.3 (Variation) the Parties shall take into account (inter alia):

- evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige the Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such

expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;

- giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the that provided under this Contract, including similar businesses in which the Contractor or its shareholders or affiliates carries on business;
- demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required;

3.6.13. THIRD PARTY CONTRACTS

The Contractor's entry into, amendment to, waiver or exercise of any right relating to a Third Party Contract must not have any adverse effect on the delivery of any requirement under this Contract, it must not increase the Council's liabilities (including on termination or on the occurrence of a Relevant Event) or have any adverse effect on any aspect of the Contract.

At any time after the signing of this Contract, if and whenever the Contractor shall enter into or any Affiliate enters into any Third Party Contracts the Contractor shall ensure or procure as the case may be that any such Contract is in writing and:

- is on reasonable arm's length terms including, for the avoidance of doubt, as regards the payment of income to the Contractor or Affiliate of the Contractor;
- where the Contractor having used reasonable endeavours to achieve such agreement (agreed by the counter party) includes a right on the part of the Contractor or a Sub-Contractor as the case may be to assign, at the request of the Council, free of charge the Contractor's rights, title and interest in and to such Contract to the Council (or Council nominated person) on termination or expiry of this Contract;

3.7. Liabilities

3.7.1. Liability, Indemnity and Insurance

Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or

- (e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

The Contractor must indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of any requirement or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of their obligations under the Contract.

Subject always to clause 3.7.1 (Liability, Indemnity and Insurance) Para.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed five million pounds (£5,000,000) in any one event; and

Subject always to clause 3.7.1 (Liability, Indemnity and Insurance) Paragraph1, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and/or
 [(b) loss of savings (whether anticipated or otherwise); and/or]
 [(b)/(c)] indirect or consequential loss or damage.

The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

The Contractor shall throughout the Contract Period maintain with a reputable insurance company within the UK such policies of insurance as are necessary to cover any liability of the Contractor in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Contractor's carrying out or failing to carry out its obligations under the Contract or for which it may become liable to the Council under this Contract including:

- Employer's liability insurance for each and every claim of not less than £5,000,000 (five million pounds);
- Public liability insurance for each and every claim of not less than £5,000,000 (five million Pounds) or such limit as may be determined by the Council from time to time, unlimited in any one year of insurance. The Public Liability policy must be extended to cover the Contractor against any liabilities assumed as a result of the existence of this Contract.

Upon request, the Contractor will provide the Council with details of the policies of insurance (by way of insurer's certificate) effected in accordance with Clause 3.7 (Liabilities) including 3.7.1 and 3.7.2, so as to demonstrate that Clause 3.7 (Liabilities) is being complied with.

The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 3.7.1 (Liability, Indemnity and Insurance) Paragraph 2.

3.7.2. Professional Indemnity

The Contractor shall effect and maintain appropriate Professional Indemnity insurance cover for the full duration of the Contract and shall ensure that all Agents, professional consultants and Sub-Contractors involved in the provisioning of the Contract do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-Contractor consultant involved in the supply of the Services has a limit of indemnity of not less than £1,000,000 for each individual claim or such higher limit as the Council may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

3.7.3. Warranties and Representations

The Contractor warrants and represents to the Council that as of the Contract Date:

- (a) it has full capacity and Council and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Bid remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any Contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three (3) years prior to the date of the Contract:
 - it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- (i) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

- (j) it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and the other Contractual documents envisaged by this Contract to be entered into by the Contractor ('Other Contract Document(s)');
- (k) all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract and the Other Contract Documents and any Other Contract Document executed after the Contract Date, has been or will be taken before such execution;
- (l) the obligations expressed to be assumed by the Contractor under this Contract are, or in the case of any Other Contract Documents executed after the Contract Date will be, legal, valid, binding and enforceable to the extent permitted by law and this Contract and any Other Contract Document is or will be in the proper form for enforcement in England;
- (m) The execution, delivery and performance by the Contractor of this Contract and any Other Contract Documents does not contravene any provision of:
 - any existing Legislation either in force, or enacted but not yet in force and binding on the Contractor;
 - the memorandum and articles of association of the Contractor;
 - any order or decree of any court or arbitrator which is binding on the Contractor; or
 - any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- (n) this Contract and any Other Contract Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto; and
- (o) the copies of the Other Contract Documents which the Contractor has delivered, or, when executed, will deliver to the Council are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Other Contract Documents which

would materially affect the interpretation or application of any of any Other Contract Documents,

and the Council relies upon such warranties and representations.

3.8. Default, Disruption And Termination

3.8.1. Termination on insolvency and change of control

The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in 3.8.1 Para1(a)-(g) occurs under the law of any other jurisdiction.

The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any

- composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
 - (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
 - (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Council become aware of the change of control,
but shall not be permitted to terminate where an Approval was granted prior to the change of control.

3.8.2. Termination on Default

The Council may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Council within 5 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Council, capable of remedy;
or
- (c) the Default is a material breach of the Contract.

If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clauses 3.3.3 Paragraph1 (Recovery of Sums Due).

The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is as a result of the Council's breach of its obligations.

3.8.3. Termination for Corrupt Gifts and Fraud

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act.

If the Contractor or any Key Sub-Contractor (or anyone employed by or acting on behalf of any of it or them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with the provisions of this Clause 3.8.3 (Termination for Corrupt Gifts and Fraud).

Any notice of termination under this Clause 3.8.3 (Termination for Corrupt Gifts and Fraud) shall specify:

- the nature of the Prohibited Act;
- the identity of the party whom the Council believes has committed the Prohibited Act;
- the date on which this Contract will terminate, in accordance with the applicable provision of this Clause;
- the Council's chosen option under Clause 67 (Termination for Corrupt Gifts and Fraud).
- Any notice of termination under this Clause 67 (Termination for Corrupt Gifts and Fraud) shall specify:
 - the nature of the Prohibited Act;
 - the identity of the party whom the Council believes has committed the Prohibited Act;
 - the date on which this Contract will terminate, in accordance with the applicable provision of this Clause;
 - the Council's chosen option under Clause 3.8.3(Termination for Corrupt Gifts and Fraud).

3.8.4. Break

The Council shall have the right to terminate the Contract at any time, for any reason, by giving 6 Months written notice to the Contractor.

3.8.5. Consequences of Expiry or Termination

Where the Council terminate the Contract under clause 3.8.2 (Termination on Default) and then makes other arrangements for the supply of Contract, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 3.8.2 (Termination on Default), no further payments shall be payable by the Council to the Contractor (for provisions under this Contract supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council have established the final cost of making the other arrangements envisaged under this clause.

The Council shall not be liable under clause 3.8.5 (Consequences of Expiry or Termination) to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under clauses 3.3.2 (Payment and VAT), 3.3.3 (Recovery of Sums Due), 3.4.1 (Prevention of Corruption), 3.5.1 (Data Protection Act), 3.5.2 (Confidential Information), 3.5.3 (Freedom of Information), 3.5.6 (Intellectual Property Rights), 3.5.7 (Audit), 3.6.6 Remedies Cumulative), 3.7.1 (Liability, Indemnity and Insurance), 3.7.2 (Professional Indemnity), 3.8.5 (Consequences of Expiry or Termination), 3.8.7 (Recovery upon Expiry or Termination) and 3.9.1 (Governing Law and Jurisdiction).

3.8.6. Disruption

The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Contractor employed by the Council.

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

In the event of industrial action by the Staff, the Contractor shall seek approval to its proposals to continue to perform its obligations under the Contract.

If the Contractor's proposals referred to in clause 3.8.2 (Termination by Default) are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.

If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Contractor may request a reasonable allowance of time and in addition, the Council may reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

3.8.7. Recovery upon Termination

On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted Contractors or Sub- Contractors, which was obtained or produced in the course of providing the Contract;
- (b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Contractor by the Council. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Contract to the Replacement Contractor and/or the completion of any work in progress.
- (d) promptly provide all information concerning the provision of the Contract requirements which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Contract has been provided or for the purpose of allowing the Council or the Replacement Contractor to conduct due diligence.

If the Contractor fails to comply with clause 3.8.7 (Recovery Upon Termination) Paragraph 1 (a) and (b), the Council may recover possession thereof and the Contractor grants a licence to the Council or their appointed Agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted Contractors or Sub-Contractors where any such items may be held.

Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 3.8.7 (Recovery Upon Termination) Paragraph 6(c) and (d) free of charge. Otherwise, the Council shall pay the Contractor's

reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

3.8.8. Force Majeure

Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of [3] Weeks, either Party may terminate the Contract with immediate effect by notice in writing.

Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor Contractor shall be regarded as due to Force Majeure only if that agent, Sub-Contractor Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 3.8.8 (Force Majeure) Paragraph One it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

3.8.9. No Double Recovery

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation under this Contract or any other agreement in relation to the Contract in respect of any loss that it has incurred (or any failure of the other Party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this Contract or otherwise.

3.8.10. Not Used

3.9. Disputes And Law

3.9.1. Governing Law and Jurisdiction

Subject to the provisions of clause 3.9.2 (Dispute Resolution), the Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-Contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

3.9.2. Dispute Resolution

The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director (or equivalent)] of each Party.

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.

If the dispute cannot be resolved by the Parties pursuant to clause 3.9.2 (Dispute Resolution) Paragraph One the Parties shall refer it to mediation pursuant to the procedure set out in clause 3.9.2 (Dispute Resolution) Paragraph 5 unless (a) the Council consider that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

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

- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to [*an appropriate mediation Contractor*] to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the

Parties may at any stage seek assistance from an appropriate mediation Contractor to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) If the Parties fail to reach agreement in the structured negotiations within 30 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts [unless the dispute is referred to arbitration pursuant to the procedures set out in clause 3.9.2 (Dispute Resolution)Paragraph6].

Subject to clause 3.9.2 (Dispute Resolution)Paragraph 2, the Parties shall not institute court proceedings until the procedures set out in clauses 3.9.2 (Dispute Resolution)Paragraph One and 3 have been completed save that:

- (a) the Council may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 3.9.2 (Dispute Resolution)Paragraph 7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Council of its intentions and the Council shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 3.9.2 (Dispute Resolution)Paragraph 7.
- (c) the Contractor may request by notice in writing to the Council that any dispute be referred and resolved by arbitration in accordance with clause 3.9.2 (Dispute Resolution)Paragraph 7, to which the Council may consent as it sees fit.

In the event that any arbitration proceedings are commenced pursuant to clause 3.9.2 (Dispute Resolution) Paragraph 6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;

- (b) the Council shall give a written notice of arbitration to the Contractor (the “Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 3.9.2 (Dispute Resolution) Paragraph 7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Council under clause 3.9.2 (Dispute Resolution) Paragraph 7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

3.9.3. Legislation

The Contractor shall perform its obligations under this Contract and any Sub-Contract in accordance with all applicable Legislation and Guidance from time to time in force subject to any consequential effect or otherwise referred to in Clause 3.6.11 (Qualifying Change in Law).