

# INVITATION TO TENDER

# Rossendale BOROUGH COUNCIL

## Future High Streets Fund

### Invitation to Tender for Architect led Design Team Services RIBA Stage 1 – 7: Bacup Market Square



**Version Control:**

<b>Reviewed/ Updated by:</b>	<b>Date of review/ change:</b>	<b>Version #</b>
GD	18/09/19	1
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**Please read this entire document before completing your response.**

## 1.1 INSTRUCTIONS:

### Market – Future High Street Funding RIBA 1 – 7:

- 1.1.1 Rossendale Borough Council (“the Council”), is inviting you to tender for the provision of those services described in section 2 below (Specification) (“the Service”)
- 1.1.2 You are required to submit your Tender to meet the specification set out in Section 2 of this Request for Tender
- 1.1.3 It is essential that you comply with the following instructions in the preparation and submission of your Tender. The Council reserves the right to reject any Tender that does not comply with these instructions
- 1.1.4 Tenders must be received by 12 noon on Friday 4<sup>th</sup> October 2019. Any Tender submitted after this date and time will be disregarded by the Council.
- 1.1.5 Procurement timescale:  
The process is being conducted in accordance with the following indicative timescale:  
**Tender document issued.....w/c 22nd September 2019**  
**Closing date for receipt of tender.....12 noon 9<sup>th</sup> October 2019**  
**Start of assessment period (estimated).....w/c 9<sup>th</sup> October 2019**  
**Contract award (estimated).....w/c 14<sup>th</sup> October 2019**
- 1.1.6 Bidders are requested to register their interest to: [mhoragsaxon@rossendalebc.gov.uk](mailto:mhoragsaxon@rossendalebc.gov.uk) to ensure that any amendments or questions can be shared with all interested parties. Clarification questions should be submitted to the same email no later than 7 days prior to close date. Please note that the Council’s responses to any queries or clarification requests may, at the Council’s discretion, be circulated to all EOI registered parties.
- 1.1.7 Other than the registered officer, Mhorag Saxon, no other Council employee or member of the Council has the authority to give any information or make any representation (express or implied) in relation to this Tender, or any other matter relating to the Contract. Any attempt to lobby for or against to Members or Officers of the Council or media during the tender process may be considered grounds for exclusion.
- 1.1.8 **Completed tenders must be sent to the following email only: [tenders@rossendalebc.gov.uk](mailto:tenders@rossendalebc.gov.uk) no later than 12 noon on Wednesday 9<sup>th</sup> October 2019 and marked in the title as “RIBA 1-7 Architect Bacup Market Square”.** In the event of a large submission tenderers are requested to send several emails which are clearly numbered and indexed.

**1.1.9 Your tender must include the following documents:**

- i Full price schedule and cost breakdown
- ii Method statement response
- iii Certificate of Non Collusion and Non Canvassing
- iv Acknowledgement and Agreement of the Terms and Conditions
- v Acknowledgement and Agreement of the Data Protection Agreement

The Council reserves the right to reject any tender where the Tender Response has not been fully completed.

1.1.10 The Council reserves the right to issue supplementary documentation at any time during the tendering process to clarify any issue or amend any aspect of the Tender. All such further documentation that may be issued shall be deemed to form part of the Tender and shall supplement and/or supersede any part of the Tender to the extent indicated.

1.1.11 A Tender submitted in accordance with this Request for Tender will be deemed to remain open for acceptance or non-acceptance by the Council for a period of 90 days from the closing date stipulated. The Council may accept the Tender at any time within this prescribed period. The Council shall, however, not be bound to accept the lowest or any quotation.

1.1.12 If your Tender is accepted by the Council, you will be required to enter into a Contract with the Council for the provision of the Services (“the Contract”). The Contract shall incorporate the terms and conditions published with this Request for Tender.

1.1.13 Your Tender must be completed in full and in English.

1.1.14 Your Tender must be submitted in Microsoft Word format and any supporting documentation must be submitted in Microsoft Word, Microsoft Excel or Adobe PDF format. It is your responsibility to ensure that the Council receives your tender by the specified deadline. In the event that Tenderers believe that they are unable to submit a Tender through the electronic system or require assistance they must contact the Procuring Officer **no later than 4 calendar days before the submission date for the Tender** to enable any technical queries to be investigated and resolved.

1.1.15 Your Tender must be signed and dated where required.

**FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION STATEMENT**

The Council is subject to The Freedom of Information Act 2000 (“Act”) and The Environmental Information Regulations 2004 (“EIR”).

As part of the Council’s obligations under the Act or EIR, it may be required to disclose information concerning the procurement process or the Contract to anyone who makes a reasonable request.

If Tenderers consider that any of the information provided in their Tender is commercially

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sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it should be clearly marked as "**Not for disclosure to third parties**" together with valid reasons in support of the information being exempt from disclosure under the Act and the EIR.

The Council will endeavour to consult with Tenderers and have regard to comments and any objections before it releases any information to a third party under the Act or the EIR. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR, or is to be disclosed in response to a request of information.

The Council must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.

The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:

has not been clearly marked as "Not for disclosure to third parties" with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or

does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or

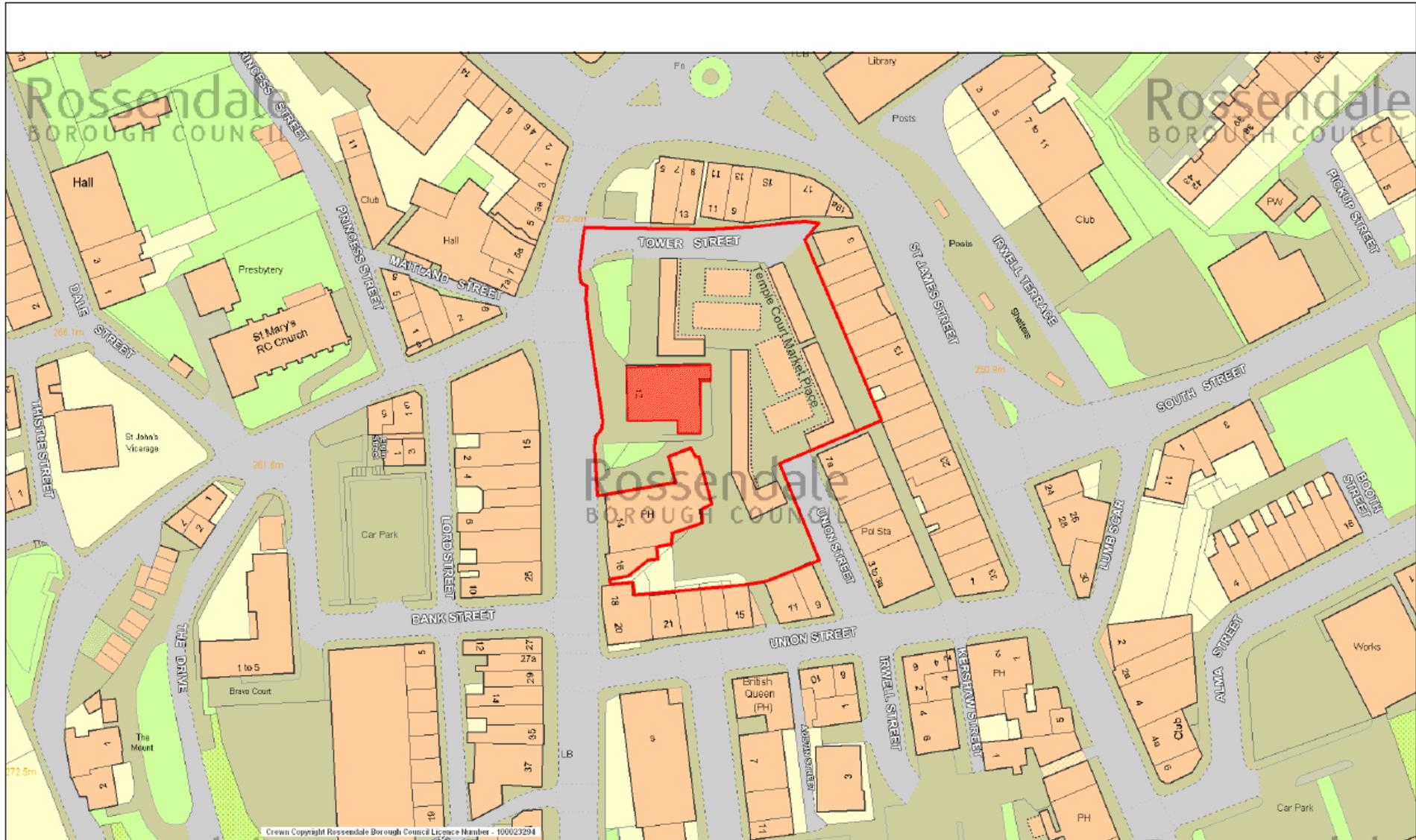
in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

## 2.0 SPECIFICATION:

### **FUTURE HIGH STREETS FUND: RIBA 1-7 Architect: Bacup Market Square**

#### **Background:**

- 2.1 Rossendale Borough Council has been successful in its Expression of Interest (EoI) to the Future High Streets Fund (FHSF) for Bacup Town Centre. The object of the FHSF is to breathe new life into town centres and high streets in ways to help them evolve and adapt to changes in consumer demand and expectations. These changes are to be transformational; and ensure a thriving town centre able to sustain itself, its community and businesses.
- 2.2 To progress with the next phase of grant assessment the Council is now required to develop a RIBA 1-7 Architect to support the FHSF and other funding bodies in support of the new market square development proposals and strategic ambition outlined in the EoI. The Masterplan is considered sufficient in the completion of stage 0 – strategic definition.
- 2.3 Rossendale Borough Council wishes to engage with qualified consultancy support to produce the detailed architecture designs associated with RIBA 1-7; the production and submission of all statutory documents such as planning permission; procurement, management, supervision and payment of all associated RIBA 1-7 sub-contractors necessary as part of the process and attendance at project boards. See **Appendix D** which outlines the required items of work at each RIBA stage.
- 2.4 The successful Consultant sought by this Tender will be required to meet the deadlines set by the project board and Rossendale Council and be expected to co-operate and share documentation with other consultants such as the business case commission.
  - The outline concept of the Market Square and associated new buildings is outlined in the emerging draft Bacup 2040 Vision and Masterplan. It involves the repurposing of the new market square, which is likely to involve some demolition and site clearance and the creation of two new commercial led multi-purpose buildings. These are likely to house the indoor market, events space, restaurants, cafes, bars, offices and residential units. This will also include a high quality public realm and associated features within the designated market square boundary that will be utilised as an outdoor events and market area.
  - The Council is consulting with the local community, businesses and community groups in the coming months and the final brief for works will be given after this has been established. The Bacup 2040 Board is a steering group for this process and will also feed into the final brief. The Bacup 2040 Vision and Masterplan is expected to be endorsed as official Council policy and as a Supplementary Planning Document in December 2019.



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Date 19/9/2019

**Red building highlighted for demolition/Market Square RIBA area within red line. Economic Development Rossendale Borough Council**

- 2.5 The RIBA 1-7 architect will be required to produce works to a high quality standard and be responsible for the delivery of all associated drawings, plans and building work costs. The Council reserves the right not to commission further stages or to change contractor after the completion of each RIBA stage; it will hold sole discretion over this decision.
- 2.6 This project will be managed by stages and it is possible that the building works could be split into distinct phases; the process will be market demand led. Designs may also need to vary during the process to reflect commercial market conditions.
- 2.7 **In addition, the appointed Bidder will be expected to cooperate where appropriate with other consultants who will be working on the Bacup 2040 Vision and associated funding bids. These are likely to be:**

**Business Case – Green Book Economic Assessment Tender:** This will form the basis of the FHSF bid and information provided by the RIBA 1-7 process will be included in this submission which will also incorporate all of the other commission's findings. A separate HSHAZ greenbook commission will also be commissioned for this funding bid.

**Derelict Buildings Tender:** There are a number of significant vacant and derelict buildings within the Bacup town centre that have a hugely detrimental impact on the town centre. Most of these buildings have been vacant and near dereliction for a number of years despite the Council's efforts to enforce against owners where necessary and appropriate. The Future High Streets Fund is an opportunity to transform these buildings. One has been identified through the Bacup 2040 Vision for demolition and the land earmarked for new development. There are another three very large derelict buildings and a high number (26%) of vacant premises within the town centre boundary with a high percentage of underused upper floors all of which require significant restoration and repurposing for a productive end use.

There are also a number of key gateway buildings within kilometre of the town centre which will be required to be included within this tender.

Individual commissions will be undertaken to assess each of the derelict buildings and to establish the funding gap.

**Public Realm (non Market Square) and Transport Infrastructure Tender:** the public realm enhancements are designed to encourage and enhance the footfall walkways within the town centre and make the town centre a more easily accessible and visually appealing place for both the local community and visitors. The introductions made by the public realm will encourage parking within the large central car park and offer a vibrant, safe and accessible walk way into the town centre. With well thought out vegetation, interpretation boards and atmospheric lighting, the pedestrian routes will be complemented by a one way system operating on Union Street which is classed as the town centre.

The pedestrian route will then lead in to the Market Square and events spaces and movement will be encouraged throughout the remaining town centre through the passages and ginnels that litter the town centre. Cycling will be included in the public realm enhancements through bike stands and bike friendly paving and also additional interpretation boards set out to encourage cyclists to visit the town centre.

All information developed by the additional contractors will be shared with the  
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winning Tenderer.

All other supporting documents may also need to be incorporated into this business plan.

**2.8 The successful Bidder will be required to incorporate into designs feedback from the consultation. Market demand assessments and policy from Rossendale Council. The findings from the following work managed and developed by the Economic Development Team at Rossendale Council.**

**2.9 Rossendale Borough Council Economic Development Team:**

2.9.1 In order to assist with the development and establishment of the Bacup 2040 Vision and Masterplan as well and associated funding bids, the Economic Development Team at the Council; will undertake the following:

- **Public Engagement:** a robust public engagement on the development sites strategy and public realm proposals to build on the Bacup 2040 Vision consultation work completed to date. This will ensure the business case continues meet and is led by local demand.
- **Management:** the Council will have overarching management of all of the procurement process and consultants.
- **Bacup 2040 Vision Board:** the Council will manage the Bacup 2040 Board and the FHSF Officer Board.
- **Accountable Body:** the Council will be the accountable body to the MHCLG
- **Governance Strategy:** Strategy for managing delivery of the proposals, project monitoring and evaluation, public engagement
- **Strategic Decision Making:** the Council will be responsible for all strategic level decision making throughout the process.

**2.9.2 This information will be shared with the appointed Consultant.**

2.10 In terms of FHSF deadlines, a draft submission will be required by Wednesday 15<sup>th</sup> January 2020 and further update may be required prior to April 2020.

**2.11 It is expected that RIBA stage 3 + financial costs (stage to be confirmed later by Rossendale Council) must be provided to the Council no later than Friday 24<sup>th</sup> April 2019 to enable appropriate Council sign off prior to final submission to the Ministry of Housing, Communities and Local Government (MHCLG) by Thursday 30<sup>th</sup> April 2020.**

2.12 The remaining stages will be completed at the discretion and timing determined by the project plan, external funding deadlines and Rossendale Council.

**2.13 Project timescales:** It is mandatory that the successful Tenderer will be required to adhere to the following timescales:

Item	Date
Further business case guidance circulated	September 2019

Commence inception meetings with MHCLG	October 2019
Indicative Cap Ex Estimate	8 <sup>th</sup> November 2019
RIBA designs and costs for early draft business case submission	15 <sup>th</sup> January 2020
RIBA designs and costs for full business case submission date	30 <sup>th</sup> April 2020

**These timescales are based on the Ministry of Housing, communities and Local Government guidance (subject to variance).**

#### 2.14 Provision of Information:

2.14.1 The Council will provide a copy of the full EoI and other relevant information to enable the consultants to undertake the work. This will include relevant information from the following sources:

- Bacup 2040 Vision (2019)
- Bacup Opportunities Masterplan (2019)
- Bacup Constraints Map (2019)
- Bacup Conservation Area Appraisal (under review) **Appendix E**
- Bacup Article 4 Direction **Appendix F**

These documents are available in the Appendix at the end of this document. Further guidance notes on the Business Case will be available through the Government website.

2.14.2 Other documentation that the Council has access to that is required for the completion of the full business case will be provided to the consultants as required.

2.14.3 In addition, the appointed consultants will be required to meet / phone conference relevant Council Officers and the Project Board which will meet as required to establish and test any assumptions used in the preparation of the full business case and to collect relevant information for the FHSF bid; as well future delivery timetables subject to approval.

2.14.4 Regular two-weekly telephone conference meetings will be established between the Council and the Consultants.

#### 2.15 Management Arrangements:

The commission will be managed by the Economic Development Team led by the Economic Development and Property Service Manager, Guy Darragh, with Project Officer support from Mhorag Saxon. The Economic Development Team will co-ordinate liaison between the consultants and other relevant Officers in the Council and other organisations, where necessary. A specific internal working group including all relevant Council services will be established.

## 2.16 **Submission Requirements:**

Tenderers are invited to submit proposals to Rossendale Borough Council for consideration demonstrating the following:

- An understanding of the brief and requirements
- A methodology of how the RIBA 1-7 architecture services will be developed
- A work programme timeline which reflects the methodology to achieve the required RIBA stages with the FHSF timescales

## 2.17 **Resources and Personnel:**

2.17.1 Tenderers must specify how their project team will be set up, who will lead it and the roles each member of the team will play; the roles and responsibilities of any sub-consultants should also be set out clearly. CVs of the Project Director, Project Manager, and other appropriate staff, including any sub-consultants, should be provided.

2.17.2 A clear day to day project manager must be identified who will be the main contact and who will have full knowledge of every aspect in the preparation of the RIBA 1-7 and that that any immediate issues can be quickly addressed, or meetings attended at short notice. A schedule of inputs for each team member and their overall time requirements should be included.

2.17.3 It is expected that the project manager, or their representative, may be in attendance at the Bacup 2040 Vision Steering Group meeting, Council or funding body on occasions.

## 2.18 **Capability Statements and References:**

Consultants will be required to demonstrate a proven track record with regards to the requirements of the commission. The key skills and competencies required from consultants are:

- RICS qualification and suitable experience
- Capability to provide robust RIBA 1-7 designs and costings
- Town centre building designs and public square
- Experience of working as part of a multi- discipline team

2.19 Please provide details of two comparative or relevant projects carried out by your organisation and by the individuals who would be part of the project (please limit each example to one double-sided A4 page).

2.20 Details of two independent referees (including at least one Local Authority), for whom similar, or comparable, work has been conducted.

## 2.21 **Fee Proposal:**

2.21.1 The Council has a maximum budget set for the completion of the Business Case and bids above this figure may not be considered. Bidders should clearly set out their fees involved, including a breakdown of the fees for each of the persons involved in undertaking the study. This should cover the following:

- A breakdown of costs relevant to each stage of the project and fee structure if a phase of 1 out of the 2 possible buildings was brought forward at different times ;
- The number of hours and rates for each member of the team; and
- Overall budgeted fee for the total project.

2.21.2 The fee for the study will be fixed in advance and include all expenses excluding VAT. The cost of attending meetings during the course of the study should be included in the composite fee to be submitted. In terms of arrangements for fee payments; 1/7 of the total fee will be paid upon the satisfactory completion of each RIBA stage 1-7.

## **2.22 Delivery of the RIBA 1-7 programme:**

**2.22.1 The RIBA stage 3 + costings to be completed by Friday 24<sup>th</sup> April 2020 (RIBA stage to be confirmed).**

2.22.2 The report and any original material, including surveys, will be the copyright of Rossendale Borough Council and must be sent in both PDF and an easily changeable and well know software package.

### 3.1 EVALUATION CRITERIA and SELECTION PROCESS:

3.1.1 The criteria described in this Request for Tender is the Criteria used by the Council to determine the Most Economically Advantageous Tender. You must provide the information required in section 5 (Tender Response). The information you provide will be evaluated by the Council using the criteria described below and the Contract will be awarded to in accordance with this criteria.

3.1.2 Your Tender Response will form part of the Contract.

3.1.3 The Council reserves the right to request you to attend an interview to clarify matters contained within you Tender Response.

3.1.4 Tenders will be scored using the following criteria:

Price	Pass / fail 60%
<b>Method Statement 1</b> – Implementation – how will the RIBA 1-7 stages will be produced and by whom (1000 word limit)	40%
<b>Method Statement 2</b> – Methodology in producing the RIBA 1-7 stages (1000 word limit)	
<b>Method Statement 3</b> – Named attendance at project Board ; 2 weekly phone conference calls; Board presentations when required (500 word limit)	
<b>Method Statement 4</b> –Co-operation of other consultants	

commissions and Rossendale Borough Council produced work (500 word limit)		
<b>Method Statement 5</b> – knowledge and experience with town centre regeneration projects (500 word limit)		
<b>Method Statement 6</b> – How will conflict of interest with other comparative FHSF bids be managed to maintain the integrity of the Rossendale bid (500 words)		

**3.1.5 Responsible Procurement:** The answers provided in your Response will be evaluated and scored. Bidders who self-certify that they do not meet the requirements of this section will be excluded.

The provision of insufficient or false information and/or any responses that leads the Council, acting reasonably, to conclude (considering the risk that the relevant answer concerns the Bidder's ability to properly perform the contract) that it would be inappropriate to select the Bidder on this occasion, will result in exclusion.

Exclusion grounds may apply at any point in the procurement process up to the award of contract.

RIBA Stage	a) Cost for demolition, 1 building & public realm	b) Cost for additional second building
1		
2		
3		
4		
5		
6		
7		

The table above should indicate your total costs for each RIBA stage for a) demolition of 12 Market Street, 1 new building and public realm works to the Market Square. Please ensure you also have a total cost for each RIBA stage of for a

second new build in addition to the aforementioned demolition, first new build and public realm works.

### 3.2 SCORING METHODOLOGY:

3.2.1 The following scoring methodology shall be used for the Method Statement question(s):

3.2.2

Score	Performance
0	The response raises major concerns about understanding or approach which is potentially highly detrimental to satisfactory service delivery or contract performance.
1	The response suggests significant shortcomings of understanding or approach which may impact on service delivery or contract performance.
2	The response suggests minor shortcomings of understanding or approach which may impact to a short extent on service delivery or contract performance.
3	The response raises no concerns about understanding or approach to service delivery or contract performance.

If a tender scores '0' against any one or more method statements, this will give grounds for excluding that tender from any further consideration. For any tenders so excluded, the relevant price will also be excluded from the evaluation.

### 3.3 PRICE:

3.3.1 Price shall be allocated a total of 60% of the marks available.

3.3.2 Your Price submission will be scored using the following methodology:

***(Lowest Price Submitted / Bidders Submitted Price) x Weighting***

3.3.3 The Council will seek clarification from you if your submitted Tender is considered by the Council to be economically unviable. Following a review of any submission that you make in response to such a clarification, if the Council remains of the opinion that the submitted Tender is economically unviable, the Council will reject that Tender.

## 4.0 STANDARD TERMS AND CONDITIONS OF CONTRACT:

### Contents

#### 1. Definitions and Interpretation:

1.1. The following words and expressions shall have the following meanings:

**Assets:** Any Council equipment, software or intellectual property used by the Provider for the delivery of the Service.

**Authorised Council**

**Officers:** Council officers authorised by the Contract Manager as notified to the Provider in writing by the Council from time to time.

**Background IPR:** means intellectual property rights existing prior to this Agreement or generated outside the services under this Contract which one Party agrees to make available to the other in the course of carrying out its obligations.

**Business Continuity Plan:** the business continuity and disaster recovery plan prepared by the Provider pursuant to Clause 9

**Change in Law:** means any change in any law or change in any of the requirements of any code of practice, which comes into force after the Commencement Date

**Change of Control Events:** means the events in clause 20.

**Commencement Date:** means the date as the parties may agree.

#### Commercially Sensitive

**Information:** the information comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider

significant commercial disadvantage or material financial loss.

- Confidential Information:** means any information which relates to trade secrets, know-how, intellectual property rights and personnel or has been designated as confidential by either party in writing or that ought to be considered as confidential including Commercially Sensitive Information.
- Contract:** means the contract for provision of the Service in accordance with the Contract Documents.
- Contract Documents:** any document agreed by the parties to be Contract Documents including but not limited to these terms and conditions, the Specification, the Contract Particulars, the Providers' tender and all other Tender Documents;
- Contract Manger:** means the person who is authorised by the Council to manage the Contract.
- Contract Particulars:** means the contract particulars set out in part A of this Contract.
- Contract Period:** means the period from the Commencement Date to either:
- i. the date of expiry of the Term or such other date of expiry as may be varied by any extensions to the Contract which are agreed pursuant to clause 3.2 (Extended Term); or
  - ii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.
- Contract Price:** means the price agree by the parties for the full and proper performance by the Provider of its obligations under the Contract.
- Council Auditors:** means the Council's internal auditors and external auditors.

Council Data:	<p>i. data, text drawings sounds which are embodied in any electric optical or tangible media which are :-</p> <p>(a) supplied to the Provider by or on behalf of the Council or</p> <p>(b) which the Provider is required to generate, process store or transmit pursuant to this Contract or</p> <p>ii. any Personal Data for which the Council is the Data Controller</p>
Data Controller:	data controller as defined by the DPL.
Data Processor:	data processor as defined in the DPL.
Data Protection Legislation (DPL):	(i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR, (ii) the DPA, (iii) and any national implemented Laws, regulations and secondary legislation about the processing of personal data and privacy as amended or updated from time to time and (iv) any successor legislation to the GDPR or the DPA.
Data Subject:	a natural person whose data is processed.
DPA:	Data Protection Act 1989 and or Data Protection Act 2018 [subject to Royal Assent].
Default:	means any breach of the obligations of the relevant party or any act or omission or negligence of the relevant party in connection with performance of their obligations.
Default Interest Rate:	means 8% above the base lending rate of the Bank of England.
Force Majeure:	<p>means:</p> <p>(a) an act of God including but not limited to fire, flood or natural disaster, act of war, destruction or damage to; or</p> <p>(b) any event or circumstances which are beyond the reasonable control of the party affected but shall not include strike action (save to the extent caused by an event of Force Majeure) or the</p>

failure to provide the Service by a sub-Contractor.

- General Change in Law:** a Change in Law where the change is of a general legislative nature (e.g. taxation or duties of any sort affecting the Provider)
- GDPR:** General Data Protection Regulation (Regulation (EU) 2016/679).
- Good Industry Practice:** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the services similar to the Service under the same or similar circumstances;
- Intellectual Property** means copyright, know-how, goodwill Rights (IPR): specifications, plans, policies, procedures, training manuals, database rights, trade or business names moral rights and other similar rights or obligations whether registerable or not.
- Key Officers:** means Council and Provider employees who are identified as being key to performance of the party's obligations and who are appointed under clause 18.
- KPI:** Key Performance Indicator
- Organised Crime:** means planned and co-ordinated criminal behaviour and conduct by people working together on a continuing basis.
- Performance** means all reports, records and data in any form Management Reports: required by the Council for monitoring performance and provision of the Service.
- Premises:** means the location where the Service is performed.
- Personal Data:** personal data as defined in the GDPR which is processed in connection with this Contract.

- Products:** the products, equipment or the like supplied by the Provider or used by the Provider in performance of the Service
- Prohibited Act:** means and shall comprise of:
- i. to directly or indirectly promise or give any person working for or engaged by the Council a financial or other advantage to induce or to reward that person to perform improperly any function or activity;
  - ii. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a function or activity in connection with this Contract;
  - iii. to committing any offence:
    - a. under the Bribery Act; or
    - b. any under legislation creating offences concerning fraudulent acts relating to this Contract; or
    - c. any other contract with the Council; or
    - d. defrauding, attempting to defraud or conspiring to defraud the Council.
- Provider:** means the person, firm or company whose tender to perform the Contract is accepted and where the context so admits, his personal representatives, successors and permitted assignees
- Regulated Activity:** In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.  
In relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
- Regulated Activity Provider:** As defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.
- Regulatory Body:** Any body which is established by or pursuant to statute, to whose regulatory powers either of the parties are subject.

- Result:** means all Intellectual Property Rights created by or on behalf of the Provider:
- i. in the course of performing the Service or
  - ii. arising from the Service or
  - iii. exclusively for the purpose of performing the Service including but not limited to reports, drawings, software, designs, and materials and supporting data.
- Serious Issues of Concern:** means and shall include but is not limited to physical, mental and sexual abuse of Service Users and fraudulent and criminal activities.
- Service:** means the delivery of service, and all related services and work to be performed as set out in Clause 7 and more particularly described in the Specification.
- Service User:** means the recipient of the Service.
- Specific Change in Law:** a Change in Law that relates specifically to the business of the Council which could not affect a comparable service.
- Specification:** means the Specification or any other document setting out the description of the Services to be performed as set out in the Specification
- Tender Documents:** means all documents sent by the Council to the Provider and documents received by the Council from the Provider which comprise and relate to the tender for the Contract.
- Term:** means the period starting from the Commencement Date for the period stated in the Contract documents or as agreed by the parties

**Working Day:** Means any day from Monday to Friday (inclusive), which is not Christmas Day, Good Friday or a statutory bank holiday.

- 1.2. The terms defined in the Contract Particulars shall have the same meaning in these terms and conditions.
- 1.3. Headings are used in this Contract for the convenience of the parties and shall not affect the interpretation and reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.4. Words denoting the masculine gender include the feminine gender and words denoting natural persons include corporations and firms and any other legal entity and shall be construed interchangeably in that manner.
- 1.5. Words denoting the singular include where the context so admits the plural and vice versa.
- 1.6. Any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.7. Any reference to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended modified extended or re-enacted or replaced and in force and including all subordinate legislation made under it.
- 1.8. Any reference to any law, regulation, directive or statutory provision of the European Union (European Union Law) or any legislation or statutory provision enacted under or to give effect to any European Union law, shall following Britain withdrawing from the European Union (EU).(Brexit), be construed as referring to any legislation, replacing or superseding or re-enactment or revocation or consolidation of that European Union Law or applicable legislation or statutory provision .

**2. Application of these terms and conditions:**

- 2.1. Subject to the Council's right to terminate the Contract, these terms and conditions shall apply and shall remain in force for the Contract Period.

**3. CONTRACT PERIOD:**

- 3.1. This Contract shall commence on the Commencement Date and shall continue for the Term unless terminated earlier or extended in accordance with the terms of this Contract.
- 3.2. The Contract may be extended at the option of the Council for a further period, the 'Extended Term' but otherwise upon the same terms and conditions set out in this Contract.

- 3.3. Unless terminated earlier in accordance with the terms of this Contract, this Contract shall expire either at the end of the Term or upon exercise of the option by the Council, at the end of the Extended Term.

**4. Provider's Status:**

- 4.1. The Contract is a contract for service and the Provider shall be acting as an independent contractor not as agent of the Council.
- 4.2. Nothing in the Contract shall create, or be deemed to create a partnership between the parties.
- 4.3. The Provider shall be exclusively responsible for discharging of any tax and VAT liability arising out of the remuneration for the Services provided under the Contract.

**5. Regulatory Body Registration and Notice**

**5.1. The Provider warrants and represents:-**

- 5.1.1 that it holds all requisite regulatory registration required for provision of this Service;
- 5.1.2 that it holds and will continue to hold the requisite registration during the existence of this Contract;
- 5.1.3 that it holds and will continue to hold the necessary licence or other document enabling the Provider to provide the Service.

**5.2 The Provider must notify the Council:**

- 5.2.1 of any formal notice received from any Regulatory Body relating to the provision of the Service; or
- 5.2.2 any order, or inquiry by any Regulatory Body into any misconduct or mismanagement in relation to the carrying out of the Service by the Provider; or
- 5.2.3 in the event of being subject to an investigation by any Regulatory Body relating to the Service; or

5.2.4 If the Provider's registration required for provision of the Service is withdrawn or cancelled.

**6. Warranty:**

6.1. The Provider acknowledges and confirms that:

6.1.1. It has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;

6.1.2. it has received all information requested by it from the Council to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;

6.1.3. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council; and

6.1.4. it has entered into this Contract in reliance on its own due diligence.

6.2. Except as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

6.3. The Provider warrants that:

6.3.1. ALL INFORMATION, REPRESENTATIONS AND MATTERS OF FACT COMMUNICATED TO THE COUNCIL BY THE PROVIDER IN CONNECTION WITH THE SERVICE INCLUDING ANY INFORMATION PROVIDED BY THE PROVIDER IN RESPONSE TO THE INVITATION TO TENDER ARE TRUE AND ACCURATE AND NOT MISLEADING.

6.3.2. THE SERVICE, REPORTS, DOCUMENTS AND MATERIALS PRODUCED BY OR FOR THE PROVIDER PURSUANT TO THE CONTRACT SHALL NOT INFRINGE ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS;

6.3.3. IT HAS FULL CAPACITY AND AUTHORITY TO ENTER INTO THE CONTRACT; AND

6.3.4. IT HAS OBTAINED ALL NECESSARY AND REQUIRED LICENCES, CONSENTS AND PERMITS TO PERFORM THE SERVICE.

**7. The Service:**

7.1. The Provider shall provide the Service with effect from the Commencement Date for the duration of the Contract Period in accordance with the Contract Documents.

7.2. The Provider shall perform its obligations for the duration of the Contract Period and notwithstanding

- i. the existence of an unresolved dispute ,and or
- ii. any failure by the Council to pay the Contract Price

The Provider shall continue to perform its obligations and shall not suspend provision of the Services unless the Provider is entitled to terminate this Contract under clause 44.2 or 44.3.

7.3. Where any Service is stated in the Specification to be subject to a specific KPI, the Provider shall provide the Service in such manner as will ensure that the achieved KPI is at least the, specified or target KPI.

7.4. Where clause 7.3 applies, the Provider shall provide records and Management Reports summarising the achieved KPI as provided for in clause 22.2.

7.5. Time shall be of essence where dates and period for performance of the Service are specified in the Contract Documents or substitutes for them.

**8. Performance Standard and Continuous Improvement:**

8.1. The Provider shall use and shall procure the use of all reasonable skill and diligence to carry out the Service and the Service shall be carried out to the satisfaction of the Contract Officer and shall without limitation conform to:-

- (i) these terms and conditions;
- (ii) the provisions of the Contract Documents;
- (iii) any variation agreed in writing by the parties;
- (iv) the requirement of any relevant British or European Union legislation, Regulation or Code of Practice;
- (v) any professional standard which might be reasonably expected of the Provider;
- (vi) Good Industry Practice;
- (vii) Any representation or warranties made by the Provider orally or in writing.

8.2. The Provider shall comply with and give all notices required by any Act of Parliament, Regulation, bylaw and any European Union directive in provision Services.

- 8.3. The Provider shall co-operate with any other Providers, Central or Local Authorities, Agencies or other organisations or bodies commissioned or appointed in relation to the Service.
- 8.4. The Provider shall immediately inform the Council in writing of anything that threatens or makes it unlikely to successfully deliver the Service or any part of it.
- 8.5. The Provider shall have an ongoing obligation throughout the Contract Period to identify new and potential improvements to the Service and shall deliver the Service in such manner as to secure continuous improvement having regard to a combination of economy, efficiency and effectiveness. The Provider shall in that regard, report to the Council every six months:
- 8.5.1. new or potential improvements to the Services including; procedure, methods, performance mechanism and customer support services;
- 8.5.2. new or potential improvements which might result in efficiency changes in delivery of the Service that would enable service delivery at lower costs and greater benefit to the Council.
- 8.6. If the Council wishes to incorporate any improvement identified by the Contractor under clause 8.5, the Council shall send the Contractor a change request for consideration in accordance with clause 26.6.
9. **Business Continuity:**
- 9.1. The Provider shall establish, implement and maintain an adequate Business Continuity Plan that will ensure delivery of the Service without stoppage at all times irrespective of adverse conditions or events.
- 9.2. In the event of the occurrence of such adverse conditions or events, the Provider shall promptly activate the Business Continuity Plan and shall immediately inform the Council.
- 9.3. The Provider shall continue to provide the affected Service in accordance with the Business Continuity Plan and shall restore the Service to normal in accordance with the Business Continuity Plan.
10. **Health and Safety:**
- 10.1. The Provider shall comply with the Health and Safety at Work etc Act 1974 and all regulations and codes of practice made under it which relate to the provision of Services.

- 10.2. The Provider shall provide to the Council on request its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974).
- 10.3. The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Service where that incident causes personal injury or damage to property that may give rise to personal injury.
- 10.4. Where the Services are provided on Council Premises, the Provider shall comply with any health and safety measures implemented by the Council for persons working on Council's Premises.

**11. Council's Premises and Assets:**

- 11.1. Where provision of the Service is to be carried out on Council Premise, the Provider acknowledges that it has inspected the Premise and has satisfied itself as to the suitability of the Premise for provision of the Service.
- 11.2. Subject to clause 10.4 the Council shall provide to the Provider access to such parts of the Council's Premises and such Assets as the Provider reasonably requires for the purpose of properly performing the Service.
- 11.3. The Provider shall comply with the Council's security requirement and shall keep safe and secure all Assets provided and used by the Provider in provision of the Service.
- 11.4. The Provider shall notify the Council immediately on becoming aware of any damage caused by the Provider or its subcontractors to Council Premises or any Asset of the Council.

**12. The Contract Price and Payments:**

- 12.1. In consideration of the Provider properly performing its obligations under this Contract, the Council shall pay the Provider the Contract Price.
- 12.2. The Contract Price shall be paid in arrears upon submission of valid invoices subject to satisfactory performance. Each invoice shall have sufficient information of Services provided to allow the Council to verify the accuracy of the invoice. Payment of the Contract Price shall be made within 30 days of receipt of the correct (undisputed) invoice.
- 12.3. Where any party disputes an amount ('disputed amount'), an amount equal to the sum not in dispute shall be paid and the dispute in respect of the disputed amount will be determined in accordance with Clause 24. Provided that the disputed amount has been disputed in good faith, interest due on the disputed amount shall not accrue until resolution of the dispute between the parties.

12.4. Subject to clause 12.3, interest shall be payable on the late payment of any undisputed amounts properly invoiced at the Default Interest Rate. The Provider shall not suspend the supply of the Services if any payment is overdue.

12.5. Any payment of interest under this Contract shall be at the Default Interest Rate from the due date for payment until the actual date of payment.

**13. Overpayment and Deductions:**

13.1. Where the Council has paid in advance for Services that have not been provided by the Provider, the Council will be entitled to a refund of such payment from the Provider and the Provider shall refund such money to the Council.

13.2. Should the Provider fail to repay such amounts within the time limit set by the Council the outstanding amount shall bear interest on a daily basis at the Default Interest Rate from the due date for payment until the actual date of payment.

13.3. The Council may set off any amounts owed by the Provider under this Contract against any amount payable by the Council to the Provider under any other contract.

**14. Financial Management and Auditing:**

14.1. The Provider shall maintain detailed costing information in respect of all expenditure relating to this Contract and to provision of the Service and shall maintain and retain copies of all receipts, accounting records and any relevant documents for a period of at least 6 years following completion or termination of this Contract.

14.2. The Provider shall permit free access at all reasonable times to all records of accounting and all relevant documents (including computerised documents and data) for inspection and audit by the Council Auditors and shall on request make available such records of accounting and all relevant documents for inspection and audit by the Council Auditors.

14.3. If an inspection or audit should reveal a discrepancy in the accounting records, the Provider shall immediately rectify the discrepancy. The right of inspection in clause 14.2 above, shall remain in effect for a period of one (1) year after the termination or expiry of this Contract or until the settlement of all subsisting claims by the Council whichever is the later

14.4. The Provider shall take adequate measures to safeguard against fraud and theft by its directors, staff or subcontractor and shall notify the Council immediately if it has reason to suspect any irregularity or fraud has occurred or is occurring.

14.5. Any substantiated allegation of fraud against the Provider or its directors, may result in termination of this Contract and either the recovery or repayment of the

amount of any loss sustained by the Council including the cost of making other arrangements to provide the Service.

**15. Provider's Employees:**

15.1. The Provider shall engage and retain sufficient numbers of staff with the requisite skills knowledge, training, experience and abilities as shall be necessary for the proper performance of the Service.

15.2. The Provider shall replace promptly any staff who cease to be in the employ, or under the control of the Provider for any reason or who shall be removed from assisting in the provision of the Service, and the Provider shall ensure that such replacement shall in every way be suitable for the performance of the Service.

15.3. The Provider shall provide a means of identification of all staff engaged in the provision of the Service.

15.4. The Provider shall operate a staff disciplinary procedure in accordance with current ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on disciplinary and grievance procedures.

15.5. Where the Council has reasons to believe that any staff's manner of performance of the Service is below the acceptable standard or detrimental to the health of the Service User or not in the best interest of the Service User:

2.1

15.5.1. The Council may by notice in writing require the Provider to remove such staff from provision of the Service; and

2.2

15.5.2. The Provider shall forthwith remove such staff from the provision Service and shall immediately provide a replacement unless the Council determines otherwise;

15.5.3. The Council shall in no circumstances be liable either to the Provider or such staff in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Provider shall fully indemnify the Council in respect of any claim made by such staff.

2.3

15.6. The Provider shall implement and maintain a whistleblowing policy which complies with the 'Whistleblowing Arrangements Code of Practice issued by the British Standards Institute in conjunction with Public Concern at Work'.

The Policy shall :

- i. set out procedures by which staff can confidentially report concerns about illegal, unethical or otherwise unacceptable conduct and
- ii. ensure that it enables the staff to bypass the level of management at which the problem may exist.

15.7. The Provider shall comply with the provisions of the Modern Slavery Act 2015 and shall take such steps as is necessary to promote ethical business practice and policy to protect employees and workers from abuse and exploitation. The

Provider shall use all reasonable endeavours to ensure that slavery and human trafficking is not taking place in its supply chains.

## 16. **Safeguarding Vulnerable People:**

- 16.1. Where the Service is Regulated Activity, the Provider acknowledge that the provision of the Service is Regulated Activity and that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Service provided under this Contract, for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 16.2. The Provider shall
- i. ensure that all Staff engaged in provision of the Service are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service; and
  - ii. monitor the level and validity of the checks under this clause for each member of staff
- 16.3. The Provider shall not employ any person who is barred from or whose previous conduct or records indicate that they would not be suitable to carry out the Service or who may otherwise present risk to the Service Users.
- 16.4. The Provider must have suitable procedures in place to protect, prevent and respond to abuse against vulnerable Service Users.

## 17. **Safeguarding to Prevent Terrorism:**

- 17.1. The Provider acknowledges that, the Council has a duty under the Counter-Terrorism and Security Act 2015 (“CTSA”) to have due regard to prevent people from being drawn into terrorism. The Provider shall facilitate the Council’s compliance with its duty pursuant to the CTSA and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Provider should ensure that staff are appropriately trained to:
- i. understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;
  - ii. be aware of extremism and the relationship between extremism and terrorism;
  - iii. know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it.
  - iv. obtain support for people who may be exploited by radicalising influences.
- 17.2. And where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police.

**18. Key Officers:**

- 18.1. Each party shall appoint the persons named in the Contract as Key Officers who will be responsible for the matters allocated to such Key Officer.
- 18.2. The Key Officers shall have the authority to act on behalf of the respective party on matters for which they are expressed to be responsible.
- 18.3. Each party shall ensure that the office of any Key Officer is not vacant at any time and must promptly notify the other of any replacement.
- 18.4. The Council may require the Provider to remove any of its Key Officers whom it considers in its reasonable opinion to be unsatisfactory for any reason which has a material impact on delivery of the Service. The cost of such replacement shall be borne by the Provider.

**19. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE):**

19.2. On Commencement:

19.2.1. Where on the commencement of the Contract, staff transfer from a previous Provider, the Provider hereby acknowledges and undertakes to the Council that with effect from the Commencement Date it will become the employer of the transferring staff on the transfer of the undertaking to which the TUPE Regulations apply; and

19.2.2. The Provider shall indemnify and keep the Council indemnified from and against all loss incurred by the Council in connection with or as a result of any claim or demand by any transferring staff (whether in contract, tort, under statute, pursuant to European law or otherwise) arising directly or indirectly from any act, fault or omission of the Provider in respect of any transferring staff on or after the Commencement Date or any claim arising out of any change made by the Provider on or after the Commencement Date to such transferring staff's terms and conditions of employment.

19.3. On Expiry or Termination:

19.3.1. Where the TUPE Regulations apply, upon expiry or termination of the Contract, the Provider shall, before the expiry or termination of the Contract (howsoever occurring), provide the Council with a list of all staff, together with all 'employee liability' information required under Regulation 11 TUPE and any other information the Council may require, including but not limited to PAYE and national insurance records and personnel files relating to all such persons.

**Change of Control:**

19.4. The Provider must notify the Council as soon as it becomes aware of the happening of any of the following Change of Control Events:

19.4.1. there is a change in the management or ownership of the Provider;

19.4.2. the merger of the Provider with any other organisation;

19.4.3. the acquisition, sale, transfer of assets or shares of the Provider;

19.4.4. if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010.

19.4.5. if a company, any changes in the structure of the Provider which the Provider may be required to notify Company House.

19.5. The Provider shall provide to the Council full details and related documentation of the transaction including where relevant any sale agreement and or Company House documentation of the transaction and the Council may require the Provider to novate the Contract.

19.6. For the avoidance of doubt, any Provider change whether by, transfer or sale of the ownership of the Provider or otherwise to a new organisation shall not discharge the Provider from its obligations under this Contract. Unless and until the Contract is novated, the Provider shall remain liable and accountable under this Contract.

**20. Inspection:**

21.1. THE PROVIDER MUST ALLOW AUTHORISED COUNCIL OFFICERS AND COUNCIL AUDITORS ACCESS TO THE PREMISES AT ANY REASONABLE TIME TO ENTER AND VIEW; INSPECT AND OBSERVE THE PROVISION OF THE SERVICE AND ASSOCIATED RECORDS.

**22. Monitoring and Performance Review**

22.1. THE COUNCIL SHALL UNDERTAKE SERVICE PERFORMANCE REVIEWS AGAINST THE TARGETS AND KEY PERFORMANCE INDICATORS IN ACCORDANCE WITH THE SPECIFICATION.

22.2. THE PROVIDER SHALL CO-OPERATE FULLY AND PROVIDE ALL PERFORMANCE MANAGEMENT REPORTS AND SUCH ASSISTANCE AND ALL OTHER INFORMATION AS REQUIRED UNDER THIS CONTRACT OR AS MAY BE REQUESTED BY THE COUNCIL OR COUNCIL AUDITORS FOR THE PURPOSE OF:

- i. monitoring and review of this Contract;
- ii. the examination and certification of the Provider's accounts; and

- iii. to enable the Council to comply with its statutory obligation of best value under the Local Government Act and other reviews as are required by any relevant law or statute.

22.3. The parties' Key Officers and authorised representatives shall meet to discuss and implement the outcome of such reviews.

22.4. If the Provider fails to meet the performance targets set out in the Specification, the Council may invoke the Default provisions in clause 42.

**23. Complaints and Compliments:**

23.1. The Provider shall set up and maintain a written compliment, complaints and suggestion procedure, in accordance with the Council's compliments, complaints and suggestion procedure and shall monitor and evaluate the effectiveness of its delivery of the Service. The Provider shall make available to the Council the written compliment, complaints and suggestion procedure.

23.2. The Provider shall ensure that all relevant staff engaged in the provision of the Service are fully aware of the compliment complaints and suggestion procedure and shall keep detailed, accurate and complete records of all compliments, complaints and suggestions received and the responses. The detailed and complete records shall be forwarded to the Council's complaints officer at a frequency to be agreed with the Provider.

**23.3. The Complaints Procedure:**

23.3.1. The complaint process shall be straight forward and easily accessible to Service Users and / or any one acting on their behalf ('the Complainant') The Provider shall ensure that the Service Users and / or representatives are aware of this procedure and shall ensure that all relevant documentation is made available on demand.

23.3.2. The complaint process shall be fair and transparent and shall not result in reprisals against the Service User and / or their representative.

23.3.3. The Provider shall deal with all complaints in the first instance, promptly, efficiently and must investigate all complaints.

23.3.4. The Complainant must be treated with respect and courtesy and the Provider shall provide all assistance as may be required by the Complainant to enable the Complainant understand the procedure or advice or where they may obtain such assistance. The Complainant must be told the outcome of the investigation of their complaint and the action taken.

23.3.5. The complaint process shall be fully documented setting out the action taken, the outcome and whether or not the Complainant is satisfied. The complete and comprehensive detail shall be forwarded to the Council.

23.3.6. The investigations must be carried out and the complaint resolved with 10 days of receipt of the complaint.

23.4. Where the complaint is not resolved or cannot be resolved under the Provider's complaints procedure, or where the Service Users or his representative so requests, the Provider shall assist the Complainant to access the Council's complaints procedure and will assist and co-operate with the Council in carrying out any investigations for the purpose of resolving the complaint

23.5. If a complaint is made to the Local Government Ombudsman relating to performance of Services under this Contract, the Provider shall provide all relevant information and co-operate fully with any investigation of the Local Government Ombudsman.

23.6. In the event of a finding of maladministration by the Local Government Ombudsman in relation to any act or omission or default of the Provider in performance of Services under this Contract, the Provider shall fully indemnify the Council for any loss suffered by the Council as a result thereof.

**24. Dispute Resolution Procedure:**

24.1. The parties shall in the first instance attempt to resolve any disputes arising out of or relating to this Contract through negotiations between the parties' senior representatives who shall have authority to settle the dispute:

- i. either party may initiate the negotiations by written notice to the other setting out the details of the dispute;
- ii. the nominated senior representatives shall meet within 5 Working Days and shall in good faith negotiate to resolve the dispute.

24.2. If the matter is not resolved within 20 Working Days of commencement of negotiations, the parties agree to settle the dispute by mediation.

24.3. The parties will jointly agree and appoint a mediator in accordance with the Centre for Effective Dispute Resolution (CEDR) Mediation Procedure.

24.4. If the dispute is not settled by mediation with 20 Working Days of commencement of mediation or such other longer number of days as may be mutually agreed after appointment of the mediator, either party may refer the dispute to the Courts.

**25. Assignment and sub-contract:**

25.1. This Contract is personal to the Provider and the Provider shall not assign charge or otherwise deal with the benefit pursuant to this Contract.

25.2. The Provider shall not delegate or subcontract its obligations under this Contract without the prior written consent of the Council. Consent if given may be subject

to reasonable conditions and such consent if given shall not relieve the Provider from its liability and obligations under this Contract.

- 25.3. Any authorised subcontract shall be in writing and in so far as it is applicable, the terms of the subcontract, shall replicate the terms of this Contract and shall procure compliance and impose the same obligations on the subcontractor including without exception compliance with all relevant legislation, Council's policy and practice in respect of procurement and adoption of quality standards in force at the time
- 25.4. The Provider shall include in such sub-contract a term which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice
- 25.5. The Provider shall at all times remain primarily accountable for the quality of the Services provided and shall remain primarily accountable and liable for quality of the Service provided under the subcontract

**26. Variations:**

- 26.1. Save as provided in this clause 26 or otherwise provided in this Contract, any requirement for a variation shall be subject to Change Control Procedure in accordance with clause 26.6 and this Contract shall not be varied or amended unless both parties have agreed such variation or amendment in writing.
- 26.2. Notwithstanding clause 26.1 above or any other provisions of this Contract, in the event of a Change in Law, whether due to;
- i. a General Change in Law or
  - ii. a Specific Change in Law where the effect of the Specific Change in Law is reasonably foreseeable on the date of this Contract:
- 26.2.1. If the Council issues a variation notice pursuant to this clause 26.2 the Provider shall neither be relieved of its obligations to perform the Service in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price.
- 26.2.2. Any variation notice in clause 26.2 shall specify the date from which the variation shall take effect and the Contract shall as from the date specified in the notice be varied.
- 26.2.3. For the avoidance of doubt, the Provider shall not reject any variation to this Contract proposed by the Council where the variation is required by the Council in order to conform to a Change in Law.
- 26.3. If a Specific Change in Law occurs during the Term other than as described in clause 26.2.ii,
- 26.3.1. the Provider shall as soon as reasonably practicable notify the Council of the likely effects of that change including:

- i. whether or not any changes are required to the manner of performance of the Service and
- ii. any change in the Contract Price

26.3.2. Any request to vary the manner of performance of the Service and any change in the Contract Price shall be subject to the Change Control Procedure

26.3.3. If the Provider acting reasonably considers the change (under this clause 26.3) to the Contract Price to be unacceptable it may terminate this Contract by not less than 90 days' notice in writing to the Council. For the avoidance of doubt, the Provider shall not be entitled to any claim for compensation or damages for such early termination.

#### 26.4. Change Control Procedure

- i. If either party wishes to change the scope of the Services (including Council requests for additional services), it shall submit details of the requested change to the other in writing.
- ii. If either party requests a change to the scope or manner of execution of the Services, the Contractor shall, within a reasonable time, provide a written estimate to the Council of:
  - a. the likely time required to implement the change;
  - b. any variations to the Contract Price arising from the change;
  - c. the likely effect of the change on the delivery and performance of the Service; and
  - d. any other impact of the change on the terms of this Contract.

III. IF THE COUNCIL WISHES THE CONTRACTOR TO PROCEED WITH THE CHANGE, THE PARTIES SHALL AGREE IN WRITING THE NECESSARY VARIATIONS TO THE SERVICE, THE CONTRACT PRICE AND ANY OTHER RELEVANT TERMS OF THIS CONTRACT TO TAKE ACCOUNT OF THE CHANGE AND THE CONTRACTOR SHALL IMPLEMENT THE CHANGE AS AGREED.

#### 27. Indemnity:

27.1. Subject to clause 27.2. the Provider shall fully and properly indemnify and keep the Council indemnified against all actions, loss, damage, cost liability, expenses and damages howsoever arising whether in tort, contract, under statute or otherwise out of breach or negligence of the Provider, his agents, employee or subcontractors, in connection with the provision of the Service or supply or use of Products: for any claim made against the Council :

- I. BY A THIRD PARTY ARISING OUT OF, OR IN CONNECTION WITH, THE PROVISION OF THE SERVICE OR SUPPLY OF THE PRODUCTS
- II. FOR ACTUAL OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, OR IN

CONNECTION WITH, THE PROVISION OF THE SERVICE OR SUPPLY OR USE OF THE PRODUCTS; AND

- III. BY A THIRD PARTY FOR DEATH, PERSONAL INJURY OR DAMAGE TO PROPERTY ARISING OUT OF, OR IN CONNECTION WITH, DEFECTIVE PRODUCTS, TO THE EXTENT THAT THE DEFECT IN THE PRODUCTS IS ATTRIBUTABLE TO THE ACTS OR OMISSIONS OF THE PROVIDER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

27.2. The indemnity under Clause 27.1 shall apply except insofar as the, actions, loss, damage, cost liability, expenses and damages incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council or its Representatives

**28. Limitation of Liability:**

28.1. Subject to Clause 28.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

28.2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement

28.3. Subject to clauses 15.5.3, 27.1, 28.1 35.8, 38.7 and 39.3, the liability of the Provider (whether on tort contract or otherwise) shall, save in respect of personal injury and death caused by its negligence or that of its servants agents or employees, in no case exceed the amount of insurance cover that it has in place in accordance with clause 29.

28.4. Subject to Clause 24.1 and Clause 24.6, the Council's aggregate liability to the Contractor for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall be limited in any Contract Year to £[FIGURE].

28.5. Nothing in this Contract excludes or limits the liability of either Party for:

- ii. fraud or fraudulent misrepresentation;
- iii. death or personal injury caused by that Party's negligence.

**29. Insurance:**

- 29.1. The Provider shall take out and maintain in full force and effect with a reputable company during the Contract Period, at its own cost, minimum level of insurance cover as follows:
- 29.1.1. Public liability insurance – minimum insurance of £5,000,000 against all loss of and damage to property (real or personal or intellectual) and death or injury to persons in relation to any one claim or series of claims.
  - 29.1.2. Employer’s Liability (Compulsory Insurance) Act 1969 – minimum insurance of £10,000,000 (except where the Provider is exempt from the obligations of this Act, provided that alternative arrangements for meeting such liability will be agreed with the Council.) in relation to any one claim or series of claims
  - 29.1.3. Professional Indemnity Insurance - (where applicable) in respect of the Provider’s business with a minimum level of indemnity of £1,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or sub-contractors involved in the provision of the Service hold and maintain appropriate cover.
  - 29.1.4. Product liability insurance (where applicable) with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and not less than £5,000,000 in aggregate for all claims arising in any year.
  - 29.1.5. Efficacy Insurance to cover any Service or Product failure to perform (where applicable) extending either the Public Liability or Product Liability Insurance or both, the minimum value of such extended cover shall be £5,000,000.
- 29.2. The insurance cover in clause 29.1 shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider’s performance of this Contract, including death, personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 29.3. The Provider shall when required by the Council produce evidence of the insurance required in the sub-clauses above. In the event that the Provider at any time fails to maintain the insurance in sub-clauses above the Council may take out and maintain such insurance and the Provider shall pay to the Council the cost and expenses so incurred by the Council.
- 29.4. The terms of the insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

29.5. Where the insurance is a “Claims Made Policy” (ie an insurance policy with a condition whereby only *claims* notified to the insurer during the policy period are covered). the Provider shall hold and maintain the insurance for a minimum of 6 years following the expiry or earlier termination of the Contract.

**30. Confidentiality:**

30.1. The parties acknowledge that any Confidential Information obtained from or relating to the other or any sub-contractor or the Service User is confidential information for the purposes of this Contract.

30.2. Subject to Clause 39 each party ('Receiving Party') shall keep the Confidential Information of the other party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party.

30.3. Each party and any permitted sub-contractor shall:

30.3.1. only use Confidential Information for the purposes of this Contract;

30.3.2. not disclose any Confidential Information to any third party without the prior written consent of the other, and it may be a condition of such consent that such third party sign a confidentiality undertaking on same terms as set out in this clause;

30.3.3. take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed or used other than for the purposes of this Contract by its employees, agents or sub-contractors.

(i)

30.4. The restrictions in this clause 30 shall continue to apply after the termination of this Contract without limit in point of time but shall not apply to Confidential Information:

30.4.1. which is or comes into the public domain or is subsequently disclosed to the public (otherwise than as a result of a breach of this clause 30); or

30.4.2. which is required to be disclosed by law; or

30.4.3. which was already in possession of the party (without restrictions as to its use on the date of receipt); or

(ii)

30.4.4. which is required by any Regulatory Body to which the disclosing party is subject including without limitation the Commissioner for Local Administration;

30.4.5. to the extent that the Confidential Information needs to be disclosed for the proper performance of the party's obligations under this Contract.

**31. Council Data and Security:**

31.1. The Provider shall not store, copy, disclose, or use Council Data except as necessary for the performance by the Provider 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 Provider, the

Provider shall supply that Council Data to the Council as requested by the

Council in the format specified by the Council.

31.2. The Provider shall preserve the integrity of Council Data and prevent 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.

31.3. The Provider shall ensure that any system on which the Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security requirements.

**32. Data Transparency and Publication:**

32.1. The parties acknowledge that except for any information which is exempt from disclosure in accordance with FOIA, EIR, GDPR and DPA, the text of these terms and conditions and Contract Documents is not Confidential Information.

32.2. The Council shall be responsible for determining in its absolute discretion whether the Contract Documents or any part of a Contract Document is exempt from disclosure in accordance with the provisions of the FOIA, EIR, GDPR and DPA.

32.3. Notwithstanding clause 30 above or any other term of the Contract, the Provider hereby gives its consent for the Council to publish this Contract and the Contract Documents in its entirety including from time to time agreed changes to the Contract, to the general public in whatever form the Council may decide.

32.4. The Council may consult with the Provider to inform its decision to publish but the Council shall have the final decision in its absolute discretion and the Provider shall cooperate and provide all assistance as the Council may require.

32.5. Except as required by law, the Provider shall not publish this Contract or any Contract Document or make any announcement relating to this Contract or its subject matter without the prior written consent of the Council .

**33. Information Sharing:**

33.1. The Council will share information on a Provider's performance of the Service with other Local Authorities and with Regulatory Bodies in matters of public interest.

**34. Intellectual Property Rights:**

34.1. Nothing in this Contract shall affect the ownership of either party's Background IPR which one party agrees to make available to the other in the course of carrying out its obligations.

34.2. If one Party makes any of its Background IPR available to the other Party in the course of this Contract the Party receiving such Background IPR shall treat it as confidential information disclosed under Clause 30, and shall not use it for any purposes other than that for which it was made available to that party.

34.3. All IPR in the Specification or any specifications or instructions provided to the Provider by the Council shall remain the property of the Council.

34.4. Unless otherwise agreed in writing by the Council, the Result shall vest in the Council on creation and shall be the property of the Council and the Council shall have the right to unfettered use of the Result. The Provider hereby waives all moral rights to the Result and to the extent that any IPR in the result do not automatically vest in the Council, the Provider hereby assigns absolutely to the Council all title and interest in the IPR the Provider may have or hereby acquire in the Result.

34.5. The Provider shall not at any time sell, loan, transfer, transmit, distribute, deal with or otherwise dispose or purport to deal with the Result in any way which may adversely affect the Council's proprietary or IPR.

34.6. The obligations under this clause will continue to apply after the termination of this Contract without limit in point of time.

**35. Equality Act and Equal Opportunities:**

35.1. The Provider shall comply with the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act (in relation to sex, race, disability, religion or belief, age etc) in:

35.1.1. provision of Services; and

35.1.2. recruitment and management of its staff and must ensure observance of these provisions by its staff and sub-contractors employed in provision of the Service.

35.2. The Provider shall operate an equal opportunities policy and warrants that its equal opportunities policy complies with all statutory obligations and it shall not

treat one group of people less favourably than others in relation to recruitment of staff and in provision of the Service.

- 35.3. The Provider acknowledges that in carrying out the Service, it may be regarded as a public authority and shall comply with the Council's disability equality duty under the Equality Act 2010
- 35.4. The Provider shall take all reasonable steps to support the Council in the Council's duty to prevent discrimination and to promote equality of opportunity.
- 35.5. The Provider shall in particular with regard to its employees make all reasonable adjustments to ensure that no employee is placed at a substantial disadvantage by reason of:
- i. its provision , criterion or practice or
  - ii. the physical feature of the Premise or
  - iii. a lack of provision of auxiliary aids and services.
- 35.6. Where the Service is carried out in Council Premises, the Provider shall inform the Council as soon as it is aware of any circumstances which will in any way hinder or affect an employee's ability to perform and provide the Service.
- 35.7. The Provider shall notify the Council as soon as it becomes aware of any investigation or proceedings brought against the Provider under the Equality Act in connection with this Contract and shall:
- i. allow the Council access to any relevant documents;
  - ii. permit Council officers to attend any associated meetings; and
  - iii. co-operate fully and promptly with the investigating body, court or tribunal
- 35.8. The Provider shall indemnify the Council against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Council arising out of or in connection with any investigation or proceedings under the Equality Act resulting from any act or omission of the Provider.

### **Sustainability and Social Value:**

#### 35.9. Environmental Issues:

- 35.9.1. During performance of this Service the Provider must seek to avoid using products, substances and services that are known to be, or where there is strong evidence to suggest they could be harmful to the environment or a danger to health (employees, contractors and members of the public).

Wherever possible and economically practicable, only materials from sustainable sources must be used in the performance of this contract.

**35.10. Social Outcomes and Community Benefits:**

35.10.1. The Council has a stated commitment to improving employment opportunities and increasing the skills and employability of its communities. The Provider shall, in the performance of this contract, consider ways in which it may be able to contribute to this objective.

**36. HUMAN RIGHTS ACT 1998:**

36.1. The Provider acknowledges that in performing its obligations under this Contract, it may be a public body for the purposes of the Human Rights Act 1998 (HRA) and may be subject to the same duty as the Council in the same way as if it was the Council.

36.2. The Provider shall to the extent applicable to provision of the Service, comply with the Council's HRA obligations as if it was the Council.

**37. Data Protection Legislation (DPL):**

38.1. The Parties shall comply with the Data Protection Legislation

37.1. With respect to the Parties' rights and obligations under this Contract, the Parties acknowledge that the Council is a Data Controller and that the Provider is a Data Processor.

37.2. The Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Contract.

37.3. The Provider shall ensure that personal and/or sensitive information is properly protected and shall implement appropriate arrangements which ensure that personal information of Service Users and employees are processed and protected in accordance with current statutory requirements.

37.4. The Provider shall:

- (a) Process the Personal Data only in accordance with written instructions from the Council to perform its obligations under this Contract and where applicable, the parameters of Appendix 1 which sets out the scope, nature and purpose of the processing;

- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 31 (Council Data and Security Requirements);
- (c) not disclose or transfer the Personal Data to any third party or Provider personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Council (save where such disclosure or transfer is specifically authorised under this Contract);
- (d) impose confidentiality obligations on all personnel authorised to process Personal Data.

37.5. The Provider shall ensure that any transfer of Personal Data between the Provider and the Council, is strictly controlled in accordance with the Council's information security requirements and shall ensure that processes are in place to protect this data at all times including the use of encryption where appropriate.

37.6. The Provider shall not transfer any Personal Data outside of the European Economic Area without the prior written consent of the Council and the following conditions are met:

- i. either the Council or the Provider has provided appropriate safeguards in relation to the transfer
- ii. the data subject has enforceable rights and effective remedies
- iii. The Provider has provided an adequate level of protection to the Personal Data it is transferring
- iv. The Provider complies with reasonable instructions of the Council in respect of the Personal Data it is transferring.

37.7. The Provider shall notify the Council immediately if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data;
- (ii) a request to rectify, block or erase any Personal Data;
- (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

37.8. The Provider shall assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the DPL with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 37.9. The Provider shall notify the Council immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- 37.10. The Provider shall at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by any applicable law to store the Personal Data;
- 37.11. The Provider shall, maintain records of processing activities to help demonstrate compliance with GDPR and shall allow access to Council Auditors pursuant to clause 14, 21 and 22.
- 37.12. The Provider shall fully and properly indemnify the Council for any breach of DPL by the Provider which renders the Council liable for any costs, fines, claims or expenses howsoever arising.
- 37.13. Where the Provider intend to engage a sub-contractor pursuant to Clause 25 and intends for that sub-contractor to process any Personal Data relating to this Contract, the Provider shall:
- i. notify the Council in writing of the intended processing by the sub-contractor;
  - ii. obtain prior written consent to the processing;
  - iii. ensure that any sub- contract imposes obligations on the sub-contractor to give effect to the terms set out in this Clause 38.

**Freedom of Information Act 2000 (FOIA) and Environment Information Regulation 2004 (EIR):**

39.1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR; the Provider shall:

- (a) transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (b) provide all necessary assistance and co-operation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (c) shall, if required, provide and shall procure that its sub-contractors provide at the Provider's expense, all information belonging to the Council which is in its possession or control in the form that the Council requires within 5 Working

Days (or such other period as the Council may reasonably specify) of the Council's request for such information; and

- (d) not respond directly to a request for information unless authorised in writing to do so by the Council.

37.14. The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a request for Information to the extent that it is permissible and reasonably practical for it to do so and shall act in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA.

37.15. The Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs or is to be disclosed in response to a request for information.

37.16. Failure to provide such information in accordance with the terms of this Contract shall be a breach of this Contract and the Provider shall indemnify the Council for any claims, costs, damages and expenses that the Council may incur by reason of such breach including but not limited to claims, costs, damages and expenses arising directly or indirectly as a result of any decision of the Information Commissioner that such information shall be disclosed.

37.17. The Council shall not be liable for any loss, damage or detriment, howsoever caused, arising from disclosure of any information disclosed in compliance with a request for information under FOIA and/or the EIRs.

**38. Civil Contingency:**

40.1. In times of emergency, the Provider shall support and co-operate with the Council and carry out such services as the Council may require to enable the Council comply with and carry out its duties under the Civil Contingencies Act 2004.

**39. Prevention of Bribery and Corruption:**

39.1. The Provider shall :-

39.1.1. comply with the Bribery Act 2010 and all laws and regulations relating to anti bribery and anti-corruption;

- 39.1.2. have and shall maintain an adequate anti bribery policy to prevent the Provider and its staff from committing any Prohibited Acts and shall enforce it where appropriate.
- 39.1.3. promptly notify the Council of any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with performance of this Contract; and
- 39.1.4. must co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 39.2. The Council may terminate this Contract and any other contract with the Provider by written notice with immediate effect if the Provider, his employees or any person acting on his behalf (whether with or without the knowledge of the Provider) breaches the obligations under this clause.

**40. Default in Performance:**

40.1. Where in the opinion of the Contract Manger the Provider fails to perform the whole or any part of the Service:

- i. with the standard of skill, care and diligence which a competent and suitably qualified person performing similar service could reasonably be expected to exercise; or
- ii. in accordance with the Specification or any other Contract Document; or
- iii. in accordance with any provision of this Contract,

the Provider will be considered to be in Default.

40.2. The Council shall give the Provider written notice ('Default Notice'), specifying the Default.

40.3. Where the Default can be remedied, the Default Notice shall specify an 'Action plan' with reasonable time limits and require the Provider to correct or re-execute the Service to the satisfaction of the Contract Officer.

40.4. Should the Provider fail to remedy the Default as required in the Action plan, the Council may:

- i. withhold or reduce payments to the Provider in proportion to the Default or as is reasonable taking into consideration the nature of the Service; and or
- ii. suspend provision of the Service in accordance with clause 44; and or
- iii. terminate the Contract in accordance with clause 45 below; or
- iv. terminate provision of part of the Services only.

**41. Involvement in Organised Crime:**

- 43.1. The Provider must at all times conduct his business with utmost probity and transparency and must not do anything that may give rise to suspicion of involvement with Organised Crime.
  
- 43.2. The Provider shall immediately report to the Council and to the Police any suspicion that any person or body it has dealings with, may in any way be involved with Organised Crime.
  
- 43.3. The Council may terminate this Contract and any other contract with the Provider by written notice with immediate effect if the Provider, his employees or any person acting on his behalf (whether with or without the knowledge of the Provider) breaches the obligations under this clause.
  
- 43.4. The Council may share information of any allegation or suspicion of involvement in crime with the Police, any regulatory body or public authorities in order to ascertain or satisfy itself that the Contractor or any related body is not involved with Organised Crime.

**42. Suspension:**

- 44.1. The Council may suspend provision of Services in order for an investigation to be carried out, where:
  - i. there are Serious Issues of Concern; or
  - ii. the Provider is in Default and has failed to remedy the Default.
  
- 44.2. The Council shall inform the Provider in writing of the reason for the suspension and the required cause of action and time scale for rectification of the same.
  
- 44.3. The suspension will remain in force unless and until the Council notifies the Provider in writing that the suspension has been removed or the Contract is terminated.

**45. Termination:**

- 45.1. Termination by either party:
  - 45.1.1. Either party may terminate this Contract by notice in writing to the other if either party is prevented from carrying out its obligations as a result of Force Majeure for 30 days or more;

## 45.2. Termination by the Provider

45.2.1. The Provider may without prejudice to any accrued rights or remedies of either party under this Contract terminate this Contract by notice in writing to the Council if the Council commits a breach and following a reasonable notice to remedy the breach, the Council fail to remedy the breach.

## 45.3. Termination by the Council:

45.3.1. The Council may without prejudice to any accrued rights or remedies of either party under this Contract terminate this Contract in whole or in part forthwith by notice in writing to the Provider if the Provider:

- i. in relation to any contract with the Council, commits any offence under the Bribery Act 2010; or
- ii. fails to comply with the Default Notice in clause 42.2;
- iii. commits a breach of this Contract which breach cannot be remedied;
- iv. commits any criminal offence on the Premises;
- v. fails to operate proper Health and Safety procedures, such that the life of the Service Users or the public or staff or employees of the Council and of the Provider are at risk;
- vi. is struck off by a Regulatory Body;
- vii. If there is a Change of Control of the Provider, where such Change of Control was not notified to the Council or accepted by the Council.

## 45.4. Termination due to Insolvency

45.4.1. The Council may terminate forthwith by notice in writing if the Provider has:

- i. has a Liquidator, Receiver, Administrator, administrative Receiver or similar officer appointed over its assets; or
- ii. (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or
- iii. (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or
- iv. becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- v. ceases or threatens to cease to carry on its business.

## 45.5. Termination for Non-Compliance with Public Contracts Regulations 2015 (“the Regulations”) in accordance with Section 73(1) of the Regulation.

45.5.1. The Council shall forthwith by notice in writing terminate the Contract where:

- i. the Contract has been subject to a substantive modification which would have required a new procurement procedure in accordance with Regulation 72 (9).
- ii. the Provider should not have been selected or awarded the Contract because:
  - a. the Provider was at the time of such selection or award or following such selection or award is convicted of any of the offences in Regulation 57 (1) of the Regulations.
  - b. the Provider is in breach of its obligations relating to the payment of taxes or social security contributions.
- iii. the Council has to terminate the Contract:
  - a. as a requirement of the Regulations or
  - b. to comply with the Regulations or
  - c. on the order of a competent Court or Regulatory Authority.

45.5.2. The Council may by notice in writing terminate the Contract where:

- i. the Provider's tender did not comply with applicable obligations in the fields of current environmental, social and labour law in accordance with Regulation 56(2) of the Regulations;
- ii. any of the situations referred to in Regulation 57(8) of the Regulations arise.

45.6. Termination due to Change in Law

45.6.1 The Council shall terminate this Contract forthwith if there if there is a Change in Law the effect of which is to make it unlawful for the Provider to continue provision of the Service.

46. **Co-operation between the Parties:**

46.1. During any period of notice of termination under clause 45, both parties shall co-operate and the Provider shall provide such information and assistance as is necessary to ensure an orderly transfer of responsibility to a new organisation.

46.2. The Provider shall not withdraw the delivery of Service to individual Service Users either before or at the end of the period of notice until suitable alternative arrangement is made by the Council provided that where the Provider continues to provide the Service after the termination of the Contract (in whatever circumstances) the Council shall continue to make payments to the Provider at the same rate and in the same way as was applicable before the termination of the Contract.

46.3. The Provider shall deliver up to the Council the Result and all property belonging to Council which may be in its possession.

**47. Consequences of Termination:**

47.1. Upon termination of this Contract for whatever reason the Provider will be paid all money due to him after taking into consideration any loss that may have been suffered and can be sufficiently evidenced by the Council; and

47.2. Where:

- ii. the Council terminates the Contract as provided in clause 45.3 or
- iii. the Provider terminates the Contract other than as provided in this Contract;

the provisions of clause 47.3 shall apply.

47.3. Where following the termination under clause 45.3. the Council has to re-tender and or re-commission the provision of the Service, the Council shall recover from the Provider the cost to the Council of the re-tender and or re-commission of the Service.

**48. Force Majeure:**

48.1. If either party fails to perform its obligations under this Contract by reason of an event of Force Majeure, that party shall be relieved from liability in respect of the performance of its obligations under this Contract as are prevented by the Force Majeure event during the continuation of such event provided that it shall within 2 Working Days notify the other party in writing of the reasons for failure or stoppage and the likely duration.

48.2. The relevant party will take all reasonable steps to overcome the delay or stoppage and will provide such reasonable assistance to the other, as it is able to facilitate continuation of provision of the Service.

48.3. If either party is prevented from performance of its obligations for a continuous period in excess of 30 days:

- i. if agreed by the parties, the parties may suspend this Contract in whole or in part (upon such terms as may be agreed by the parties), or
- ii. the other party may terminate this Contract in whole or in part;

forthwith on service of written notice upon the party so prevented.

48.4. Neither party shall have any liability to the other, except that rights and liabilities which have accrued prior to such termination shall continue to subsist and for the avoidance of doubt the Council shall not be liable for payments to the Provider for services not performed by reason of an event of force majeure.

49. **Contracts (Rights of Third Parties) Act 1999:**

49.1. This Contract is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

50. **Waiver:**

50.1. Failure of either party to exercise any right or remedy shall not constitute a waiver of such right or remedy.

50.2. No waiver shall be effective unless it is communicated to the other party in writing.

50.3. Waiver of a default shall not (unless it expressly so provides) constitute a waiver of any future default.

51. **Notices:**

51.1. Any notice, consent, acceptance or the like required or to be given under this Contract shall be in writing and shall be deemed to be given by sending to the relevant party at the address for service:

- i. when delivered if given personally or sent by recorded delivery post;
- ii. 3 Working days after the day of posting in the case of first class post; or
- iii. next Working Day after sending in the case of e-mail.

51.2. Either party may change its address for service by serving a notice in accordance with this clause.

52. **Severance:**

52.1. If any provision of this Contract shall be found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.

52.2. If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

53. **Governing Law:**

53.1. The validity, construction and performance of this Contract shall be construed and governed by the Laws of England and Wales and each party irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

54. **Entire Agreement:**

- 54.1. This Contract constitutes the entire agreement between the parties in respect of the Service and the parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated in this Contract.
- 54.2. These terms and conditions shall prevail over any terms and conditions, which emanate from the Provider.
- 54.3. This Contract supersedes any prior contract between the parties, whether written or oral with effect from the Commencement Date but without prejudice to any rights or remedies which have already accrued to either party as at such date.

55. **Survival of Terms:**

- 55.1. Clause 19 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)  
Clause 30 Confidentiality,  
  
Clause 33 Intellectual Property,  
  
Clause 38 Data Protection Act and Information Security,  
  
Clause 39 Freedom of Information Act and Environmental Information Regulations,  
  
Shall survive termination of this Contract.

56. **Re-tender and Information:**

- 56.1. Subject to clause 30 the Provider shall on request provide to the Council such information and data as the Council may reasonably require to enable the Council to prepare necessary documentation for the re-tender and appointment of another provider for the provision of the Service.

**Appendix G:****CERTIFICATE OF NON-COLLUSION AND NON-CANVASSING**

To: The Committee and Member Services Manager  
 Room 213, The Business Centre, Futures Park, Bacup OL13 0BB

Date: \_\_\_\_\_

**Statement of Non-Canvassing**

I/we hereby certify that I/we have not canvassed any member, Director, Employee, Representative or Adviser of the Council in connection with the proposed award of the Contract by the Council, and that no person employed by me/us or acting on my/our behalf, or advising me/us, has done any such act.

I/we further hereby undertake that I/we will not canvass any member, Director, Employee, Representative or Adviser of the Council in connection with the award of the Contract and that no person employed by me/us or acting on my/our behalf, or advising me/us, will do any such act.

**Statement of Non-Collusion**

The essence of selective tendering for the Contract is that the Council shall receive bona fide competitive Tenders from all Tenderers.

In recognition of this principle, I/we certify that this is a bona fide offer, intended to be competitive and that I/we have not fixed or adjusted the amount of the offer in accordance with any agreement or arrangement with any other person (except any sub-contractor identified in this offer).

I/we also certify that I/we have not done, and undertake that I/we will not do, at any time any of the following acts:

communicate to a person other than the Council, the amount or approximate amount of my/our proposed offer except where the disclosure in confidence of the approximate value of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender; or

enter into any agreement or agreements with any other person that they shall refrain from tendering or as to the amount of any offer submitted by them; or

offer or agree to pay or give or actually pay or give any sum of money, inducement or valuable consideration, directly or indirectly, to any person for doing or having done or having caused to be done in relation to any other offer or proposed offer, any act or omission.

Economic Development Rossendale Borough Council

I/we agree that the Council may, in its consideration of the offer and in any subsequent actions, rely upon the statements made in this Certificate.

Signed by .....

**Appendix H:**

**Data Protection:**

**THE DATA PROCESSOR SUPPLEMENTAL AGREEMENT**

**RE: [INSERT SERVICE/PROJECT/CONTRACT NAME]**

THIS AGREEMENT is made on the                      day of                      2018

BETWEEN:

- (1) ROSENDALE BOROUGH COUNCIL The Business Centre, Futures Park, Bacup OL13 0BB (hereinafter called 'the Council') and
- (2) [                      ] Ltd a company registered in England and Wales (Company Number [                      ]) and having its registered office at [                      ] ("the Provider")

Whereas:

- (1) The Council and the Provider have entered into a contract [ dated [                      ] [of even date herewith] pursuant to which the Provider is to deliver [                      ] services to the Council for which the Council is the Data Controller ("the Contract").
- (2) The Parties wish to enter into a data processing agreement that complies with the Data Protection Legislation
- (3) This Agreement and the Schedules hereto set out the conditions on which the Provider shall obtain, store, share, transmit and dispose of Personal Data on behalf of the Council and the technical and organisational security controls the Provider shall deploy in order to safeguard Personal Data.

NOW IT IS AGREED as follows:

## 1. **Definitions and Interpretation**

- 1.1 In this Agreement, unless otherwise specified, the definitions and interpretation set out in Schedule 1 to this Agreement shall apply and all data protection terms shall be interpreted in accordance with the meaning ascribed to them in Data Protection Legislation

## 2. **Consideration**

- 2.1 In consideration of the payment of the sum of £1.00 the Council engage the services of the Provider, the Provider accepts the engagement to provide the service on the terms and conditions set out in in this Agreement.

## 3. **Data Protection Notification**

- 3.1 The Provider shall confirm in writing to the Council that, for the purposes of activities carried out by it as a Data Controller in its own right, it either has a valid Notification in the Register of Data Controllers as published by the Information Commissioner or is exempt from such Notification obligations.

## 4. **Assignment and Subcontracting**

- 4.1 Other than where explicitly provided for in the Contract, any rights, obligations and/or performance required under this Agreement shall not be assigned, novated or subcontracted to any Sub-Contractor or other third party without the prior written consent of the Council.
- 4.2 The Provider may only authorise a Sub-Contractor to process Personal Data subject to the Council's prior written consent and provided that the Contractor has supplied the Council with full details of such Sub-Contractor, including details of the location where it will process any Personal Data.
- 4.3 Before allowing any Sub-Contractor to process any Personal Data related to this Agreement, the Provider must:
- (a) notify the Council in writing of the intended Sub-Contractor and Processing
  - (b) obtain the written consent of the Council;

- (c) enter into a written agreement with the Sub-Contractor which give effect to the terms set out this Agreement such that they apply to the Sub-Contractor; and
- (d) provide the Council with such information regarding the Sub-Contractor as the Council may reasonably require.

4.4 The Provider shall remain fully liable to the Council for the performance of any Subcontractor and all acts or omissions of any Sub-Contractor.

5. **Not Used**

6. **Data Protection**

6.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only Processing that the Provider is authorised to do is listed in Schedule 2 by the Council and may not be determined by the Provider. The Provider shall comply with the Data Protection Legislation and all applicable law in the Processing of Personal Data and shall:

6.1.1 process Personal Data only to the extent and in such a manner as is necessary for the purposes specified in the Contract and this Agreement, including the particulars outlined in Schedule 2 and in accordance with documented instructions issued by the Council from time to time and shall not process Personal Data for any other purpose unless required to do so by law.

6.1.2 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;

6.2 In carrying out Council instructions, the Provider shall comply with all documentation produced or agreed by the Council relating to the Processing of Personal Data in the delivery of the Contract.

- 6.3 The Provider acknowledges that where it does not process Personal Data in accordance with the Council's instructions but itself determines the purposes and means of Processing Personal Data it shall be considered to be a Data Controller in respect of that Processing.
- 6.4 The Provider may only delete, amend or transfer Personal Data as expressly authorised by the Council for the purposes specified in this Agreement and as set out in Schedule 2.
- 6.5 The Provider shall not delete, amend or transfer Personal Data in any circumstances other than as provided for under Clause 6.4 and under Clause 14 (Retention) without the express consent of the Council.
- 6.6 The Provider shall not transfer or facilitate the transfer of any Personal Data outside the UK or beyond the European Economic Area without the express written permission of the Council
- 6.7 The Provider shall comply with the Data Protection Legislation, in particular it shall:
- 6.7.1. maintain a written record of all Processing activities carried out on behalf of the Council, containing:
    - 6.7.1.1 the parties' names and contact details and those of their representatives and data protection officers (where such officers are appointed);
    - 6.7.1.2 the categories of Processing carried out on behalf of the Council;
    - 6.7.1.3 where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards where relevant;
    - 6.7.1.4 a general description of the Provider's technical and organisational security measures;
  - 6.7.2 co-operate on request with the Information Commissioner's Office or any successor body functioning as a data protection supervisory authority; and
  - 6.7.3 appoint a Data Protection Officer if required by Data Protection Legislation.

- 6.8 The Provider 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.
- 6.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement.

## 7. **Provider Personnel**

- 7.1 The Provider shall take all reasonable steps to ensure the reliability and integrity of all Provider Personnel who have access to Personal Data and shall ensure that it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Provider's duties under this clause;
  - (b) are subject to appropriate confidentiality undertakings with the Provider or any Sub-Contractor;
  - (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;
- 7.2 **The Provider shall ensure that Provider Personnel**
- 7.2.1 receive information security training on induction and annual refresher training;

7.2.2 are aware of the controls the Provider has established for the protection of Personal Data at rest or in transit; in physical and electronic format, stored in both secure and non-secure locations and of the Provider's procedure for the reporting and management of security incidents;

7.3 The Provider shall ensure that only such of the Provider Personnel who may assist in carrying out its obligations under this Agreement shall have access to Personal Data and that such Provider Personnel have been vetted in line with Good Industry Practice and in accordance with any specific requirements of the Council.

7.4 The Provider shall ensure that none of the Provider Personnel used to carry out the services disclose any Personal Data to any third party except where expressly authorised to do so for the delivery of the services and as specified in Schedule 2.

7.5 Save as provided in clause 7.4, the Provider shall ensure that none of the Provider Personnel publish, disclose or divulge any Personal Data to a third party unless instructed to do so in writing by the Council.

## **8. Technical and Organisational Measures**

8.1 The information security regime implemented by the Provider shall be compliant with all relevant legislation, and shall conform to recognised Good Industry Practice.

8.2 Appropriate technical, security and organisational measures shall be taken by the Provider to safeguard against accidental or unlawful destruction, damage, loss, alteration, unauthorised disclosure of or access to, Personal Data.

8.3 The Provider shall apply organisational and technical controls such as network and system specific security, physical security, user access privileges, user passwords, including but not limited to the following to ensure that:

8.3.1 irrespective of whether Personal Data is at rest or in transit, the controls deployed are appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage taking account of the nature and sensitivity of Personal Data;

- 8.3.2 physical measures provide effective protection for information, systems and services from unauthorised access, theft, interference or damage;
- 8.3.3 procedures are in place to identify and resolve software and system faults and failures, including the identification of malicious software;
- 8.3.4 access to Personal Data is role based for legitimate business purposes in accordance with the “need to know” principle and that user permissions are controlled and granted and removed in line with job responsibilities;
- 8.3.5 sufficiently complex password controls are implemented for all authorised personnel with role based access to Personal Data;
- 8.3.6 passwords, usernames and access codes are not disclosed to any other person (whether employed by the Provider or not) and that all passwords and security codes are kept securely;
- 8.3.7 remote access to the Providers’ secure network requires two factor authentication (something the user knows and a token they have);
- 8.3.8 where Personal Data is not stored solely on secure networks:
- (i) only portable devices owned and controlled by the Provider are used to transport Personal Data and devices with built-in hard drives, deploy recognised industry standard encryption software;
  - (ii) only the minimum necessary Personal Data is transported on portable devices or in paper form
  - (iii) systems are in place to account for the movement of paper documents removed from and returned to the secure environment;
  - (iv) paper documents are kept secure and returned to the secure environment without delay and are not left in unattended vehicles; stored with portable devices or in portable device containers;
- 8.3.9 unencrypted email via the insecure internet is not used to communicate or transmit private, confidential or commercially sensitive Agreement Data;
- 8.3.10 exchanges of Personal Data shall conform with the secure methods for electronic transmission in any Information Sharing Agreements (ISAs) agreed by the Council with other parties;
- 8.3.11 all reasonable precautions are taken to preserve the integrity and prevent any corruption or loss, damage or destruction of Personal Data;
- 8.3.12 all reasonable steps are taken to maintain and audit compliance with above measures.

- 8.4 Within 20 Working Days after the Effective Date, the provider shall prepare and submit to the Council for approval a fully developed complete and up to date Security Management Plan providing a comprehensive written description of the technical and organisational methods employed to safeguard Personal Data supplementing any policies and procedures the Provider may have already supplied.
- 8.5 Except where the Provider's IT system security has been subject to penetration testing by an accredited provider in the 18 month period immediately prior to the date of this Agreement, the Provider shall arrange for such a test within the 6 month period immediately following the date of this Agreement. Where a test has taken place within the specified period, a summary of the findings, recommended remedial measures and the actual measures implemented by the Provider shall be supplied to the Council within 4 weeks from the date of this Agreement. In the event of a future test, the summary of the findings together with a plan of any measures the Provider intends to implement shall be provided to the Council no later than 6 weeks after the Provider receives the Assessor's report.
- 8.6 In the event any Personal Data related to this Agreement in the possession of the Provider becomes lost, corrupted or rendered unusable for any reason, the Provider undertakes to promptly restore such Personal Data using its back up and/or disaster recovery procedures at no cost to the Council.

## 9. **Security Incident Management, Reporting and Notification**

- 9.1 The Provider shall operate an incident management procedure for the timely reporting, investigation and management of all security incidents.
- 9.2 A security incident is defined as:
- 9.2.1 a deliberate attempt, whether successful or not, to compromise Personal Data; or
  - 9.2.2 accidental breach of privacy/confidentiality and/or the loss or theft of Personal Data, or
  - 9.2.3 a breakdown in Provider systems/processes that has or potentially may lead to Personal Data becoming damaged or exposed to unauthorised sources.

- 9.3 In the event of a security incident which has the potential to compromise Personal Data or has compromised Personal Data, a senior officer designated by the Provider will be responsible for investigating the incident and for implementing any necessary urgent remedial measures to contain the incident and/or learn lessons to avoid a similar incident occurring.
- 9.4 The Provider's designated senior officer shall notify the Council's nominated representative no later than the next Working Day after the incident becomes known and will provide sufficient information to ensure the Council is able to assess the nature and severity of the incident and the containment and recovery measures underway or planned.
- 9.5 The Provider shall co-operate with the Council's nominated representative on the management and resolution of all information security incidents.
- 9.6 The Provider accepts that the obligation as to whether or not it is necessary to notify the fact of a security incident to:
- 9.6.1 Data Subjects;
  - 9.6.2 Data Controllers from whom Personal Data may have been sourced;
  - 9.6.3 if appropriate, relevant regulatory bodies, is a decision for the Council and not the Provider.
- 9.7 Under no circumstances shall the Provider notify individuals or other bodies about a security incident unless expressly authorised to do so by the Council's nominated representative.
- 9.8 The Provider shall supply all information necessarily required by the Council in relation to security incidents on a timely basis to assist it in determining whether it is necessary to notify data subjects and/or other bodies and in dealing with any complaints, regulatory investigations and/or legal action brought against the Council.

## 10. **Audit and Inspection**

10.1 The Provider shall comply with all reasonable requests or directions from the Council for information necessary to satisfy itself that the Provider is in full compliance with its obligations under this Agreement and Data Protection Legislation and the Provider shall allow for and contribute to audits including access to the Provider's premises (upon the Council giving reasonable notice) for the purpose of inspecting all facilities, systems, documents and electronic data relating to the Processing of Personal Data by the Provider and to audit Processing activities carried out by the Provider under this Agreement.

## 11. **Data Protection related complaints and communications**

11.1 The Provider shall notify the Council no later than the next Working Day following the receipt of any complaint, notice or communication from an individual, supervisory or government body:

11.1.1 relating directly or indirectly to the processing of Personal Data and/or

11.1.2 to the Council's statutory obligations under Data Protection Legislation, the common law duty of confidence or other privacy related legislation

11.2 The Provider 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 12 (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.

11.3 The Provider shall immediately inform the Council if, in its opinion, a Council instruction infringes any Data Protection Legislation.

## 1.2 12. Subject Access Requests

- 12.1 Subject to clause 12.3, the Provider 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.
- 12.2 The Contractor's obligation to notify under clause 12.1 shall include the provision of further information to the Council in phases, as details become available.
- 12.3 The Provider acknowledges that the Council is responsible for responding to requests from individuals for access to their Personal Data and shall assist and cooperate with the Council in complying with its statutory obligations.
- 12.4 The Provider shall:
- 12.4.1 transfer the Subject Access Request to the Council as soon as practicable and in any event within three Working Days of receipt;
  - 12.4.2 ensure that once in receipt or made aware that a Subject Access Request has been submitted, all the requested information is retained for potential disclosure;
  - 12.4.3 provide the Council with a copy of all the Personal Data in its possession (including the sources of the information), in the form the Council requires

within seven Working Days of receiving the request (or such shorter period as may be specified); and

12.4.4 provide all necessary assistance as reasonably requested to enable the Council to respond to the Subject Access Request within the time for compliance set out in Data Protection Legislation.

12.5 Under no circumstances shall the Provider respond directly to a Subject Access Request unless expressly authorised to do so in writing by the Council.

### 13. **Freedom of Information**

13.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FoIA) and the Environmental Information Regulations 2004 (EIRs) and shall assist and cooperate with the Council to enable it to comply with its Information disclosure obligations.

13.2 The Provider shall:

13.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within three Working Days of receiving a Request for Information;

13.2.2 ensure that once in receipt or made aware that a Request for Information has been submitted, all the requested Information is retained for potential disclosure;

13.2.3 provide the Council with a copy of all the Information in its possession relating to a Request for Information (including the sources of the information), in the form the Council requires within seven Working Days of receiving the Request for Information (or such shorter period as may be specified); and

13.2.4 provide all necessary assistance as reasonably requested 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 EIRs;

- 13.3 The Council shall be responsible for determining in its absolute discretion whether requested information is exempt from disclosure in accordance with the provisions of the FoIA, EIRs, or any other relevant statute or case law governing access to information.
- 13.4 Under no circumstances shall the Provider respond directly to a Request for Information unless expressly authorised to do so in writing by the Council.
- 13.5 The Provider acknowledges that the Council may be obliged under the FoIA or the EIRs to disclose information concerning the Provider or the Services:
- 13.5.1 in certain circumstances without consulting the Provider; or
- 13.5.2 following consultation with the Provider having taken its views into account;
- 13.5.3 provided always that the Council shall, in accordance with any recommendations in the Section 45 FoIA Code, take reasonable steps, where appropriate, to give the Provider prior notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
14. **Retention**
- 14.1 The Provider shall enter into a Disposal and Destruction Plan with the Council which will specify the requirements for the retention and disposal of Personal Data over the life of the Contract and on termination to ensure that Personal Data is not held longer than is necessary and that Personal Data is permanently and securely destroyed unless the Council instructs the Provider to transfer and/or supply Personal Data to the Council on termination or the Provider is required by law to retain Personal Data.
- 14.2 The Disposal and Destruction Plan shall be agreed no later than 3 months after the signing of this Agreement by both parties.
- 14.3 The implementation of the Disposal and Destruction Plan, including arrangements on termination shall be undertaken by the Provider at no cost to the Council.

## 15. Termination

- 15.1 This Agreement shall terminate automatically upon expiry or earlier termination of the Contract unless terminated earlier in accordance with Clause 15.2.
- 15.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement by giving written notice to the other party if the other party commits a material breach of any material term of this Agreement and if that breach is remediable fails to remedy that breach within a period of 30 days after being notified in writing to do so.
- 15.3 On termination of this Agreement for any reason, the Provider shall immediately cease processing of all Personal Data and at the Provider's expense in accordance with the Disposal and Destruction Plan shall either supply Personal Data to the Council in the format specified or arrange for it to be transferred as directed by the Council and shall ensure that all remaining copies of Personal Data, including residual Agreement Data, are permanently removed from the Provider's systems in so far as the Provider is not required by law to retain Personal Data.
- 15.4 The Provider shall provide written confirmation of compliance with clause 15.3 no later than 14 days after termination of this Agreement.

## 16 Variation

- 16.1 The Council may vary the terms of this Agreement subject to providing at least 20 Working Days' notice to take account of any guidance issued by the Information Commissioner's Office or otherwise.
- 16.2 Any other variations must be by mutual agreement

## 17. Indemnity

- 17.1 The Provider shall indemnify and keep indemnified the Council against all claims, losses, liabilities or costs (including legal fees and penalties) and expenses incurred by or awarded against the Council or for which the Council may become liable due to any failure by the Provider or the Provider Personnel to comply with any of its obligations under this Agreement or as a result of any negligence, or
- Economic Development Rossendale Borough Council

breach of Data Protection Legislation, statute, common law or European law by the Provider in processing Personal Data.

18. **Jurisdiction**

- 18.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties shall submit to the exclusive jurisdiction of the Courts of England and Wales.



## A) Definitions

“Personal Data”	means all Personal Data generated and obtained by the Data Processor in the delivery of the Contract
“the Contract”	The contract [dated [            ]] of even date herewith] under which the Provider provides the Services to the Council
“Data Impact Assessment”	means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Controller” (including Joint Data Controller)	means as defined in Data Protection Legislation;
“Data Loss Event”	means 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 Processor”	means as defined in in Data Protection Legislation
“Data Protection Impact Assessment”	means an assessment by the Data Controller of the impact of the envisaged Processing on the protection of Personal Data.
“Data Protection Legislation”	i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR, (ii) the DPA (iii) and any  Economic Development Rossendale Borough Council

	national implemented Laws, regulations and secondary legislation about the processing of personal data and privacy as amended or updated from time to time and (iv) any successor legislation to the GDPR or the DPA
“Data Protection Officer”	means as defined in Data Protection Legislation
“Data Subject”	means as defined in Data Protection Legislation
“DPA 2018”	means the Data Protection Act 2018
“Disposal and Destruction Plan”	means the Plan to be developed by the Council governing retention and disposal of Personal Data
“FOIA Code”	The Code of Practice issued by the Secretary of State pursuant to Section 45 of the Freedom of Information Act 2000
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679)
“Good Industry Practice”	means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably and ordinarily expected at from time to time from of a skilled and experienced service provider engaged in a similar type of undertaking as that of the Provider as under the Contract under the same or similar circumstances
“Notification”	means registration as a Data Controller with the relevant national authority as defined in Data Protection Legislation

“Personal Data”	means as defined in in Data Protection Legislation
“Personal Data Breach”	means as defined in in Data Protection Legislation
Protective Measures:	means 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.
“Provider Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any subcontractor engaged in the performance of the Provider’s obligations under this Agreement;
“Processing”	means as defined in in Data Protection Legislation
“Requests for Information”	A request for information pursuant to the Freedom of Information Act 2000 and/or a request for environmental information as defined in Regulation 2 of the Environmental Information Regulations 2004 (2004/3391)
“Security Management Plan”	means the Provider plan describing the technical and organisational measures for delivery of the services as designed, revised and implemented pursuant to clause 8.4
“Sensitive Personal Data”	Means data consisting of information as to— (a) the racial or ethnic origin of the data subject, (b) political opinions, (c) religious beliefs or other beliefs of a

similar nature,  
 (d) whether or not the a member of a trade union  
 (e) physical or mental health or condition,  
 (f) sexual life,  
 (g) the commission or alleged commission of any offence, or  
 (h) alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.

or such definition of sensitive or special category data as is provided for in Data Protection Legislation .

“the Services” the services to be provided by the Provider under the Contract

“Special Categories of Personal Data” means as defined in Article 9(1) of the GDPR

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

“Working Day” A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business

## **B) Interpretation**

(i) Words importing one gender shall include any other gender, words importing the singular include the plural and vice versa and any reference to a person includes a reference to an individual, company, authority, board, association or any other body.

(ii) The headings for any Clause sub-Clause paragraph sub paragraph or Schedule are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement and the parties agree to observe and perform all their respective covenants and obligations contained herein whether contained in any of the Clauses sub-Clauses paragraphs or sub-paragraphs or in any of the Schedules

(iii) The word “including” shall be construed so as not to limit the generality of any words or expressions with which it is used

(iv) Any covenant or obligation upon any party under this Agreement not to do an act or thing shall be deemed to include an obligation not to knowingly cause or suffer such act or thing to be done.

(v) Where any consent approval or other authorisation is required under this Agreement from either of the Parties it shall be implied (unless the contrary shall appear from the express terms of this Agreement) that the Party from which such consent approval or other authorisation is sought shall diligently and reasonably consider any written request therefore made by the other Party and that such consent approval or other authorisation shall not be unreasonably withheld or delayed.

(vi) Any reference in this Agreement to a statute or order shall (unless stated to the contrary) include any statutory extension or modification of such statute or order and any regulations orders byelaws or other subordinate legislation already or hereafter to be made under or pursuant to it.

(vii) Reference in this Agreement to any Clause sub-Clause paragraph sub-paragraph or Schedule without further designation shall be construed as a reference to the Clause, sub-Clause, paragraph, sub-paragraph or Schedule to this Agreement so numbered.

(viii) The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes this Schedule.

## Schedule 2

### Schedule of Processing, Personal Data and Data Subjects

1. The Provider shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data]

	<p>(whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p> <ul style="list-style-type: none"> <li>- DESCRIBE WHO IS RESPONSIBLE (IF APPROPRIATE) FOR ISSUING/COMMUNICATING PRIVACY NOTICES, THE FORM THIS WILL TAKE AND HOW IT WILL BE DONE</li> <li>- DESCRIBE WHO IS RESPONSIBLE FOR GAINING CONSENT (IF APPROPRIATE) AND HOW THIS IS DONE</li> <li>- DESCRIBE WHO IS RESPONSIBLE FOR ACTING ON MARKETING PREFERENCES/OPT OUTS AND HOW THIS IS MANAGED/CONTROLLED</li> <li>- RECORD KEY CONTACT PERSONNEL AND CONTACT DETAILS FOR VARIOUS ACTIVITIES</li> </ul>
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]

**Appendix I:****Liquidated Damages****Part 1**

Contract sum (for example £90,000) + 10% (the cost associated with getting another consultant to do work)

= £99,000 X 0.002 (interest on capital) = £198 per week.

**Part 2**

Contract sum + the 10% = £99,000 x 1.5 % (Local authority fee's) 52 weeks = £28.55 per week

Therefore, total Liquidated Damages per week £226.55

**CHECKLIST:**

<b>ITEM</b>	<b>TICK IF INCLUDED</b>
TENDER DOCUMENT	
PRICE SCHEDULE	
COMPLETED METHOD STATEMENTS	
SIGNED TERMS & CONDITIONS	
SIGNED DATA PROTECTION	
SIGNED ACKNOWLEDGEMENT OF LIQUIDATED DAMAGES	
<b>SIGNED</b>	