

**Tender for CLEANING CONTRACT 2019**

**Tender – Document Three**

**General Terms and Conditions**

**DATED**

1. **CORBY BOROUGH COUNCIL**
2. **[SUPPLIER]**

**AGREEMENT relating to**

**[XXX] services**

**THIS AGREEMENT** is made on the ………….…………………………....…………… **2020**

**BETWEEN**

(1) **[XXX]** whose principle place of business is at **[XXX**] (the **“Council”**); and

(2) **[XXX]** (Company No. **[XXX]**) whose offices are registered at **[XXX]** **(**the **“Supplier”**).

**1 Background**

(A) The Council placed a contract notice **[XXX]** in the Official Journal of the European Union (the “OJEU”) seeking expressions of interest from potential Suppliers for the provision of services to the Council under a agreement (the “Agreement”).

(B) On the basis of the Supplier's Tender, the Council selected the Supplier as a potential Supplier to enter the Agreement to provide Services to the Council in respect of the Supplier's Tender in accordance with the Agreement.

(C) This Agreement sets out the Services which may be required by the Council, the terms and conditions and the obligations of the Supplier during and after the term of the Agreement.

(D) The Supplier shall at all times before and after the expiry of the Agreement fully co-operate, work in good faith and assist the Council and or its representatives during the delivery of the Services.

(E) The Supplier has the necessary skill, knowledge, experience and capacity to perform the Services.

**IT IS AGREED** as follows: -

**GENERAL PROVISIONS**

2 Definitions and Interpretation

2.1 In this Agreement save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them:

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| --- | --- |
|  |  |
| **“Additional Services”** | Additional Services may be purchased in accordance with the price quoted in Schedule 2. The Council does not guarantee that any Additional services will be purchased; |
| **“Agreement”** | this agreement including any Schedules attached;  |
| **“Approval”** | the prior written approval of the Council; |
|  |  |
| **“Authorised Officer”** | the authorised person or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Agreement;  |
|  |  |
| **“BACS”** | Bank Automated Clearing Systems; |
|  |  |
| **“Best Value Duty”** | the obligations of the Council under part 1 of the Local Government Act 1999, including the statutory instruments and guidance issued by the Secretary of State in relation to the Act (as amended); |
|  |  |
| **"Commencement Date"** | shall be on the **[XXX]** being the date from which the Agreement shall commence; |
|  |  |
| **“Commercially Sensitive Information”****“Conditions”** | the information listed in Schedule 7 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss;these terms and conditions of the Agreement, which comprise part of the agreement; |
|  |  |
| **“Confidential Information”** | any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights (IPR), know-how, personnel, Council and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and any Commercially Sensitive Information; |
|  |  |
| **“Convictions”** | other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment of that Order);  |
|  |  |
| **“Default”** | any breach or failing of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the relevant Party, its Staff, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other; |
|  |  |
| **“DPA”** | the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
|  |  |
| “Enhanced DBS” | a current enhanced DBS checks/ certificates as defined by the SVGA prior to starting their duties; |
|  |  |
| **“Environmental Information Regulations”** | the Environmental Information Regulations 2004; |
|  |  |
| **“FOIA”** | Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and or codes of practice issued by the Information Commissioner in relation to such legislation; |
|  |  |
| **“Force Majeure”** | any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Staff; |
|  |  |
| **“Fraud”** | any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to any aspects of the Agreement or defrauding or attempting to defraud or conspiring to defraud the Council; |
|  |  |
| **“Good Industry Practice”** | using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances; |
|  |  |
| **“Information”** | has the meaning given under section 84 of the Freedom of Information Act 2000; |
|  |  |
| **“ISA”** | the body known as the Independent Safeguarding Council set up under the Safeguarding Vulnerable Groups Act 2006 (the “SVGA”) to oversee the registration of people who wish to work with children or vulnerable adults;  |
|  |  |
| **“ITT”** | the invitation to tender issued by the Council on **[XXX]**; |
|  |  |
| "**Law**" | any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body; |
|  |  |
| **“Monitoring Arrangements”** | the monitoring arrangements set out in Schedule 4; |
|  |  |
| **“Month”** | calendar month; |
|  |  |
| **“Premises”** | the location where the Services are to be performed; |
|  |  |
| **“Price”** | the price, excluding VAT, covering all the costs associated in the delivery of the Service, as detailed in Schedule 3; |
|  |  |
| **“Prohibited Act**” | (a) | offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward: |
|  |  | (i) | for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or |
|  |  | (ii) | for showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council; |
|  | (b) | committing any of the following offences: |
|  |  | (i) | under the Bribery Act 2010; |
|  |  | (ii) | under legislation creating offences in respect of fraudulent acts; or |
|  |  |  |  |
|  |  | (i) | at common law in respect of fraudulent acts in relation to this agreement or any other contract with the Council; or |
|  |  | (ii) | defrauding or attempting to defraud or conspiring to defraud the Council; |
|  |  | (iii) | under SVGA. |
|  |  |
| **“Supplier Representative”** | the person nominated by the Supplierto act on his/her behalf; |
|  |  |
| **“Quality Standards”** | the quality standards published by the British Standards Institute, the International Organisation for Standardisation or other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Supplier would reasonably and ordinarily be expected to comply as supplemented by Schedule 1; |
|  |  |
| **“Relevant Transfer”****“Regulatory Bodies”** | a relevant transfer for the purposes of TUPE.those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly; |
|  |  |
| **“Replacement Supplier”** | any third party service Supplier appointed by the Council from time to time to provide any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the termination or partial termination of the Agreement, whether those services are provided by the Council internally and/or by any third party; |
|  |  |
| **“Requests for Information”** | shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations; |
|  |  |
| **“Schedules”**  | any schedules attached to the Agreement; |
|  |  |
| **"Service"** | the supply of services (as referred to in Schedule 1) to be provided by the Supplier in accordance with the terms and conditions of the Agreement; |
|  |  |
| **“Staff”** | appropriately qualified and/or trained personnel employed by the Supplier to carry out obligations under this Agreement, including (but not limited) to those paid or unpaid, temporary or permanent, servants, agents, sub-contractors or self-employed staff, volunteers and or students, personal assistant and, as applicable, all such potential personnel; |
|  |  |
| **“Term”** | the period of **[XXX]** months/ years from Commencement Date **[with the option to extend up to a further [XXX] months in accordance with Condition 3.2]**; |
|  |  |
| **“Termination”** | when the Agreement is ended pursuant to Condition 52-59; |
|  |  |
| **“Tender”** | the tender submitted by the Supplier to the Council on **[XXX]** and as detailed in Schedule 2; |
|  |  |
| **“TUPE Regulations”** | Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended); |
|  |  |
| **"Variation"** | as detailed in Condition 39; |
|  |  |
| **“VAT”** | Value Added Tax; |
|  |  |
| **“Working Day”** | any day identified in Schedule 1. |

* 1. In this Agreement: -

### 2.2.1 "Person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, council, agency, charity, other third sector organizations, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns;

### 2.2.2 "Party" means any party to this agreement individually and "Parties" refers to all of the parties to this agreement collectively. A Party shall include all permitted assigns of the Party in question; and

### 2.2.3 a statutory provision includes a reference to that provision as modified, replaced, amended and/or enacted from time to time (whether before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it.

2.3 words importing the masculine gender include the feminine gender;

2.4 words in the singular include the plural and vice-versa;

2.5 words importing individuals shall be treated as importing corporations and vice-versa;

2.6 Conditions, headings and references are for ease of reference only and shall not affect construction;

1. **Term of Agreement**

3.1 The Agreement shall take effect on the Commencement Date and shall expire automatically **[XXX]** months from the Commencement Date, unless it is otherwise terminated under Conditions 52-59, or otherwise lawfully terminated.

***[OPTIONAL CLAUSE]***

* 1. The Council has the option to extend the Agreement up to a further **[XXX]** months. If this is applicable then the decision to extend by the Council will take into consideration the availability of future funding, the Supplier’s ability to meet the required outcomes, quality performance requirements and contractual compliance. No extension to the Agreement will be valid unless the Council has given express permission in writing.

**4 Scope of the Agreement**

4.1 This Agreement governs the relationship between the Council and the Supplier in respect of the provision of the Services by the Supplier to the Council.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services to be ordered by them pursuant to the Agreement and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

4.5 The Supplier acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Supplier and that the Council are at all times entitled to enter into other contracts and arrangements with other Suppliers for the provision of any or all services which are the same as or similar to the Services.

4.7 The Supplier acknowledges and agrees that the relationship between it and the Council in respect of the provision of Services shall be solely governed by this Agreement which shall be a bilateral contract between the Supplier and the Council.

1. No Partnership or Agency
	1. Nothing in this Agreement will be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Council and the Supplier.
	2. Save as expressly provided otherwise in this Agreement, the Supplier will not be, or be deemed to be, an agent of the Council and the Supplier will not hold itself out as having Council or power to bind the Council in any way.

6 Entire Agreement

6.1 This Agreement constitutes the entire agreement and understanding between the Council and the Supplier in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Council and the Supplier in relation to such matters.

6.2 Both the Council and the Supplier acknowledge and agree that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either the Council or the Supplier of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

7 Notices

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

7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Condition 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

7.3 For the purposes of Condition 7.2, the address of each Party shall be:

|  |  |  |
| --- | --- | --- |
| a) | For the Council: |  |
|  | Address: | [XXX] |
|  | For the attention of:  | [XXX] |
|  | Tel: | [XXX] |
|  | Email: | [XXX] |
|  |  |  |
| b) | For the Supplier: |  |
|  | Address: | [XXX] |
|  | For the attention of:  | [XXX] |
|  | Tel: | [XXX] |
|  | Email: | [XXX] |

7.4 Either Party may change its address for service by serving a notice in accordance with this Condition.

**8 Complaints Handling**

8.1 The Supplier shall notify the Council of any complaint received within two (2) Working Days of becoming aware of that complaint and such notice shall contain full details of the Supplier's plans to resolve such complaint.

8.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement, the Supplier shall use its best endeavours to resolve the complaint within ten (10) Working Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.

9 Inspection of the ITT

 Save as the Council may otherwise direct, the Supplier is deemed to have inspected the ITT before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Agreement.

10 Mistakes in Information

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

1. Conflicts of Interest
	1. The Supplier shall:
2. use all best endeavours to protect the safety and wellbeing of Council which include taking necessary measures to avoid any confusion of roles or situations in which a conflict of interest might arise;
3. adopt clear and well-organised procedures to record significant information about personal relationships and take all necessary steps to remove and prevent a conflict of interest;
4. take appropriate steps to ensure that neither the Supplier nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to the Council under the provisions of the Agreement. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
	1. The provisions of this Condition shall apply during the continuance of the Agreement and for a period of two (2) years after its termination.

**12 Obligations of the Council**

The Council shall appoint an Authorised Officer for the purpose of liaison with the Supplier and advise the Supplier in writing of such appointment. Any Order is given to the Supplier by such Authorised Officer shall be deemed to be given by the Council.

13 Obligations of the Supplier

1. 13.1 The Supplier shall:
2. 13.1.1 provide the Services in accordance with the Agreement and as the same may evolve during the Term and as they may be supplemented, enhanced, modified or replaced in accordance with the Agreement made in connection with this Agreement in accordance with the requirements set out in the Schedules in consideration of the payment of the Price, and on the Term of this Agreement.
3. 13.1.2 perform the Services with professional skill and care and in conformity with the highest professional standards;
4. 13.1.3 ensure its Staff are not and shall in no circumstances hold themselves out as being the servants or agents of the Council for any purposes other than those expressly conferred on them by this Agreement;
5. 13.1.4 not and shall in no circumstances hold itself out as being authorised to enter into any agreement on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation;
6. 13.1.5 bear exclusive responsibility for the payment of national insurance contributions and for discharge of any income tax and VAT liability arising out of Payment for the Services performed by the Supplier under this Agreement;
7. 13.1.6 carry out the Services detailed in the Schedule 1 unless otherwise specified in the Agreement;
8. 13.1.7 report to the Council any complaints or allegations relating to any person employed by the Supplier which would bring into question that persons suitability to be engaged in the provision of the Services;

13.1.8 if necessary the Council require the Supplier to remove from work in or about the provision of the Services any person employed by the Supplier and provide a substitute in order to ensure that the Services are maintained to Agreement standards. Any member of the Staff removed from work under the provision of this Condition shall not be re‑engaged in the delivery of the Services without the written consent of the Council. The Council shall in no circumstances be liable either to the Supplier or the employee in respect of any liability, loss or damage occasioned by such withdrawal, suspension or removal and the Supplier shall fully indemnify the Council against any claim made by such employees;

13.1.9 not employ in the provision of the Services any ex-employee of the Council who has been dismissed on disciplinary grounds without the express written consent of the Council;

13.1.10 be responsible for ensuring every aspect of the service fully complies with legislative requirements and indemnifies the Council accordingly;

13.1.11 shall ensure that the Staff have a command of the English language sufficient to allow effective verbal communication with Council in the event of an emergency situation; and is capable to competently read the English language where required;

13.1.12 throughout the Agreement comply with relevant statute and common law, statutory instruments, judicial decisions and European Community directives. The Supplier shall inform the Council if these give rise to any substantial opportunities or benefit or to any substantial difficulties;

13.1.13 ensure that all equipment used for the purpose of this Agreement must comply at all times with all legislation and regulations in force at the time;

13.1.14 proceed with the carrying out of the Services regularly, diligently and in accordance with such programme as may be included within the Agreement. If the Agreement contains specific dates or periods by which any part of the Services is to be completed the Supplier shall complete that part by such date or within such period or as the same may be extended in accordance with Condition 18.

13.1.15 comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of the Services has not been specified in the Agreement the Supplier shall agree the relevant standard of Services with the Authorised Officer prior to the commencement of the Services, and the Supplier shall undertake its obligations in accordance with Good Industry Practice and as may be required by any Regulatory Body;

13.1.16 warrant and represent that all Staff assigned to the performance of the Service shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

1. Guarantee Bond

If requested by the Council, the Supplier shall provide the Council on or before the Commencement Date with a bond in favour of the Council in the form attached at Schedule 9 issued by a reputable surety within the European Union no less than 10% of the annual Contract Price, such bond to be in a form acceptable to the Council and to remain in place during the Term.

1. Parent Company Guarantee

If requested by the Council, the Supplier shall provide the Council on or before the Commencement Date with a parent company guarantee in favour of the Council in the form attached at Schedule 10 issued by [XXX], such parent company guarantee to be in a form acceptable to the Council and to remain in place during the Term. If the Supplier does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Council may deduct [10% / 20%] OR £[SUM] from the Contract Price or the sums that would otherwise be due to the Supplier under this Contract, until the Supplier procures such execution and delivery.

1. 15 Not Used
2. 16 Service accessibility and use of the Council’s Premises
3. 16.1 The Supplier shall deliver the Services in accordance with the needs of Council, to the required staffing levels and at the agreed intervals as defined by the Agreement.
4. 16.2 The Supplier is not permitted to cancel or postpone the provision of Services for which firm dates or periods of time have been agreed, unless a Force Majeure event occurs.
5. 16.3 The Council reserves the right under the Agreement to refuse to admit to or to withdraw permission to remain on, any premises occupied by or on behalf of the Council, any member of the Supplier’s Staff whose admission or continued presence would be, in the reasonable opinion of the Council undesirable.

16.4 The Supplier’s Staff, assigned within the boundaries of any of the Council premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

16.5 If the Supplier shall fail to comply with Condition 16.4 above the Council (whose decision shall be final and conclusive) may decide that such failure is prejudicial to the interests of the Council and if the Supplier does not comply with the provisions of Condition 16.4 within a reasonable time of written notice from the Council so to do then the Council may terminate the Agreement provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

1. 16.6 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council and as to whether the Supplier has failed to comply with Condition 17.4 shall be final and conclusive.

**17 Recruitment, Selection and Vetting of Staff**

1. 17.1 The Supplier shall as a minimum:
2. 17.1.1 operate robust systems for the recruitment and selection of their Staff and comply with safe recruitment practices. Upon reasonable request the Supplier shall give information to the Authorised Officer regarding their processes, and any relevant Staff development programmes;
3. 17.1.2 provide a mix of qualified and/or experienced Staff capable of responding in a sensitive and caring way to the needs of the Council. The range of qualifications and level of staffing and experience of Staff shall be provided in accordance with the Agreement;
4. 17.1.3 ensure that there is a sufficient number of competent Staff to carry out the Services as required in the Agreement and that they have the relevant qualifications, experience, training, accreditation, registration (both professional and non-professional), training, specialism and expertise to carry out the Services required;
5. 17.1.4 ensure that all Staff understand and embrace the nature and purpose of the Service that they are providing (including the Council policies and procedures).
6. 17.1.5 comply with all relevant legislation and the Law in relation to the delivery of Services;
7. 17.1.6 use all best endeavours to keep abreast of all relevant legislative changes and re-enactments issued;
8. 17.1.7 introduce and/or keep in place training and development programmes that ensure Staff fulfil the aims of the Service and meet the changing needs of the Council. The training and development programme should take into account any relevant change in legislation, regulation or guidance concerning the provision of the Services;
9. 17.1.8 use best endeavours to ensure that an appropriate infrastructure is in place and maintained to ensure that all requirements of this Agreement are met and developed;
10. 17.1.9 ensure that all persons including Staff duties involve access to a Council towards whom the Supplier owes a special duty of care, are subject to Enhanced CRB/DBS checksprior to starting their duties;
11. 17.1.10 have a rigorous and transparent recruitment and selection policy and guidance on how they evidence their decision-making in regard to all matters disclosed as the result of an Enhanced CRB/DBS check for all Staff;
12. 17.1.11 ensure unequivocally that any of the Suppliers members of Staff, who is or are found to be unsuitable (even during a preliminary investigation into a complaint of any sort) for whatever reason or as the result of any subsequent Enhanced CRB/DBS checks, shall be immediately removed from access to the Council and a suitable Replacement Supplier appointed. The Supplier shall inform the Authorised Officer in the event of any such removal and any actual or possible impact on the Council;
13. 17.1.12 ensure that all relevant information regarding the Council is communicated to the Staff (where applicable) prior to the Services taking place.

**18 Extension of Time**

18.1 If the Supplier is delayed in the performance of the Services by any act or default of the Council, or by any industrial action preventing the Supplier from having access to the Premises (not limited to the employees of the Supplier or any of his sub-contractor), then the Supplier shall be entitled to extension of time for completion of any event for which there is a fixed time or period for completion under the Agreement, and which is affected by the act or default of the Council or such industrial action, as is reasonable provided that:

(a) the Supplier shall have given the Council immediate notice in writing within three (3) days of the occurrence of any such act or default or industrial action;

(b) within twenty one (21) days of the ending of any such act or default or industrial action the Supplier shall have given the Council full particulars with supporting evidence of the extension of the time for completion to which he considers himself entitled;

(c) the event, which was delayed by the act or default of the Council or industrial action, was on the critical path for the completion of the event concerned.

18.2 The Council shall notify the Supplier within thirty (30) days of the receipt of the notice given by the Supplier under Condition 18.1 (b) above of the extension of time, if any, to which the Council considers that the Supplier is reasonably entitled.

1. 19 Best Value
2. 19.1 The Supplier agrees to use its best endeavours throughout the duration of the Agreement to ensure the continual improvement in the planning and the delivery of the Services with regard to effectiveness, efficiency and economy in meeting the needs of the Council.
3. 19.2 The Supplier shall provide such assistance and information that the Council may reasonably require to enable the Council to discharge and fulfil its Best Value Duty in relation to the Services.

PRICE

1. 20 Payment

20.1 The Payment for each Service is specified in Schedule 3 and shall be valid for duration of the Term from the Commencement Date of this Agreement.

20.2 In consideration of the performance of the Supplier’s obligations under the Agreement by the Supplier, the Council shall pay the Price in accordance with this Condition and Schedule 3.

20.3 Should the Agreement be extended (by the written Approval of the Council), then the Payment for each Service shall be as detailed in Schedule 3.

20.4 The Council will not pay for any Services that exceed the agreed Price as specified in Schedule 3.

1. 20.5 The Payment shall cover all costs entailed in the delivery of the Service and give a breakdown of their costs.
2. 20.6 All amounts due under this Agreement are exclusive of any applicable VAT, which the Council shall pay in addition against appropriate VAT invoices.

21 Prompt Payment Arrangements

1. 21.1 The Supplier shall submit a fully itemised invoice within fourteen (14) days after the end of each week, complying with VAT requirements, to the Council in respect of Services that have been delivered.
2. 21.2 Where the Supplier submits an invoice to the Council in accordance with Condition 21.1, the Council will consider and verify that invoice in a timely fashion.
3. 21.3 The Council shall pay the Supplier any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Council has determined that the invoice is valid and undisputed.
4. 21.4 Where the Council fails to comply with Condition 21.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 21.3 after a reasonable time has passed.

21.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

a) provisions having the same effect as Conditions 21.2 - 4 of this Agreement; and

b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Conditions 21.2 - 4 of this Agreement.

c) In Condition 21.5, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

* 1. The Supplier is entitled to request other payment arrangements from the Council and the Council shall give such payment requests reasonable consideration. Any alternative arrangement that is agreed shall be set out in a side letter to this Agreement.
	2. If, for any reason, the Supplier fails or is unable to provide the Services, to the level and/or standard agreed, the Council reserves the right to reduce the level of payment proportionally. Before taking this step the Council shall consult with the Supplier in good faith and give details in writing of the Default or failure and the value of the Services lost by the Council and/or loss or expense incurred by the Council.
	3. Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of this Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or other agreement or contract with the Council.
	4. Any overpayment by the Council to the Supplier, whether of the Price or of VAT, shall be a sum of money recoverable by the Council from the Supplier.
	5. The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

 STATUTORY OBLIGATIONS AND REGULATIONS

1. Anti-Bribery and Modern Slavery Requirements

22.1 The Supplier shall;

1. comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act 2010 {the “Bribery Act”) and Modern Slavery Act 2015;
2. maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with all applicable anti-bribery and anti-corruption legislation;
3. use reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act) including any sub-contractors and suppliers comply with this clause;
4. implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chain, to ensure that there is no slavery or human trafficking in its supply chain;
5. use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

22.2 Where the Supplier or its employees, servants, sub-contractors, suppliers or agents or anyone acting on the Supplier’s behalf, engages in conduct prohibited by Conditions 22.1 in relation to this or any other agreement with the Council, the Council has the right to:

(a) terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination;

(b) recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this Condition, whether or not the Agreement has been terminated;

22.3 In exercising its rights or remedies under this Condition, the Council shall:

(a) act in a reasonable and proportionate manner having regard to such matters as the gravity of the Prohibited Act and the identity of the person performing the Prohibited Act;

(b) give all due consideration, where appropriate, to action other than termination of the Agreement.

23 Prevention of Fraud

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

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

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

1. terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of Services and any additional expenditure incurred by the Council throughout the remainder of the Term; or
2. recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this Condition.

24 Discrimination

24.1 The Supplier shall (and shall procure that its Staff shall) not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination in employment including but not limited to the Equality Act 2010, and shall (and shall procure that its Staff shall) at all times comply with the provisions of the Human Rights Act 1998 (the “HRA”) in the performance of the Services.

24.2 The Supplier shall take all reasonable steps to secure the observance of Condition 24.1 by all Staff.

**25 Human Rights**

25.1 The Supplier shall not do or permit or allow anything to be done which is incompatible with the rights contained within the HRA

25.2 The Supplier shall not do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the HRA.

**26 The Contracts (Rights of Third Parties) Act 1999**

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

#### 27 Environmental Requirements

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

**28 Health and Safety**

28.1 The Supplier shall ensure that its employees and agents shall at all times in connection with this Agreement comply with the Health and Safety at Work etc Act 1974.

28.2 The Supplier shall comply with all relevant and applicable statutes, regulations, orders and the like which may impose requirements in relation to the supply of Services.

28.3 Any accident or other incident occurring as a result of anything done by the Supplier under the Agreement shall be reported immediately to the Council. After the incident, the Supplier must further submit a detailed report advising of the accident or any other incident.

PROTECTION OF INFORMATION

29 Data Protection Act

29.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation and any applicable Laws. This Condition 29 is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation. In this Condition 29, applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

29.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Supplier is the Data Processor. Schedule 8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

29.3 Without prejudice to the generality of Condition 29.1, 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 Supplier for the duration and purposes of this Agreement.

29.4 Without prejudice to the generality of Condition 29.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

(a) process that Personal Data only on the written instructions of the Council (as set out in Schedule 8), unless the Supplier is required by applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the applicable Laws;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

1. the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
2. the Data Subject has enforceable rights and effective remedies;
3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
4. the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(d) notify the Council immediately if it receives:

1. a request from a Data Subject to have access to that person’s Personal Data;
2. a request to rectify, block or erase any Personal Data;
3. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council’s obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) 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 Agreement;

(g) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of the Agreement unless required by the applicable Laws to store the Personal Data;

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by the Council or the Council’s designated auditor.

29.5 The Supplier shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier’s obligations under this clause 10.

29.6 Where the Supplier intends to engage a sub-contractor and intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:

(a) notifiy the Council in writing of the intended processing by the sub-contractor;

(b) obtain prior written consent to the processing;

(c) ensure that any Sub-Contract imposes obligations on the sub-contractor to give effect to the terms set out in this Condition 29.

29.7 Either party may, at any time on not less than thirty (30) days’ give written notice to the other party, revise this Condition 29 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

29.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

30 Confidentiality

1. 30.1 Each Party:-
2. (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
3. (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
4. 30.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement: -
5. (a) is given only to such of the Staff or its third party engaged to advise it in connection with the Agreement as is strictly necessary for the performance of and only to the extent for the performance of the Agreement; and
6. (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or its third party otherwise than for the purposes of the Agreement.
7. 30.3 The Supplier shall ensure that Staff or its third party is aware of the Supplier’s confidentiality obligations under this Agreement.
8.
9. 30.4 The Supplier shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.
10. 30.5 The provisions of Conditions 35.1 to 35.4 shall not apply to any Confidential Information received by one Party from the other: -
11. which is or becomes public knowledge (otherwise than by breach of this Condition);
12. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
13. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
14. is independently developed without access to the Confidential Information; or
15. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations (EIR) pursuant to Condition 36.
16. 30.6 Nothing in this Condition shall prevent the Council: -
17. (a) disclosing any Confidential Information for the purpose of: -
18. (i) the examination and certification of the Council accounts; or
19. (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
20. (b) disclosing any Confidential Information obtained from the Supplier: -
21. (i) to any government department or any public body. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any public body; or
22. (ii) to any person engaged in providing any services to the Council for any purpose relating to the Agreement and will notify the Supplier that it has done so;
23. provided that in disclosing information under sub-paragraph (b) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
24. 30.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of IPR.
25. 30.8 In the event that the Supplier fails to comply with this Condition, the Council and reserves the right to terminate the Agreement by notice in writing with immediate effect.

30.9 The provisions under this Condition 35 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

31 Freedom of Information

31.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council (at the Supplier’s expense) to enable the Council to comply with these Information disclosure requirements.

31.2 The Supplier shall and shall procure that its sub-contractors shall:

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

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

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of EIR.

31.3 The Council shall be responsible for determining at its absolute discretion whether any Information is:

(a) exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

(b) to be disclosed in response to a Request for Information, and

in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

31.4 The Supplier acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA or the EIR to disclose Information: -

(a) without consulting with the Supplier, or

(b) following consultation with the Supplier and having taken its views into account.

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

31.6 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Condition 31.4.

32 Publicity, Media and Official Enquiries

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

32.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Condition 32.1 by all their servants, employees, agents, professional advisors and consultants. The Supplier shall take all reasonable steps to ensure the observance of the provisions of Condition 32.1 by its sub-contractors.

32.3 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

33 Security

33.1 The Supplier shall comply with all reasonable security requirements of the Council while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

33.2 The Council shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.

34 Intellectual Property Rights (IPR)

34.1 All IPR in any part of the Agreement or other material:

(a) furnished to or made available to the Supplier by the Council shall remain the property of the Council subject to any licensing conditions that have been agreed by the Council in accordance with Condition 34.2;

(b) prepared by or for the Supplier for sole use, or intended use, in relation to the performance of this Agreement shall belong to the respective Council,

and the Supplier shall not, and shall procure that the Supplier’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such IPR, or any other information (whether or not relevant to this Agreement) which the Supplier may obtain in performing the Agreement except information which is in the public domain.

34.2 The Supplier shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party IPR. The Supplier shall use its reasonable endeavours to procure that the owner of the rights grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material and the Supplier shall use its reasonable endeavours to ensure that such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other contracting authorities, the Replacement Supplier or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

34.3 It is a condition of this Agreement that the materials supplied or licensed by the Supplier will not infringe any IPR of any third party and the Supplier shall during and after the Term on written demand indemnify and shall keep indemnified the Council and the Crown against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim refers to:

(a) materials and documents furnished by the Council;

(b) the use of data (including, but not limited to, print, images, artwork and design) supplied by the Council which is not required to be verified by the Supplier under any provision of the Agreement.

34.4 The Council shall notify the Supplier in writing of any claim or demand brought against the Council for infringement or alleged infringement of any IPR in materials supplied or licensed by the Supplier.

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

(a) consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) take due and proper account of the interests of the Council; and

(c) not settle or compromise any claim without the Council prior written consent (not to be unreasonably withheld or delayed).

34.6 The Council shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Supplier for infringement or alleged infringement of any IPR in connection with the performance of the Agreement and shall, except where such claim or demand or action has arisen as a result of negligence on the part of the Council, be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and Council basis) incurred in doing so.

34.7 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any IPR by the Council or the Supplier in connection with the performance of the Agreement.

34.8 If a claim, demand or action for infringement or alleged infringement of any IPR is made in connection with the Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed) either:

1. modify its performance of the Agreement so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply to such modified performance of the Agreement; or

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.

34.9 At the termination of the Agreement the Supplier shall immediately return to the Council all materials, work or records held, including any back-up media.

34.10 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

35 Audit

 The Supplier shall keep and maintain until 6 years after the end of the Term of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request afford the Council or the Council representatives such access to those records as may be requested by the Council in connection with the Agreement.

36 Performance Monitoring Arrangements

1.
2. 36.1 The Supplier agrees that it shall meet and continue to meet the quality monitoring and reporting requirements as detailed in Schedule 4 and subsequent outcomes and quality monitoring frameworks are developed. The Supplier shall also co-operate with the Authorised Officers when carrying out monitoring and evaluation activities in relation to this Agreement.
3. 36.2 The Supplier shall be responsible for monitoring the Council receiving the Service and use all best endeavours to ensure that the Services provided are meeting their needs and fulfilling the individual outcomes.
4. 36.3 The Supplier shall have in place, to the Council and reasonable satisfaction, internal quality monitoring and quality assurance policies and procedures to ensure the Services are of the quality and standard required by this Agreement.
5. 36.4 The Parties shall meet when the Council sees fit to review the Services. The review shall take into consideration the quality reports and any other available and/or appropriate monitoring information, address any performance issues, and review both the Supplier’s and Council’s ability to meet the requirements of the Agreement.
6. 36.5 The Council’s monitoring and evaluation procedures in relation to the Agreement shall also take into account and include information obtained from other Council, authorities and other professional bodies or agencies, as per information sharing protocols in place.

36.6 The Supplier shall use best endeavours to:

36.6.1 permit any person authorised by the Council, on production of relevant authorisation, to enter and inspect at any reasonable time, with or without notice, any premises where the Supplier is providing Services;

36.6.2 permit any person authorised by the Council to gain access to the information required, subject to DPA and other legal constraints;

36.6.3 permit any person authorised by the Council to examine the Supplier’s organisational structure and procedures with particular reference to:

1. the quality and appropriateness of the Staff;
2. the support given to Staff;
3. supervision and reviews carried out by the Supplier of its Staff;
4. the Supplier’s policies and procedures.

36.6.4 provide immediate access, or access as soon as is reasonably possible, to records of Council and other such records as the Council may reasonably request.

 36.6.5 co-operate with supplying information as requested by the Council in line with the monitoring arrangements under this Agreement.

## 36.7 The Supplier shall comply with the monitoring arrangements set out in the Agreement including, but not limited to, providing such data and information as the Supplier may be required to produce under the Agreement.

CONTROL OF THE AGREEMENT

37 Assignment and Sub-Contracting

37.1 The Supplier shall not assign, sub-contract or in any other way dispose of the Agreement without providing details of the intended sub-contractor to the Council. In the event that the Council reasonably directs that the Supplier shall not sub-contract any part of the Agreement to a particular sub-contractor this shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Agreement.

37.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

37.3 Where the Council has consented in writing to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Council within twenty (20) Working Days of issue.

37.4 The Council shall be entitled to:

37.4.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or part to any public sector organisation; or

37.4.2 transfer, assign or novate its rights and obligations where required by law to a body assuming the whole or part of the Council's business.

38 Waiver

38.1 The failure of either the Council and the Supplier to insist upon strict performance of any provision of the Agreement or the failure of either the Council or the Supplier to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

38.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other in writing in accordance with the provisions of Condition 7.

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

39 Variations

39.1 The Council and the Supplier agree that neither shall be entitled to vary the content of the Agreement without the written consent of the other except if there is a statutory change which imposes new or amended duties upon the other and such new or amended duties are connected with the performance of the Services in which case the Council will be entitled to issue a variation of the Agreement to the Supplier which the Supplier shall comply with such variation.

39.2 Variations to any Service shall be made in writing and signed and dated by both the Council and the Supplier and recorded as a variation as part of the Conditions of this Agreement in accordance with Schedule 5.

39.3 The Council and the Supplier shall use their best endeavours to ensure that all Variations are effected in a consensual and reasonable manner.

39.4 The valuation of Variations pursuant to this condition shall be ascertained by the Authorised Officer in accordance with the following provisions:

39.4.1 where work is omitted from Schedule 1, the Prices quoted in Schedule 3 shall determine the ascertainment of the work omitted;

39.4.2 where any Additional Services or works is of a similar nature to that described in Schedule 1 the appropriate Price in Schedule 3 shall apply to such Additional Services or work;

39.4.3 where Additional Services or work is not of a similar character to or not executed under similar conditions to work set out in the Schedule 1 or other documents, the ascertainment shall be made at fair prices having due regard where applicable to the Prices contained in Schedule 3.

40 Severability

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

40.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Council and the Supplier shall immediately commence negotiations in good faith to remedy the invalidity.

41 Remedies Cumulative

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

 LIABILITIES

**42 Liability and Indemnity**

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

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation; or

(d) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

42.2 The Supplier shall be liable for and shall fully and promptly indemnify the Council, its officers, employees, agents and other Suppliers against all liabilities, damages, costs, losses, claims, expenses, demands and proceedings whatsoever, howsoever arising, whether in agreement, tort or otherwise, directly or indirectly, out of, or in the course of, or in connection with, the provision of or failure to provide the Services.

42.3 The Supplier's liability and indemnity to the Council arising under this Condition shall be without prejudice to any other right or remedy available to the Council.

42.4 The Supplier shall insure against its full liability under Condition 42 above and shall maintain all required insurance policies including professional indemnity, public liability, employer’s liability.

42.5 Public liability insurance with a limit of indemnity of not less than £[XXX,000,000] in relation to any one claim or series of claims; employers liability with a limit of indemnity of not less than £[XXX,000,000] in relation to any one claim or series of claims; professional indemnity with a limit of indemnity of not less than £[XXX,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 Services hold and maintain appropriate cover; and if applicable, product liability insurance with a limit of indemnity of not less than [XXX,000,000] with a limit of indemnity of not less than £[XXX,000,000] in relation to any one claim or series of claims;

* 1. Any excess or deductibles under such insurance (referred to in Conditions 42.4 and 42.5) shall be the sole and exclusive responsibility of the Supplier.
	2. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Agreement.
	3. The Supplier shall produce to the Council, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
	4. If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the Agreement then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
	5. The Supplier shall maintain the insurances referred to in Condition 42.4 and 42.5 for a minimum of six (6) years following the expiration or earlier termination of the Agreement.

42.11 The Supplier shall notify the Council in writing as soon as reasonably possible, of any investigation or proceedings brought against the Supplier and shall indemnify the Council against any loss, claims and expenditure resulting from the Supplier’s breach.

43 Warranties and Representations

43.1 The Supplier warrants and represents to the Council that:

1. the it has the full capacity, authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform its obligations under this Agreement;
2. that this Agreement is executed by a duly authorised representative of the Supplier;
3. in entering this Agreement, it has not committed any Fraud;
4. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Agreement;
5. it has not caused or induced any person to enter such agreement referred to in Condition 43.1(d) above;
6. it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Agreement;
7. it has not committed any offence under the Bribery Act 2010;
8. the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
9. the Services shall be to the reasonable satisfaction of the Council;
10. the Services shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force relating to the Agreement;
11. all obligations of the Supplier pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
12. the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial or its ability to observe or perform its obligations under this Agreement;
13. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement which may be entered into with a Council;
14. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement which may be entered into with a Council;
15. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
16. in the three (3) years prior to the date of this Agreement it has:
17. conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
18. been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
19. not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

43.2 The Supplier fully warrants and represents to the Council the statements in Condition 43.1 above.

1. 44 Transfer of Undertaking

44.1 If applicable and where reasonably requested to do so the Parties shall provide all relevant and up to date information in connection with the TUPE Regulations as the requesting Party may require.

44.2 The Parties agree that the provisions of Schedule 6 shall apply to any Relevant Transfer of staff under this Agreement.

DEFAULT, DISRUPTION AND TERMINATION

45 Termination on change of control and insolvency

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

 (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

 (b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

 (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

 (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

 (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

 (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

 (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

 (h) any event similar to those listed in Conditions 45.1(a)-(h) occurs under the law of any other jurisdiction.

45.2 The Council may terminate the Agreement with immediate effect by notice in writing where the Supplier is an individual and:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier’s creditors; or

(b) a petition is presented and not dismissed within 14 days or order made for the Supplier’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Supplier’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier’s assets and such attachment or process is not discharged within 14 days; or

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

(h) any similar event occurs under the law of any other jurisdiction within the United Kingdom.

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

 (a) being notified that a change of control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

46 Termination on Default

46.1 The Council may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Supplier or the Supplier Representative with immediate effect if the Supplier commits a default and if:

1. the Supplier fails to deliver the Services within the time specified;

 (b) the Supplier has not remedied the default to the satisfaction of the Council within thirty (30) days, or such other longer period as may be specified by the Council, after issue of a written notice specifying the default and requesting it to be remedied; or

(b) the default is not capable of remedy; or

(c) the default is a fundamental breach of the Agreement.

#### 46.2 In the event that through any default of the Supplier, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

#### 46.3 The Supplier may terminate this Agreement if the Council is in material breach of its obligations to pay undisputed charges by giving the Council ninety (90) days’ notice specifying the breach and requiring its remedy.

47 Break

47.1 The Council shall have the right to terminate the Agreement (for whatever reason) at any time by giving 4 weeks written notice to the Supplier.

47.2 The Council may extend the period of notice at any time before it expires.

48 Consequences of Termination

48.1 Where the Council terminates the Agreement under Condition 46, or terminates the provision of any part of the Agreement under that Condition, and then makes other arrangements for the provision of Services the Council shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. Where the Agreement is terminated under Condition 46, no further payments shall be payable by the Council to the Supplier until the Council has established the final cost of making those other arrangements. With regard to the application of this Condition the Council acknowledges its general duty to mitigate any losses it might suffer.

48.2 Where the Council terminates the Agreement under Condition 47, the Council shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Condition 47.

48.3 The Council shall not be liable under Condition 46 to pay any sum which:

(a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

(b) when added to any sums paid or due to the Supplier under the Agreement, exceeds the total sum that would have been payable to the Supplier if the Agreement had not been terminated prior to the expiry of the Term.

48 Disruption

48.1 The Supplier shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of any Council, its employees or any other contractor employed by the Council.

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

48.3 In the event of industrial action by the Staff or the Supplier’s suppliers the Supplier shall seek Approval to its proposals to perform its obligations under the Agreement.

48.4 If the Supplier’s proposals referred to in Condition 48.3 are considered insufficient or unacceptable by the Council, then the Replacement Agreement may be terminated by the Council by notice in writing with immediate effect.

48.5 If the Supplier is temporarily unable to fulfil the requirements of the Replacement Agreement owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council.

49 Recovery upon Termination

49.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Supplier and the Council accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

49.2 At the end of the Term (and howsoever arising) the Supplier shall forthwith deliver to the Council upon request all the Council’s property (including but not limited to materials, documents, information, access keys, design templates, machinery) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors.

49.3 At the end of the Term (howsoever arising) and/ or after the Term the Supplier shall provide their reasonable co-operation free of charge to the Council and any new Supplier appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress.

49.4 The provisions of this Condition shall survive the continuance of this Agreement and indefinitely after its termination.

50 Force Majeure

50.1 For the purpose of this Condition, “Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Supplier’s organisation or within any sub-contractor’s organisation.

50.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of three (3) months, either Party may terminate the Agreement by notice in writing with immediate effect.

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

50.4 Condition 50 does not affect the Councils’ rights under Condition 48.

50.5 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in this Condition 50 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

50.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

Dispute and Law

51 Governing Law

 51.1 This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

52 Dispute Resolution

52.1 The respective Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within thirty (30) days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the [head of procurement] (or equivalent) of each Party.

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

52.3 If the dispute cannot be resolved by the Parties pursuant to Condition 52.1 the dispute shall be referred to mediation pursuant to the procedure set out in sub Condition 52.5 unless (a) the respective Council considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.

52.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

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

 (a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within fourteen (14) days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within fourteen (14) days from the date of the proposal to appoint a Mediator or within fourteen (14) days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.

 (b) The Parties shall within Fourteen (14) days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

 (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

 (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

 (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.

 (f) If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Condition 61.6

52.6 Subject to Condition 52.2, the Parties shall not institute court proceedings until the procedures set out in Conditions 52.3 and 52.5 have been completed save that:

(a) the Council may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Condition 52.7.

(b) if the Supplier intends to commence court proceedings, it shall serve written notice on the other Party of its intentions and the Council shall have twenty one (21) days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Condition 52.7.

(c) the Supplier may request by notice in writing to the Council that any dispute be referred and resolved by arbitration in accordance with the provisions of Condition 52.7, to which the Council may in its discretion consent as it sees fit.

52.7 In the event that any arbitration proceedings are commenced pursuant to Condition 52.6, the following provisions shall apply:

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

### (b) the Council shall give a written notice of arbitration to the Supplier (“the Arbitration Notice”) stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

### (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 61.7(b) shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Council under 52.3 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(f) the arbitration proceedings shall take place in London and in the English language; and

1. the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

|  |
| --- |
| IN WITNESS of which this Agreement has been duly executed and delivered as a deed by the parties. |

|  |  |
| --- | --- |
| Executed by the Council:  |  |
| .................................................................[XXX] |
| .................................................................[XXX] |

|  |  |
| --- | --- |
| Executed by the Supplier: |  |
| .................................Signature of Director | ..............................................Print Name  |
| ................................Signature of Director | ................................................Print Name  |

**SCHEDULE 1**

**SERVICES**

**[INSERT SCOPE OF SERVICES]**

**SCHEDULE 2**

**SUPPLIER’S TENDER**

**[INSERT SUPPLIER’s TENDER HERE]**

**SCHEDULE 3**

**PRICING (CHARGES AND PAYMENT)**

**[INSERT SUPPLIERS PRICING]**

**SCHEDULE 4**

**PERFORMANCE MONITORING**

**[INSERT KPI’S HERE]**

1. SCHEDULE 5
2. VARIATION

**BETWEEN:**

|  |
| --- |
|  [ ] ("**the Council"**)and[ ] (**"the Supplier"**) |

1. The Agreement is varied as follows: [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Agreement.
3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Council**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |

**Authorised to sign for and on behalf of the Supplier**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |

**SCHEDULE 6**

TRANSFER OF UNDERTAKING/ STAFF TRANSFER

# DEFINITIONS

In this Schedule, the following definitions shall apply:

Admission Agreement: the agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;

Eligible Employee: any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

### redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

### unfair, wrongful or constructive dismissal compensation;

### compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

### compensation for less favourable treatment of part-time workers or fixed term employees;

### outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

### employment claims whether in tort, contract or statute or otherwise;

### any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

Fair Deal Employees: those Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

Former Supplier: a supplier supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

New Fair Deal: the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for staff pensions: staff transfer from central government*" issued in October 2013;

Notified Sub-contractor: a Sub-contractor identified in *Annex C* to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

Replacement Services: any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Council internally and/or by any third party;

Replacement Sub-contractor: a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Replacement Supplier: any third party service Supplier of Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council);

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Schemes: the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the DPA 1998), but including in an anonymised format:

### their ages, dates of commencement of employment or engagement and gender;

### details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;

### the identity of the employer or relevant contracting Party;

### their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

### their wages, salaries and profit sharing arrangements as applicable;

### details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

### any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

### details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

### copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

### any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Supplier's Final Personnel List: a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Supplier Personnel: all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;

Supplier's Provisional Personnel List: a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

Transferring Former Supplier Employees: in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date as contained in *Annex B* and accurate as at the date on which this Agreement is signed by both Parties; and

Transferring Supplier Employees: those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

#

# INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

#

# RELEVANT TRANSFERS

## The Council and the Supplier agree that:

### the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

### as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

## The Council shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Council shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

# FORMER SUPPLIER INDEMNITIES

##

## Subject to paragraph 4.2, the Council shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

### any act or omission by the Former Supplier arising before the Relevant Transfer Date;

### the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

#### any collective agreement applicable to the Transferring Former Supplier Employees; and/or

#### any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

### any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

#### in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

#### in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

### a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

### any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

### any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

##

## The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

### arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

### arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

##

## If any person who is not identified by the Council as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Council as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

###

### the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Council and, where required by the Council, to the Former Supplier; and

###

### the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

## If an offer referred to in paragraph 4.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Council, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

##

## If by the end of the 15 Working Day period specified in paragraph 4.3(b):

### no such offer of employment has been made;

### such offer has been made but not accepted; or

### the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

##

## Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of paragraph 4.3 to paragraph 4.5 and in accordance with all applicable proper employment procedures set out in Law, the Council shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 4.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

## The indemnity in paragraph 4.6:

### shall not apply to:

#### in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

#### any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

### shall apply only where the notification referred to in paragraph 4.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Council and, if applicable, the Former Supplier, within six months of the Effective Date.

## If any such person as is described in paragraph 4.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in paragraph 4.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

#

# SUPPLIER INDEMNITIES AND OBLIGATIONS

##

## Subject to paragraph 5.2, the Supplier shall indemnify the Council and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

### any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

### the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

#### any collective agreement applicable to the Transferring Former Supplier Employee; and/or

#### any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

### any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

### any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

### any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Council and/or the Former Supplier in writing;

### any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

#### in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

#### in relation to any employee who is not a Transferring Former SupplierEmployee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

### a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and

### any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

##

## The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier’s failure to comply with its obligations under the Employment Regulations.

## The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

##

## The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this *paragraph 5*, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

## Despite *paragraph 5.4*, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#

# INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and/or at the Council’s direction, the Former Supplier, in writing such information as is necessary to enable the Council and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#

# PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

##

## The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Council relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

### the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;

### HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;

### HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

### the New Fair Deal.

## Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 7.1 shall be agreed in accordance with Schedule 5 (Variation).

#

# PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Schedule, where in this Schedule the Council accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Former Supplier contains a contractual right in that regard which the Council may enforce, or otherwise so that it requires only that the Council must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PENSIONS

#

# PROTECTION OF PENSIONS

## The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in paragraph 10 to paragraph 16 in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

## The provisions of paragraphs 9 to 16 shall be directly enforceable by an affected employee against the Supplier and any Notified Sub-contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Supplier or Notified Sub-contractor under those paragraphs in his own right under section 1 of the Contracts (Rights of Third Parties) Act 1999.

#

# PARTICIPATION IN PUBLIC SECTOR PENSION SCHEME

## The Supplier undertakes to enter into the Admission Agreement.

## The Supplier and the Council undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.

## The Supplier shall bear its own costs and all costs that the Council reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

#

# FUTURE SERVICE BENEFITS

## If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

## If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

## The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Council, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

## The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

#

# FUNDING

## The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

## The Supplier shall indemnify and keep indemnified the Council on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#

# PROVISION OF INFORMATION

The Supplier and the Council respectively undertake to each other:

### to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Schedule and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

### not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Schedule without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#

# INDEMNITY IN RESPECT OF FAIR DEAL EMPLOYEES

The Supplier undertakes to the Council to indemnify and keep indemnified the Council on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#

# EMPLOYER OBLIGATION UNDER PENSIONS LEGISLATION

The Supplier shall comply with the requirements of the Pensions Act 2008, sections 257 and 258 of the Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005.

#

# SUBSEQUENT TRANSFERS

The Supplier shall:

### not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

### provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Council may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

### for the period either

#### after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

#### after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Council, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Council (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

Employment exit provisions

#

# PRE-SERVICE TRANSFER OBLIGATIONS

##

## The Supplier agrees that within 20 Working Days of the earliest of:

###

### receipt of a notification from the Council of a Service Transfer or intended Service Transfer;

### receipt of the giving of notice of early termination or any Partial Termination of this Agreement;

### the date which is 12 months before the end of the Term; and

### receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the DPA 1998, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Council.

##

## At least 28 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Council or at the direction of the Council to any Replacement Supplier and/or any Replacement Sub-contractor:

### the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

### the Staffing Information in relation to the Supplier’s Final Personnel List (insofar as such information has not previously been provided).

## The Council shall be permitted to use and disclose information provided by the Supplier under paragraph 17.1 and paragraph 17.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

## The Supplier warrants, for the benefit of the Council, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to paragraph 17.1 and paragraph 17.2 shall be true and accurate in all material respects at the time of providing the information.

## From the date of the earliest event referred to in paragraph 17.1(a), paragraph 17.1(b) and paragraph 17.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):

### replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

### make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

### increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

### introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;

### increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

### terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

## During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

### the numbers of employees engaged in providing the Services;

### the percentage of time spent by each employee engaged in providing the Services; and

### a description of the nature of the work undertaken by each employee by location.

## The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

### the most recent month's copy pay slip data;

### details of cumulative pay for tax and pension purposes;

### details of cumulative tax paid;

### tax code;

### details of any voluntary deductions from pay; and

### bank/building society account details for payroll purposes.

#

# EMPLOYMENT REGULATIONS EXIT PROVISIONS

## The Council and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the Supplier of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the Supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

## The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

##

## Subject to paragraph 18.4, the Supplier shall indemnify the Council and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

### any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

### the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

#### any collective agreement applicable to the Transferring Supplier Employees; and/or

#### any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

### any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

### any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

#### in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

#### in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Council and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on or before the Service Transfer Date;

### a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

### any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Council and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

### any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

##

## The indemnities in paragraph 18.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

### arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

### arising from the Replacement Supplier’s failure, and/or Replacement Sub-contractor’s failure, to comply with its obligations under the Employment Regulations.

##

## If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

###

### the Council shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

###

### the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

## If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Council shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

##

## If after the 15 Working Day period specified in paragraph 18.5(b) has elapsed:

### no such offer of employment has been made;

### such offer has been made but not accepted; or

### the situation has not otherwise been resolved

the Council shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

##

## Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraph 18.5 to paragraph 18.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 18.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

## The indemnity in paragraph 18.8:

### shall not apply to:

#### in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

#### any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

### shall apply only where the notification referred to in paragraph 18.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six months of the Service Transfer Date.

## If any such person as is described in paragraph 18.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in paragraph 18.5 to paragraph 18.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

## The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

### the Supplier and/or any Sub-contractor; and

### the Replacement Supplier and/or the Replacement Sub-contractor.

## The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Council, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

##

## Subject to paragraph 18.14, the Council shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

### any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;

### the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

#### any collective agreement applicable to the Transferring Supplier Employees; and/or

#### any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

### any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

### any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

### any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

### any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

#### in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

#### in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

### a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

### any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

##

## The indemnities in paragraph 18.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Annex A. Admission Agreement

Annex B. Transferring Former Supplier Employees

Annex C. List of Notified Sub-contractors

**SCHEDULE 7**

**COMMERCIALLY SENSITIVE INFORMATION**

**[INSERT HERE]**

**SCHEDULE 8**

**DATA PROCESSING**

**DATA PROCESSING**

**1. The Supplier shall comply with any further written instructions with respect of processing by the Council.**

**2. Any such further instructions shall be incorporated into this Schedule.**

**3. PROCESSING BY THE SUPPLIER**

|  |  |
| --- | --- |
| **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 | *[How long?]* |
| 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* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]* |
| Categories of Personal Data | *[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]* |

**SCHEDULE 9**

**GUARANTEE BOND**

|  |  |  |
| --- | --- | --- |
| DATED |  |  |
|  |  |  |
|  |  |  |
| [SUPPLIER] |
| and |
| [GUARANTOR] |
| and |
| [COUNCIL] |
|  |  |  |
| GUARANTEE BOND |
|  | relating to a project at |  |
| [XXX] |

**THIS GUARANTEE BOND** is made as a Deed **BETWEEN** the following parties whose names and addresses are set out in the Schedule to this Bond (the “Schedule”)

1. The “Supplier” as principal
2. The “Guarantor” as guarantor, and
3. The “Council”
4. **WHEREAS**
5. By a Contract (the “Contract”) entered into or to be entered into between the Council and the Supplier particulars of which are set out in the Schedule the Supplier has agreed with the Council to execute works (the “Works”) upon and subject to the terms and conditions therein set out.
6. The Guarantor has agreed with the Council at the request of the Supplier to guarantee the performance of the obligations of the Supplier under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

**NOW THIS DEED WITNESSES** as follows:

1. The Guarantor guarantees to the Council that in the event of a breach of the Contract by the Supplier or in the event of the Insolvency of the Supplier the Guarantor shall, subject to the provisions of this Guarantee Bond, satisfy and discharge the damages sustained by the Council as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Supplier.
2. The maximum aggregate liability of the Guarantor and the Supplier under this Guarantee Bond shall not exceed the sum set out in the Schedule (the “Bond Amount”) but subject to such limitations and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Supplier under the Contract.

3 The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Council under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Guarantee Bond.

1. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
2. The Supplier having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Council or the Guarantor against the Supplier) to perform and discharge the obligations on its part set out in the Contract.
3. This Guarantee Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Supplier.
4. The parties to this Guarantee Bond do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
5. This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

**THE SCHEDULE**

The Supplier: [XXX] whose registered office address is at [XXX].

The Guarantor: [XXX] whose registered office address is at [XXX].

The Council: [XXX] of [XXX].

The Contract: A Contract dated the [XXX] day of [XXX] between the Council and the Supplier in the form known as [XXX] for the [XXX] for the original contract sum of [XXX] pounds [£[XXX]].

The Bond Amount: The sum of £[ ]

Expiry: The date of the completion of the Services (which shall be conclusive for the purposes of this Guarantee Bond)

**IN WITNESS** whereof the Guarantor, the Supplier and the Council have executed and delivered this Guarantee Bond as a Deed this day of Two Thousand

EXECUTED AS A DEED by (Supplier)

[XXX]

Director

Director/Secretary

EXECUTED AS A DEED by (Guarantor)

[XXX]

Director

Director/Secretary

EXECUTED AS A DEED (but not delivered

until the date inserted above)

by affixing the common seal of the COUNCIL

in the presence of:

…………………………………………

Authorised signatory

………………………………………….

Authorised signatory

SCHEDULE 10

PARENT COMPANY GUARANTEE

**DATED 2020**

**[*GUARANTOR*]**

**- and -**

**[COUNCIL]**

**- and -**

**[SUPPLIER]**

**SUPPLIER'S PARENT COMPANY GUARANTEE**

**THIS DEED OF GUARANTEE** is made the day of 2020

**BETWEEN:**

(1) **[*GUARANTOR*]** (Company Number [*number*]) whose registered office is at [*address*] ("the Guarantor") and

(2) [**COUNCIL]** of [XXX] ("the Council" which expression includes its successors in title and permitted assigns) and

(3) **[SUPPLIER]** (Company Number) whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] ("the Supplier")

1. Background
	1. The Supplier has entered or is about is about to enter into the Contract with the Council in respect of the Services.
	2. At the request of the Supplier the Guarantor has agreed with the Council to guarantee the Supplier's due performance of the Contract upon the terms and conditions of this Deed of Guarantee
2. Definitions

In this Deed of Guarantee the following expressions shall have the following meanings:

"Contract" means the [XXX] entered into or to be entered into between the Council and the Supplier for the delivery of the Services together with any documents or arrangements which are supplemental or ancillary to it by way of change variation or otherwise

"Services" means the [XXX]

1. Interpretation

In this Deed of Guarantee:

* 1. References to a person include any individual, firm, partnership, company, corporation, government, governmental body and department, authority, agency, trust, unincorporated body of persons or associations and any other organisation having legal capacity and include any permitted transferee or assign of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person
	2. References to the singular shall include the plural, and vice versa, and a reference to any gender shall include all other genders
	3. Headings are inserted for convenience only and shall be ignored in construing this Deed of Guarantee
	4. Any reference to legislation means all relevant acts of parliament, regulations, instruments or orders made under them, all regulations and bye-laws of any relevant local and statutory authority and shall be construed as a reference to the same as it may have been, or may from time to time be amended, modified or re-enacted
	5. Any obligation on a party to this Deed of Guarantee to do an act includes an obligation to procure that it is done

**NOW IT IS AGREED** as follows:

1. Indemnity

In consideration of the Council paying to the Guarantor the sum of £10.00 (ten pounds) if demanded the Guarantor agrees that if the Supplier in any respect fails to carry out or commits any breach of its obligations under the Contract then unless the Supplier is relieved from performance by any clause of the Contract or by statute or by the decision of a tribunal of competent jurisdiction the Guarantor as primary obligor will indemnify the Council against all losses damages costs and expenses that may be incurred by the Council by reason of any default on the part of the Supplier in performing and observing the terms provisions agreements covenants conditions stipulations and obligations on its part contained in the Contract including all costs and expenses of enforcing this Deed of Guarantee

1. Guarantor's acknowledgments and agreements
	1. The Guarantor acknowledges and agrees that its obligations shall remain in full force and effect and shall not be discharged affected reduced or released in any way by
		1. the insolvency or liquidation of the Supplier or
		2. any novation amendment alteration in or variation or waiver of any of the terms provisions agreements covenants conditions stipulations and obligations of the Contract (including any further or additional works) or in the extent or nature of the Services or
		3. any allowance of time by or on behalf the Council under or in respect of the Contract or the Services or
		4. any act carried out in performance or purported performance of the Contract or
		5. any other fact circumstance provision of statute or rule of law which might otherwise entitle the Guarantor to be released in whole or in part from this Deed of Guarantee or
		6. any forbearance or forgiveness by or on the part of the Council in or in respect of any matter or thing concerning the Contract

and the Guarantor hereby consents in advance to any of the above without the need for any further notice to be given by or on behalf of the Council

1. Guarantor's authority

The Guarantor warrants to the Council that it has full corporate power and authority to enter into this Deed of Guarantee

1. Supplier's undertaking to the Guarantor

The Supplier has requested the execution of this Deed of Guarantee by the Guarantor and undertakes with the Guarantor (without limitation of any other rights and remedies of the Council or the Guarantor against the Supplier) to perform and discharge the obligations on its part set out in the Contract

1. Assignment
	1. The Council shall be entitled to assign or transfer all or any of its rights or benefits under this Deed of Guarantee at any time without the consent of the Guarantor being required to any person to whom the Council has assigned or transferred all or any of his rights and benefits under the Contract
	2. The Guarantor hereby undertakes not to contend in defence of proceedings under or in connection with this Deed of Guarantee that its liability to a permitted assignee of the Council is affected or diminished by reason of the Council having suffered no loss and/or by reason of any loss claimed to have been suffered by a permitted assignee of the Council being different in character from that suffered by the Council or which would have been suffered by the Council following any breach or alleged breach by the Supplier. The parties agree that the liability of the Guarantor for any breaches of the terms of this Deed of Guarantee shall not be so affected or diminished
2. Guarantor's confirmation
	1. The Guarantor confirms that it has the same liability to the Council as the Supplier has under the Contract provided that:
		1. the Guarantor shall have no greater liability to the Council by virtue of this Deed of Guarantee and/or to any assignee of the Council than it would have had had the Guarantor been named as a joint Supplier under the Contract and
		2. the Guarantor shall have available to it the same rights of defence set-off and counterclaim as areor would be available to the Supplier under the Contract
3. Liquidation or bankruptcy of the Supplier

The parties agree that the Council shall not be obliged before taking steps to enforce this Deed of Guarantee to take action or proceedings against or to make or file any claim in the liquidation or bankruptcy of the Supplier or any other person

1. Invalidity, illegality or unenforceability of the Contract

If the Contract is or becomes totally or partially invalid illegal or unenforceable the Guarantor shall nevertheless be liable under this Deed of Guarantee as a primary obligor as if it were not so invalid illegal or unenforceable

1. Third Party Rights

The parties to this Deed of Guarantee do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it apart from any assignee or transferee referred to in clause 8

1. Governing law and disputes
	1. The provisions of this Deed of Guarantee shall be governed by and construed in accordance with English Law
	2. Any disputes or differences between the parties in connection with this Deed of Guarantee shall be referred to the exclusive jurisdiction of the English Courts except for the purposes of any enforcement proceedings in respect of any judgment or award of the English Courts in another jurisdiction.

**IN WITNESS** whereof the Parties have executed this Deed of Guarantee as a deed

Executed as a deed by the Supplier

……………………………………

Director

……………………………………

Director

Executed as a deed by the Guarantor

………………………………………

Director

………………………………………

Director

Executed as a deed by the Council

………………………………………

[XXX]

………………………………………

[XXX]