|  |  |  |
| --- | --- | --- |
| **ORDER FORM**  **(Professional services)** | | smaller_London Councils_colour |
| **PURCHASE ORDER No.** |  | |
| **DATE:** |  | |

1. **Appointment**
   1. London Councils hereby appoints the Service Provider to perform the Service, subject to and in accordance with the terms of this Order, which incorporates by reference:
      * London Councils’ Conditions “E” (Professional Services) 2016 (Standard Conditions)
      * The Special Conditions set out in Appendix 1 of this Agreement.
      * The Additional Security Clauses set out in Appendix 2 of this Agreement.
      * The Additional Definitions and Additional Conditions set out in Appendix 3 of this Agreement.
      * The Schedules 1 - 4 inclusive detailing various requirements thus:

Schedule 1 - ITT and Service Specification

Schedule 2 - Method Statement

Schedule 3 - Schedule of Rates / Payment Details

Schedule 4 - Change Request Process

1. **Standard Conditions**
   1. For the purposes of this Agreement, the following particulars apply in relation to the interpretation of the Standard Conditions:

|  |  |  |
| --- | --- | --- |
| **THE PARTICULARS** | | |
| 1.1(e) | The Consultant / Service Provider is: |  |
| 1.1(m) | The Payment Period is: | 20 Working Days following submission of a valid and undisputed invoice |
| 1.1(o) | The Services are: | Online data management system and platform for sharing and benchmarking metrics |
| 1.1(c) | The Authorised Officer is: | Paul Honeyben |
| 2.5 | The timescale for performing the Services is: | Over a 3 year period commencing 1st April 2018 |
| 2.6 | The Services are performed in the following Stages: | N/A |
| 3.1 | The Fee is: | £[ ] exclusive of VAT subject to adjustment in accordance with the attached conditions |
| 3.2 | Interim payments on account will be made at the following intervals: | Quarterly in advance on production of valid VAT invoice |
| 4.1 | The insurances required will be for a sum of not less than: | * £1,000,000 each and every claim for Professional Indemnity; and * the minimum level required under the governing law for Employer’s Liability |
| 5.1 | Intellectual Property Rights: | Special Condition 1 in Appendix 2 applies |
| 7 | Data Sharing, Data Processing and GDPR: | Special Condition 2 in Appendix 2 applies |
| 16.1 | Community Benefit: | Condition 16.1 does not apply |
| 19 | Construction Projects: | Condition 19 does not apply |
| The further documents which are attached to and form part of this Order are: | | To be completed post tender |
|  | | |

* 1. Where there is any discrepancy or inconsistency between the Standard Conditions and the Special Conditions (if any) set out in Appendix 3 of this Agreement, the latter takes precedence over the former.
  2. By signing this Order where indicated below London Councils and the Consultant have confirmed their acceptance of the terms and conditions applying to this Order with effect from the date indicated above.

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of London Councils by: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |
| **SIGNED** for and on behalf of the Consultant by: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |

**LONDON COUNCILS’ CONDITIONS “E” (PROFESSIONAL SERVICES) 2016 EDITION**

1. **Definitions & Interpretation**
   1. In this Agreement, unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:
2. **Agreement** means these Conditions, the Order and any other document referred to in the Order;
3. **Apprenticeship** means course of training relevant to the Services being provided;
4. **Authorised Officer** means the person named in the Order or any person designated or nominated by London Councils in writing as its representative, in relation to instructions to, and receipt of information, documents, etc. from the Consultant under this Agreement;
5. **Confidential Information** means all information obtained under this Agreement or in connection with the Services;
6. **Consultant / Service Provider** means the firm, company, or individual being the counterparty to London Councils named in the Order;
7. **Deprived Area** means any borough, district or other local government area (defined as such in the law of any member state of the European Union) defined as “most deprived” in the English Indices of Deprivation 2015, as published from time to time, by the Department of Communities and Local Government (DCLG), or in any similar or equivalent index or table as maybe published from time to time, by any central or local government or public body in any member state of the European Union;
8. **Documents** means the documents (including, reports, recommendations, expert witness reports, documentary evidence, advertising materials, databases, sketches, drawings, designs, logos and other documents and information) in any way specifically prepared by the Consultant in connection with the Services whether or not in existence prior to the commencement of the Services;
9. **Fee** means the sum indicated in the Order to be paid by London Councils in consideration of the Consultant carrying out and completing the Services to London Councils’ satisfaction;
10. **Limitation Period** unless stated otherwise in the Order means the period of 6 years commencing from either the date of completion of the whole of the Services, or (if earlier) the date upon which the Consultant’s engagement under this Agreement is terminated;
11. **London Councils** is a Joint Committee established pursuant to section 102 of the Local Government Act 1972 (as amended), whose principal offices are at 59½ Southwark Street, London SE1 0AL;
12. **Materials** means all background and third party information and materials including, database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor if any) in any way used by the Consultant in preparation of the Documents;
13. **Order** means the order form letter or Deed issued by London Councils (into which these Conditions are incorporated by reference) instructing the Consultant to provide the Services;
14. **Payment Period** means (unless otherwise specified in the Order) 20 Working Days from receipt of a valid invoice and fee account (accompanied by detailed timesheets where requested or such other supporting evidence as may be reasonably requested by London Councils);
15. **Policies of London Councils** means respectively the Standing Orders, Financial Regulations and Equal Opportunities Policy of London Councils currently in force (copies of which can be obtained from the Authorised Officer), together with any further policies identified in this Agreement;
16. **Services** means those services as set out on or referred to in the Order;
17. **Stage** means any stage or point of progress in the execution of the Services if any as will be set out and so defined in the Order; and
18. **Working Day** means Monday to Friday inclusive, excluding Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England.
    1. Headings are for information only and do not form part of this Agreement.
    2. A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, enforceable EU Legislation, Code of Practice or the like will include reference to any amendment or re-enactment of the same.
    3. Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals will be treated as importing corporations, companies and/or partnerships and vice versa.
    4. The terms of this Agreement will be the sole terms applying to this Agreement and all other conditions of contract, or terms of trade, supplied by the Consultant are specifically excluded and do not amend, or in any way displace the terms and conditions of this Agreement.
19. **Services**
    1. London Councils engages the Consultant and the Consultant agrees to carry out the Services subject to and in accordance with the terms of this Agreement.
    2. The Consultant will provide suitably qualified personnel to carry out the Services using all reasonable skill, care and diligence having regard to current knowledge, information and good practice.
    3. The Consultant will in the execution of the Services take account of any Statute, Statutory Instrument, Byelaw, relevant British Standard or equivalent European Standard or other mandatory requirement or Code of Practice and the Policies of London Councils, which may be in force, or come into force, during the execution of the Services.
    4. The Consultant will collaborate and work in consultation with any other consultants or contractors appointed now, or at any time by London Councils, during the provision of the Services.
    5. The Services will be performed by the Consultant within the time limit stated in the Order (or if none stated, within a reasonable time)
    6. If the Services set out in the Order are set out in Stages, the Consultant will not proceed with any Stage without the written authority of the Authorised Officer.
    7. The Consultant will, if so required, attend upon a committee of London Councils, or any statutory or public body, on any matter concerning the Services and will attend any meetings called by the Authorised Officer, make such reports concerning the Services as the Authorised Officer may reasonably require.
    8. London Councils will be relying upon the Consultant’s skill and expertise in the provision of the Services and also upon the accuracy of all statements made and advice given by the Consultant in connection with the provision of the Services and the accuracy of any documents, reports or other materials drawn up or created by the Consultant in relation to the same, subject always to the Consultant’s obligations set out in Condition 2.2.
20. **Payment**
    1. London Councils will pay to the Consultant and the Consultant will accept in full satisfaction for the performance of the Services the Fee, or such other amount as may become payable to the Consultant in accordance with, at the times and in the proportions set out in, this Order, together with any correctly charged V.A.T. that is applicable.
    2. Where it is agreed that interim payments on account are to be made to the Consultant by London Councils, these payments will be made at intervals, or on the dates set out in the Order which will be the payment due date in this Agreement. Payment for the Services and any Additional Services will, unless otherwise agreed in writing, be made by London Councils within the Payment Period. The last day of the Payment Period is the final date for payment under this Agreement.
    3. As a condition precedent to payment London Councils’ Purchase Order number must be indicated on any invoice submitted by the Consultant in connection with this Agreement. London Councils will be entitled to reject any invoice submitted by the Consultant in the event that London Councils’ relevant Purchase Order number is not stated on the invoice. Invoices submitted by the Consultant will be considered and verified by London Councils in a timely fashion and undue delay in doing so will be insufficient justification for failing to regard an invoice as valid and undisputed.
    4. Without waiver or limitation of any rights or remedies London Councils will be entitled to withhold, deduct or set-off from any amounts due or owing by London Councils to the Consultant in connection with this Agreement any losses, costs or damages arising from the Consultant’s breach of this Agreement, or any other agreement, subject always to London Councils giving the Consultant written notice not later than 5 Working Days before the final date for payment of the amount due, which will specify any amount proposed to be withheld, deducted or set-off, the ground or grounds for such withholding and/or deduction.
21. **Insurance & Indemnity**
    1. The Consultant will have and keep in force Professional Indemnity insurance and Public Liability insurance and if applicable Employer’s Liability Insurance to cover any claim made against them by London Councils in relation to their Services including any loss arising out of the breach of Condition 2 and will upon request, from time to time, produce to the Authorised Officer suitable proof that such cover is in place.
    2. The Consultant will indemnify London Councils against any claims for loss or damage to property or injury or death to any person arising directly out of their obligations and the performance of the Services.
    3. The Consultant will indemnify London Councils against any claims, actions and demands arising from the Consultant’s failure to comply with the Data Protection and General Data Protection Regulations set out at clause 7 hereto which failure causes London Councils to fail in its statutory obligations thereunder.
22. **Intellectual Property Rights – See Special Condition 1 in Appendix 1**
23. **Confidentiality & Publicity**
    1. The Consultant will only divulge Confidential Information to those employees who are directly involved in the Services or are engaged in support of them and will ensure that such employees are aware of, and will comply with, these obligations as to confidentiality.
    2. The Consultant will not advertise, or publicly announce that it undertakes work for London Councils, nor will it make any press release, or statement, without the prior written consent of the Authorised Officer.
    3. The Consultant agrees and warrants that it will not without the prior express written consent of London Councils:
    4. use for its own benefit or otherwise exploit any Confidential Information nor divulge to any other party that the Consultant is intending to, or has tendered for, or been appointed to perform, the Services;
    5. disclose any Confidential Information, in whole or in part, to any third person, firm, company or other such similar entity or otherwise use such information to the detriment of London Councils for example, but not limited to, the pursuit of a business opportunity;
    6. use the Confidential Information for any purpose whatsoever other than that for which the Consultant is specifically given access; or
    7. use the Confidential Information for any illegal or immoral purposes.
    8. The Consultant will take all reasonable precautions necessary to safeguard the personal nature of the Confidential Information and will advise and inform its personnel and agents to strictly observe such obligations.
    9. All notes, data, reference materials in any way incorporating, or reflecting, any of the Confidential Information will belong exclusively to London Councils and the Consultant agrees to turn over all copies of such materials in its control to London Councils upon request, or upon completion of the Services, or upon termination of the Consultant’s engagement under this Agreement.
24. **Data Protection – See Special Condition 2 in Appendix 1**
25. **Delegation & Third Party Rights**
    1. The Consultant will not unless permitted, in writing, by the Authorised Officer and on terms acceptable to London Councils, sublet to, or sub-contract with any third party for all, or any part, of the Services.
    2. The Consultant must not appoint a sub-contractor or supplier in relation to the Services if there are compulsory grounds for excluding the sub-contractor or supplier under regulation 57 of the Public Contracts Regulations 2015. The Consultant must include in any sub-contract awarded by it in relation to the Services provisions requiring that:
26. payment due to the sub-contractor or supplier under the sub-contract is made no later than 30 days after receipt of a valid and undisputed invoice, unless the Order requires the Consultant to make earlier payment to the sub-contractor or supplier;
27. invoices for payment submitted by the sub-contractor or supplier are considered and verified by the Consultant in a timely fashion;
28. undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and
29. any contract awarded by the sub-contractor or supplier in relation to the Services includes provisions to the same effect as this Condition 8.2.
    1. The Consultant will not assign, or transfer, the benefit, or obligations of this Agreement, or any part of them.
    2. Nothing in this Agreement confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to this Agreement.
30. **Status of the Consultant**
    1. Nothing contained in this Agreement, or elsewhere, is to be read, or construed, as a contract of employment so as to place the parties in the position of employer or employee. Nothing contained in this Agreement is to be so construed as to constitute either party to be the agent of the other. This Agreement does not operate so as to create a partnership or joint venture of any kind between the parties.
31. **Force Majeure**
    1. London Councils reserves the right to postpone or to cancel this Agreement or reduce the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of London Councils including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
32. **Notices**
    1. Any demand notice, or other communication, required to be given hereunder will be sufficiently served if served personally on the addressee, or if sent by a pre-paid first class special delivery post, or by facsimile transmission to the registered office, or last known address of the party to be served with it and if so sent will subject to proof of the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting, or on successful transmission as the case may be.
33. **Waiver & Severance**
    1. Failure by London Councils at any time to enforce the provisions of this Agreement, or to require performance by the Consultant of any of the provisions of this Agreement, will not be construed as a waiver of any such provision and will not affect the validity of this Agreement, or any part of this Agreement, or the right of London Councils to enforce any provision in accordance with its terms, at any time.
    2. If any provision in this Agreement becomes void, voidable or unenforceable by virtue of the coming into force of any statute or other mandatory legislation or in the event of any provision being declared by any court of competent jurisdiction to be such, then and in such event, the balance of this Agreement will remain in full force and effect.
34. **Bribery** 
    1. The Consultant must comply at all times with the provisions of the Bribery Act 2010, in particular Section 7 thereof in relation to the conduct of its employees, or persons associated with it.
    2. The Consultant warrants that, at all times, it has in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it, and must provide to London Councils at its request, within a reasonable time, proof of the existence and implementation of those procedures.
    3. London Councils is entitled by notice to the Consultant to terminate the Consultant’s engagement under this or any other contract with the Consultant if, in relation to this or any other such contract, the Consultant or any person employed by it or acting on its behalf commits an offence in relation to the Bribery Act 2010.
35. **Discrimination**
    1. The Consultant must not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or Schedule 8 of the Employment Equality (Age) Regulations 2006.
    2. Without prejudice to the generality of Condition 14.1, the Consultant is to comply with London Councils’ Equal Opportunities Policy, a copy of which has been provided to the Consultant by London Councils.
    3. The Consultant will take all necessary steps to secure the observance of the provisions of Conditions 14.1 and 14.2 by all its employees, servants, agents or sub-contractors employed in the performance of the Services.
36. **Freedom of Information**
    1. In the event that London Councils receives a request in connection with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004:
37. the Consultant will use reasonable endeavours to assist London Councils, at no additional charge and within such timescales as London Councils may reasonably specify, in meeting any requests for information in relation to this Agreement or the Services which are made to London Councils; and
38. London Councils will, wherever reasonably practical, consult with the Consultant before disclosing information that relates to the Consultant.
    1. All information provided or assistance rendered by virtue of the Consultant’s obligations under this Condition 15 is part of the Consultant’s general obligations to London Councils and will be at no cost to London Councils.
39. **Community Benefit – Not used**
40. **Audit**
    1. During the course of the Services and for the Limitation Period, London Councils may conduct or be subject to an audit for the following purposes:
41. to verify the accuracy of the fees paid to the Consultant (and proposed or actual variations to it in accordance with this Agreement) and/or the costs of all suppliers (including sub-contractors) for the Services;
42. to review the integrity, confidentiality and security of any data relating to London Councils;
43. to review the Consultant's compliance with the Data Protection Act 1998 or any other applicable legislation;
44. to review any records created during the course of the Services;
45. to review any books of account kept by the Consultant in connection with the provision of the Services;
46. to carry out the audit and certification of London Councils’ accounts;
47. to carry out an examination pursuant to any legislation applicable to the economy, efficiency and effectiveness with which London Councils has used its resources; or
48. to verify the accuracy and completeness of any reports delivered or required by this Agreement.
    1. Except where an audit is imposed on London Councils by a regulatory body, London Councils may not conduct an audit under this Condition 17 more than once in any calendar year.
    2. London Councils will use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Consultant or delay the provision of the Services.
    3. Subject to London Councils’ obligations of confidentiality, the Consultant must on demand provide London Councils and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
49. all information requested by the above persons within the permitted scope of the audit;
50. reasonable access to any sites controlled by the Consultant and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
51. access to the Consultant's personnel.
    1. London Councils will endeavour to (but is not obliged to) provide at least 10 Working Days’ notice of its or, where possible, a regulatory body's, intention to conduct an audit.
    2. The parties agree that they will bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition 17, unless the audit identifies a material failure of the Consultant to perform its obligations under this Agreement in which case the Consultant must reimburse London Councils for all London Councils’ reasonable costs incurred in the course of the audit.
    3. If an audit identifies that:
52. the Consultant has failed to perform its obligations under this Agreement in any material manner, the parties will agree and implement a remedial plan. If the Consultant's failure relates to a failure to provide any information to London Councils about the Consultant’s fees, any interim payment or proposed further payment, the Consultant's costs or any proposed or actual variations, then the remedial plan will include a requirement for the provision of all such information;
53. London Councils has overpaid, the Consultant must pay to London Councils the amount overpaid within 15 Working Days. London Councils may deduct the relevant amount from the Fee if the Consultant fails to make this payment; and
54. London Councils has underpaid, London Councils will pay to the Consultant the amount of the under-payment less the cost of audit incurred by London Councils if this was due to a default by the Consultant in relation to invoicing within 15 Working Days.
55. **Termination** 
    1. London Councils may terminate the Consultant’s engagement under this Agreement by written notice, such notice being effective immediately, in the event of any of the following occurrences:
56. if the Consultant refuses, or neglects, to execute the Services, or any part of them, or commits any breach of any obligation imposed upon it by this Agreement, or refuses, or neglects within a reasonable time to comply with any instructions given to it by the Authorised Officer;
57. if the Consultant refuses or neglects to comply with the Policies of London Councils, or any provisions of such policies, or commits any breach of any obligation imposed upon the Consultant by such policies, or refuses, or neglects within a reasonable time to comply with any instructions given to the Consultant by London Councils in regard to such Policies;
58. if the Consultant being an individual or a partnership has a petition for bankruptcy presented to the courts becomes bankrupt or makes a composition or arrangement with his creditors or has a proposal in respect of himself or his firm for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 as amended, by the Enterprise Act 2002, or where an application for bankruptcy is made against any individual partner of the firm, or where the partnership has a provisional liquidator receiver, or manager of its business duly appointed, or where the partnership is dissolved save for the purposes of bona fide reconstruction on terms acceptable to London Councils, or where a substantial change in the partners occurs;
59. if the Consultant being a company has an application made under the Insolvency Act 1986 as amended by the Enterprise Act 2002 in respect of its company to the court for the appointment of an administrator, or having a winding up order made, or a resolution passed (except for the purposes of amalgamation or reconstruction on terms acceptable to London Councils) for voluntary winding up, or having a provisional liquidator, receiver, or manager of its business, or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act 1986 as amended, by the Enterprise Act 2002, appointed, or having possession taken by, or on behalf of, the holders of any debentures secured by a floating charge;
60. in the event of any substantial change in legal status, or of circumstances occurring which will materially affect the contractual relationship between the parties, or the rights of London Councils to sue, or otherwise recover monies due, or enforce any other right arising under this Agreement which for the purposes of this Agreement has not been agreed between the parties;
61. if at any time progress on any part of the Services appears to the Authorised Officer to be unnecessarily delayed by any cause within the reasonable control of the Consultant and such delay and the cause of it if capable of remedy is not remedied within 5 Working Days after an instruction in writing requiring the same is given to the Consultant by the Authorised Officer;
62. in the circumstances specified in Condition 13.3; or
63. in the circumstances specified in regulation 73(1) of the Public Contracts Regulations 2015.
    1. If London Councils at any time in its absolute discretion wishes to abandon, defer, delay, postpone or substantially modify the provision of the Services, London Councils may give written notice to terminate the Consultant’s engagement or suspend the whole or any specified part of this Agreement with immediate effect.
    2. If London Councils terminates the Consultant’s engagement under Condition 18.2, London Councils will pay to the Consultant:
64. at the conclusion of any agreed Stage of the Services such sum as will have been agreed upon the execution of this Agreement to represent the consideration due for the completion of any such Stage; or
65. where no Stages have been defined, or in the event of termination at a time when any Stage is part performed by the Consultant, such proportion of the consideration for either the Services, or the part performed Stage of the Services, as the Authorised Officer, acting reasonably, determines represents a fair proportion of the consideration due to the Consultant, in accordance with the Order for the Services authorised by the Authorised Officer and performed by the Consultant.
    1. Termination of the Consultant’s engagement or completion of this Agreement will not prejudice any rights and remedies of London Councils and the Consultant that may have accrued before such termination, or completion, or prejudice the right of either party to recover any amount outstanding at such termination, or completion.
66. **Construction projects – Not Used**
67. **Governing Law & Disputes**
    1. If any dispute arises out of this Agreement which cannot be amicably settled between the parties then the parties will attempt to settle such dispute by mediation in accordance with the Model Mediation Procedure published the by Centre for Effective Dispute Resolution from time to time. Neither party will commence any court proceedings/litigation in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation and that mediation has terminated.
    2. The Consultant will continue to perform its obligations (including, any Additional Services) even if any dispute resolution procedure has been invoked under this Condition 20 by either party.
    3. This Agreement will be governed by and construed in accordance with the Laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

**APPENDIX 1**

**SPECIAL CONDITIONS**

1. Clause 5 of the standard conditions “Intellectual Property Rights” is hereby deleted in its entirety and replaced by the following:
2. ***INTELLECTUAL PROPERTY RIGHTS***
   1. *The service to be provided is “online software as a service", accessed through the Service Provider’s website. The Service Provider owns the Intellectual property rights whether vested or contingent and whether currently In existence or otherwise Including (without limitation) software, website, patents, Inventions, trademarks, service marks, logos, design rights, registered designs, copyright, database rights, domain names, trade or business names, moral rights, trade secrets, the right to sue for passing off and all similar rights whether registered or not (in any country) and all extensions revivals reversions and renewals of any of the above. The above shall Include In relation to registrable rights any applications made in respect of such rights.*
   2. *Clause 5.1 above shall not apply in respect of any data, reports or templates provided to the Service Provider by London Councils. In these circumstances any Intellectual property rights shall be owned by London Councils or by the London Borough which has provided the data to London Councils for the purposes of this Contract.*
   3. *The Service Provider hereby grants to London Councils a perpetual non­exclusive royalty-free licence to use any material generated by the provider’s website during the contract period which falls under the criteria set out in the specification (contract document). The Service Provider agrees that London Councils may without let or hindrance publish, alter, release, license or otherwise exploit and deal with such material as it thinks fit, via any medium.*
   4. *The Service Provider undertakes to do all such acts or things and execute and /or procure the execution of all such documents London Councils may request from time to time in order to perfect or confirm London Councils’ licence or use of the material referred to in sub-condition 5.2.*
   5. *The Service Provider agrees to waive all moral rights in respect of the material referred to in sub-condition 5.2.*
   6. *Where the IPR in material used in the performance of this Contract or forming a material part of any report or data prepared for use by London Councils are owned by a third party the Service Provider shall obtain the necessary licence for use of such material by London Councils.*
   7. *The Service Provider shall keep London Councils fully indemnified against all losses and all actions claims proceedings costs and damages (including any damages or compensation paid by London Councils on the advice of Its legal advisor and after consultation with the Service Provider to compromise or settle any claim and all legal costs or other expenses) arising out of any breach of IPR of a third party in material supplied by the Service Provider In the provision of the Services.*
3. Clause 7 of the Standard Conditions “Data Protection” is hereby deleted in its entirety and replaced by the following:
4. ***DATA SHARING, DATA PROCESSING and GDPR***

*For the purposes of this Agreement and in particular this clause 7 the following terms shall have the following meanings:*

* 1. *Definitions*

***DPA*** *means the Data Protection Act 1998 (being replaced by GDPR on 25th May 2018).*

***Data Controller*** *means the individual or organisation that decides the purpose of processing personal information, including what information will be processed and how it will be obtained.* *For the purposes of this Agreement each of the Subscribing Boroughs are the Data Controllers for their own data and the survey results they receive from London Councils. Each Subscribing Borough as the Data Controller for its own data remains legally responsible for the personal data even when it is processed by the Service Provider. Each Subscribing Borough has agreed to take steps to ensure the personal data remains protected, the liabilities and risks are appropriately managed and data is processed lawfully.*

***Data Processing*** *means any business activity or contracted service that involves using personal, corporate or other information for any purpose, including obtaining, recording, holding, viewing, storing, adapting, altering, deleting, disclosing. This is not restricted to computer processing, but includes manual files and verbal discussions.*

***Data Processor*** *means**an individual (other than an employee of the data controller) or organisation that processes personal information whilst undertaking a business activity or contracted service on behalf of the Data Controller. For the purposes of this Agreement London Councils and the Service Provider are the Data Processors who are processing personal data on behalf of the Subscribing Boroughs.*

***Data Subject*** *means an individual person whose personal information has been processed*

***GDPR*** *means the General Data Protection Regulation (2016) Regulation (EU 2016/679). as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same. All compliance references to GDPR in this Agreement are applicable from 25th May 2018*

***Personal data*** *means personal data as defined in Section 1 (1) of the DPA and Article 4 (2) of the GDPR, which is supplied to the Service Provider by London Councils or obtained by the Service Provider in the course of performing the Services.*

***Data Subject Access Request*** *means a request for Personal Data falling within the provisions of Section 7 of the DPA and Article 11, 12 & 15 of the GDPR*

***Subscribing Borough*** *means any of the 32 London Boroughs and the City of London which provide data for the purposes of the HR Metric Service.*

* 1. *The Service Provider will comply at all times with the provisions of the DPA and is cognisant of the GDPR coming into effect during the term of this Agreement.*
     1. *Upon GDPR coming into effect (n.b. intended 25th May 2018) the Service Provider (and for its part London Councils), will fully comply with Regulation (EU) 2016/679 (GDPR) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and any subsequent amendments from the date such provisions come into force.*
     2. *The Service Provider will, if required to do so during the term of this Agreement and at its own cost, liaise and consult with London Councils in establishing a protocol to be observed and performed by both parties which enables them, or either of them, to fully comply with, and observe and perform, the provisions of the General Data Protection Regulations.*

***Service Provider Data Processing Responsibilities***

* 1. *The Service Provider shall at all times process personal data only as instructed to do so by the Data Controller and in accordance with the requirements and principles of DPA and GDPR.*
  2. *The Service Provider hereby warrants that it has in place appropriate technical and organisational security measures that protect the personal data it is contracted to process on behalf of the Data Controller from unauthorised or unlawful processing, accidental loss, destruction or damage. In undertaking the foregoing, the Service Provider shall take all required measures pursuant to Article 32 of the GDPR.*
  3. *The Service Provider agrees to maintain good information governance standards and practices consistent with industry standards and the Information Commissioner’s guidance.*
  4. *The Service Provider shall make available to the Data Controller and the Information Commissioner (or other supervisory authority) all information necessary to verify compliance with the DPA and the obligations laid down in Article 28 of the GDPR.*
  5. *The Service Provider shall not share the personal data with any third party without the prior written permission of the Data Controller or process personal data in any way or for any purpose that has not been instructed and authorised by the Data Controller.*
  6. *The Service Provider shall not transfer or permit the transfer of the personal data to any territory outside the European Economic Area.*
  7. *The Service Provider shall process data only as instructed by the Data Controller. The Data to be processed is to collect, store, process/aggregate the data provided and produce results/reports to be made available to the Subscribing Boroughs for the purposes of benchmarking HR metrics data, pay and pay-rates. This instruction can be varied by the Subscribing Boroughs in writing acting through London Councils.*
  8. *The Service Provider will act as Data Processor with respect to the personal information processed under this Agreement. As such, the Service Provider must follow the direction of London Councils acting on behalf of the Subscribing Boroughs as to how Personal Data is processed.*
  9. *All data shared by the Subscribing Boroughs under this agreement is confidential and shall not be disclosed to a third party without the express written consent of the Party which first submitted it to the Service Provider, or unless the disclosure is required by law.*

1. *The Service Provider shall comply with all relevant mandatory and advisory codes of practice issued under the DPA (and GDPR when in force);*
2. *The Service Provider shall assist the Authority in safeguarding the legal rights of the data subject;*
3. *The Service Provider shall indemnify London Councils against loss, destruction or processing contrary to Data Processing and/or GDPR legislation by itself, its employees, Service Providers or agents;*
4. *The Service Provider shall ensure the reliability and training of all its relevant employees to ensure awareness of and compliance with the Service Provider’s obligations under the DPA and the GDPR;*
5. *The Service Provider shall immediately notify London Councils if it receives a complaint or request relating to the Authority’s obligations under the DPA and the GDPR and the Service Provider will assist and co-operate with the Authority in relation to any complaint or request received, including:*
   1. *providing full details of the complaint or request;*
   2. *promptly providing London Councils with any Personal Data and other information requested.*
6. *The Service Provider will record all incidents involving any breach of security, inappropriate disclosure or loss of data reported to it and notify the appropriate people/organisations that a breach has occurred and will liaise and co-operate with London Councils in deciding the appropriate course of action taking into account:*
7. *containment and recovery, to limit as far as possible any damage;*
8. *the risks associated with the breach. A risk assessment will help inform decisions about remedial actions and notification;*

*thereby understanding the cause and evaluating the effectiveness of its response to the incident, revising as necessary its information security measures in the light of any findings.*

1. *Incidents involving the breach of security, inappropriate disclosure or loss of data by the Service Provider and/or any sub-Service Provider appointed by the Service Provider will follow the same process as provided under sub-clause 7.11E starting with notification to London Councils within 24 hours of the incident being discovered/known (in accordance with Article 30 (2) of the GDPR).*
2. *The Service Provider shall cooperate with Data Protection Compliance Audits as and when requested.*
3. *The Service Provider shall comply with GDPR requirements for maintaining accurate, current and comprehensive Records of Processing Activities.*
4. *The Service Provider shall assist the Data Controller in the event the Data Controller is required or needs to carry out a privacy impact assessment.*
5. *The Service Provider must inform the Data Controller if, in its opinion, the Data Controller’s instructions would breach Union or Member State law.*
6. *The Service Provider will ensure that their Public Liability policy has an extension to cover liability under the Data Protection Act 1998 and any subsequent regulation*
7. *The Service Provider shall not assign or sub contract the Data Processing Services to any third party without prior written consent of London Councils in writing and ensure that if such consent is given any sub contract for data processing contains the requirement for the sub-contractor to observe and perform the provisions herein and to fully comply with DPA and GDPR.*

***Data Quality***

* 1. *The Subscribing Boroughs have agreed to be responsible for ensuring that the data they provide for the surveys is accurate, complete and current (or as at any data specified in the survey). If any of the Subscribing Boroughs finds inaccuracies in its own data it will provide amended data to the Service Provider who will use it to update the survey results. If the Subscribing Borough notices inaccuracies in the survey results it will contact London Councils and the Service Provider so that the inaccuracies can be corrected.*

***Retention***

* 1. *The Service Provider shall hold copies of all the sets of pay data, and any other relevant HR metrics data that is deemed as personal, provided by the Subscribing Boroughs and the results that it compiles from that data (referred to from here on as the “Master File”).*
  2. *The Service Provider will retain the Master File for the duration of the contract. At the end of the contract all data will be provided to London Councils in an appropriate format.*
  3. *Subscribing Boroughs will also destroy any copies of their own return or any copies of the results that they hold after the elapse of six years from the date that the Service Provider first requested that data.*

***Awareness Training***

* 1. *The Service Provider will ensure that all staff providing data and/or using results’ data are aware of the need to comply with the provisions of this Agreement and that they have received appropriate training in handling data.*

***Data Subject Access Requests***

* 1. *The Service Provider shall promptly inform London Councils and the Data Controller in writing of the following, providing all known facts, circumstances and other information, as well as all assistance and co-operation to investigate or deal with:*
     1. *any Subject Access Request;*
     2. *any request or notice by a Data Subject to have Relevant Personal Data rectified, erased or any request or notice exercising any Data Subject’s “right to be forgotten” or “right to data portability” under Articles 17 or 20 of the GDPR.*
  2. *Each Subscribing Borough as the Data Controller for its own data remains legally responsible for the personal data even when it is processed by the Service Provider. Each Subscribing Borough will take steps to ensure the personal data remains protected, the liabilities and risks are appropriately managed and data is processed lawfully.*

***Data Security Requirements***

* 1. *The Service Provider shall:*
     1. *Have regard to the state of technological development and to the cost of implementing any measures, provide a level of security (including appropriate technical and organisational measures) appropriate to the harm that might result from unauthorised or unlawful processing of personal data or the accidental loss, damage or destruction of personal data and the nature of that personal data; and*
     2. *Ensure that access to the personal data is limited to those employees who need access to meet the Service Provider’s obligations under this contract; and*
     3. *Take reasonable steps to ensure the reliability of their personnel who have access to the personal data, which shall include ensuring that all staff engaged by the Service Provider understand the confidential nature of the personal data; and*
     4. *Have received appropriate training in data protection prior to their use of the data; and*
     5. *Have signed a written undertaking that they understand and will act in accordance with their responsibilities for confidentiality under contract.*
  2. *The Service Provider shall ensure:*
     1. *That it has properly configured access rights for its staff, including a well-defined starters and leavers process to ensure appropriate access control.*
     2. *That suitable and effective authentication processes are established and used to protect personal data.*
     3. *That the personal data is backed up on a regular basis and that any back up data is subject to vigorous security measures as necessary to protect the availability, integrity and confidentiality of the data.*
     4. *That robust and tested business continuity measures are in place to protect the confidentiality, integrity and availability of the Customer’s personal data.*
     5. *Data transferred electronically is encrypted in accordance with national standards.*
     6. *Employees are not able to access the data remotely e.g. from home or via their own electronic device or internet portal other than through a secure electronic network and in accordance with organisational remote working policy. No data shall be stored in such devices.*
     7. *Data that requires disposal is disposed of securely and confidentially in accordance with the secure destruction requirements specified in clause 7.22.*

***Serious information breach incident, incident reporting and duty of candour.***

* 1. *The Service Provider shall have procedures in place to monitor access and to identify unauthorised and unlawful access and use of personal data. The Service Provider shall immediately report any information security incident related to the personal data subject to this contract to the Data Controller and undertakes to also fully cooperate with the Data Controller’s incident investigation requirements.*

***Secure Destruction***

* 1. *The Service Provider shall ensure that personal data held in paper form is destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with industry standards for confidential office waste destruction.*
  2. *The Service Provider shall ensure that electronic storage media used to hold or process the data is destroyed or overwritten to current industry standards. In the event of any bad or unusable sectors that cannot be overwritten, the Service Provider shall ensure complete and irretrievable destruction of the media itself.*
  3. *The Service Provider shall provide the Data Controller with copies of all relevant overwriting verification reports and/or certificates of secure destruction of personal data at the expiry or termination of this agreement.*
  4. *The Parties shall comply with Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, more commonly known as the General Data Protection Regulation (the “GDPR”), and any subsequent amendments from the date such provisions come into force.*
  5. *The Consultant will if required to do so liaise and consult with London Councils in establishing a protocol to be observed and performed by both parties which enables them or either of them to fully comply with the provisions of the General Data Protection Regulations.*
  6. *The provisions of this Special Condition 7 will continue in perpetuity.*

**APPENDIX 2**

**ADDITIONAL SECURITY CLAUSES**

**Definitions**

“Subscribing Boroughs” means the London local authorities that subscribe to London Councils’ HR Metrics Service.

“Council Data” means

1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:
2. supplied to the Service Provider by London Councils or the Subscribing boroughs; or
3. which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or
4. any Personal Data for which the Subscribing Boroughs are the Data Controller.

“Council System" means London Councils’ and the Subscribing boroughs’ computing environments (consisting of hardware, software and/or telecommunications networks or equipment) used by London Councils or the Service Provider in connection with this contract which is owned by or licensed to London Councils or the Subscribing boroughs by a third party which interfaces with the Contractor System or which is necessary for London Councils and the Subscribing boroughs to receive the Services;

“Current Release” means the latest New Release of the Licensed Software and/or the Specially Written Software issued by the Service Provider and accepted by London Councils and the immediately preceding New Release of the Licensed Software and/or the Specially Written Software Issued within three years of the latest New Release or If no New Release has been accepted within the Contract Period, the Licensed Software and/or the Specially Written Software;

“Defect" means any failure of code or error within the Licensed Software and/or the Specially Written Software which causes the Licensed Software and/or the Specially Written Software to fail to meet the features and the functionality of the accompanying written materials, the documentation or the Service Specification including but not limited to any failure of code within the Licensed Software and/or the Specially Written Software which has adverse effect on response times stated within the Service Specification or which produces unintelligible or incorrect results;

“Licensed Software” means the standard software provided by the Service Provider (or by a third party on behalf of the Service Provider) to London Councils and Subscribing Boroughs without modification under this Contract and includes the Current Release and any New Release;

“Malicious Software” means any software programme or code intended to destroy, interfere, corrupt or cause undesired effects on programme files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“New Release” means any new release of the Licensed Software and/or the Specially Written Software;

"Service Provider Software” means software which is proprietary to the Service Provider, including software which is or will be used by the Service Provider for the purposes of providing the Services;

"Service Provider System” means the information and communications technology system used by the Service Provider in performing the Services including the software, the Service Provider' equipment and related cabling (but excluding London Councils’ or the Subscribing boroughs systems);

“Specially Written Software” means any software created by the Service Provider (or by a third party on behalf of the Service Provider) on instruction of London Councils for the purpose of this Contract and includes the Current Release and any New Release

**Licensed/Specially Written Software**

* 1. The Service Provider warrants, represents and undertakes that it has obtained all necessary rights, licences and consents from any third parties having any Intellectual Property Rights in the licensed Software and/or Specially Written Software which are necessary or appropriate to Use the Software in accordance with the performance of this Contract.
  2. In accordance with Clause 1.1 the Service Provider warrants that London Councils and the Subscribing boroughs are permitted to use the Licensed Software and/or Specially Written Software.
  3. Save as provided under Special Condition 1 in Appendix 1, neither London Councils nor any Subscribing borough shall itself or by any third party, alter or modify the whole or any part of the Licensed Software and/or Specially Written Software nor merge any part of the Licensed Software and/or Specially Written Software with any other software nor, save to the extent and in the circumstances expressly permitted by law, create derivative works from or reverse engineer or decompile or disassemble the Licensed Software and/or Specially Written Software or attempt to do any of these things. Components of the Licensed Software and/or Specially Written Software may not be separated from the Licensed Software and/or Specially Written Software and used without the express consent of the Service Provider.
  4. Neither London Councils nor any Subscribing borough shall either itself or by a third party alter, obscure, remove, interfere with or add to any trademarks, trade names, markings or names affixed to or contained within the Licensed Software and/or Specially Written Software and/or documentation.
  5. Neither London Councils nor any Subscribing borough shall use or permit use of the Licensed Software and/or Specially Written Software in any manner which in any way prejudices the Service Provider's legitimate interests or conflicts with the normal exploitation of the Licensed Software and/or Specially Written Software by the Service Provider.
  6. London Councils and any Subscribing borough shall at all times comply with accepted industry security practice in the use of the Licensed Software and/or Specially Written Software.
  7. The Licensed Software and/or Specially Written Software shall extend to any upgrade from the date of delivery to London Councils of the media on which such upgrade is recorded, and all terms and conditions of this Contract shall apply to such upgrade as if the same were incorporated within the definition of Licensed Software and/or Specially Written Software.
  8. London Councils shall use reasonable endeavours to procure that each Subscribing borough observes all applicable obligations under this Contract and the Service Provider shall be relieved of liability to the extent that it is unable to perform its obligations under this Contract as a result of any Subscribing borough falling to observe its obligations and London Councils failing to procure it to do so.

**Licensed/Specially Written Warranty Period**

* 1. In the event that London Councils discovers an error or Defect in the Licensed Software and/or Specially Written Software (excluding viruses) which affects the Use of the Licensed Software and/or Specially Written Software or causes the Licensed Software and/or Specially Written Software to perform other than in accordance with the documentation and notifies the Service Provider of the error or Defect ("Notification”) within the Licensed Software and/or Specially Written Software Warranty Period, then the Service Provider shall correct the error or Defect at its own cost so that the Licensed Software and/or Specially Written Software performs in accordance with and provides all the facilities and functions set out in the documentation, within 5 working days of the notification (or within such other period as the Parties may agree) and provide a workaround (where such workaround Is viable) within 2 working days.
  2. The Service Provider shall be under no obligation to correct the error or Defect if and/or to the extent it has been caused (I) by any modification, alteration, variation or addition to the Licensed Software and/or Specially Written Software not performed or otherwise authorised by the Service Provider, or (II) through the use of the Licensed Software and/or Specially Written Software other than in accordance with the documentation, or (Ill) by use of the Licensed Software and/or Specially Written Software with other software or hardware which is incompatible with the Licensed Software and/or Specially Written Software (Iv) or by willful damage by London Councils or any Subscribing borough (v) or by abnormal working conditions (vi) by improper maintenance by London Councils or any Subscribing borough and/or a third party (vii) through negligence by London Councils, a Subscribing borough or any other third party.
  3. If the Service Provider fails where obliged pursuant to Clause 2.1 to correct the error or Defect in the required timeframe, London Councils shall invoke the Performance Default procedure set out in Additional Condition 14 in Appendix 3.
  4. If an error is found not to be the Service Provider's responsibility pursuant to Special Condition 2 in Appendix 1, London Councils will pay the Service Provider on a time and materials basis at the then ament agreed rates for all time spent and all costs and reasonable expenses incurred by the Service Provider in investigating and correcting the error SUBJECT TO the Service Provider mitigating his loss and providing evidence of all costs incurred to the satisfaction of London Councils.
  5. The Service Provider shall apply all such appropriate resources as are reasonably required to remedy any error or Defect in the Licensed Software and/or Specially Written Software during the Licensed Software and/or Specially Written Software Warranty Period promptly and without delay.

**Council Data**

* 1. The Service Provider shall not delete or remove any proprietary notices contained within or relating to Council Data.
  2. The Service Provider shall not store, copy, disclose, or use Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by London Councils.
  3. To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to London Councils as requested by London Councils in the format specified in the Service Specification.
  4. Upon receipt or creation by the Service Provider of any Council Data and during any collection, processing, storage and transmission by the Service Provider of any Council Data, the Service Provider shall take all precautions necessary to preserve the integrity of Council Data and to prevent any corruption or loss of Council Data.
  5. The Service Provider shall perform secure back-ups of all Council Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan. The Service Provider shall ensure that such back-ups are available to London Councils at all times upon request and are delivered to London Councils within 2 working days. In the event that repeated invocation of this Clause represents a strain on the Service Provider's resources, the Service Provider reserves the right to levy compliance costs reasonably associated with providing such data.
  6. The Service Provider shall ensure that any system on which it holds any Council Data, including back-up data, is a secure system that complies with accepted industry standard.
  7. If Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, London Councils may:
     1. require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data and the Service Provider shall do so as soon as practicable but not later than 2 working days.
     2. itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so.
  8. If at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify London Councils immediately and inform London Councils of the remedial action the Service Provider proposes to take.

**Security Requirements**

* 1. The Service Provider shall comply, and shall procure the compliance of its personnel, with the accepted industry security practice.
  2. The Service Provider shall ensure that the release of any new software or upgrade to software complies with the interface requirements in the Service Specification, and where applicable will co-ordinate its activity with London Councils to ensure it minimises any disruption to the Services, the ICT Environment or London Councils’ operations.

**Malicious Software**

* 1. The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment
  2. Notwithstanding Clause 7.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
  3. Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 7.2 shall be borne by the parties as follows:
     1. by the Service Provider where the Malicious Software originates from the Contractor Software, the Third Party Software or Council Data (whilst Council Data was under the control of the Contractor); and
     2. by London Councils if the Malicious Software originates from London Councils Software or Councils Data (whilst Council Data was under the control of London Councils).

**Delivery Installation and Acceptance**

* 1. The Service Provider shall make the Licensed Software and/or Specially Written Software available for acceptance tests where required by London Councils. Such tests will be carried out over a period of 5 days from the date of delivery of the Licensed Software and/or Specially Written Software or such other period as the parties may agree.
  2. The acceptance testing of the Licensed Software and/or Specially Written Software shall be conducted by London Councils with the co-operation of the Service Provider in order to determine whether the Licensed Software and/or Specially Written Software meets the requirements of the Service Specification and Method Statements and the acceptance criteria (if any) agreed in writing prior to the commencement of acceptance tests and all other applicable provisions of this Contract.
  3. If it is determined pursuant to the acceptance tests that the Licensed Software and/or Specially Written Software meets the requirements and provisions referred to in Clause 8.2, London Councils shall promptly notify the Service Provider in writing of its acceptance of the Licensed Software and/or Specially Written Software (the “Acceptance Date”).
  4. If it is determined pursuant to the acceptance tests that the Licensed Software and/or Specially Written Software does not meet the requirements and provisions referred to Clause 8.2, London Councils shall extend the acceptance testing period by a period of 5 Days (or such other period as the parties may agree) during which the Service Provider shall correct the faults which caused the acceptance procedures to be recorded as unsuccessful and the acceptance procedures shall be re-performed.
  5. If after London Councils has extended the acceptance testing period pursuant to Clause 8.4 the relevant acceptance procedures have not been recorded as successful by the end of that period, London Councils shall have the right, without prejudice to its other rights and remedies, to terminate the Contract.

**APPENDIX 3   
Additional Definitions and Additional Conditions**

**Additional Definitions:**

Notwithstanding the definitions shown at clause 1 of the standard conditions and for the avoidance of doubt the definitions hereafter shall have the following meaning:

1. **"Bid"** means the proposal prepared by the Service Provider in response to London Councils’ Invitation to Tender.
2. **“CCA"** means the CMI Contingencies Act 2004;
3. **“Commencement Date”** means 1st April 2018
4. **“Completion Date”** means 31st March 2021
5. **“Contract"** means these terms and any schedule hereto which set out the terms and conditions for the award of specific contracts.
6. **“Exempt Information Law”** mean's Information that potentially falls within an exemption under the FOIA Including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial Interests (section 43 FOIA);
7. **"FOIA"** means the Freedom of Information Act 2000;
8. **"Method Statements"** means the description and proposals put forward by the Service Provider as part of Its tender documents and which forms part of the Contract and set out In Schedule 2;
9. **“Other Information Law”** means any applicable legislation or codes governing access to Information other than FOIA;
10. **“Payment Details”** means the prices and payment details as set out in Schedule 3;
11. **“Schedule of Rates"** means the schedule of rates submitted by the Service Provider consisting of fully defined Services and the cost of provision of the Services as set out In Schedule 4;
12. **"Service Manager”** means the representative appointed by the Service Provider under Additional Condition 7.2 of this Appendix will receive and act on any instructions given by the Authorised Officer whose details are set out in 1.1(c) of the Particulars in the Order form of this contract;
13. **“Services”** means the online data management system for sharing and benchmarking metrics that the Service Provider has agreed to provide under this Contract as more particularly described In the Service Specification and, where the context requires it, shall include any materials, articles and Services to be supplied thereunder;
14. **"Service Specification”** means the specification issued by London Councils in respect of the provision of the Services as set out in Schedule 1.
15. **“Sub-Contractor”** means a person to whom the Service Provider subcontracts any of its obligations under this Call-Off Contract.

**Additional Conditions:**

These additional conditions shall be deemed and construed as forming part of the standard conditions.

1. **Interpretations**
   1. If there is any inconsistency or conflict between what is set out in any of the conditions of this Contract and what is set out in any of the Schedules, the conditions shall prevail.
   2. None of the provisions of this Contract are Intended to relate to any non-commercial matter within the meaning of Section 17(5) of the Local Government Act 1988, except to the extent that its inclusion is permitted by Section 18(2) of that Act.
2. **Scope of Contract**

The parties shall work together and individually, in accordance with this Contract, to achieve a transparent and co-operative exchange of Information in all matters relating to this Contract.

1. **Contract Period**
   1. This Contract shall be for a period of three years commencing from the Commencement Date ('Contract Period'), subject to early termination under this Contract or at law.
   2. The Contract may be extended for a further period of one year, and again by a further year, subject to agreement between the parties.
2. **Recovery of Sums Due**

Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider to London Councils, that sum may be deducted from any sum then due, or which at any later time may become due to the Service Provider under this Contract or any other Contract which the Service Provider has with London Councils.

1. **Sufficiency of Information**

The Service Provider will be deemed to have satisfied itself as regards the nature and extent of the Services and as to the accuracy and sufficiency of the prices stated In the Schedules forming part of this Contract prior to agreeing to undertake the Services. The Service Provider will be deemed to have obtained for itself all necessary information as to the risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider undertaking the Services.

1. **Statutory and other Regulations**

The Service Provider shall at its own expense comply with all statutory and other provisions to be performed and observed in connection with the Services and shall indemnify the London Councils against any claims, actions, proceedings, loss, liability, penalties, costs or expense made or incurred as a result of any failure in compliance.

1. **Monitoring**
   1. London Councils shall appoint an Authorised Officer who will have responsibility for managing and issuing instructions to the Service Provider in respect of the Contract.
   2. The Service Provider shall appoint a Service Manager who will have responsibility on behalf of the Service Provider for the management of the overall Contract.
   3. The Service Provider's performance of the Services shall be monitored by the Authorised Officer, who shall be entitled to make recommendations to the Service Provider for Improving the standard of the Service Provider's performance in undertaking the Services.
   4. The Service Manager will maintain regular contact with the Authorised Officer to discuss the Services being provided and to provide London Councils with progress reports. This will Include but not be limited to quarterly meetings between the parties. Upon receiving a request to do so, the Service Provider shall be available for any discussions arranged by the Authorised Officer {or his representative) for the purpose of reviewing the Service Provider's performance. These meetings may be attended by teleconference if either party is unable to attend in person.
   5. As part of these discussions the Authorised Officer and Service Manager will review, among other things, issues relating to the day to day performance of the Services, and the Contract monitoring systems detailed in the Specification, including but not limited to, such things as user feedback.
   6. The Service Manager shall keep notes of all discussions.
   7. The Service Provider shall permit London Councils access to its premises for contract compliance visits. Site visits may be announced or unannounced. London Councils will supply the Service Provider with a copy of any report compiled following a contract compliance visit.
   8. The Service Provider shall provide London Councils with monitoring information in accordance with its requirements and within any timescales communicated to it by the Authorised Officer. Further monitoring requirements are contained In the Service Specification.
   9. The Service Provider shall maintain proper records and accounts in relation to the provision of the Services. The financial accounts held in respect of the Services must be separate from the Service Provider's other accounts and all documents relevant to the Services and this Contract must be made available for inspection by the Authorised Officer.
   10. If following a review of the Services it is apparent to London Councils that the Services are not being carried out to the satisfaction of London Councils the parties will agree a plan and timescale for corrective action. If this is not achieved to London Councils' satisfaction, London Councils may issue a default notice in accordance with the provisions of Additional Condition [14 Performance Default] of this Contract.
2. **Human Rights**
   1. The Service Provider shall ensure that it provides the Services in compliance with the provisions of the Human Rights Ad 1998 (HRA).
   2. The Service Provider shall indemnify London Councils in respect of any cost claim or damages that London Councils may incur in respect of any breach or contravention of the HRA arising out of any act or omission on the part of the Service Provider, its employees, agents or subcontractors in providing the Services under this Contract.
3. **Health and Safety at Work**
   1. The Service Provider shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice and amendments thereto pertaining to the health and safety of employees and members of the public and shall ensure that its agents, employees and sub-contractors are competent to carry out their respective tasks with due regard to the Service Provider's obligations under these Acts and other Instruments.
   2. The Service Provider shall provide and maintain and make available for inspection by London Councils’ Authorised Officer all records reasonably requested by London Councils relating to the Service Provider's compliance with Additional Condition 9.1 above.
   3. The Service Provider shall promptly notify the Authorised Officer of any health and safety hazards which may arise in connection with the performance of the Services.
4. **Illegality**

If any provision or term of this Contract or any part of It shall become unenforceable for any reason whatsoever, including but without limitation by reason of the provisions of any legislation, Regulation, Order, Direction of the Secretary of State or other provision having the force of law or by reason of any decision of any Court of competent jurisdiction, the validity and enforceability of the remainder of this Contract shall not be affected thereby and shall remain in full force and effect. Where any such provision or decision substantially affects or alters the ability of either of the parties to comply fully with its contractual obligations the parties shall negotiate in good faith to amend and modify the provisions and terms of this Contract as may be necessary or desirable in the circumstances.

1. **Business Continuity**
   1. The Service Provider acknowledges and accepts that London Councils has obligations under the CCA.
   2. The Service Provider undertakes during and after the Contract Period to provide any information, documentation and assistance London Councils may reasonably require in order to enable London Councils to comply with its obligations under section 2 of the CCA (Duty to assess, plan and advise).
   3. In the event of an Emergency (as defined in Part 1 or Part 2 of the CCA), the Service Provider shall use its best endeavours to comply with any Instructions whatsoever of London Councils in relation to such Emergency, notwithstanding that such Instructions may be given by an officer of London Councils other than the officer(s) the Service Provider would usually deal with in respect of this Contract.
   4. London Councils shall remunerate and indemnify the Service Provider for any claims, costs and losses that the Service Provider may suffer as a direct consequence of compliance with London Councils' instructions during and in respect of an Emergency.
   5. London Councils shall use all reasonable endeavours to ensure that any Instruction given to the Service Provider pursuant to Additional Condition 11.3 above shall be:
2. reasonably necessary for the prevention or mitigation of the Emergency;
3. reasonably within the power and ability of the Service Provider to comply with, having regard to the nature of the Service Provider's business and Its obligations to London Councils under this Contract.
   1. Notwithstanding Standard Condition 10, during the term of this Contract the Service Provider shall have in place such measures as may be reasonably practicable and sufficient so that as far as reasonably possible it is able to continue to perform its obligations under this Contract in the event of an Emergency or a Disruptive Event (“Business Continuity Measures”).
   2. A Disruptive Event means any event falling outside the definition of an Emergency that may result:
4. Inability by the Service Provider to access the premises from which It provides the Services;
5. General failure of the Service Provider's staff to attend work or perform their functions;
6. Failure of or disruption to the IT and communications systems, or the loss of date and/or records of, the Service Provider;
7. Loss of or damage to equipment, resources or materials of the Service Provider;
8. A disruption in provision of goods or services provided to the Service Provider by any third party.
   1. Within 1 month of the Commencement Date the Service Provider shall ensure that Its Business Continuity Measures are recorded in a document entitled a Business Continuity Plan and shall submit a copy of the Business Continuity Plan for London Councils' approval.
   2. If at any time during the term of this Contract after receipt of the Business Continuity Plan, London Councils reasonably considers that changes to the Business Continuity Plan are required, the Service Provider shall upon notification by London Councils of these changes record the changes in the Business Continuity Plan and implement them.
   3. The Service Provider shall use its best endeavours to ensure that its contracts with its sub-contractors engaged in or about the execution of this Contract contain provisions similar to those in this Additional Condition 11 as far as necessary to allow the Service Provider to perform its obligations under this Additional Condition 11.
   4. The Service Provider shall indemnify and keep indemnified London Councils for any claims, loss or damage incurred by London Councils as a result of the Service Provider's breach of this Additional Condition 11.
9. **Waiver**

Failure by London Councils at any time to enforce the provisions of this Contract or to require performance by the Service Provider of any of the provisions of this Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of London Councils to enforce any provision in accordance with Its terms.

1. **Variation**
   1. A variation to this Contract shall only be valid if it has been agreed by London Councils and the Service Provider in writing.
   2. A Change Request Process is attached at Schedule 4 and this represents the agreed process to be used for any changes which London Councils requires in respect of the Services.
2. **Performance Default**
   1. Without prejudice to London Councils' right to terminate the Contract in accordance with these terms and conditions and without prejudice to any other claim or remedy London Councils may have against the Service Provider, London Councils may in the event that the Service Provider: -
3. fails in the reasonable opinion of London Councils' Authorised Officer to provide the Services or any part of the Services;
4. fails to provide any part of the Services to a reasonable standard acceptable to London Councils’ Authorised Officer;

Issue the Service Provider with a written notice (a “Default Notice”) detailing the breach, the remedy (if any) and a period within which to comply.

* 1. If the Service Provider falls to comply with the Default Notice or if the breach is incapable of remedy, London Councils shall be entitled to deduct from any manias that may be due to the Service Provider such sums to reflect the actual loss to London Councils arising out of the breach including administration costs.
  2. If the Service Provider complies with a Default Notice to the satisfaction of London Councils the Service Provider may be charged London Councils' reasonable costs (if any) arising from the breach.
  3. If the Service Provider is issued with three default notices this shall be deemed a persistent breach of this Contract giving London Councils the right to terminate this Contract in accordance with this Contract.

1. **Contract Termination**
   1. Notwithstanding clause 18.7 of the Standard Conditions, London Councils may also terminate this Contract at any time by giving the Service Provider 90 days’ notice in writing. London Councils may extend the period of notice at any time before it expires subject to agreement on the level of services to be provided by the Service Provider during the period of extension.
   2. Standard Condition 6 (Confidentiality), Special Conditions 1 (Clause 5 - IPR) and 2 (Clause 7 - Data Sharing, Data Processing and GDPR) shall survive the termination of this Contract.

**Schedule 1   
ITT and Service Specification**

The full specification can be found in the Invitation to Tender:



The list of surveys required for 2018/19 will include:

* Chief Officers' Pay
* Pay & Benefits (excluding Social Care)
* Pay & Benefits (Social Care)
* Human Capital Metrics
* HR Outputs
* HR Resources
* Terms & Conditions
* Trade Union Membership & Facility Time
* Agency CSW pay & numbers data
* Analysis of DfE CSW data
* Gender Pay Gap reporting
* Agency ASW pay & numbers data
* Bespoke individual user surveys

**Schedule 2   
Method Statement**

*To be populated post tender*

**Schedule 3   
Schedule of Rates / Payment Details**

*To be populated post tender*

**Schedule 4   
Change Request process**

Additional surveys will be required from time to time, at the request of the Heads of HR group. These requests would go through a change request process via the HR Metrics Governance Board (see below).

**Change request process**