

Dated

PETERBOROUGH CITY COUNCIL

AND

[XXX]

SERVICES AGREEMENT FOR THE PROVISION OF

Head of Legal Services
Sand Martin House
Bittern Way
Fletton Quays
Peterborough
PE2 8TY

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SERVICES AGREEMENT

This Agreement is made the day of

BETWEEN:

- (1) **Peterborough City Council** of Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY (the “**Council**”); and
- (2) **[XXX]**, a [company limited by guarantee] [(Company No.)] [and registered as a charity (Charity No.)] whose registered office is at [XXX] (“**the Contractor**”).

INTRODUCTION:

The Contractor has agreed to provide [XXX] services as set out or referred to in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms and expressions shall have the following meanings:

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| “Agreement” | means these conditions, the Specification and the Contractor’s Tender. |
| “Authorised Officer” | the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Agreement or as amended from time to time. |
| “Business Day” | any day other than a Saturday or Sunday or a public or bank holiday in England. |
| “Change in Law” | Any change in Law which impacts on the supply of the Services and performance of this Agreement and which comes into force after the Commencement Date. |
| “Commencement Date” | means [XXX]. |
| “Confidential Information” | any information (however it is conveyed or on whatever media it is stored) which relates to the Services, the business, affairs, developments, trade secrets, know-how, personnel, customers and suppliers of either Party, including Intellectual Property Rights, together with information derived from the above, any other information clearly designated as being confidential (whether or not is marked as “confidential”) or which ought reasonably to be considered to be confidential. |

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| “Contract Manager” | The person (and any replacement) appointed by the Contractor in accordance with clause 7. |
| “Contract Particulars” | as described in the Specification. |
| “Contract Period” | The period of the Initial Term, as extended (if applicable) in accordance with clause 5.2, subject to any earlier termination of this Agreement in accordance with clause 13. |
| “Contractor Personnel” | Any and all employees, directors, officers, agents, consultants, Processors, servants, voluntary or unpaid workers and representatives of the Contractor or any Sub-contractor engaged in the performance of the Contractor’s obligations under this Agreement (including an individual employed by the Contractor or any Sub-contractor in the performance of the Services in respect of clause 43 (TUPE) and any other TUPE obligation). |
| “Control” | as defined by section 450 of the Corporation Taxes Act 2010. |
| “Controller”, “Processor”, “Processing”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”, “Special Category Personal Data” | shall each take the meaning given in the Data Protection Legislation. |
| “Council” | Peterborough City Council named above as a Party and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists). |
| “Data Loss Event” | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Agreement, including any Personal Data Breach. |
| “Data Protection Impact Assessment” | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| “Data Protection Legislation” | shall mean all applicable data protection and privacy legislation in force from time to time in the United Kingdom (including the GDPR, the LED and the DPA 2018) and any relevant national implementing Laws and regulatory requirements, as amended from time to time, to which the Council and/or the Contractor are subject, relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any related guidance or codes |

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| | of practice issued by the relevant Supervisory Authorities. |
| “Data Subject Request” | a request made by, or on behalf of, a Data Subject to exercise the Data Subject’s rights under the Data Protection Legislation. |
| “Delivery Instructions” | the instructions provided in the Specifications and any other information that the Council considers appropriate to the provision of the Services. |
| “Disaster” | an event defined as a disaster in the Disaster Recovery Plan. |
| “Disaster Recovery Plan” | a plan which sets out the procedures to be adopted by the Contractor in the event of a Disaster (including the procedures to be taken by the Contractor in planning and providing for any such event). |
| “DPA 2018” | Data Protection Act 2018. |
| “EIR” | The Environmental Information Regulations 2004. |
| “FOIA” | The Freedom of Information Act 2000. |
| “FOI Request” | Any request for information made to either Party under the FOIA (including in relation to any of the matters hereunder) . |
| “Force Majeure” | any cause materially affecting the performance by a Party of its obligations under this Agreement arising from any reasonably unforeseeable event which is beyond its reasonable control, including without limitation, acts of God, war, industrial action (subject to clause 34.4), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies. |
| “Good Industry Practice” | Standards, practices, methods and procedures conforming to the Law and the exercise of such 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 within the relevant industry or business sector and in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Agreement. |
| “GDPR” | the General Data Protection Regulation (Regulation (EU) 2016/679). |
| “HRA” | The Human Rights Act 1998. |
| “ICO” | The Information Commissioner’s Office. |
| “Initial Term” | the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date. |
| “Intellectual Property Rights” | patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country |

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| | (including but not limited to the United Kingdom) and the right to sue for passing off. |
| “Invitation to Tender” | the Council’s invitation to tender for this Agreement. |
| “Key Personnel” | those persons named in the Specification as being key personnel and any replacement from time to time under clause 9.1.9 (Warranty). |
| “Law” | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply. |
| “LED” | Law Enforcement Directive (Directive (EU) 2016/680. |
| “Liabilities” | all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought. |
| “Materials” | any and all works of authorship and materials developed, written or prepared on whatever media for the purposes of or in connection with the Services including, without limitation, any and all reports, studies, data, databases, diagrams, charts, specifications, software, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto. |
| “Party” | a party to this Agreement. |
| “Price” | the price of the Services as set out in Schedule 1. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for. |
| “Prohibited Act” | <p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> |

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| | <p>(ii) under s117 LGA 1972;</p> <p>(iii) under legislation creating offences concerning fraudulent acts;</p> <p>(iv) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</p> <p>(iv) defrauding, attempting to defraud or conspiring to defraud the Council.</p> |
| “Protective Measures” | appropriate technical and organizational measures, which may include: pseudonymising and encrypting Personal Data, and which shall (i) ensure confidentiality, integrity, availability and resilience of systems and services; (ii) ensure that availability of and access to Personal Data can be restored in a timely manner after an incident; and (iii) include the requirement regularly to test, assess, re-evaluate and update the effectiveness of appropriate technical and organizational measures for the security of processing. |
| “Regulated Activity” | in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006. |
| “Regulated Activity Provider” | shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006. |
| “Replacement Contractor” | any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Agreement. |
| “Service Levels” | the service levels to which the Services are to be provided, as set out in Schedule 2. |
| “Services” | the services described in the Specification to be supplied by the Contractor in accordance with the Agreement together with all equipment required and any associated goods provided by the Contractor in relation to those services. |
| “Specification” | the specification in Schedule 2 setting out the Council's detailed requirements in relation to the Services. |
| “Sub-processor” | any third party appointed to process Personal Data on behalf of the Contractor pursuant to the Agreement. |
| “Sub-contractor” | means any company or other person contracted or engaged by or on behalf of the Contractor as may be permitted under this Agreement. |
| “Supervisory Authority” | The relevant supervisory authority determined as set out in the Data Protection Legislation. |
| “Tender” | the Contractor’s tender set out in Schedule 4 for the Services |

in response to the Council's Invitation to Tender.

"Transparency Code"

Local Government Transparency Code 2015.

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or replaced from time to time.

"Vetting Procedures"

the Council's procedures and departmental policies for the vetting of personnel for:

(a) eligibility to work in the UK;

(b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure;

(c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

1.2 Reference in this Agreement to:

1.2.1 any statute, statutory instrument, order, regulation or other similar instrument ("legislation") shall be construed as a reference to the legislation as amended or re-enacted from time to time;

1.2.2 (except where the context otherwise requires) words denoting the singular include the plural and vice-versa, words denoting any gender include all genders; and

1.2.3 any Clause, Sub-clause or Schedule shall mean a clause or a sub-clause of or schedule to this Agreement.

1.3 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

1.4 The schedules shall form part of the Agreement and any reference to this Agreement includes the schedules.

1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.6 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

1.7 Any words following the terms "including", "include", "in particular" or "for example" or similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

1.8 [In the case of any ambiguity between any provision contained in the body of this agreement and any provision contained in the Schedules or appendices, the provision in the body of this Agreement shall take precedence.]

2 HEADINGS

The index and headings to the clauses and appendices to and schedules of this Agreement are for convenience of reference only and will not affect its construction or interpretation.

3 NOTICES

3.1 Any notice required by this Agreement to be given by either Party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the address in the Agreement, and in the case of the Council shall be marked for the attention of the Head of Legal Services.

- 3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served on the second Business Day after posting or at the time recorded by the delivery service.

4 ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 4, shall not exclude liability in respect of any fraudulent misrepresentation.

5 CONTRACT PERIOD

- 5.1 This Agreement shall take effect and commence on the Commencement Date and shall continue for the Contract Period.
- 5.2 The Council shall have the option to extend this Agreement beyond the Initial Term for 2 further period(s) of 12 months each. If the Council wishes to exercise its option to extend for the first such twelve month period, it shall notify the Contractor in writing prior to the expiry of the Initial Term. If the Council wishes to exercise its second option to extend by a further period of 12 months, it shall notify the Contractor in writing prior to the expiry of the first twelve month extension period. Any and all such extension period (s) (as applicable) shall be construed as part of the Contract Period and shall be governed by the terms of this Agreement.

6 PERFORMANCE

- 6.1 The Services shall be provided in accordance with the Specification and the Tender.
- 6.2 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.
- 6.3 The Contractor shall perform the Services described in the Specification in accordance with the terms and conditions set out in the Agreement and shall comply and co-operate with any reasonable instructions given by the Authorised Officer.
- 6.4 Without prejudice to clause 6.3, the Contractor shall provide the Services, or procure that they are provided:
- 6.4.1 with reasonable skill and care and in accordance with the best practice prevailing in the Services industry from time to time;
 - 6.4.2 in accordance with all Applicable Laws.
- 6.5 Without limiting the general obligation set out in clause 6.4, the Contractor shall (and shall procure that the Contractor Personnel shall):
- 6.5.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Contractor shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
 - 6.5.2 not discriminate directly or indirectly or by way of victimization or harassment against any person contrary to the Equality Act 2010;
 - 6.5.3 co-operate with and assist the Council to satisfy its duty under the Equality Act to eliminate unlawful discrimination and to promote equality of opportunity.
- 6.6 Where Contractor Personnel are required to carry out any activity alongside the Council's employees in any premises, the Contractor will ensure that each such Contractor Personnel will comply with the Council's employment policies and codes of practice relating to discrimination and equal opportunities. The Contractor will notify the Council in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Equality Act in connection with this Agreement and shall:
- 6.6.1 provide any information requested by the investigating body, court or tribunal in the timescale allotted;

- 6.6.2 attend (and shall permit a representative from the Council to attend) any associated meetings;
- 6.6.3 promptly allow access to any relevant documents and information; and
- 6.6.4 co-operate fully and promptly with the investigatory body, court or tribunal.
- 6.7 The Contractor shall include in the conditions of contract for each Sub-contractor obligations matching those set out above.
- 6.8 Subject as hereinafter provided the Contractor shall devote such time, attention, skill, knowledge and experience as may be necessary for the proper discharge of these duties.
- 6.9 The Contractor shall keep the Authorised Officer of the Council informed of progress on the Services in which the Contractor is engaged.
- 6.10 The Contractor shall provide the Authorised Officer with management information reports as specified in the Specification.
- 6.11 The Contractor will not during the duration of the Agreement undertake any additional activities or accept other engagements which would directly interfere with or preclude the performance of the duties required from time to time under this Agreement or which might lead to any conflict of interest between the Contractor and the best interests of the Council.
- 6.12 The Contractor shall be responsible for compliance with and ensure that all obligations are performed in accordance with the Health and Safety requirements set out in clause 26 hereof.
- 6.13 The Contractor is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Agreement.
- 6.14 The Contractor will, be responsible at its own cost and expense for the provision of all necessary staff, materials and equipment for the management and execution of any obligation under the Agreement.
- 6.15 The Contractor shall comply with the Vetting Procedures in respect of all staff employed or engaged in the provision of Services whose role involves the handling of information of a sensitive or confidential nature or information that is subject to any relevant security measures.
- 6.16 The Contractor shall train and ensure that all staff employed or engaged in the provision of the services are trained to an appropriate standard for the purposes of performing the Agreement.
- 6.17 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Agreement, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the Contract Period accordingly.
- 6.18 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- 6.19 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- 6.20 The Council retains the Contractor for the performance of the Services on a non-exclusive basis and the Contractor accepts such appointment to provide the Services on the terms of this Agreement.

7 CONTRACT MANAGER

- 7.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract. This could be the service manager or another suitable authorised employee.

- 7.2 The Contractor shall ensure that the Council is aware who the Contract Manager is and who, in their absence, is suitable and authorised to act.
- 7.3 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

8 RISK IN AND TITLE TO GOODS

- 8.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Agreement or otherwise.
- 8.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

9 WARRANTY

- 9.1 The Contractor warrants and represents to the Council that:
- 9.1.1 the Services will be provided in a proper, skilful and workmanlike manner;
 - 9.1.2 it has the right, power and authority to enter into this Agreement and to perform the Services required;
 - 9.1.3 the Services will be provided by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice and, where applicable, will be subject to staff Vetting Procedures and any security policy notified to the Contractor from time to time;
 - 9.1.4 the Services shall conform in all respects with the requirements of any applicable law from time to time in force and that it has and will continue to hold all necessary (if any) regulatory approvals from any regulatory body necessary to perform the Contractor's obligations under the Agreement;
 - 9.1.5 the Contractor has and will continue to have all necessary rights in and to any software or Intellectual Property Rights or any other materials made available by the Contractor to the Council necessary to perform the obligations under this Agreement;
 - 9.1.6 the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the agreement;
 - 9.1.7 the Services will be provided in accordance with this Agreement [and any descriptions provided by the Contractor in the Contractor's Tender];
 - 9.1.8 the Services will be provided in accordance with the reasonable requirements of the Authorised Officer;
 - 9.1.9 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the person was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the prior written agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the

Contractor; and

9.1.10 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.

9.2 The Contractor warrants and represents to the Council that neither the Contractor nor any Contractor Personnel or any person or persons associated with it:

9.2.1 have been convicted of an offence involving slavery and/or human trafficking; and

9.2.2 (having made reasonable enquiries, to the best of its knowledge) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

9.3 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:

9.3.1 be free from defects in design, material and workmanship; and

9.3.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

9.4 Without prejudice to the Council's rights to terminate under clause 13 (Termination), if any of the Services supplied are not in accordance with the Agreement, the Council shall be entitled to:

9.4.1 require the Contractor to provide replacement Services in accordance with the Agreement as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or

9.4.2 subject to clause 18 (Liability and Insurance) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

10 CONTRACTOR PERSONNEL

10.1 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:

10.1.1 any member of the Contractor Personnel; and/or

10.1.2 any person employed or otherwise engaged by any of the Contractor Personnel; whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

10.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Council may reasonably desire.

10.3 The Contractor Personnel, engaged within the boundaries of any of the Council's 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.

10.4 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 shall be final and conclusive.

10.5 The Contractor shall replace any of the Contractor's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary

training and skills to meet the requirements of the Services.

- 10.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

11 PRICE AND PAYMENT

- 11.1 The Council shall pay the Price for the Services to the Contractor as set out in Schedule 1, which shall be inclusive of all costs and expenses incurred by the Contractor in providing the Services.
- 11.2 The Price shall be paid by the Council as set out in Schedule , provided that the Contractor shall within fifteen (15) calendar days of the end of each quarter submit to the Council a proper invoice containing appropriate details together with documentary evidence as may be required by the Authorised Officer. Each invoice must quote the correct purchase order number and failure to do so will result in the invoice being returned unpaid. The Contractor shall send all invoices via email as a PDF attachment to payments@peterborough.gov.uk and the Council's Authorised Officer until advised otherwise by the Council.
- 11.3 Payment of any valid and undisputed invoice will be made no later than thirty (30) calendar days following the date of receipt and agreement of the invoice by the Council for Services completed to the satisfaction of the Council.
- 11.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- 11.5 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Agreement. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Agreement or otherwise.
- 11.6 The Council, acting by the Authorised Officer, may from time to time propose an increase, decrease or change in the scope, frequency or performance of the Services. Any such proposed variation must be discussed with the Contractor. Where such increase, decrease or change in the scope is agreed with the Contractor, the Contractor shall be bound to carry out the Services as so varied. Upon such variation the Price payable to the Contractor shall be revised in accordance with 29.2.
- 11.7 Where any variation to the scope, frequency or performance of the services is agreed in accordance with clause 29 the Contractor and the Council shall jointly agree to a revision in the Contract Price to properly and fairly reflect the nature and extent of the variation. The Contractor shall provide the Authorised Officer with such information and documentation as the Authorised Officer may reasonably require to reach the calculation.
- 11.8 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract a similar provision having the same effect as clause 11.3 and a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards the same provision as clause 11.3.
- 11.9 In clause 11.8, "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.

12 RECOVERY OF SUMS

Without prejudice to the provisions of clause 11.5 hereof, if any sum of money shall at any time

have been, or becomes, recoverable from, or payable by the Contractor to the Council, the Council is entitled to deduct that money from any moneys due under this Agreement or any other contract between the Council and the Contractor, irrespective of when such money shall have been or becomes payable or recoverable.

13 TERMINATION

- 13.1 The Council may terminate this agreement with immediate effect by the service of written notice on the Contractor, and recover from the Contractor its costs and losses in doing so on an indemnity basis, in the following circumstances:
- 13.1.1 the Contractor commits a material breach of any term of this Agreement which is irremediable or if such breach is remediable fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 13.1.2 the Contractor repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - 13.1.3 the Contractor wilfully neglects or refuses to carry out any of its reasonably required duties under this Agreement;
 - 13.1.4 the Contractor refuses or neglects to comply with any reasonable and lawful directions of the Council;
 - 13.1.5 The Contractor, or anyone acting on the Contractor's behalf (with or without the knowledge of the Contractor) has:
 - 13.1.5.1 offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward in respect of the Agreement or any other agreement for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Agreement or any other agreement with the Council;
 - 13.1.5.2 shown or forborne to show any favour or disfavour to any person in relation to the Agreement or any other agreement with the Council;
 - 13.1.5.3 committed an offence under the Bribery Act 2010; or
 - 13.1.5.4 given any fee or reward which is an offence under s.117(3) of the Local Government Act 1972.
 - 13.1.6 the Contractor undergoes a change of control, within the meaning of section 450 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Agreement; or
 - 13.1.7 the Contractor becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or
 - 13.1.8 the Contractor is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Contractor or the Council into disrepute or is materially adverse to the interests of the Council; or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Contractor ceases to trade;
 - 13.1.9 this Agreement has been subject to a substantial modification within the meaning of regulation 72(9) of the Public Contracts Regulations 2015;
 - 13.1.10 the Contractor, has at the time of contract award been in the situations referred to in regulation 57(1) or regulation 57 (2) of the Public Contracts Regulations 2015 and would have been excluded from the procurement procedure; or

- 13.1.11 where the Court of Justice of the European Union has declared that the contract award involved a serious infringement of the public procurement rules (under Article 258 of the Treaty on the Functioning of the European Union (TFEU));
- 13.1.12 the Contractor commits an offence under the Modern Slavery Act 2015 or breaches any of the warranties contained in clause 9.2 or 27.5 hereof.
- 13.2 The proper exercise by the Council of its right of termination under this clause shall be without prejudice to any other rights or remedies which the Council may have or be entitled to exercise against the Contractor.
- 13.3 Subject to clause 13.4, for the purposes of clause 13.1.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:
 - 13.3.1 A substantial portion of this Agreement; or
 - 13.3.2 Any of the obligations set out in clauses 6, 9, 10, 18, 20, 21, 23, 26, 33, 35, 41 and 45 at any time during the term of this Agreement;
 - 13.3.3 In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 13.4 Notwithstanding any other provision contained in this Agreement, the Council reserves the right to terminate this Agreement in whole or in part, after eighteen months (18) from the Commencement Date, upon six (6) months prior notice in writing to the Contractor.
- 13.5 The following acts and omissions by the Contractor shall be defined as material breaches for the purposes of clause 13.1.1.

Where the Contractor fails to comply with its obligations as set out in the Specification.

14 CONSEQUENCES OF TERMINATION

- 14.1 On termination of the Agreement pursuant to clause 13.1.6, 13.1.7, 13.1.8, 13.1.9, 13.4 or 34.7 the Council shall:
 - 14.1.1 pay to the Contractor sums due and reasonably incurred up to the date of termination where the Council has received Goods or Services to the equivalent value;
 - 14.1.2 pay to the Contractor sums due for expenditure incurred after the date of termination only in so far as it is a result of commitments entered into by the Contractor in good faith before the date on which notice of termination was given and which cannot be voided on or before the termination date. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence of losses reasonably and actually incurred by the Contractor as a result of termination within 5 days of receiving the notice of termination;

provided that any such sum payable in accordance with this clause 14.1 shall only be payable by the Council if it would have been payable in accordance with this Agreement if it had not been terminated.
- 14.2 The Council shall not be liable under clause 14.1.2 to pay any sum which was claimable under insurance held by the Contractor, or when added to any sum paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Contract Period.

15 DISPUTE RESOLUTION PROCEDURE

- 15.1 If a dispute arises between the Council and the Contractor in connection with the Agreement, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level within 10 days of written notice of dispute being served by one or on the other without recourse to legal proceedings.

- 15.2 If a dispute is not resolved within fourteen (14) days of referral under clause 15.1 then either Party may refer it to senior representatives of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 15.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 15.1 and 15.2, shall first be referred to mediation or other alternative dispute resolution procedure as agreed between the parties, each acting in good faith. If the parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre of Dispute Resolution at Exchange Tower, 1 Harbour Exchange Square, London, E14 9GB. Unless otherwise agreed the parties will share equally the costs of mediation and the use of mediation will be without prejudice to the rights of the parties in all respects if the mediation does not achieve an agreed resolution of the dispute within 60 days (or such longer period as the parties may agree) of the notice of dispute being served.
- 15.4 Unless the Agreement shall have already been determined or abandoned the Contractor shall in every case continue to proceed with the Services in accordance with this Agreement.

16 SURVIVAL

The following clauses will survive termination or expiry of the Agreement: Clause 8 (Risk in and Title to the Goods), Clause 14 (Consequences of Termination), Clause 18 (Liability and Insurance), Clause 20 (Intellectual Property), Clause 21 (Confidentiality), Clause 23 (Data Protection), Clause 24 (Freedom of Information), Clause 25 (Record Keeping and Monitoring), Clause 32 (Severance), Clause 39 (Law and Jurisdiction) and Clause 43 (TUPE).

17 EXIT ARRANGEMENTS

The Contractor shall support the Council in managing the smooth and timely transition of the Agreement by providing all necessary reasonable resources and information for ending the arrangement and or handing over the services to the Council or its Replacement Contractor. The Contractor shall provide a detailed exit plan to the Council within three months of date of this contract to the expiry of the Agreement.

18 LIABILITY AND INSURANCE

- 18.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Agreement.
- 18.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- 18.3 Neither Party excludes or limits liability to the other for death or personal injury caused by its negligence or for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or any such liability which it is not permissible to exclude by Law.
- 18.4 The Contractor shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of, or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by an act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or by any circumstances within its or their control.
- 18.5 The Contractor shall notify the Council as soon as possible and in any event within 48 hours of any incident that may lead to any claim, demand or proceedings and shall supply such particulars or details thereof as the Council shall reasonably require.
- 18.6 The Contractor shall at all times throughout the Contract Period maintain in force such

policies of insurance with reputable insurers or underwriters as are sufficient to cover its liability under this Agreement.

18.7 The Contractor shall on or before the Commencement Date and thereafter annually, and at such other times as the Council may require, supply the Council or its Authorised Officer within seven days with certified copies of a statement of its insurance cover and if further requested by the Council promptly with copies of insurance policies, endorsements, cover notes, premium receipts and other documents necessary evidencing that such policies are fully maintained to comply with this Agreement.

18.8 The provisions of this Clause shall survive the expiry or termination of this Agreement for whatever reason.

19 LIMITATION OF LIABILITY

19.1 The Council's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:

19.1.1 for non-payment of invoices for Services purchased, to the amount unpaid; or

19.1.2 for any other type of liability, to the amount paid for the Services under the Agreement.

19.2 (Subject to clauses 18.3 and 19.4 of this Agreement) the Contractor's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to [five (5)][ten(10) million pounds or one hundred and twenty five percent (125%) of the total Price whichever is the greater.

19.3 (Subject to clause 19.4 and without limitation or prejudice to clause 13.1), neither Party will be liable to the other Party for:

19.3.1 any indirect, special or consequential loss or damage; or

19.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

19.4 Notwithstanding any other provisions in this Agreement limiting the Contractor's liability (whether in tort (including negligence or breach of statutory duty), contract or otherwise), the Contractor shall be liable for

19.4.1 the full amount of any fine or fines levied against the parties and/or the Council as a result of the Contractors breach of any legislation or regulations (including the Data Protection Legislation); and

19.4.2 the full amount of all losses, costs, or expenses that may arise (including, without limitation, all costs associated with rectification or restoration of any lost Personal Data), as a result of a Data Loss Event, caused by the Contractor's breach of the Data Protection Legislation, the terms of this Agreement or any other negligence by the Contractor.

19.5 Subject to clause 14.2 the Council may, amongst other things, recover as a direct loss:

19.5.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default;

19.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default;

19.5.3 the additional cost of procuring replacement Services for the remainder of the Contract Period; and

19.5.4 any anticipated savings.

20 INTELLECTUAL PROPERTY

- 20.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- 20.1.1 provided to the Contractor by the Council shall remain the property of the Council;
 - 20.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Agreement shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- 20.2 The Council shall be entitled to use, modify, arrange and copy all property, copyright and all other intellectual property rights (including but without limitation the database rights in any database ("the Intellectual Property") in the Materials developed, originated, written or prepared by the Contractor (whether individually or jointly with the Council) for the purposes of this agreement, which Intellectual Property the Contractor by this Agreement assigns to the Council with full title guarantee.
- 20.3 The Contractor grants the Council a non-exclusive licence to use any pre-existing Intellectual Property Rights in order to make use of the Services.
- 20.4 At the request of the Council the Contractor shall do all such things and sign all documents or instruments reasonably necessary in the Council's opinion to enable the Council to obtain, defend and enforce its intellectual Property in such Materials.
- 20.5 The Contractor warrants that the Materials will (so far as they do not comprise Material originating from the Council) be original works of authorship and the use or possession by the Council will not subject the Council to any claim for infringement of any proprietary rights of any third party.
- 20.6 The Contractor agrees to notify the Council in writing of any breach or claim of breach of any intellectual property in use for the purposes of this agreement and shall indemnify the Council against any and all claims, liability, loss, damages, costs and expenses which the Council may incur or suffer as a result of a breach by the Contractor of the warranties set out in this clause.
- 20.7 The Contractor agrees that the Council is entitled to all property, copyright and other intellectual property rights in all Materials developed, originated, written, prepared or contributed to by the Council whether or not changed or developed by the Contractor.
- 20.8 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

21 CONFIDENTIALITY

- 21.1 The Contractor and the Council shall keep confidential all information shared between them which may be designated as confidential obtained under or in connection with this Agreement and shall not divulge the same to any third party without the written consent of the party in whom the ownership of the confidential information is vested.
- 21.2 The provisions of this clause shall not apply to:
- 21.2.1 any information in the public domain otherwise than by breach of this Agreement;
 - 21.2.2 information obtained from a third party who is free to divulge the same;
 - 21.2.3 any information which is personally developed;
 - 21.2.4 any information required to be disclosed by law.
- 21.3 The Contractor and the Council shall divulge confidential information only to those persons who are directly involved in providing the Services under this Agreement and shall ensure that such persons are aware of and comply with these obligations as to confidentiality.

21.4 The provisions of this clause shall continue in perpetuity.

22 PUBLICITY AND STATEMENTS

22.1 The Contractor will not use any corporate logos of the Council nor refer to the Council or this Agreement or the Services, directly or indirectly, in connection with any product, promotion or publication, without the prior written permission of the Council. For the avoidance of doubt, the restriction contained in this clause shall apply equally to any references to the Council in any form or medium.

22.2 The Contractor shall not at any time whether during the Contract Period of the Agreement or thereafter make any public statement in relation to the Council or its businesses, affairs, customers or clients unless authorised by the Council and shall not after this engagement has been terminated wrongfully represent themselves as being engaged by or connected to the Council.

23 DATA PROTECTION

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

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

23.3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment that arises in connection with the Agreement. Such assistance may, at the discretion of the Council, include:

23.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

23.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

23.3.3 an assessment of the risks to the rights and freedoms of Data Subjects (including the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed); and

23.3.4 the measures (including Protective Measures) envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:

23.4.1 process that Personal Data only in accordance with the written instructions notified to it in advance by the Controller, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited from doing so by Law;

23.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures) having taken account of the:

23.4.2.1 nature of the data to be protected;

23.4.2.2 harm that might result from a Data Loss Event;

23.4.2.3 state of technological development; and

23.4.2.4 cost of implementing any measures;

provided that the Contractor shall at all times notify the Council of any/all updates and changes to such Protective Measures.

- 23.4.3 ensure that:
- 23.4.3.1 the Contractor Personnel do not process Personal Data except in accordance with this Agreement and are limited to such persons only as are required to access the Personal Data for the purposes of its processing in accordance with the Agreement;
 - 23.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - a) are aware of and comply with the Contractor's duties under this clause 23;
 - b) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted hereunder ; and
 - d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 23.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions have been fulfilled:
- 23.4.4.1 the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Articles 46 -49 or LED Article 37) as determined by the Council;
 - 23.4.4.2 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - 23.4.4.3 the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to any such proposed transfer of the Personal Data;
- 23.4.5 return all Personal Data to the Council, and securely destroy or wipe all copies of it held by the Contractor, within two (2) months of the termination of the Agreement, or earlier if requested to do so in writing by the Council, unless the Contractor is required by Law to retain the Personal Data. The Contractor shall send a written notice to the Council (marked for the attention of the Data Protection Officer, with a copy marked for the attention of the Director of Law and Governance, confirming that Personal Data has been returned (with all copies securely destroyed or wiped) within such two (2) month period or earlier return period as the Council may have required under this clause 23.4.5, or that the Contractor is required by Law to retain the Personal Data, in which case the Contractor shall provide exact details of the Personal Details which the Processor is required to retain by law and the legal basis (i.e. statute, regulation or other law) for such retention.
- 23.5 Subject to clause 23.6, the Contractor shall notify the Council immediately if it:
- 23.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 23.5.2 receives a FOI Request in relation to either Party's obligations hereunder and/or under the Data Protection Legislation;
 - 23.5.3 receives any communication from the Information Commissioner or any other

- regulatory authority in connection with Personal Data processed under the Agreement;
- 23.5.4 receives a request from any third party for disclosure of Personal Data; or
- 23.5.5 becomes aware of a Data Loss Event.
- 23.6 The Contractor's obligation to notify under clause 23.5 shall include the provision of further information to the Council in phases, as soon as details become available.
- 23.7 Taking into account the nature of the processing, the Contractor shall provide the Council with prompt and full assistance in relation to either Party's obligations under Data Protection Legislation and the matters referred to under clause 23.5 including any complaint, communication or request or Data Loss Event (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- 23.7.1 the Council with full details and copies of the complaint, communication or request;
- 23.7.2 such assistance as is reasonably requested by the Council (including in relation to appropriate technical and organizational measures) to enable the Council to comply with a Data Subject Request, within the relevant timescales set out in the Data Protection Legislation;
- 23.7.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- 23.7.4 assistance as requested by the Council following any Data Loss Event;
- 23.7.5 assistance as requested by the Council with respect to any request from the ICO or other Supervisory Authority, or any consultation by the Council with the ICO or other Supervisory Authority.
- 23.8 The Contractor shall maintain complete and accurate written or electronic records and information in relation to all the processing it carries out hereunder in accordance with the Data Protection Legislation and to demonstrate its compliance with the provisions of this clause 23 and shall immediately make the same available for inspection upon request by the Controller or a Supervisory Authority in relation to any of the matters referred to in clause 23.5 hereof, and in all other cases, no later than 10 (ten) Working Days after being requested by the Council to do so. This requirement (to maintain accurate written or electronic records) does not apply where the Contractor employs fewer than 250 staff, unless:
- 23.8.1 the processing of the Personal Data it carries out is likely to result in a risk to the rights and freedoms of data subjects;
- 23.8.2 the processing is not occasional;
- 23.8.3 the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR.
- 23.9 The Contractor shall allow for audits of its Data Processing activities by the Council or the Council's designated auditor upon reasonable notice by the Council and (without prejudice to the provisions for earlier access referred to in clause 23.8 hereof) in any event no later than 10 (ten) Business Days after being requested by the Council to do so.
- 23.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation. If no data protection officer is required by the Data Protection Legislation, the Contractor shall, upon signature hereof by the parties, provide the name, office, contract address, email address and telephone number of a duly authorized officer, who shall act as the Contractor's representative and contact in relation to all Data Protection Legislation matters arising in relation to the Agreement.

- 23.11 The Contractor shall not engage a Sub-processor to process any Personal Data related to the Agreement, without first obtaining the prior written authorisation of the Council. If the Contractor wishes to engage such Sub-processor it must first:
- 23.11.1 notify the Council in writing of the intended Sub-processor and processing; and
 - 23.11.2 provide the Council with such information regarding the Sub-processor as the Council may reasonably require; and
 - 23.11.3 obtain the prior written consent of the Council.
- If and subject to the Council giving it's prior written authorisation to the appointment of such Sub-processor, the Contractor shall enter into a binding written agreement with the Sub-processor which gives effect to the terms set out in this clause 23 (and the related Definitions) and as such that they apply to the Sub-processor (as a Processor) and will not allow the Sub-processor to process any Personal Data related to this Agreement before it has done so.
- 23.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.13 The Council may elect, at any time (on not less than 30 (thirty) Business Days' notice), to revise the provisions of this clause 23 (and relevant related Definitions) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme, referred to in the Data Protection Legislation the Agreement and upon receiving any such notice, the Contractor agrees that it shall accept and be bound by the same.
- 23.14 The Parties agree to take account of any guidance issued by the ICO. The Council may on not less than 30 (thirty) Business Days' notice to the Contractor amend the Agreement to ensure that it complies with any guidance issued by the ICO or applicable replacement or alternative Supervisory Authority (as defined in the GDPR)].
- 23.15 The provisions of this clause 23 shall apply notwithstanding any other term of this Agreement in relation to the processing of Personal Data and in the event of any conflict between the terms of this clause 23 and the remaining terms of this Agreement in relation to the processing of Personal Data, the terms of this clause 23 shall prevail
- 23.16 A breach of clause 23 by the Contractor shall be deemed to be a material breach for the purposes of clause 13.1.

24 FREEDOM OF INFORMATION

- 24.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA, Transparency Code and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.
- 24.2 The Contractor shall and shall procure that its Sub-contractors shall:
- 24.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
 - 24.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Business Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 24.2.3 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 the Environmental Information Regulations.
- 24.3 The Council shall be responsible for determining at its absolute discretion whether the

Commercially Sensitive Information and/or any other Information:

24.3.1 is exempt from disclosure in accordance with the FOIA, Transparency Code or EIR;

24.3.2 is to be disclosed in response to a Request for Information

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

24.5 The Contractor acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations, or the Transparency Code to disclose Information:

24.5.1 without consulting the Contractor; or

24.5.2 following consultation with the contractor and having taken its views into account,

provided always that where clause 24.5 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

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

24.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council may disclose information on its website in relation to monthly expenditure over £500 (five hundred pounds), in relation to this Agreement. The information will include the Service Provider's name and the monthly Periodic Payment paid or other as may be required. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

25 RECORD KEEPING AND MONITORING

25.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Agreement has been completed, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Agreement.

25.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Agreement.

26 HEALTH AND SAFETY

The Contractor and all persons engaged in providing the Services shall comply fully with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations, all health and safety policies of the Council and any other Acts, Regulations and Approved Codes of Practice relating to the health and safety of Contractor Personnel (or any of them) and others who may be affected by the Contractor's work activities.

27 CORPORATE REQUIREMENTS

27.1 The Contractor shall comply with all obligations under the HRA.

27.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:

27.2.1 Equality and diversity policies;

- 27.2.2 Anti-slavery policies;
- 27.2.3 sustainability;
- 27.2.4 information security rules;
- 27.2.5 whistleblowing and/or confidential reporting policies;
- 27.2.6 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services; and

27.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

27.4 The Contractor shall comply with all relevant legislation relating to Contractor Personnel, including (but not limited to) the compliance in law of the ability of the Contractor Personnel to work in the United Kingdom.

27.4.1 If the Contractor has a finding against it relating to its obligations under clause 27.4 it will provide the Council with:

27.4.2 details of the finding; and

27.4.3 the steps the Contractor has taken to remedy the situation.

27.5 In performing its obligations under this Agreement, the Contractor shall:

27.5.1 comply with all applicable anti-slavery and human trafficking Laws, including the Modern Slavery Act 2015;

27.5.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

27.5.3 include in its contracts with its Sub-contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 27.5 and ensure that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking Laws, including the Modern Slavery Act 2015; and

27.5.4 implement due diligence procedures for its Sub-contractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains

28 LAW AND CHANGE IN LAW

28.1 The Contractor shall comply at all times with the Law in its performance of the Agreement.

28.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) Business Days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) Business Days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either Party may refer the matter to dispute resolution in accordance with clause 15.

28.3 Any agreed additional sums payable as a result of the operation of clause 28.2 shall be included in the Price. For the avoidance of doubt nothing in this Agreement is intended to allow the Contractor double recovery of any increase in costs.

29 CONTRACT VARIATION

29.1 Subject to clause 29.2, no variation or modification to the Agreement is valid unless it is in writing and signed by the Council and the Contractor.

- 29.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised delivery instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

30 THIRD PARTY RIGHTS

Any Replacement Contractor may enforce any rights given under the Contracts (Rights of Third Parties) Act 1999 but nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation of this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such rights unless expressly so stated in any such agreement by the parties. This does not affect any right or remedy of a third party which exists or is available from the Act.

31 NO WAIVER

- 31.1 Failure by either Party at any time to enforce any one or more of the provisions of this Agreement or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of the Agreement or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- 31.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 3 (Notices).

32 SEVERANCE

If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

33 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- 33.1 Neither the Council nor the Contractor shall assign or sub-contract this Agreement or any part thereof without the prior written consent of the other Party. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.
- 33.2 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Sub-contractor, directors, consultants, servants, agents, officers, contractors and employees of any Sub-contractor, as though they were its own.
- 33.3 In the event that the Council novate, assign, transfer, charge, mortgage, subcontract or delegate or deal in any other manner with all or any of its rights under the Agreement the Contractor shall continue to provide the services as agreed under this agreement, at no additional cost in so far as no additional obligations are placed upon the Contractor in performing the services.

34 FORCE MAJEURE

- 34.1 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure (subject to the provisions of this clause 34).
- 34.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.
- 34.3 For the purposes of this Agreement force majeure shall mean any cause of delay beyond

the reasonable control of either Party and shall include but not by way of limitation war prohibitive regulation, Act of God, strikes, riots, sabotage, fire, explosion, storm, flood, earthquake.

- 34.4 Industrial action by, or illness or shortage of Contractor Personnel, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause 9 shall not be regarded as an event of Force Majeure.
- 34.5 Neither party shall incur any liability in the event that it is delayed in the performance of its obligations as a result of force majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement.
- 34.6 If either Party 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 it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue.
- 34.7 If the event of Force Majeure continues for more than two (2) months either Party may give written notice to the other to terminate the Agreement with immediate effect.
- 34.8 If the Agreement is terminated in accordance with clause 35.7 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

35 PREVENTION OF BRIBERY

- 35.1 The Contractor:
 - 35.1.1 shall not, and shall procure that any Sub-contractor and/or Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
 - 35.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 35.2 The Contractor shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
- 35.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Sub-contractor or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 35.4 If any breach of clause 36 is suspected or known, the Contractor must notify the Council immediately. If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 36, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 35.5 The Council may terminate this Agreement by written notice with immediate effect if the Contractor, Sub-contractor or any Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 35.
- 35.6 Any notice of termination under clause 35.5 must specify:
 - 35.6.1 the nature of the Prohibited Act;
 - 35.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 35.6.3 the date on which this Agreement will terminate.

- 35.7 Despite clause 15 (Dispute Resolution), any dispute relating to:
- 35.7.1 the interpretation of clause 35; or
 - 35.7.2 the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

Any termination under clause 35 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

36 COSTS AND EXPENSES

Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Agreement.

37 NO AGENCY OR PARTNERSHIP

Nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.

38 INSPECTION OF CONTRACTOR'S PREMISES

The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to this Agreement.

39 LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

40 COMMITMENT TO ENVIRONMENTAL IMPROVEMENT

- 40.1 The Contractor shall work with the Council in so far as necessary to improve the effects of the operational services on the environment both in terms of the 'direct effects' and the 'service effects'.
- 40.2 In this respect the Contractor shall use its best endeavours to strive to improve the environmental efficiency of Contracted Service and provide a flexible approach to the management of these services and shall during the Term of this Agreement:
- 40.2.1 demonstrate to the Council or its Authorised Officer a commitment to continuous improvement and to employing the best practicable environmental options in the provision of the service wherever possible;
 - 40.2.2 demonstrate to the Council or its Authorised Officer a commitment to compliance with environmental legislation in place from time to time;
 - 40.2.3 incorporate into the decision making process of the Contractor the principles set out in Clause 44.3 below; and
 - 40.2.4 demonstrate to the Council or its Authorised Officer a commitment to managing and operating the service in accordance with best practice.
- 40.3 The Contractor shall consider environmental efficiency as part of the operational planning process on an ongoing basis throughout the Agreement. In this respect, the Contractor shall have regard to the following:
- 40.3.1 Transport Management – The use of energy efficient vehicles used in the provision of the Service and the efficient use of vehicles whilst providing the service.
 - 40.3.2 Waste Management – The use of safe and environmentally sound disposal methods for waste generated directly by the Contractor in providing the Service.
 - 40.3.3 Energy Management – The efficient use of energy for buildings and equipment used in the provision of the Service.

- 40.3.4 Water Management – The efficient use and reuse of water used in the provision of the Service.
- 40.3.5 Resource Management – The efficient use of resources used in the provision of the Service.

41 COMPETITION ACT

The Council reserves the right in appropriate circumstances to make this Agreement and all documents related or connected to it available to the Office of Fair Trading and other statutory regulators.

42 WHISTLEBLOWING

- 42.1 The Council is committed to tackling fraud, abuse and other forms of malpractice. The Council has a Confidential Reporting (Whistle blowing) Policy and Procedure which also applies to the Council's Contractors. A copy of the Council's Policy is available upon request.

If Contractors have any concerns about anything that the policy covers they should contact one of the following senior management officers:-

Corporate Director, Resources or Chief Internal Auditor, Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY regarding theft, fraud or misappropriation of funds.

Director of Governance, Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY regarding employees' abuse of position, harassment etc.

Corporate Director of People and Communities Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY regarding the safety and wellbeing of vulnerable adults and the safety or welfare of children.

43 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

The provisions of Schedule 3 (TUPE and Pensions) of this Agreement shall apply in respect of transferring employees' TUPE and pension provisions and the Contractor shall and shall procure that any Sub-contractor shall comply with the provisions of Schedule 3.

44 EMERGENCY PLANNING

- 44.1 The Contractor shall comply at all times with the relevant provisions of the Disaster Recovery Plan.
- 44.2 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:
 - 44.2.1 implement the Disaster Recovery Plan;
 - 44.2.2 continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
 - 44.2.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan. To the extent that the Contractor complies fully with the provisions of this clause 44 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Contractor), the Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in clause 6 but shall be the Service Levels set out in the Disaster Recovery Plan or (if none) the best Service Levels which are reasonably achievable in the circumstances.

45 SAFEGUARDING CHILDREN AND VULNERABLE

- 45.1 The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

- 45.2 The Contractor shall ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service ("DBS") including a check against the adults' barred list or the children's barred list, as appropriate and monitor the level and validity of the checks under this clause 46 for each member of the staff and monitor the level and validity of the checks under this clause 46 for each member of staff.
- 45.3 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 45.4 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 46 have been met.
- 45.5 The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to [the Service Users OR children OR vulnerable adults].
- 45.6 The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children or vulnerable adults.

Schedule 1
Pricing Schedule

Schedule 2 Specification

Schedule 3

TUPE and Pensions

1. The Council makes no assurances or representations as to the effect of TUPE on the Contract.
2. The Contractor has acknowledged that it has formed its own view as to whether TUPE applies in respect of the Services to be provided under the Contract.
3. It is agreed between the Council and the Contractor that the contract sum/price will not be varied after the commencement of the Contract on the grounds that TUPE does or does not apply irrespective of the belief of either party prior to the time the Contract commenced.
4. The Contractor shall:-
 - i. become responsible for the payment of all salaries and provision of other benefits and deductions of any employees that transfer under TUPE, which employees are set out in the TUPE list attached to the Contract with effect from the transfer date;
 - ii. ensure that all appropriate pensions provisions are in place to the satisfaction of the Council with effect from the transfer date;
 - iii. not for the duration of the Contract to adversely change or amend terms and conditions of employment, including any applicable collective or individual agreements of the transferred employees; and
 - iv. indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of, or in connection with, the employment or termination of employment of the transferred employees on or after the transfer date or the breach by the Contractor or Sub-contractor to whom the employees may transfer or any of the provisions of this clause (TUPE).
5. The Contractor shall immediately upon request by the Council provide the Council with details of any measures which the Contractor (or Sub-contractor) envisages it or they will take in relation to any employees who are or will be subject to any transfer from the Contractor (and Sub-contractor) and shall indemnify the Council against all injuries, claims, costs and expenses (including legal expenses) and/or damages resulting from any failure by the Contractor or Sub-contractor to comply with this obligation.
6. In the event of any future transfer to the Council or any replacement Contractor or Sub-contractor on the expiry or early termination of the Contract or as a consequence of part of the Contract not being provided by the Contractor, the Contractor will use all reasonable endeavours to procure that it or any Sub-contractor will:-
 - i. comply with the obligations under TUPE;
 - ii. immediately upon request provide to the Council a list containing details of the employees eligible to transfer and such other appropriate information reasonably required by the Council to enable it to disclose as appropriately to third parties invited to tender for any subsequent contract(s) covering the

services or works concerned. This list and details to be provided to the Council is to contain the following:-

- nature of job/job description;
 - current salary;
 - length of service;
 - contracted hours and percentage of those contracted hours spent on the Contract;
 - retirement age;
 - arrangements for overtime and whether this is contractual;
 - any factors that may affect redundancy entitlement;
 - any outstanding industrial injury claims or other claims or actions;
 - whether any probationary period is current;
 - period of notice to terminate employment;
 - current pay agreement and any agreed settlement yet to come into effect;
 - age;
 - sex;
 - annual leave entitlement;
 - sick leave entitlement;
 - maternity and paternity leave arrangements;
 - special leave entitlement;
 - other benefits eg. season tickets, loans, car provision;
 - whether they are a member of an Admitted Body Scheme or a member of a company pension scheme;
 - location and contractual provisions relating to this;
 - terms and conditions of employment;
 - details of Admitted Body Scheme or company pension scheme; and
 - any other information reasonably requested by the Council.
7. The Contractor warrants that the above information when provided to the Council will be accurate and complete in all respects, that it will immediately inform the Council in writing of any changes to that information between the date provided and the date of any replacement Contract and that it will have discharged all known liabilities relating to its employees. If the Contractor fails to provide the required information or does not provide it accurately and completely, updated as necessary, the Council reserves the right to exclude the Contractor from being invited to tender for any subsequent contract(s) (if the Contractor would otherwise have qualified for invitation) or to disqualify the Contractor from submitting a bid for any subsequent contract(s) or to reject a bid from the Contractor for any subsequent contract(s).
8. The Contractor shall take all reasonable steps to ensure that otherwise than in the bona fide course of business it (or its Sub-contractor) it will not without the consent of the Council in any period between the date on which the information is provided and any expiry or termination of the Contract:-
- i. vary or purport to vary the terms and conditions of employment of employees eligible for TUPE transfer;
 - ii. increase the number of transferring employees; or
 - iii. assign or redeploy any transferring employees to other duties unconnected to the Contract to avoid a transfer.
9. The Contractor will use its reasonable endeavours that (and likewise its Sub-contractor) to procure that any employee eligible for TUPE transfer is not dismissed for a reason connected to the transfer and will indemnify the Council or any replacement supplier

against direct or indirect loss, damages, claims, costs and expenses (included legal expenses) suffered or incurred by the Council or any replacement supplier:-

- i. in relation to the employment or termination of employment of any employee during the period leading up to a TUPE transfer;
- ii. in relation to a breach or non-observance of any collective agreement, custom, practice or arrangement (whether legally binding or not) with a trade union or staff association in respect of employees eligible to TUPE transfer;
- iii. to the extent that it arises any failure by the Contractor (and its Sub-contractor) failure to comply with obligations under TUPE in respect of employees eligible for transfer; and
- iv. in relation to vicarious liability owed to third parties arising or connected with the eligible employees contract of employment which arises from any act or omission on the part of the transferring employee in the period leading up to the TUPE transfer.

10. For the purpose of the TUPE clauses above the Contractor agrees with the Council that all employees transferring from the previous contractor (where it is a private contractor) are to be offered a company pension scheme.

This document has been executed as a DEED and is DELIVERED and takes effect on the date stated at the beginning of it.

EXECUTED under the Common Seal of
PETERBOROUGH CITY COUNCIL
In the presence of

.....
Duly Authorised Officer

EXECUTED as a Deed by
[name of company]
acting by a director and
..... a director OR its Company Secretary

Director

.....
Director/Company Secretary