

CORBY BOROUGH COUNCIL

AND

XXXXXXXXXX LIMITED

**TERMS AND CONDITIONS FOR CONTRACT FOR
CORBY ENTERPRISE CENTRE VOICE AND DATA SUPPLY**

Contents

1.	INTERPRETATION	1
2.	THIRD PARTY RIGHTS.....	3
3.	COMMENCEMENT AND CONTRACT PERIOD	3
4.	WARRANTIES AND REPRESENTATIONS.....	3
5.	SUFFICIENCY OF INFORMATION	4
6.	OBLIGATIONS PRIOR TO THE COMMENCEMENT DATE	5
7.	PROVISION OF GOODS.....	5
8.	NOT USED.....	ERROR! BOOKMARK NOT DEFINED.
9.	CONTRACT STANDARD	10
10.	MONITORING AND REVIEW	11
11.	NOT USED	ERROR! BOOKMARK NOT DEFINED.
12.	CONTRACT MANAGER	11
13.	AUTHORISED OFFICER	12
14.	CONTRACT PRICE.....	13
15.	LIABILITY AND INDEMNITY	14
16.	INSURANCE	16
17.	AUDIT AND RECORDS	17
18.	CONTRACTOR'S EMPLOYEES	18
19.	NOT USED	ERROR! BOOKMARK NOT DEFINED.
20.	COUNTER-TERRORISM AND SECURITY ACT 2015	20
21.	NOT USED	ERROR! BOOKMARK NOT DEFINED.
22.	NOT USED	21
23.	EQUALITIES AND HUMAN RIGHTS ACT	21
24.	HEALTH AND SAFETY	22
25.	SUSTAINABILITY	23
26.	PROPERTY AND EQUIPMENT	24
27.	PREMISES	25
28.	SMOKE FREE REGULATIONS	26
29.	BRITISH AND ENVIRONMENTAL STANDARDS	26
30.	CONTRACTOR'S COMPUTER SYSTEMS.....	26
31.	INTERCEPTION OF COMMUNICATIONS	27
32.	DATA PROTECTION.....	28
33.	FREEDOM OF INFORMATION	31
34.	CONFIDENTIALITY.....	32
35.	WHISTLEBLOWING	34
36.	BRIBERY ACT 2010	35
37.	INTELLECTUALPROPERTY	45
38.	DEFAULTS AND REMEDIES.....	37
39.	TERMINATION	39
40.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	41
41.	ARRANGEMENTS FOR RE-TENDERING AND HANDOVER ON TERMINATION	43
42.	FORCE MAJEURE	44
43.	DISASTER RECOVERY AND BUSINESS CONTINUITY	44

44.	RIGHT OF SET OFF.....	45
45.	SPECIFIC PERFORMANCE	45
46.	DISPUTE RESOLUTION	45
47.	CIVIL CONTINGENCIES AND EMERGENCIES.....	47
48.	CORRESPONDENCE AND COMPLAINTS.....	47
49.	SECURITY.....	48
50.	PUBLICITY.....	49
51.	CHANGES TO THE CONTRACTOR	49
52.	NOT USED	ERROR! BOOKMARK NOT DEFINED.
53.	WAIVER.....	49
54.	ENTIRE AGREEMENT.....	50
55.	NO AGENCY PARTNERSHIP EMPLOYMENT OR TENANCY	50
56.	NOT USED	50
57.	AMENDMENTS	50
58.	VARIATIONS	51
59.	NOTICES	53
60.	ASSIGNMENT, SUB-CONTRACTING AND NOVATION	54
61.	SEVERANCE	55
62.	LAW AND JURISDICTION.....	55
63.	COUNCIL CHANGES.....	56
64.	COUNTERPARTS	57
	SCHEDULE 1 DEFINITIONS AND INTERPRETATION.....	59
	SCHEDULE 2 SPECIFICATION.....	70
	SCHEDULE 3 CONTRACTOR'S PROPOSALS	90
	SCHEDULE 4 PROCESSING, PERSONAL DATA AND DATA SUBJECTS	91

THIS CONTRACT is dated

2019

BETWEEN

- (1) **CORBY BOROUGH COUNCIL** of the Corby Cube, George Street, Parklands Gateway, Corby Northamptonshire NN17 1QG; and
- (2) XXXXXXXXXXXXXXXX incorporated and registered in England and Wales under company number XXXXXXXXXXXXXXXX whose registered office is at XXXXXXXXXXXXXXXX ("the Contractor"),

referred to as "Parties" hereunder.

BACKGROUND

- A. The Council wishes to procure the provision of Voice and Data Supply to the Corby Enterprise Centre which are described in further detail in the Specification (the "Goods and Services").
- B. The Contractor has offered to provide the Goods and Services and the Council has accepted the Contractor's offer.
- C. The Contractor shall provide the Goods and Services in accordance with the terms and conditions in this Contract.

1. INTERPRETATION

- 1.1. In this Contract except where the context requires otherwise:
 - 1.1.1. Words in the singular shall include the plural and vice versa.
 - 1.1.2. Words importing individuals shall be deemed also to include reference to incorporated and unincorporated associations and vice versa.
 - 1.1.3. A reference to one gender shall include a reference to the other genders.
 - 1.1.4. Headings are included for ease of reference only and shall not affect the construction of the Contract.
 - 1.1.5. Any reference to any Clause or Schedule or Appendix is, except where it is expressly stated otherwise, a reference to a clause of or schedule to or appendix to these Conditions. A reference to a paragraph is to the relevant paragraph of the Schedule in which it appears.
 - 1.1.6. The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the Schedules.
 - 1.1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, consolidation, extension, or re-enactment and includes any Subordinate Legislation for the time being in force made under it.
 - 1.1.8. The expressions "subsidiary" and "holding company" shall have the meanings set out in Section 1159 of the Companies Act 2006.
 - 1.1.9. Any references to a "month" or "day" shall be to a calendar month or day respectively.

- 1.1.10. The parties have had the opportunity to take legal advice and no contract term shall be construed contra proferentem.
- 1.1.11. Words preceding "include," "includes" or "including" shall be construed without limitation by the words which follow those words.

Schedules

- 1.2. The Schedules to this Contract form part of this Contract. The provisions of Schedule 1 (Definitions) shall have effect.

Precedence of Documentation

- 1.3. In the event of any inconsistency between the provisions of the body of this Contract and the Schedules, or between the Schedules (save where any Schedule expressly provides otherwise), the inconsistency shall be resolved according to the following descending order of priority:
 - 1.3.1. this Contract and Schedule 1 (Definitions)
 - 1.3.2. Schedule 2 (Specification);
 - 1.3.3. the Schedules (excluding Schedule 1 (Definitions), Schedule 2 (Specification) and Schedule 3 (Contractor's Proposals);
 - 1.3.4. Schedule 3 (Contractor's Proposals).
- 1.4. For the avoidance of doubt, the Specification shall at all times have priority over the Contractor's Proposals and the Contractor shall be obliged to comply with the Specification and provide the Goods and Services in accordance with the Specification.
- 1.5. Any changes to the Contractor's Proposals may only be made in accordance with Clause 58 (Variations).

Responsibility for Related Parties

- 1.6. Subject to the provisions of this Contract, the Contractor shall be responsible as against the Council for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Council shall be responsible as against the Contractor for the acts and omissions of the Council Related Parties as if they were the acts and omissions of the Council.

Approval

- 1.7. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, nor the failure of the same, shall unless otherwise expressly stated in this Contract, relieve the Contractor of any of its obligations under the Contract Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

Succession

- 1.8. References to a public organisation (other than the Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Council) shall include their successors and assignees.

2. THIRD PARTY RIGHTS

- 2.1. The Parties do not intend any term of this Contract to be enforceable by any third party nor to confer a benefit on any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise, but that will not affect any right or remedy that exists apart from that Act.

3. COMMENCEMENT AND CONTRACT PERIOD

- 3.1. The Contractor shall provide the Goods and Services from the Commencement Date until the end of the Contract Period unless the Contract is:
 - 3.1.1. terminated sooner in accordance with these Conditions or in accordance with common law or statute; or
 - 3.1.2. extended in accordance with Clause 3.3.
- 3.2. The Contractor shall execute the Contract promptly and shall not, save to the extent as may be expressly authorised in advance by the Council in writing, commence the provision of the Goods and Services nor be entitled to any part of the Contract Price nor any remuneration whatsoever until it has so executed the Contract.
- 3.3. The Council shall be entitled at its absolute discretion to extend the Contract Period by any number of periods up to an aggregate of a further twelve (12) calendar months.
- 3.4. If the Council wishes to exercise its right to extend this Contract under Clause 3.3 it shall serve on the Contractor notice in writing to that effect not less than six (6) months before the expiry of the Contract Period (or, if applicable, the Contract Period as previously extended).
- 3.5. If and each time the Council exercises its rights in Clause 3.3, the definition of Contract Period shall be deemed to be amended accordingly and the Contractor shall continue to provide the Goods and Services to the Contract Standard at the Contract Price prevailing on the date of the extension or as revised in accordance with Clause 14 (Contract Price) from time to time.

4. WARRANTIES AND REPRESENTATIONS

- 4.1. The Contractor warrants and represents that:
 - 4.1.1. it has in all respects complied with the conditions of tendering set out in the Invitation to Tender, including, without limitation, not doing any of the acts or matters prohibited by such conditions of tendering;
 - 4.1.2. it has made its own enquiries and has satisfied itself as to the accuracy and adequacy of any information whatsoever supplied to it by or on behalf of the Council and all other matters relating to the Contract including, without limitation, the Contract Documents and the Contract Price;
 - 4.1.3. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Contractor in connection with or arising out the Contractor's Proposals are true, complete and accurate in all respects;
 - 4.1.4. it has full power and authority to enter into the Contract and thereafter to provide the Goods and Services;

- 4.1.5. it is of sound financial standing and is not aware of any circumstances (other than such circumstances as expressly disclosed by the Contractor when submitting the Contractor's Proposals) that may adversely affect such financial standing in the future;
- 4.1.6. it has or has made arrangements to ensure that it will have sufficient working capital, skilled Employees, equipment, machinery and other resources available to it in order to provide the Goods and Services in accordance with the Contract Standard;
- 4.1.7. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to provide the Goods and Services and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to provide the Goods and Services;
- 4.1.8. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Goods and Services so as to assess the full scope and volume of the work involved in providing the Goods and Services to the Contract Standard; and
- 4.1.9. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed or controlled by the Council and which is for the time being in the possession of the Contractor,

and the Council relies upon such warranties and representations and nothing in this clause 4.1 shall exclude or restrict any right (s) remedy and/or remedies which may be available to the Council if any of the above warranties and/or representations should be and/or become untrue.

5. SUFFICIENCY OF INFORMATION

- 5.1. The Contractor acknowledges and confirms that it has:
 - 5.1.1. satisfied itself before entering into this Contract as to the accuracy and sufficiency of the Contract Price and other financial information stated by the Contractor in Contractor's Proposals, which shall (except in so far as is otherwise provided in the Contract) cover all the Contractor's obligations under the Contract; and
 - 5.1.2. obtained for itself all the necessary information as to risks, contingencies, and any other circumstances whatsoever which might reasonably influence or affect the Contractor's Proposals.
- 5.2. Except as may be expressly set out in the Contract, the Council does not warrant the accuracy of any representation or statement of fact or law including, without limitation, the frequencies or volumes set out in the Specification or other Tender document given to the Contractor by the Council, its servants or agents at any time before the execution of this Contract. The Council shall not be liable to the Contractor for any loss or damage which the Contractor may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement, information or advice was made or given fraudulently by the Council, its servants or agents acting in the course of their employment.

6. OBLIGATIONS PRIOR TO THE COMMENCEMENT DATE

- 6.1. Within thirty (30) Working Days (or such date as the parties agree otherwise) following the date of this contract, the parties shall arrange a pre-commencement meeting which shall be attended by senior representatives of the Contractor (including the Contract Manager), any of the Contractor's sub-contractors in so far as the same will be directly providing any Goods and Services, representatives of the Council, representatives of the former contractor (if applicable) and representatives of such Fellow Contractors, if any, as the Council shall determine necessary.
- 6.2. At the pre-commencement meeting, (where applicable) the Parties shall finalise the plan for the implementation of the provision of Goods and Services and handover necessary for the smooth, seamless and successful transition of the provision of Goods and Services from any former contractor to the Contractor. Such a plan shall be agreed by the Authorised Officer and Contract Manager in writing.
- 6.3. The Contractor shall liaise with Fellow Contractors to ensure that any handover is carried out successfully. In addition, the Contractor shall arrange and attend as many meetings with the Council, the former contractor and any Fellow Contractors as are reasonably required for the successful handover of the Goods and Services.
- 6.4. To the extent that the Contractor has not already done so in the Contractor's Proposals and the same has been bound into the Contract Documents, the Contractor shall carry out and provide to the Council, as soon as reasonably practicable after the date of this Contract:-
 - 6.4.1. proof of insurances held;
 - 6.4.2. a method statement(s) setting out in practical terms how the Contractor intends to provide the Goods and Services and to ensure that the Goods and Services are provided to the Contract Standard;
 - 6.4.3. details of the identities, positions and responsibilities and contact details of all relevant Employees including, in particular, the Contract Manager and authorised deputies.
 - 6.4.4. the agreed implementation plan.
- 6.5. The Council shall, prior to the Commencement Date:
 - 6.5.1. notify to the Contractor in writing the name and contact telephone number of any person who is to be the Authorised Officer as at the Commencement Date and any persons holding such other positions as may be stipulated in the Specification; and
 - 6.5.2. provide the Contractor with such Data and information as the Contractor may, in the Council's opinion, reasonably require or which the Contractor may reasonably request in order for it to commence the provision of the Goods and Services.
- 6.6. The Council shall provide reasonable assistance to the Contractor prior to the Commencement Date including where possible:
 - 6.6.1. allowing the Contractor reasonable access to appropriate Council staff; and
 - 6.6.2. reporting to the Contractor on current issues which may affect the Goods and Services.

7. PROVISION OF GOODS

Goods Order

- 7.1. From time to time the Council may issue a Goods Order to the Contractor (in such form as the Council may, in its absolute discretion, determine from time to time) and such Goods Order shall specify the relevant Delivery Date(s) and Time(s) and Delivery Location(s). For the avoidance of doubt, the Council is under no obligation to issue any Goods Order during the Contract Period or issue Goods Orders for any minimum volume of Goods.
- 7.2. The Contractor shall at all times carry out the written instructions issued by the Council in connection with the Goods Order. Should the Contractor require any further instruction or information for, or in connection with, the provision of the Goods that are the subject of a Goods Order, the Contractor shall make a written application to the Authorised Officer in which the requirement is stated in adequate detail. Such application shall be made on a date which, having regard to the date upon which the Contractor reasonably needs the instruction or information for or in connection with the provision of the Goods in accordance with the Goods Order, is neither too far away from nor too close to that date, having regard to all the circumstances including the time likely to be required by the Authorised Officer to respond to the application.
- 7.3. Each Goods Order shall be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Contractor purports to apply under any quotation, sales offer, order acknowledgement or any other document issued by the Contractor or in correspondence).
- 7.4. Each Goods Order is an offer made by the Council to the Contractor and shall be binding on the Contractor upon the acceptance thereof by the Contractor (subject to and in accordance with the provisions of this Clause 7.4). Unless previously withdrawn by the Council, a Goods Order shall be deemed accepted if not rejected by the Contractor by notice in writing within seven (7) calendar days of the date on which such Goods Order is made.
- 7.5. Where the Contractor rejects a Goods Order, it shall notify the Authorised Officer immediately following such rejection, providing with such notification full written justification for such rejection, and, if so required by the Authorised Officer, the Parties shall discuss the matter in good faith in order to resolve the issue (and, where it is not resolved within a reasonable time of such discussion, the matter shall be referred to the dispute resolution procedure set out in Clause 46 (*Dispute Resolution*) of this Contract). Where the Authorised Officer requires clarification in respect of such rejection, the Contractor shall promptly provide such additional information as the Authorised Officer may request.
- 7.6. The reference of the relevant Goods Order must be quoted on all correspondence, Delivery Notes (as defined in Clause 7.11.4 below) and all invoices relating to such Goods Order.
- 7.7. The Council reserves to itself in its absolute discretion the right to purchase or order any goods whether specified in the Goods Order or not from any person other than the Contractor.

Quality

- 7.8. The Contractor shall ensure that the Goods (and their packaging and labelling):
 - 7.8.1. correspond with their description and comply with any requirements set out in the Specification and the relevant Goods Order;
 - 7.8.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), free from design and other inherent defects and fit for any purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication;

- 7.8.3. where applicable, be free from defects in design, material and workmanship and remain so for 12 months after Delivery;
 - 7.8.4. be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and/or storage of the Goods;
 - 7.8.5. to the extent that such Goods are hazardous:
 - 7.8.5.1. be marked as such with the appropriate international danger symbols displayed and with the name of the hazardous material in English;
 - 7.8.5.2. be accompanied with transportation or other documents that include a declaration of the relevant hazard and name of the material, as well as emergency information in the form of written instructions, labels or markings;
 - 7.8.6. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods; and
 - 7.8.7. comply with all Goods Legislation, relevant EU or industry adopted standards and best practice.
- 7.9. The Council shall have the right to inspect and test the Goods at any time before and/or up to thirty (30) calendar days following Delivery Completion. If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Contractor's undertakings at Clause 7.8, the Council shall inform the Contractor and (where such breach is capable of remedy) the Contractor shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Contractor shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Contractor has carried out its remedial actions.
- 7.10. Where inspection and testing pursuant to Clause 7.9 reveals that the Contractor is in material and/or fundamental breach of contract, the Council reserves the right to terminate the Contract.

Delivery

- 7.11. The Contractor shall ensure that:
- 7.11.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 7.11.2. the Goods are separated from the Contractor's other stock on the Contractor's storage premises and are clearly labelled as the property of the Council so as to easily identify the Goods from the Contractor's other stock;
 - 7.11.3. the Goods are delivered, free of charge, to the Delivery Location(s) and shall, unless otherwise specified in the Goods Order, at its own risk unload the Goods and place them in a room or location stipulated by the Council;
 - 7.11.4. each Delivery of the Goods is accompanied by a delivery note (a "**Delivery Note**") which details the reference of the relevant Goods Order, the date and time of the actual Delivery, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

- 7.11.5. the Authorised Officer or another person authorised by the Council or the Authorised Officer signs the Delivery Note when Delivery occurs;
 - 7.11.6. if the Contractor requires the Council to return any packaging material to the Contractor, that fact is clearly stated on the Delivery Note. Any such packaging material shall be returned to the Contractor at the cost of the Contractor;
 - 7.11.7. at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
 - 7.11.8. the Goods are delivered on the Delivery Date(s) and Time(s) to the Delivery Location(s) or as otherwise instructed in writing by the Council. Completion of the Delivery (the “**Delivery Completion**”) shall occur on the completion of unloading the Goods at the Delivery Location(s) or, where the requirements of the relevant Goods Order requires the Contractor to take steps to render the Goods usable, including but not limited to installing and/or assembling the Goods, Delivery of the Goods shall be completed on the completion of such installation and/or assembly; and
 - 7.11.9. the Goods are not delivered in instalments without the Council's prior written consent. However, failure by the Contractor to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in Clause 7.21.
- 7.12. Time for delivery under this Contract shall be of the essence.
 - 7.13. The Council shall be under no obligation to accept Delivery of the Goods (or any part thereof) prior to the Delivery Date(s) and/or Time(s) but reserves the right to do so.
 - 7.14. The Council shall have the right to change its instructions to the Contractor pertaining to Delivery at any time (including any instructions set out in the relevant Goods Order or the Specification), providing it notifies the Contractor of such change(s) at least seven (7) calendar days prior to the relevant Delivery Date.

Title and risk

- 7.15. Title and risk in the Goods shall pass to the Council on Delivery Completion.
- 7.16. Where goods belonging to the Council are sent to the Contractor’s premises, or the premises of any third party authorised by the Contractor, for overhaul, repair, cleaning or the provision of any other service by the Contractor, such goods shall be at the risk of the Contractor from the time that they are handed over to the Contractor or its authorised agent until such time as they have been returned to the Council and, if so provided for on the Order, repositioned, and reconnected to the satisfaction of the Council. The property in such goods shall at all times remain with the Council and the Contractor shall clearly mark such goods as belonging to the Council and keep them separate from all other goods in the Contractor’s possession as far as it is reasonable to do so in order to complete the agreed work.

Acceptance and Rejection of Goods

- 7.17. For the avoidance of doubt, Acceptance of the Goods shall not be deemed to have occurred unless and until:
 - 7.17.1. such Goods have been delivered in accordance with all relevant requirements set out within the Goods Order and/or the Specification and these Conditions and, if applicable, been installed or assembled as required by the Goods Order and/or the Specification and made useable; and

- 7.17.2. the Council has had a reasonable time to accept such Goods, such period not being less than thirty (30) calendar days, or after any latent defect in such Goods (or part thereof) has become apparent to the Council.
- 7.18. Any Acceptance of the Goods by the Council shall be without prejudice to any rights that the Council may have against the Contractor.
- 7.19. For the avoidance of doubt, no inspection or testing by the Council, whether before or after Delivery of the Goods, nor the signing of any Delivery Note (or other document acknowledging physical receipt of any Goods on behalf of the Council) shall be deemed to constitute evidence of the Council's Acceptance or approval of the Goods for the purposes of the Sale of Goods Act 1979 (as amended or superseded) or, where the Goods are found to be defective or not in accordance with the Contract or written instructions of the Council, deemed to be a waiver of the Council's rights either to cancel or return all or any part thereof.
- 7.20. The Council may (in its absolute discretion) employ an expert to examine the Goods and if such Goods are determined by the expert not to be in accordance with the Goods Order, Specification, written instruction of the Council or this Contract then the expense of such expert examination shall be borne solely by the Contractor.

Remedies

- 7.21. Whether or not Acceptance of the Goods has occurred, if the Goods are not delivered on the Delivery Date(s) and Time(s), or do not comply with the undertakings set out in Clause 7.1 above, then without limiting any of its other rights or remedies, the Council shall have the right to any one or more of the following remedies:
- 7.21.1. reject those Goods or any part of them and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund of the Goods so returned shall be paid forthwith by the Contractor (if paid);
- 7.21.2. require the Contractor to repair or replace the rejected Goods;
- 7.21.3. require the Contractor at its own expense to remove the Goods, and where any damage whatsoever is occasioned to the Goods whilst such Goods remain at the Council Premises or during their removal by the Contractor (howsoever such damage is caused), the Council shall bear no responsibility or liability therefor;
- 7.21.4. refuse to accept further deliveries of the Goods or suspend performance of the Services pending resolution of the non-compliance to the Council's satisfaction, without liability to the Contractor;
- 7.21.5. at the Council's option, require the Contractor to take such steps, at the Contractor's cost, as are reasonably required by the Council to remedy any defect in the Goods and carry out any other work necessary to ensure that the terms of the Contract are complied with;
- 7.21.6. recover from the Contractor any costs incurred by the Council in obtaining substitute goods from a third party; and
- 7.21.7. claim damages for any other cost, loss or expenses incurred by the Council which are in any way attributable to the Contractor's failure to carry out its obligations.
- 7.22. For the avoidance of doubt, the provisions of this Clause 7 shall apply to any repaired or replacement Goods supplied by the Contractor.
- 7.23. The Contractor warrants that it has full clear and unencumbered title to all Goods to be transferred to the Council under this Contract, and that, at the Delivery Date(s) and Time(s)

in respect of such Goods, the Contractor shall have full and unrestricted rights to transfer all such items to the Council.

- 7.24. The Council's rights under this Clause 7 are in addition to the statutory terms implied in favour of the Council (so far as not inconsistent with any express terms of this Contract), including (without limitation) those terms implied under the Sales of Goods Act 1979 (as amended or superseded).
- 7.25. For the avoidance of doubt, the provisions of this Clause 7 shall survive the expiry or earlier termination of this Contract and continue in full force and with full effect without limit in point of time.

Price of Goods

- 7.26. Throughout the Contract Period, the Council reserves the right to monitor the market for Goods available through this Contract. Where it is found that goods of like quality and specification are available at lower prices than those currently available through the Contract, the Contractor shall be required to review the Contract Price. Should the Council not be satisfied with the outcome of such review, the Council reserves the right to terminate the Contract in respect of some or all of the Goods available in accordance with Clause 39.5 of this Contract.

8. NOT USED

9. CONTRACT STANDARD

- 9.1. During the Contract Period the Contractor shall provide the Goods and Services (and any variations thereof authorised under Clause 5 in accordance with the Specification and any Good Orders issued in accordance with Clauses 7.1-7.6 in a proper and skilful manner to the Contract Standard in accordance with the Contract.
- 9.2. With effect from the Commencement Date, the Contractor and all its Employees, agents, sub-contractors, and sub-consultants shall provide the Goods and Services to the following standards (the "Contract Standard"):
- 9.2.1. using all due skill care and diligence as would a competent contractor experienced in providing goods of a similar nature to the Goods and services of a similar nature, size, scope and complexity and at the same location as the Services;
 - 9.2.2. applying all reasonable professional standards and techniques;
 - 9.2.3. in accordance with the Contract Documents;
 - 9.2.4. in compliance with all the instructions issued to the Contractor by the Authorised Officer pursuant to or in connection with the Contract;
 - 9.2.5. in accordance with all Laws relevant to the provision of the Goods and Services;
 - 9.2.6. in a manner which does not prejudice the reputation and interests of the Council;
 - 9.2.7. in co-operation and liaison with Fellow Contractors as required to provide the Goods and Services; and
 - 9.2.8. in a manner consistent with the Council discharging its statutory duties to the extent that these may have an effect on the Goods and Services.
- 9.3. Without prejudice to 9.1 and 9.2, the Contractor shall notify the Council to the risk or the existence of any reason which may prevent the Contractor from providing the Goods and

Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.

10. MONITORING AND REVIEW

- 10.1. The Contractor shall institute at the Commencement Date, and maintain and keep under review throughout the Contract Period, systems designed to ensure that the Goods and Services are performed to the Contract Standard.
- 10.2. The Council reserves the right to monitor the Contractor's performance of its obligations in this Contract by any other means it considers appropriate at its absolute discretion, including unannounced inspections.
- 10.3. The Contractor shall assist the Council as necessary and undertake as requested any monitoring of the Goods and Services or of the users or recipients of the Goods and Services as the Council shall require in order for the Council to fulfil any of its statutory obligations, including, without limitation, to meet its obligations under the Equality Act 2010.
- 10.4. Throughout the Contract Period, the Parties shall work together to ensure that the Contract and the Contractor's provision of the Goods and Services represent value for money and continuous improvement for the benefit of the Council.
- 10.5. Unless expressly agreed otherwise by the Parties within (2) two calendar months following the beginning of each Contract Year, the Contractor shall prepare and submit to the Council a review ("the Annual Contract Review") which shall contain an analysis of the Goods and Services throughout the previous Contract Year, focussing on those areas that were particularly successful and those areas where the Goods and Services might have been improved and an action plan for rectifying any problems identified.
- 10.6. Subject to Clause 33 (Freedom of Information) and Clause 34 (Confidentiality), the Annual Contract Review shall be held by the Council in commercial confidence and it shall not be disclosed to anyone other than to elected members and officers of the Council directly associated with the provision of the Goods and Services, internal and external auditors of the Council, and the Council's solicitors.
- 10.7. The Contractor and the Council shall discuss the Annual Contract Review and the Council may in its absolute discretion issue instructions requiring the Contractor to implement any measure which otherwise might reasonably be considered necessary by the Council to ensure value for money.
- 10.8. At any time during the Contract Period the Council shall be entitled to carry out, either itself or by engaging a suitably qualified third party, a thorough review of the operation of the Contract and the provision of the Goods and Services, including, a value for money review. The Contractor shall offer all reasonable assistance to the Council and any independent third party in the carrying out of any such review and shall attend such meetings and provide such documents as may be reasonably requested for this purpose.

11. NOT USED

12. CONTRACT MANAGER

- 12.1. The Contractor shall during the Contract Period:

- 12.1.1. appoint and keep appointed a Contract Manager and shall at least twenty Working Days prior to the proposed date of the appointment notify the Authorised Officer of the name, office address, email address, qualifications and experience of the Contract Manager; and
- 12.1.2. give notice in writing to the Council of the removal of any notified person as a Contract Manager

and until such notice shall have been served on the Council by the Contractor the Council shall be entitled to treat as Contract Manager only the person last notified to it as such.

- 12.2. The Contract Manager shall be the authorised representative of the Contractor and be deemed to be empowered on behalf of the Contractor for all purposes connected with the Contract. In particular and without limitation, any notice, information, instruction, or other communication whatsoever given by or made to the Contract Manager shall be deemed to have been given by or made to the Contractor.
- 12.3. The Contract Manager shall be entitled to appoint one or more persons to act as his deputies and in the event that he does so shall notify the Council accordingly in writing and shall stipulate in such notice the name telephone number email address and the responsibilities allocated to such deputy.
- 12.4. The Contractor shall ensure that throughout the Contract Period the Contract Manager:
 - 12.4.1. is available to be contacted by the Authorised Officer during each Working Day and that:
 - 12.4.1.1. out of Working Hours telephone numbers and mobile telephone numbers are made available where reasonably required; and
 - 12.4.1.2. the Authorised Officer is notified as soon as is practicable but within 2 Working Days of the Contractor becoming aware that the Contract Manager is on holiday or sick leave together with the name and telephone number of a substitute alternative contact;
 - 12.4.2. consults with the Authorised Officer (and with such other of the Council's supervisory staff as may be specified by an Authorised Officer) as often as may reasonably be necessary to ensure a continuous and efficient provision of the Goods and Services in accordance with the Contract Documents;
 - 12.4.3. attends all meetings, including meetings outside Working Hours, concerned with the provision of the Goods and Services as may be reasonably requested by the Authorised Officer including, without limitation, committee meetings and meetings arranged by the Council with members of the public, other organisations, Council officers or elected members, or auditors; and
 - 12.4.4. follows and complies with all instructions or directions given by any Authorised Officer in connection with the provision of the Goods and Services.

13. AUTHORISED OFFICER

- 13.1. The Council shall, during the Contract Period, give notice in writing to the Contractor from time to time of:
 - 13.1.1. the name and contact telephone numbers and email address of any person appointed as the Authorised Officer; and
 - 13.1.2. the removal of any notified person as the Authorised Officer

and until any such notice shall have been served on the Contractor by the Council the Contractor shall be entitled to treat as Authorised Officer only the person last notified to it as such.

- 13.2. The Authorised Officer shall be entitled to appoint one or more persons to act as his deputies and in the event that he does so shall notify the Contractor accordingly in writing and shall stipulate in such notice the name telephone number email address and the responsibilities allocated to such deputy.
- 13.3. The Council shall, throughout the Contract Period, take reasonable steps to ensure that the Authorised Officer is available for consultation with the Contractor at reasonable times.
- 13.4. Unless specifically authorised for that purpose, the Authorised Officer does not have authority to amend the Contract or to relieve the Contractor of any express obligations under the Contract.

14. CONTRACT PRICE

14.1. Subject to the Contractor fulfilling its obligations under the Contract and in consideration of the Contractor properly delivering the Goods and performing the Services, the Council shall pay to the Contractor the Contract Price, which Contract Price shall be exhaustive of any amounts due to the Contractor in respect of its provision of the Goods and Services and performance of its obligations under this Contract.

14.2. The Contract Price shall be paid:

14.2.1. By way of monthly instalments within thirty (30) days of receipt of a correct invoice which specifies:

14.2.1.1. the Contract reference;

14.2.1.2. the relevant Order/s;

14.2.1.3. the ancillary Services performed during the period or periods to which the invoice relates and as specified by the Council on the any relevant Order.

And paid by way of BACS payment.

Disputed Amounts

14.3. In the event that the Council is not satisfied that a sum or sums in the invoice submitted in accordance with this Clause 14 is accurate or complete, the Council shall:

14.3.1. pay any undisputed amount within thirty (30) days; and

14.3.2. withhold any disputed amount and submit a notice to the Contractor within fifteen (15) days stating the sum which is in dispute and the reason for the dispute (a "Disputed Amount Notice").

14.4. Within 15 days of the Contractor having received the Disputed Amount Notice, the Contractor shall respond setting out how the disputed amount was calculated.

14.5. The Parties shall meet as soon as practicable following the receipt of the Contractor's response to the Disputed Amount Notice and shall attempt to resolve the dispute amicably between them. If the Parties are unable to reach agreement within sixty (60) Working Days of such meeting the Council shall be entitled to continue withholding the disputed amount and the matter shall be referred to the Dispute Resolution Procedure.

- 14.6. In the event that the outcome of the Dispute Resolution Procedure is that:
- 14.6.1. the Contractor was properly due any part of the withheld sum, the Council shall pay such part within seven Working Days together with interest thereon at the Prescribed Rate from the date on which such payment was due;
 - 14.6.2. the Council is not due to pay the Contractor (and the Contractor is not due to receive) any part of the withheld sum, such part shall be deemed deducted from the Contract Price and the Contractor shall, for the record, re-submit the invoice in the correct amount or issue a credit note.

Sub-Contractors

- 14.7. Where the Contractor enters into a sub-contract with a Sub-contractor for the purpose of performing any of its obligations under this Contract, it shall ensure that each such sub-contract contains a provision requiring:
- 14.7.1. the Contractor to pay any sums which are due from it to a Sub-contractor within 30 days from the date of a valid and undisputed invoice;
 - 14.7.2. the Contractor to consider and verify any invoices for payment submitted by a Sub-contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
 - 14.7.3. the Sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the Parties to that sub-contract, requirements to the same effect as those required in this Clause 14.16.
- 14.8. Without prejudice to any other rights or remedies of the Council whether in contract, tort (including negligence), or under statute, or otherwise, the Council shall be entitled to withhold or reduce, or make deductions from the Contract Price:
- 14.8.1. pursuant to Clause 38 (Defaults and Remedies);
 - 14.8.2. where the Contractor has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or ;
 - 14.8.3. where the Council has suffered financial loss by virtue of the Contractor overpaying a third party including, without limitation, where the Contractor in the course of carrying out its obligations under the Contract makes an overpayment of salary or makes duplicate credit payments.

15. LIABILITY AND INDEMNITY

- 15.1. Subject to the limits on maximum liability set out in Clause 15.5, the Contractor shall be liable for and shall fully and promptly indemnify the Council, its employees, agents and other contractors, against all Losses whatsoever and howsoever arising, whether directly, or in relation to any third party liabilities, out of or in connection with:
- 15.1.1. any breach by the Contractor of any of the provisions of the Contract;
 - 15.1.2. the use or occupation by the Contractor of any of the Council Premises or of any premises for which the Council has any legal responsibility;
 - 15.1.3. the use by the Contractor of any equipment or asset owned by the Council or leased, hired or otherwise under the control of or for which the Council has any legal responsibility; and

15.1.4. any negligent, other tortious or fraudulent act or omission, or breach of statutory duty by the Contractor.

For the purposes of this Clause 15.1, references to the Contractor in Clauses 15.1.1 – 15.1.4 shall include any Employee, agent or sub-contractor of the Contractor and "third party liabilities" shall mean any demands made by third parties against the Council and all liabilities of the Council to third parties.

15.2. Any requirement in this Clause 15.1 or elsewhere in these Conditions for one Party to indemnify the other shall not apply to the extent that the claim in question arises from the negligence or breach of contract of the indemnified Party.

15.3. Without prejudice to the generality of this Clause 15 the Parties' liability to each other in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse all costs and expenses reasonably incurred by the other in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.

15.4. The Contractor's liability to the Council pursuant to Clause 15.1 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Contract and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever any Bond, Guarantee or sub-contractor warranty.

15.5. Notwithstanding anything to the contrary contained in this Contract, the Contractor's liability to the Council whether arising from breach of contract, tort including negligence, breach of statutory duty or otherwise shall be limited as follows:

15.5.1. in respect of liability arising from

15.5.1.1. death or personal injury to any person caused by its negligence or that of any of its employees or agents acting in the course of their employment

15.5.1.2. a misrepresentation made fraudulently

15.5.1.3. breach of any implied term concerning title to Goods

15.5.1.4. breach of statutory duty

shall be unlimited;

15.5.2. in respect of all other types of liability falling outside those listed in Clause 15.5.1 but arising out of or in connection with the Contractor's performance of this Contract, the Contractor's liability to the Council shall be limited to **£5,000,000 (five million pounds)** for each and every occurrence or connected series of occurrences giving rise to Losses.

15.6. Notwithstanding anything to the contrary contained in this Contract, the Council's liability arising from:

15.6.1. death or personal injury to any person caused by its negligence or that of any of its employees or agents acting in the course of their employment;

15.6.2. a misrepresentation made fraudulently;

15.6.3. a breach of the terms implied by section 12 of the Sales of Goods Act 1979;

15.6.4. a breach of section 2 of the Consumer Protection Act 1987; or

15.6.5. breach of a statutory duty

shall be unlimited.

15.7. For the purposes of Clause 15.5 "In Aggregate per Year" shall mean that the limitation of liability referred to in that Clause shall be the monetary limit of liability in respect of breaches, failures or negligence committed in any Contract Year.

16. INSURANCE

16.1. Without prejudice to the Council's rights under the Contract, the Contractor shall at its own cost and throughout the Contract Period take out and maintain with reputable insurers such policy or policies of insurance as may be necessary to insure the Contractor against all manner of risks which might arise in connection with the Contractor's performance of its obligations under the Contract including (without limitation) in respect of the following policies:

16.1.1. **employers' liability** in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 such insurance cover shall be not less than £10,000,000 (ten million pounds) in respect of any one claim or series of claims arising out of any one incident;

16.1.2. **public liability and occupiers' liability** such insurance cover shall be not less than £5,000,000 (five million pounds) in respect of any one claim or series of claims arising out of any one incident;

16.1.3. **loss or damage to property** loss or destruction by reason of accident, burglary, theft, fire or otherwise of all equipment, assets, software and any premises owned or under the legal responsibility of the Contractor (including any Council property or Council's Equipment at the Contractor's own premises) and such insurance shall be sufficient to cover the full replacement value

16.1.4. **professional indemnity** such insurance cover shall be not less than £5,000,000 (five million pounds) in respect of any one claim;

16.1.5. **product liability** such insurance cover shall be not less than £5,000,000 (five million pounds) in respect of any one claim; and

and such insurance cover shall include an indemnity to principals clause.

16.2. The Contractor shall at appropriate times during the Contract Period submit to an Authorised Officer a copy of its then current insurance, together with documentary evidence that such insurance remains properly maintained.

16.3. If the Contractor fails to comply with its obligations under this Clause 16 either fully or at all, the Council shall be entitled to:

16.3.1. arrange the relevant insurance itself; and

16.3.2. charge the price of such insurance together with an administration charge of 10% (ten per cent) of such price, to the Contractor by way of (in the Council's discretion) either:

16.3.2.1. deduction from any sums payable by the Council to the Contractor under the terms of the Contract; or

16.3.2.2. recovering the same as a debt due to the Council from the Contractor.

- 16.4. The Contractor shall ensure that any sub-contractors of the Contractor maintain like insurance cover to that covered by the insurance required to be provided by the Contractor under this Clause 16.

17. AUDIT AND RECORDS

- 17.1. The Council shall retain title to all Council Data supplied to or compiled or obtained by the Contractor. The Contractor shall carefully safeguard all Council Data in relation to their security, authenticity, confidentiality and accuracy throughout the Contract Period and either pass all Council Data to the Council or, if so directed by the Authorised Officer, ensure their confidential destruction at the end of the Contract Period or earlier if the Authorised Officer reasonably considers that their lodging with the Contractor is no longer necessary for the fulfilment of the Contract. The return or destruction of such records shall be at the Contractor's expense.
- 17.2. The Contractor shall at all times both during the Contract Period and following Termination allow the Authorised Officer, internal or external auditor, the head of the Council's in-house legal department (or any person or persons nominated by a chief officer of the Council) access on reasonable notice to and/or a right of entry to any premises in the possession or under the control of the Contractor and in any way relating to or used in connection with the Goods and Services.
- 17.3. The Contractor shall at all times throughout the Contract Period and for six years thereafter (or for such other longer period as reasonably required by the Authorised Officer) maintain full, accurate, interrogable and auditable computer and/or hard copy records of all matters relating to the provision of the Goods and Services including (without limitation), costs and expenses, overheads, Employee resources, amounts charged to the Council and received from the Council, complaints from the service users who received the Goods and Services, reviews and method statements.
- 17.4. The Contractor shall provide all information or Council Data reasonably required by the Council relating to the provision of the Goods and Services within a reasonable time of any request made in writing by the Authorised Officer. Such information or Council Data shall be presented in a secure format and in such secure media as is reasonably described in the notice.
- 17.5. The Contractor shall at all times during the Contract Period and following Termination allow the Authorised Officer, (or any person or persons nominated by a chief officer of the Council):
- 17.5.1. immediate access to;
 - 17.5.2. the permission to copy and remove any copies of; and
 - 17.5.3. (if in the opinion of the Authorised Officer or chief officer nominee it is reasonably necessary or appropriate) the permission to remove the originals of;
- any books, records and information in the possession or under the control of the Contractor or any sub-contractor and in any way relating to or used in connection with the provision of the Goods and Services (including, without limitation, any Council Data stored on a computer system used by the Contractor).
- 17.6. The Contractor shall, as soon as reasonably practicable upon request by the Authorised Officer, the Council's internal or external auditors and the Local Government Ombudsman provide all information, documentation, access to Employees and assistance required by the Council or their insurers or auditors in connection with any legal proceedings, insurance

claim, third party complaint, potential claim or media interest which has, or may have, arisen out of or during the course of the Contractor's provision of the Goods and Services or the Contract.

- 17.7. The Contractor shall reimburse to the Council any sum, which the Local Government Ombudsman requires to be paid to a complainant as a result of a finding of maladministration attributable to the Contractor. In any case where the Contractor is only responsible in part for a finding of maladministration against the Council, the Contractor shall be required to reimburse to the Council an appropriate proportion of the sum payable to the complainant such proportion to be determined by the Council in its absolute discretion. Any sum to be reimbursed to the Council by the Contractor under this Clause 17.7 shall be paid by the Contractor within 28 days of receipt of written notification from the Council to do so.
- 17.8. Without prejudice to the Contractor's general obligations to provide Council Data and information to the Council on request, the Council shall be entitled to request, and the Contractor shall provide within a reasonable time, employment and relevant personal information in relation to the Employees for the purposes of anti-fraud measures such as data matching. The Contractor shall ensure that it takes any measures necessary pursuant to all applicable Data Protection Legislation and any other relevant Laws to facilitate such disclosure lawfully and fairly.
- 17.9. The provisions of this Clause 17 shall survive Termination and shall continue in force in accordance with their terms.

18. CONTRACTOR'S EMPLOYEES

- 18.1. Without prejudice to any other provision of this Clause 18, the Contractor shall at all times during the Contract Period employ sufficient Employees to ensure that the Goods and Services are provided to the Contract Standard, including (without limitation) during periods of absence of its Employees due to sickness, maternity leave, holidays, training or otherwise.
- 18.2. The Contractor shall throughout the Contract Period:
- 18.2.1. employ or engage in and about the provision of the Goods and Services only persons who are careful, honest, skilled, competent, qualified and experienced in the work they are to perform;
 - 18.2.2. ensure that every Employee engaged by the Contractor in and about the provision of the Goods and Services is and at all times remains properly and sufficiently trained, skilled and instructed with regard to the rules, procedures and statutory and regulatory requirements concerning health and safety at work and all other rules and procedures relevant to the duties which that person has to perform;
 - 18.2.3. ensure that its Employees comply with all relevant rules, codes, policies, procedures and standards of the Council including the Council Policies set out in Schedule 10 which are current or which may be notified to the Contractor by the Council from time to time and with all relevant statutes, statutory orders and regulations; and
 - 18.2.4. implement such Employee training schemes as are necessary to ensure the provision of the Goods and Services to the Contract Standard.

Disclosure and Barring Service certificate

- 18.3. No Employee shall commence their duties in connection with the Goods and Services until the Contractor if required to do so in any document forming part of this Contract has provided evidence to the Council that a satisfactory standard level (or other level approved in advance by the Authorised Officer) Disclosure and Barring Service certificate has been issued by the Disclosure and Barring Service.
- 18.4. Without affecting the Contractor's rights and obligations as an employer the Council or the Authorised Officer may, to the extent reasonably necessary to protect the standards and reputation of the Council, and following consultation with the Contractor, request the Contractor to remove from the Goods and Services or relevant part of it any person or Employee (including for the avoidance of doubt the Contract Manager and/or his deputy) and the Contractor shall forthwith comply with such request. The Council shall not in any circumstances be liable to any such person or Employee or to the Contractor in relation to any such removal and the Contractor shall fully and promptly indemnify the Council in respect of any claims brought by any such person or Employee arising from it.
- 18.5. The Contractor shall at all times during the Contract Period provide a sufficient complement of Supervisory Staff (in addition to the Contract Manager) to ensure that the Employees engaged in the provision of the Goods and Services are at all times adequately supervised and able to perform their duties to the Contract Standard.
- 18.6. The Contractor shall take all reasonable steps to ensure that no Employee in any circumstances solicits or accepts any gratuity, tip or any other form of money taking or reward, from any person in connection with the provision of all or any part of the Goods and Services other than pursuant to the terms of the Contract.
- 18.7. The commission of any act prohibited by Clause 18.6 by the Contractor or any member of Staff will be regarded by the Council as a matter of serious misconduct and, without prejudice to any of the Council's other rights under this Contract or at law:
- 18.7.1. the Authorised Officer shall be entitled in respect of the commission of any such prohibited act by an Employee to require the removal forthwith from the provision of the Goods and Services such Employee or Employees;
- 18.7.2. the Council shall be entitled in respect of the commission of any such prohibited act by the Contractor to terminate this Contract forthwith or on such period of notice as the Council may decide.
- 18.8. Notwithstanding any industrial action by Employees, it remains the Contractor's responsibility to meet the requirements of this Contract. The Contractor must inform an Authorised Officer immediately of any intended or actual dispute and/or industrial action that may affect the Contractor's ability to provide the Goods and Services to the Contract Standard.
- 18.9. In the event of industrial disputes involving persons employed directly by the Council or any of its other contractors which adversely affect the Contractor's provision of the Goods and Services, the Contractor shall co-operate with the Council to ensure the continued provision of the Goods and Services to the Contract Standard and/or subject to Clause 18.10 agree any adjustments as may be fair and reasonable in the circumstances to the Goods and Services and/or the way in which it or any part of the Goods and Services are provided and/or to these Conditions for the period during which the relevant dispute adversely affects the Contractor's provision of the Goods and Services.
- 18.10. If the provision of the Goods and Services to the Contract Standard is substantially affected by such industrial action as is referred to in Clause 18.9, then the [Contract Price shall be amended during the period of the industrial action to an amount agreed between the

Council and the Contractor or in default of such agreement, either Party may refer such matter to the Dispute Resolution Procedure and Expert in accordance with the provisions of Clause 46 (Dispute Resolution).

- 18.11. The Contractor shall at all times comply with the Immigration, Asylum and Nationality Act 2006 and any other Laws relevant to the legality of employing any person who is not a British national (together, "Immigration Legislation") and shall not employ as an Employee throughout the Contract Period any person who is not eligible to work in the United Kingdom pursuant to Immigration Legislation. Without prejudice to the generality of the foregoing, the Contractor shall comply with any and all record-keeping requirements of Immigration Legislation and provide documentary evidence that it has so complied (to the Council's reasonable satisfaction) within 14 days of any request being made by the Council.

19. NOT USED

20. COUNTER-TERRORISM AND SECURITY ACT 2015

- 20.1. The Contractor is aware of the Council's obligations under the Counter-Terrorism and Security Act 2015 including any guidance, amendments and all subsequent regulations pursuant to this Act and in particular its obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty")

- 20.2. The Contractor will:

- 20.2.1. co-operate with the Council in ensuring the Council's compliance with its requirements under the Counter-Terrorism and Security Act 2015 and the Prevent duty;
- 20.2.2. comply with any Counter-Terrorism and Security Act policy produced by the Council;
- 20.2.3. demonstrate an awareness and understanding of the risk of radicalisation within through effective leadership, working in partnership with the Council and the utilisation of appropriate capabilities in relation to the delivery of the Goods and Services;
- 20.2.4. ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel;
- 20.2.5. ensure that any Council -owned venues and resources involved in the provision of the Goods and Services do not provide a platform for extremists and are not used to disseminate extremist views;
- 20.2.6. use filtering solutions on any IT equipment made available to the general public under this Contract which limit access to terrorist and extremist material.

21. NOT USED

22. NOT USED

23. EQUALITIES AND HUMAN RIGHTS ACT

- 23.1. The Contractor shall comply with all applicable Equalities Legislation in its performance of the Contract and shall take all reasonable steps to ensure that all servants, Employees, agents and sub-contractors of the Contractor engaged in the provision of the Goods and Services do not unlawfully discriminate, harass or victimise within the meaning and scope of the Equalities Legislation. This Clause 23.1 shall be without prejudice to the Contractor's general obligation to comply with Legislation.
- 23.2. The Contractor shall not at any time unlawfully discriminate in relation to employing any person for the purposes of performing the Goods and Services on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise. For the purposes of this Clause 23.2, employing a person shall include, without limitation, recruiting, appointing, selecting, training, promoting, remunerating, subjecting to a detriment, disciplining and dismissing.
- 23.3. The Contractor shall provide such information as the Council requires to satisfy itself that the Contractor complies and will continue to comply with Clauses 23.1 and 23.2.
- 23.4. Where in connection with this Contract the Contractor, its Employees, agents or sub-contractors, are required to carry out the Goods and Services on Council Premises or alongside the Council's employees on any other premises, the Contractor shall comply with the Council's own employment policy and codes of practice relating to equality and equal opportunities, including those set out in the Code of Practice copies of which are available on request from the Council.
- 23.5. Without prejudice to the generality of Clauses 23.1 and 23.2, the Contractor shall at all times comply with the Equality Act 2010 (the "Act") in respect of its treatment of its Employees and in the provision of the Goods and Services. In particular, the Contractor shall in its performance of the Contract take (and shall ensure that its servants, agents, Employees and sub-contractors take) all reasonable steps to eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Act) and persons who do not share it; and foster good relations between persons who share such a protected characteristic and persons who do not share it. The Contractor shall also ensure that it and its servants, agents, Employees and sub-contractors provide all relevant information in this regard to the Council so that the Council can assess its own compliance with its general and specific duties under the Act.
- 23.6. The Contractor shall comply with the Equality Act 2010 Code of Practice on Employment and the Equality Act 2010 Code of Practice on Equal Pay (the "Codes") (or any replacement guidance and/or publication) issued by the Equality and Human Rights Commission. In particular, and without prejudice to the foregoing, the Contractor shall operate an equal opportunities policy which, so far as practicable, complies fully with the practical guidance, recommendations and advice set out in the Codes.
- 23.7. The Contractor shall inform the Council as soon as it becomes aware of any legal, tribunal or court proceedings, ombudsman enquiries or arbitrations brought against the Contractor under the Equalities Legislation or of any judgments, convictions (not spent or exempted

under the Rehabilitation of Offenders Act 1974), awards or settlements arising from such matters and shall, at its own cost, provide the Council with such further information and documentation as may reasonably be required in relation thereto. In the event that any breaches of the Council's duties under the Equalities Legislation are found to have occurred due to the acts or omissions of the Contractor or its servants, Employees, agents or sub-contractors, the Contractor shall indemnify the Council against any Losses that it suffers as a result.

- 23.8. The Contractor shall, no later than twelve months from the Commencement Date and annually thereafter submit a report to the Council demonstrating its compliance with this Clause 23.
- 23.9. In the event that the Contractor subcontracts any or a substantial part of its obligations under this Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this Clause 23.
- 23.10. The Contractor shall (and shall procure that its Employees shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. 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.

24. HEALTH AND SAFETY

- 24.1. The Contractor shall, in performing the Goods and Services, at all times comply with the Health and Safety at Work Act 1974 and all regulations, guidance, codes of practice issued or made under it from time to time or by any body with responsibility for the enforcement of health and safety Laws.
- 24.2. Without prejudice to the generality of its obligations in Clause 24.1 the Contractor shall, in performing the Goods and Services ensure that it and its Employees, or any other person acting on behalf of the Contractor:
 - 24.2.1. are suitably competent, qualified, inducted, instructed and trained to undertake the task for which they are employed;
 - 24.2.2. carry out risk assessments and implement appropriate control measures as reasonably required in relation to each task that it or any Employee or any other person acting on behalf of the Contractor is required to carry out in relation to the Goods and Services, ensuring that they are specific to the Goods and Services they are carrying out on behalf of the Council;
 - 24.2.3. adopt safe methods of work in order to protect the health and safety of its Employees, Council staff, and any other persons including (without limitation) members of the public;
 - 24.2.4. comply with all relevant parts of the Council's Policies relating to health and safety including any relevant permit to work arrangements and fire and safety arrangements prior to commencement of the Goods and Services;
 - 24.2.5.
 - 24.2.5.1. are equipped with appropriate equipment, including appropriate personal protective equipment (PPE), in order to provide the Goods and Services safely; and
 - 24.2.5.2. all such equipment shall meet or exceed the minimum safety standards required by statute at the time of use, shall comply fully

with the relevant British, European and International Standards and is maintained so that it is safe in use; and

24.2.5.3. any work equipment is constructed or adapted so as to be suitable for the purpose and location for which it is used or provided.

24.3. The Contractor shall:

24.3.1. maintain and review its health and safety policy and safe working procedures as often as may be necessary in the light of changing Laws, working practices or any other factor whatsoever, and shall notify the Council in writing of such revisions; and

24.3.2. comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Contractor's health and safety procedures and/or policies; and

24.3.3. have in place at all times throughout the duration of this Contract appropriate and up to date procedures for dealing with accidents and emergencies which procedures shall be communicated to all Employees and periodically tested, with such testing to be formally recorded.

24.4. For the avoidance of doubt the Council shall not be obliged to make and the Contractor shall not be entitled to receive any additional payment by reason of:

24.4.1. any steps which the Council requires the Contractor to take in order to comply with its obligations under in this Clause or for health or safety reasons generally (including at the Council's request the appointment of an independent health and safety adviser to review the Contractor's working procedures); and/or

24.4.2. any part of the Goods and Services being omitted whether temporarily or permanently for health or safety reasons.

25. SUSTAINABILITY

25.1. The Contractor shall ensure in its provision of the Goods and Services that it uses wherever possible working methods, equipment, materials and consumables which minimise environmental damage.

25.2. Without prejudice to the generality of Clause 25.1 the Contractor shall use its reasonable endeavours to ensure that:

25.2.1. waste packaging is recycled or appropriately disposed of where such packaging cannot be recycled;

25.2.2. other than when a specific delivery time is stipulated by the Council that goods are delivered outside peak traffic times where practicable in relation to the provision of the Goods and Services;

25.2.3. in providing the Goods and Services it complies with any codes of practice or the like in relation to sustainability and / or environmental protection issued by the Council from time to time and notified to the Contractor.

25.3. The Contractor shall comply with the environmental policies, if any, that are set out in Schedule 10 (Council Policies).

26. PROPERTY AND EQUIPMENT

- 26.1. For the purposes of this Clause 26 the Tender Documents shall mean all the documents and each of them that were provided to tenderers by the Council during the tender process leading to the award of this Contract.

Contractor's Equipment

- 26.2. Notwithstanding the provisions of Clauses 26.7 to 26.13 inclusive the Contractor shall ensure that throughout the Contract Period it supplies or makes available in good condition and in working order and within the Contract Price all such resources and equipment as may be necessary for the proper provision of the Goods and Services to the Contract Standard including, without limitation, Employees, labour, machinery, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and vehicles (the "Contractor's Equipment").
- 26.3. The Contractor shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Goods and Services are paid and up to date throughout the Contract Period and that the Contractor's Equipment is properly maintained and replaced when necessary.
- 26.4. Any vehicles used in the performance of the Contract shall be maintained by the Contractor in a safe condition, must be fully insured and must be certified as roadworthy.
- 26.5. Any specialist equipment used in the performance of the Contract shall be maintained by the Contractor in accordance with the manufacturer's instructions, and must not be used or modified in such a way as to negate or diminish any warranty or insurance cover which may relate to the equipment or create an additional risk to users of that equipment.
- 26.6. To the extent if at all that the Tender Documents or any of them required it to do so the Contractor shall ensure that the Council's logo or other insignia as specified in the Contract Documents is printed and is clearly visible on all forms of communications and advertisements used in connection with the Goods and Services (which shall include but not be limited to stationery and electronic correspondence), and on such of the Contractor's Equipment as may be requested by the Authorised Officer (which shall include but not be limited to uniforms and vehicles).

Council Equipment

- 26.7. Insofar as the Contractor will use in connection with the provision of the Goods and Services any Council Equipment offered by the Council, the Council shall make such Equipment available to the Contractor but in no circumstances may any Council Equipment be moved to any premises other than the Council's Premises without the Authorised Officer's written consent.
- 26.8. Any equipment to which clause 26.7 applies will be made available to the Contractor free of charge.
- 26.9. The Contractor shall use the Council Equipment solely in connection with the provision of the Goods and Services and shall make good any damage to the Council Equipment caused by the Contractor, its sub-contractors, Employees, servants or agents. Any damage shall be remedied by the Contractor in accordance with the reasonable instructions of the Authorised Officer and all costs incurred in complying with this Clause shall be borne by the Contractor. The Contractor shall inform an Authorised Officer immediately of any act of vandalism or damage to the Council Equipment observed by the Contractor or its Employees or sub-contractors and the Contractor shall use its reasonable endeavours to ensure that the

vandalism or damage ceases and to ascertain the identity of the perpetrators and to inform the Authorised Officer immediately and the police or fire brigade, if appropriate, of the same.

- 26.10. The Council does not guarantee, warrant or give any assurances as to the age or state of repair or suitability for use in the Service of any item of Council Equipment and the Contractor hereby acknowledges that it has carried out its own due diligence including inspections of such equipment and has satisfied itself as to the condition and suitability of each item of such equipment for use in the provision of the Service and accordingly the Contractor shall not be relieved from any liability in relation to any failure to provide the Service or any part of it where such failure is caused by a failure in of or the unsuitability of any Council Equipment.
- 26.11. The Council's Equipment shall remain the property of the Council and shall be delivered up to the Council at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment which was not Council Equipment shall remain the property and responsibility of the Contractor or relevant third party and shall not, unless expressly provided to the contrary in the Contract Documents, be delivered up to the Council at the end of the Contract Period.

27. PREMISES

27.1. LICENCE TO USE DESIGNATED SPACE

- 27.1.1. The Council grants to the Contractor a licence to use the Designated Space for the purpose of the provision of the Goods and ancillary uses solely in connection with the provision of the Services ("the Licence").
- 27.1.2. The Licence shall commence on the Commencement Date and shall run until the Contract is determined.
- 27.1.3. The Contractor undertakes with the Council to use the Designated Space in a reasonable and proper manner and not to cause nor permit any damage to the Designated Space.
- 27.1.4. At the termination of the Licence, the Contractor shall leave the Designated Space in at least as good a condition as at the commencement of the Licence and otherwise clean and tidy.
- 27.1.5. The Council and the Contractor agree that it is not the intention of either Party to create between them the relationship of landlord and tenant.
- 27.1.6. Possession and control of the Designated Space shall at all times remain vested in the Council and the Contractor shall not have any estate or interest in it or any part of it.
- 27.1.7. The Contractor shall not at any time be entitled to use the Designated Space to the exclusion of the Council or any others from time to time entitled and in particular the Council and others authorised by it shall with reasonable prior notice (except in the case of an emergency) have the right to enter the Designated Space at any time and for any reason.
- 27.1.8. The Licence is personal to the Contractor and the Contractor shall not (and shall have no power to) authorise any other person except its Employees to use the Designated Space.

27.1.9. In the event that this Contract is terminated for any reason or upon its expiry the Contractor shall immediately upon such termination or expiry vacate the Designated Space.

28. SMOKE FREE REGULATIONS

- 28.1. The Contractor shall use reasonable endeavours to ensure that its Employees, subcontractors and agents and their employees and any other person engaged directly or indirectly by it in the performance of this Contract shall comply with part 1 of the Health Act 2006 thereby ensuring that premises, places and vehicles which fall within the provisions of the Health Act 2006 are smoke free.
- 28.2. In the event of a contravention of the Health Act 2006 the Contractor shall forthwith remove the person who has caused the contravention by smoking and replace him/her with a replacement person with sufficient education and/or training and experience to fulfil the obligations of the Contractor under the Contract.
- 28.3. In the event of a breach of this Clause 28 (and in this respect breach shall mean two or more contraventions in any 12 month period) the Council shall be entitled to terminate this Contract in accordance with Clause 39 (Termination).
- 28.4. For the avoidance of doubt, smoking is permitted provided that the Employee is a minimum of 15 metres from entrances and exits to Council buildings.

29. BRITISH AND ENVIRONMENTAL STANDARDS

- 29.1. Where appropriate British or European Standards and codes of practice exist, all materials used and supplied in the provision of the Goods and Services shall, as a minimum requirement, be in accordance with those standards, without prejudice to any higher standard required elsewhere in the Contract.
- 29.2. In all matters connected with the Goods and Services, the Contractor shall adopt, implement, maintain, and keep under review throughout the Contract Period systems designed to ensure good environmental practice and shall comply with, all relevant Council environmental policies.
- 29.3. The Contractor shall endeavour to recycle relevant materials and shall dispose of all waste pursuant to the Environmental Protection Act 1990 and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (if applicable).
- 29.4. The Contractor shall ensure that every Employee is made aware of and complies with the Council's environmental policies.

30. CONTRACTOR'S COMPUTER SYSTEMS

- 30.1. In relation to any computer system which the Contractor uses in connection with its provision of the Goods and/or Services ("Contractor's System"), the Contractor shall ensure that such computer system is at all times throughout the Contract Period such as to enable the Contractor to comply with its obligations under the Contract and in particular (but without limitation) to provide the Goods and/or Services to the Contract Standard. Should the Council so require, the Contractor shall ensure that such computer system is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's relevant computer system.

- 30.2. The Contractor shall ensure that at all times during the Contract Period (and until any computerised Data has been returned to the Council in accordance with the provisions of the Contract) it has in place adequate and robust business continuity and disaster recovery procedures that are in accordance with good data management and security practice and that shall include as a minimum undertaking a full back up of all Data at least once per day so that in the event of the partial or total failure of the Contractor's computer system the Contractor shall be able to continue to provide the Goods and/or Services without interruption and comply with its remaining obligations under this Clause 30
- 30.3. The Contractor shall ensure that any licences in relation to software to be used in connection with the provision of the Goods and/or Services allow for the software to be tested by the Council on a machine and at a location to be determined by the Council and allow the Council to so test all such software before it is used operationally by the Contractor if it so requests.
- 30.4. The Contractor shall ensure that throughout the duration of this Contract it has in placed a good quality robust firewall and virus protection software so as to guard against any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap, disabling device, malicious code, or other contaminants or similar form of code intended (or having that effect) to cause harm, damage, or to prevent or restrict the use of any computer system or data.
- 30.5. The Council shall, free of charge, either in hard copy or in computerised form (as appropriate) provide the Contractor with such Data as is necessary in its opinion for the Contractor to perform the Goods and/or Services.

31. INTERCEPTION OF COMMUNICATIONS

- 31.1. The Contractor acknowledges and accepts that:
- 31.1.1. the Council's systems enable it to monitor telephone, email, voicemail, internet and other communications made using any Council equipment including laptops, telephones and mobile phones;
 - 31.1.2. for business reasons, and in order to carry out legal obligations in its role as an employer, use of the Council's systems (including the computer systems, telephone systems and mobile phone systems), and any personal use of them, may be continually monitored by automated software or otherwise; and
 - 31.1.3. monitoring by the Council is only carried out to the extent permitted or as required by Law and as necessary and justifiable for business purposes.
- 31.2. The Council reserves the right to retrieve the contents of email messages or to check telephone or mobile phone or internet usage (including pages visited and searches made) as reasonably necessary in the interests of its business, including for the following purposes (this list is not exhaustive):
- 31.2.1. to monitor whether use of the email system, telephone system, mobile phone system or the internet is legitimate and in accordance with this Clause 31;
 - 31.2.2. to find lost messages or to retrieve messages lost due to computer failure;
 - 31.2.3. to assist in the investigation of alleged wrongdoing; and
 - 31.2.4. to comply with any legal obligation.
- 31.3. The Contractor shall ensure that at all times all of its Employees, agents, sub-contractors and sub-consultants engaged by it in connection with the performance of any of its obligations arising under from or in connection with this Contract are notified of the Council's rights in

relation to the monitoring of communications under this Clause 31 and have provided their prior consent to such monitoring by the Council.

32. DATA PROTECTION

- 32.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and that the Contractor is the Data Processor. The only processing that the Contractor is authorised to do is listed in Schedule 4 by the Council and may not be determined by the Contractor.
- 32.2. The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 32.3. The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
 - 32.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 32.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 32.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 32.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 32.4. The Contractor shall:
 - 32.4.1. process the Personal Data only in accordance with Schedule 4, unless the Contractor is required to do otherwise by Laws. If it is so required the Contractor shall promptly notify the Council before processing Personal Data unless prohibited by Laws;
 - 32.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - 32.4.2.1. nature of the data to be protected;
 - 32.4.2.2. harm that might result from a Data Loss Event;
 - 32.4.2.3. state of technological development; and
 - 32.4.2.4. cost of implementing any measures;
 - 32.4.3. ensure that :
 - 32.4.3.1. its Employees do not process Personal Data except in accordance with this Contract (and in particular Schedule 4);
 - 32.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any of its Employees who have access to the Personal Data and ensure that they:
 - 32.4.3.2.1. are aware of and comply with the Contractor's duties under this clause;

- 32.4.3.2.2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - 32.4.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - 32.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 32.4.4. not transfer any Personal Data to any country or territory outside the European Economic Area without the prior written consent of the Council and unless the following conditions are fulfilled:
- 32.4.4.1. the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - 32.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 32.4.4.3. 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
 - 32.4.4.4. the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 32.4.5. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Laws to retain the Personal Data.
- 32.5. subject to clause 32.6 notify the Council immediately if it receives:
- 32.5.1. a Data Subject Access Request (or purported Data Subject Access Request) ;
 - 32.5.2. a request to rectify, block or erase any Personal Data;
 - 32.5.3. any other request, complaint, communication relating to either Party's obligations under the Data Protection Legislation;
 - 32.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 32.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 32.5.6. becomes aware of a Data Loss Event.
- 32.6. The Contractor's obligation to notify under clause 32.5 shall include the provision of further information to the Council in phases, as details become available.
- 32.7. Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 31.5 (and insofar as

- possible within the timescales reasonably required by the Council) including by promptly providing:
- 32.7.1. the Council with full details and copies of the complaint, communication or request;
 - 32.7.2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 32.7.3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 32.7.4. assistance as requested by the Council following any Data Loss Event;
 - 32.7.5. assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 32.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 32.8.1. the Council determines that the processing is not occasional;
 - 32.8.2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 32.8.3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 32.9. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 32.10. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- 32.10.1. notify the Council in writing of the intended Sub-processor and processing;
 - 32.10.2. obtain the written consent of the Council;
 - 32.10.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 32 such that they apply to the Sub-processor; and
 - 32.10.4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 32.11. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 32.12. The Contractor make available to the Council, at reasonable intervals and within twenty one (21) days following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council.
- 32.13. The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 32.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 32.15. The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 32.16. The Contractor shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 32 by the Contractor and/or any act or omission of any sub-contractor.
- 32.17. The provisions of this Clause 32 shall apply during the continuance of the Contract and indefinitely after its Termination.

33. FREEDOM OF INFORMATION

- 33.1. The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 33.1 to 33.4 (inclusive) below.
- 33.2. Where the Council receives a Request for Information in relation to Information that the Contractor is holding on its behalf the Council shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information and the Contractor shall:
 - 33.2.1. provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within five (5) Working Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
 - 33.2.2. provide all necessary assistance as reasonably requested by the Council in connection with any such Information, 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 Regulations.
- 33.3. Following notification under Clause 33.2 and up until such time as the Contractor has provided the Council with all the Information specified in Clause 33.1, the Contractor may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining at its absolute discretion:-
 - 33.3.1. whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
 - 33.3.2. whether the Information is to be disclosed in response to a Request for Information, and
 - 33.3.3. in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Council.

- 33.4. The Contractor shall ensure that all Information held on behalf of the Council is retained for disclosure for at least 6 years (from the date it is acquired) and shall permit the Council to inspect such Information as requested from time to time.
- 33.5. The Contractor acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 33.3.3.
- 33.6. In the event of a request from the Council pursuant to Clause 33.2 above, the Contractor shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform the Council of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Council shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under Section 10 of the FOIA. In such case, the Council shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Council is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 33.7. The Contractor acknowledges that (notwithstanding the provisions of Clause 34 (Confidentiality)) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:-
- 33.7.1. in certain circumstances without consulting with the Contractor, or
- 33.7.2. following consultation with the Contractor and having taken their views into account.

Provided always that where Clause 33.7.1 applies, the Council shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

34. CONFIDENTIALITY

- 34.1. The Contractor acknowledges the Council's obligations under the Government's transparency agenda principles and that the Council will publish on its website or in other alternative media:
- 34.1.1. this Contract and Schedule 1 (Definitions); and
- 34.1.2. Schedule 2 (Specification)
- 34.1.3. the Contract reference number;
- 34.1.4. the title of Contract;
- 34.1.5. the local authority department responsible;

- 34.1.6. the description of the goods and/or services being provided;
- 34.1.7. the name and details of the Contractor;
- 34.1.8. the sum to be paid over the length of the Contract or the estimated annual spending or budget for the Contract;
- 34.1.9. Value Added Tax that cannot be recovered;
- 34.1.10. the start, end and review dates;
- 34.1.11. whether or not the Contract was the result of an invitation to quote or a published invitation to tender; and
- 34.1.12. whether or not the Contractor is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number

and acknowledges that such information shall not be treated as Confidential Information and may be disclosed without restriction.

34.2. Each Party:

- 34.2.1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 34.2.2. shall not disclose any Confidential Information belonging to the other Party to any person without the prior written consent of the other Party except where disclosure is otherwise expressly permitted by the provisions of this Contract.

34.3. The Contractor shall not use any Confidential Information issued or provided by or on behalf of the Council in connection with the Contract otherwise than for the purpose of the Contract (except with the prior written consent of the Council).

34.4. Without prejudice to the generality of its obligations under Clauses 34.2 and 34.3 the Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:

- 34.4.1. is given only to such of the Contractor's Employees, sub-contractors, professional advisers or consultants as is strictly necessary for the performance of the Contract and only to the extent reasonably required for the performance of the Contract; and
- 34.4.2. is treated as confidential and not disclosed or used (except in either case with the prior written consent of the Council) by any Employees, sub-contractors, professional advisers or consultants otherwise than for the purposes of performing its obligations under the Contract.

34.5. The provisions of Clauses 34.2 to 34.3 inclusive shall not apply to any information:

- 34.5.1. which is already in the public domain other than through previous default by the Party making the disclosure or any other person to whom that Party is permitted to disclose such information under the Contract;
- 34.5.2. where disclosure is required to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor or any of its Sub-Contractors;
- 34.5.3. which is required to be disclosed by law whether under the FOIA or EIR or otherwise save where that information is exempt from disclosure under section 41 of the FOIA;

- 34.5.4. which is required to be disclosed by order of a court of competent jurisdiction;
 - 34.5.5. where disclosure is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory Council having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory Council concerned;
 - 34.5.6. which was obtained from a third party without obligation of confidentiality;
 - 34.5.7. which was already in the possession of the Party making the disclosure without restrictions as to its use before it came into that Party's possession or knowledge as a result of or in connection with the Contract;
 - 34.5.8. which is reasonably required by any person engaged in the performance of their obligations in relation to the Contract for the performance of those obligations;
 - 34.5.9. any provision of information to the parties' own professional advisers or insurance which is are reasonably required by them;
 - 34.5.10. disclosed by the Council relating to the Goods and/or Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new Contractor, its advisers and lenders should the Council decide to re-tender this Contract;
 - 34.5.11. any registration or recording of the property registration required; and
 - 34.5.12. any disclosure of information by the Council to any other department, office or agency of the Government or their respective advisors or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Contract;
- 34.6. In the case of any disclosure by the Contractor pursuant to Clause 34.5.8 if the Council considers it desirable, the Contractor shall first obtain from the person to whom disclosure is to be made a confidentiality undertaking in substantially similar terms to those contained in this Clause 34.
- 34.7. The Contractor shall not make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of the Contract or the Goods and/or Services without obtaining the Council's prior written approval as to the contents thereof and the manner of its presentation and publication.
- 34.8. Where under this Clause 34 the consent or approval of a Party is required, such consent or approval shall be at the entire discretion of that Party.
- 34.9. The provisions of this Clause 34 shall survive Termination and shall continue in full force and effect without limit in point of time.

35. WHISTLEBLOWING

- 35.1. Pursuant to the Public Interest Disclosure Act 1999, the Contractor shall notify the Council's Head of Audit Services immediately of any serious concerns about any aspect of Council work including procedures and /or individuals working for and on behalf of the Council.
- 35.2. Any disclosure made by the Contractor pursuant to Clause 35.1 shall be treated in the strictest confidence.

36. BRIBERY ACT 2010

- 36.1. The Contractor shall ensure it has robust policies and procedures in place to prevent bribery being committed by itself, its Employees or any third party undertaking work with, for or on behalf of the Contractor.
- 36.2. For the avoidance of doubt, bribery is an act or inducement to advantage another person with the intention of persuading that person to act improperly or in contravention of known and unknown accepted behaviour. This is applicable in instances of both offers and requests to subvert normally acceptable levels of conduct.
- 36.3. Without prejudice to the remedies under the Bribery Act 2010, the Council may terminate this Contract pursuant to Clause 39 and the Proceeds of Crime Act in the event that the Contractor(s), its Employees or any third party undertaking work with, for or on behalf of the Contractor has committed an offence under the Bribery Act 2010.
- 36.4. In the event that the Council suspects that an offence under the Bribery Act 2010 has been committed, payments to the Contractor(s) may be suspended until such time as satisfactory assurance can be provided to the Council of no wrongdoing.
- 36.5. Where a Contractor becomes aware of breaches of the Bribery Act 2010 by a Council employee or agent acting on behalf of the Council, the Contractor shall immediately notify the Council's Head of Audit Services.

37. INTELLECTUAL PROPERTY RIGHTS

- 37.1. This Contract, together with any Council Data and Intellectual Property Rights in it, shall be the exclusive property of the Council.
- 37.2. All Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or developed by the Contractor in connection with provision of the Goods and Services shall vest in and be the property of the Council provided that in the event that any such Intellectual Property Rights do not vest in the Council by operation of law the Contractor shall execute or cause to be executed including by any Employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Council with full title guarantee.
- 37.3. The Contractor shall not cause or permit anything which may damage or endanger the intellectual property of the Council or the Council's title to it, nor assist or allow others to do so.
- 37.4. The Contractor shall not in connection with the provision of the Goods and Services use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.
- 37.5. The Contractor assigns to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Goods and Services.
- 37.6. The Contractor shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council in accordance with Clause 37.5.
- 37.7. The Contractor shall notify the Council on becoming aware of:

- 37.7.1. any information prejudicial to, and/or actual, threatened or suspected complaint or proceedings brought by, any third party (including, without limitation, by any user or recipient of the Goods and/or Services) in any way connected with the Goods and/or Services and relating to the Council, the Contractor or its sub-contractors or any Fellow Contractor; or
 - 37.7.2. any actual, threatened, attempted or suspected infringement by any third party of any of the Council's Intellectual Property Rights including (without limitation) any seizure of or other interference with Data (an "Infringement").
- 37.8. The Contractor shall use its best endeavours to assist, co-operate with and follow the instructions of the Council in relation to any Infringement, including (without limitation) in protecting and/or defending the Council's Intellectual Property Rights against any infringing party and, at the Council's request or the request of the Council's insurers, the Contractor shall entrust the conduct of any proceedings in relation to any such Infringement to the Council.

Licence granted by the Contractor

- 37.9. The Contractor hereby grants to the Council and any Council Related Body a licence of the Contractor Software and the Contractor's Background IPRs on the Standard Licence Terms.
- 37.10. The Contractor shall procure that the owners or the authorised licensors of any Third Party Software hereby grants a direct licence to the Council.
- 37.11. The Contractor shall, if requested by the Council in accordance with the exit provisions in the Specification grant or procure the grant to the Replacement Contractor of a licence to Use any Contractor Software, Contractor's Background IPRs or Third Party Software subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.
- 37.12. The Contractor hereby grants to the Council a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Goods and/or Services or that is incidental to the exercise of the rights granted to the Council under this Contract.

Licences Granted by the Council

- 37.13. The Council hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Council Software, the Council System, the Council Background IPRs and the Council Data solely to the extent necessary for performing the Goods and/or Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
 - 37.13.1. any relevant Sub-contractor has entered into a confidentiality undertaking with the Contractor on the same terms as set out in Clause 33 (*Confidentiality*); and
 - 37.13.2. the Contractor shall not, without the Council's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Council.
- 37.14. In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 37.13 and any sub-licence granted by the Contractor in accordance with Clause 37.13 shall terminate automatically on the date of such termination or expiry and the Contractor shall:
 - 37.14.1. immediately cease all use of the Council System, the Council Software, the Council Background IPRs and the Council Data (as the case may be);

- 37.14.2. at the discretion of the Council, return or destroy documents and other tangible materials that contain any of the Council Software, the Council Background IPRs and the Council Data, provided that if the Council has not made an election within 6 months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Council Software, the Council Background IPRs and the Council Data (as the case may be); and
- 37.14.3. ensure, so far as reasonably practicable, that any Council Software, Council Background IPRs and Council Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Contractor computer, word processor, voicemail system or any other Contractor device containing such Contractor Software, Contractor Background IPRs and/or Contractor Data.

The Council’s Responsibilities

- 37.15. The Council shall:
 - 37.15.1. Provide the Contractor with access to the Council’s System;
 - 37.15.2. Support the Contractor in relation to the Council’s System by responding to technical questions during implementation;
 - 37.15.3. Obtain reasonable assistance for the Contractor from the third party provider of the Council’s System as is necessary for the Contractor to perform its obligations under this Contract provided always that:
 - 37.15.3.1. the Contractor has made reasonable requests for such assistance from the third party providers and such assistance has not been forthcoming; and
 - 37.15.3.2. the Contractor has notified the Council of such failure to provide reasonable assistance as soon as practicable

Intellectual Property Rights Indemnity

- 37.16. The Contractor agrees to indemnify the Council and keep it indemnified at all times, during and after the Contract Period, against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any claim by any third party that their Intellectual Property Rights have been infringed in any way by the provision of the Goods and/or Services or anything supplied created or done by the Contractor in connection with such provision.

38. DEFAULTS AND REMEDIES

Remedies Available to the Contractor

- 38.1. Interest

In the event that any undisputed invoice correctly rendered by the Contractor remains unpaid by the Council after 30 (thirty) days the Contractor shall notify the Council in writing giving the Council 15 (fifteen) further calendar days to pay such an invoice. If the invoice remains unpaid, the Contractor shall be entitled to charge interest from the date on which the 15 day period expired at the Prescribed Rate. The Parties agree that this Clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.
- 38.2. Relief from Liability

The Contractor shall not be liable to the Council for a Performance Default that is directly caused by a breach of this Contract by the Council or Fellow Contractor (a “Relief Event”) provided that the Contractor has notified the Council in writing as soon as it has come to the Contractor's attention that a Relief Event has or will occur.

Remedies available to the Council:

38.3. Performance Defaults

38.3.1. In the event of a Performance Default the Council shall issue a notice (a “Default Notice”) to the Contractor which shall specify the Performance Default and in the event that such default is capable of remedy shall require the Contractor to take steps to remedy the Performance Default and to take steps (which may be specified) to prevent any recurrence of the Performance Default, or similar Performance Defaults at no cost to the Council.

38.3.2. The Contractor shall commence the taking of all such specified steps forthwith and any failure to do so and/or compliance with the Default Notice in full will also constitute a Performance Default.

38.4. In the event that one or more of the following occurs:

38.4.1. the Contractor fails to remedy a Performance Default in accordance with the Default Notice issued by the Council; or

38.4.2. the Performance Default is in relation to a material breach of this Contract; or

38.4.3. the Contractor is issued with more than three (3) Default Notices (whether or not relating to the same or similar breaches) in any continuous 6-month period and irrespective of whether any or all Performance Defaults specified in any Default Notices have been remedied or specified steps have been undertaken in accordance with such Default Notices;

the Council may give notice to the Contractor that the Council, in its absolute discretion, is exercising one of the following options:

38.4.4. without determining this Contract in whole or in part, provide or cause to be provided other than by the Contractor, such part of the Goods and/or Services as the Council may nominate until such time as the Contractor shall have proved to the reasonable satisfaction of the Council that such part of the Goods and/or Services will be carried out by the Contractor to the Contract Standard; or at the Council's option, until such later date as the Council may specify as being in its opinion a reasonable date upon which the Contractor will be able to provide such part of the Goods and/or Services; or

38.4.5. without determining the whole of this Contract, determine part of this Contract in respect of such part of the Goods and/or Services as the Council may nominate and thereafter the Council may provide, or cause to be provided other than by the Contractor, such part of the Goods and/or Services; or

38.4.6. terminate this Contract in accordance with the provisions of Clause 39 (“Termination”).

38.5. Other Remedies

38.5.1. In addition to the matters set out above, if the Contractor commits a Performance Default the Council shall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute or otherwise, to take all or any of the following measures:

- 38.5.1.1. withhold any further payments or instalments of the Contract Price until the Contractor has remedied, or mitigated the Performance Default as stated in the Default Notice;
- 38.5.1.2. deduct from any future payment to the Contractor or from any future instalment of the Contract Price or recover as a debt due any reasonable, justifiable and demonstrable losses, costs and expenses of the Council or any Fellow Contractor suffered directly as a result of the Contractor's Performance Default together with an administration charge of 10% of such sum or sums (Deduction). If there is any dispute between the Council and the Contractor as to the amount of such Deduction, the matter shall be referred to the Dispute Resolution Procedure;
- 38.5.1.3. remedy the Performance Default itself or engage a third party to do so and to recover from the Contractor by way of deduction from the Contract Price or otherwise the reasonable cost that the Council incurs in so doing (where the Performance Default is capable of remedy).

39. TERMINATION

- 39.1. Without prejudice to any other rights and remedies it may possess including its right of termination under Clause 38 above, if any one or more of the following matters occurs, the Council shall be entitled to terminate the Contract (at the absolute discretion of the Council) forthwith or on a specified date and in whole or in part by issuing a notice to that effect ("Termination Notice"). The right of the Council to terminate shall be a contractual right pursuant to this Clause 39 and/or a common law right. The matters referred to in this Clause are:
 - 39.1.1. The Contractor being in material breach, which is not remedied within a reasonable time or repeatedly failing to meet the Contract Standard as determined by the Council in its reasonable discretion resulting in the Council being deprived of substantially the whole benefit of any aspect of the Contract;
 - 39.1.2. The Contractor having been served with written notice under Condition 38.4;
 - 39.1.3. The Contractor having failed to provide a substantial part of the Goods and/or Services for a period of seven (7) consecutive days;
 - 39.1.4. The Contractor has committed two or more contraventions of its obligations under Clause 28 (Smoke Free Regulations) in any 12 (twelve) month period during the Contract Period; or
 - 39.1.5. the Contractor or any of its Employees or agents acting or purporting to act on the Contractor's behalf commits an act which is an offence under the Enterprise Act 2000; or
 - 39.1.6. if there is an Insolvency Event; or
 - 39.1.7. the Contractor ceases, or threatens to cease, to carry on business; or
 - 39.1.8. the Council reasonably apprehends that any of the events in Clauses 39.1.6 and 39.1.7 inclusive is about to occur in relation to the Contractor and notifies the Contractor accordingly; or

- 39.1.9. the Contractor or any of its Employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Contract or to any other contract with the Council; or
 - 39.1.10. the Contractor or any of its Employees shall have committed any offence under the Bribery Act 2010; or
 - 39.1.11. the Contractor or any of its Employees have given any reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
 - 39.1.12. the Contractor or any of its Employees have committed an act of fraud; or
 - 39.1.13. the Contractor misuses or infringes any of the Intellectual Property Rights of the Council or Council's Equipment or uses the same without the prior written consent of the Council other than in the provision of the Goods and/or Services; or
 - 39.1.14. the discovery of a misrepresentation by the Contractor during the tendering process which induced the Council to enter into the Contract; or
 - 39.1.15. any other breach by the Contractor of any of its obligations under this Contract which, in the reasonable opinion of the Council: (1) constitutes a fundamental breach of the Contract by the Contractor; or (2) is a serious breach that has been repeated or persisted in by the Contractor after receipt by the Contractor of a written warning that the Council may invoke this Clause in respect of the said breach, and after the Contractor has had a reasonable opportunity to prevent such repetition or persistence.
- 39.2. In the event that any of the grounds listed in Regulation 73(1)(a) and (c) of the Public Contracts Regulations 2015 apply to this Contract, or in the case of 73(1)(b) to the Contractor, the Council may terminate this Contract by giving 7 (seven) days' prior written notice to the Contractor of such termination.
- 39.3. **Procurement Challenge**
- 39.3.1. In the event that this Contract or any modification of the same is subject to a credible and substantive legal or procurement challenge of any nature and/or is deemed by a regulatory Council to be ineffective or to be in breach of any law or regulation (the "Procurement Challenge"), then the Parties shall co-operate in good faith to determine how they should manage the best way to mitigate the impact of the Procurement Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.
 - 39.3.2. In the event that:
 - 39.3.2.1. there is a credible and substantive legal or procurement challenge of any nature and the Council considers that it is likely that a Court would declare that the Contract is ineffective, the Contract shall terminate forthwith; or
 - 39.3.2.2. this Contract is declared ineffective by a court of competent jurisdiction, bringing this Contract to an end,
 the Council shall, without prejudice to any other right or remedy that it may have, pay to the Contractor all sums lawfully due to the Contractor in consideration of its proper provision of the Goods and/or Services up until the date and time of the declaration of ineffectiveness or date of termination. The Council shall pay such

sums within thirty (30) days of its receipt of a valid and properly payable invoice for the same from the Contractor.

- 39.3.3. Save as set out in Clause 39.3.2, the Council shall have no further liability to the Contractor, including without limitation, in relation to any loss of future profit by the Contractor accruing after the declaration, claims for restitution and/or compensation howsoever arising.
 - 39.3.4. Upon the making of a declaration of ineffectiveness the Contract shall terminate and the provisions of Clauses 39.1 - 39.5 (Consequences of Expiry and Termination) and this Clause shall apply.
 - 39.3.5. For the purposes of Regulation 101(5) of the Public Contracts Regulations 2015, the Parties have agreed the inclusion of Clause 39.3 in order to regulate their mutual rights and obligations in the event of a procurement challenge and/or declaration of ineffectiveness being made. The Parties also agree that the operation of those Conditions shall provide the Contractor with sufficient restitution and compensation.
- 39.4. The Council shall be entitled to terminate this Contract in whole or in part by giving to the Contractor not less than six (6) months' notice in writing.
 - 39.5. If the Contract is determined in part, the Contract Price shall be adjusted to reflect fairly the Goods and/or Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure and if necessary to the Expert or Mediator. For the avoidance of doubt the Contractor shall not be entitled to recover through the adjusted Contract Price any profit that, but for the Termination, would have accrued to the Contractor in respect of the terminated Goods and/or Services.
 - 39.6. The Council, in its discretion but acting reasonably and taking into account the representations of the Contractor, shall be entitled to suspend by notice in writing to the Contractor part of the Goods and/or Services which it would otherwise be entitled to terminate pursuant to this Clause until such time as the Contractor is able to demonstrate that it is able to perform the Goods and Services to the Contract Standard without default.
 - 39.7. During the period of suspension in accordance with Clause 39.6 the Council shall be entitled to abate the Contract Price by such amount as is necessary for the Council to perform the Goods and/or Services itself or to engage a third party to do so.
 - 39.8. The Council's rights under this Clause are in addition and without prejudice to any right that the Council may have against the Contractor for prior breach and to any right the Council may have against the Contractor for the breach, default, negligence or event leading to the termination.
 - 39.9. The remedies of the Council under this Clause may be exercised successively in respect of any one or more defaults by the Contractor.

40. CONSEQUENCES OF EXPIRY OR TERMINATION

- 40.1. Termination shall be without prejudice to the rights and remedies of the Contractor and the Council accrued before Termination and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding as at the date of Termination.
- 40.2. Upon the expiry or termination (for whatever reason) the Contractor shall:
 - 40.2.1. forthwith cease to provide the Goods and Services;

- 40.2.2. cease to make use of the Intellectual Property Rights in any way whatsoever;
 - 40.2.3. within 7 (seven) days of termination or, in the case of expiry of the Contract Period, no later than 3 (three) months prior to such expiry, submit to the Council at the Contractor's own cost a comprehensive status report which shall be current as at the date of submission relating to the Goods and Services;
 - 40.2.4. be liable immediately to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of this Contract by the Contractor;
 - 40.2.5. where the Contract terminated, fully and promptly indemnify and compensate the Council against all loss and damage suffered by the Council by reason of such termination and without prejudice to the generality of this Clause shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be provided such Goods and/or Services as would have been performed by the Contractor during the remainder of the Contract Period to the extent that such cost exceeds sums as would have been lawfully payable to the Contractor for provided such Goods and/or Services (such costs to include but not be limited to all costs of closing out this Contract and entering into new contracts with replacement contractors). The Council shall be at liberty to have such Goods and/or Services provided by any persons (whether or not servants of the Council) as the Council in its entire discretion thinks fit and shall act reasonably but shall be under no obligation to employ the least expensive method of having such Goods and/or Services provided;
 - 40.2.6. not be entitled to any further payment under the Contract and the Council shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under this or any other Contract or to deduct therefrom any sum due from the Contractor to the Council under this or any other Contract;
 - 40.2.7. without prejudice to the Council's other rights under these Clauses within 10 (ten) days of Termination at the Contractor's own cost return to the Council or otherwise dispose of in accordance with the Council's instructions all and any:
 - 40.2.7.1. documents and other information and materials relating to the Goods and Services;
 - 40.2.7.2. Council Data (which data shall if necessary upon the Council's request be transferred in compatible form on to such computer system as the Council may request) (including back-ups); and
 - 40.2.7.3. other Council Equipment and property and software belonging to the Council which may be in the possession or under the control of the Contractor;
 - 40.2.8. make good to the Council any accounting discrepancy and/or loss or damage attributable to a Performance Default by the Contractor, its Employees, sub-contractors and agents; and
 - 40.2.9. vacate the Council Premises and the Designated Space.
- 40.3. In the event that the Contractor fails to comply with its obligations in Clause 40.2.7 the Council shall be entitled to:-

- 40.3.1. recover possession of the items referred to in each of the said Clause and for this purpose the Contractor hereby grants to the Council and its appointed agents a licence to enter onto any land or premises belonging to or under the control of the Contractor; and
- 40.3.2. recover its reasonable costs incurred in connection with exercising its rights pursuant to Clause 40.3.1, such sum to be recoverable by the Council from the Contractor as a debt.
- 40.4. Clause 40.3 together with all other provisions of this Contract which are expressed to survive Termination shall continue in force and effect in accordance with their terms.
- 40.5. Subject as otherwise provided in the Contract neither Party shall have any further obligation to the other under the Contract.

41. ARRANGEMENTS FOR RE-TENDERING AND HANDOVER ON TERMINATION

- 41.1. Prior to and at the end of the Contract Period the Contractor shall co-operate with the Council and any replacement contractor nominated by the Council ("New Contractor") in ensuring the smooth hand-over and continued running of the Goods and Services during such hand-over and in particular, but without limitation, the Contractor shall, to the extent required by the Council:
 - 41.1.1. allow the Council and any New Contractor reasonable right of access to the Contractor's and sub-contractor's premises, systems, procedures and Employees, where appropriate; and
 - 41.1.2. deliver to the Council upon request all information, materials and documents relating to the Goods and/or Services in its possession or under its control or in the possession or under the control of any permitted sub-contractors and in default of compliance with this provision the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Contractor or its permitted sub-contractors where any such documents, information or materials may be held.
- 41.2. Without prejudice to Clause 39, where the Contract is terminated for a reason set out in Clause 39.1, the Council shall immediately cease to be under any obligation to make further payment to the Contractor until the costs, loss and/or damage to the Council resulting from or arising out of the Termination shall have been calculated, including the application of Clause 40.2.8.
- 41.3. When the total costs, loss and/or damage resulting from or arising out of such Termination as is referred to in Clause 41.2 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 41.2 have been due to the Contractor, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Contractor any balance shown as due to the Contractor.
- 41.4. Upon the Termination for whatever reason of this Contract the Council shall have the option to purchase at book value any of the assets or equipment used by the Contractor solely in performance of its obligations under this Contract. Where the Council wishes to exercise this option it shall notify the Contractor in writing accordingly not less than 28 days following the date on which this Contract expires or is terminated.

42. FORCE MAJEURE

- 42.1. Except to the extent any emergency procedures are required as part of the Services, if either Party is unable to perform any obligation under the Contract because of a matter beyond that Party's reasonable control due to a Force Majeure Event, they will have no liability to the other Party for that failure to perform save that the Council shall be entitled, if the Force Majeure Event is also a Civil Emergency (as defined in Clause 47.4), to instruct the Contractor in accordance with Clause 47.2 (Civil Contingencies and Emergencies).
- 42.2. Notwithstanding the relief granted to the Parties by Clause 42.1 the Parties shall nevertheless use all reasonable endeavours in any situation where they have invoked this Clause 42 to perform their relevant obligations as soon as possible and to overcome or mitigate the effect of any Force Majeure Event on the delivery of the Goods and/or Services. The Contractor shall immediately implement the Disaster Recovery and Business Continuity Plan in accordance with Clause 43 (Disaster Recovery and Business Continuity).
- 42.3. The Parties shall not be entitled to relief under Clause 42.1 in any circumstances where they have caused or substantially contributed to any failure in the performance of their obligations by any default on their part.
- 42.4. In order to obtain relief under this Clause 42 the Party claiming that Force Majeure Event has occurred shall send to the other Party written notice but in any event within 5 Working Days of the first occurrence of the Force Majeure Event with full particulars thereof including its date of first occurrence, and the cause or event giving rise to it, and its estimated duration. The Party claiming the Force Majeure Event must notify the other immediately of the cessation of the Force Majeure Event.
- 42.5. For the avoidance of doubt, during the currency of any Force Majeure Event, the Council shall only be obliged to pay for such of the Goods and/or Services (if any) as the Contractor provides.
- 42.6. Subject to Clause 42.7 if as a consequence of a Force Majeure Event a Party is prevented from complying with all or a substantial part of its obligations for a continuous period of more than 40 Working Days then either Party may serve a notice terminating the Contract for the Force Majeure Event and, neither Party shall be liable to the other for any Losses arising out of such Termination.
- 42.7. If the Force Majeure Event is also a Civil Emergency or the Council acting reasonably deems it as such, the Council shall be entitled to elect that Clause 42.6 shall not apply for a period or periods which it shall specify to the Contractor by notice in writing and that it shall instead be entitled to instruct the Contractor in accordance with Clause 47.2 (Civil Contingencies and Emergencies).

43. DISASTER RECOVERY AND BUSINESS CONTINUITY

- 43.1. Prior to the Commencement Date, the Contractor shall update and augment the draft Disaster Recovery and Business Continuity Plan included in its Contractor Proposals and submit the same to the Authorised Officer who shall be entitled to propose amendments and/or additions. The Contractor shall forthwith amend the draft Disaster Recovery and Business Continuity Plan to take into account any amendments and additions proposed, and any comments or suggestions made, by the Authorised Officer and re-submit the same for the Authorised Officer's approval (such approval not to be unreasonably withheld or delayed). Once approved, the draft Disaster Recovery and Business Continuity Plan shall be the Disaster Recovery and Business Continuity Plan for the purposes of this Contract.

- 43.2. The Disaster Recovery and Business Continuity Plan shall be reviewed by the Contractor on each anniversary of the Commencement Date and re-submitted to the Authorised Officer for approval in accordance with the provisions of Clause 43.1.
- 43.3. The Council shall be entitled to test the procedures set out in the Disaster Recovery and Business Continuity Plan at least once every year should it so require and the Contractor shall co-operate fully with such testing.
- 43.4. If in the opinion of the Authorised Officer, acting reasonably, a Disaster Event has occurred (for whatever reason) the Contractor shall immediately implement the Disaster Recovery and Business Continuity Plan. The Contractor shall also be under an obligation to notify the Authorised Officer and immediately implement the Disaster Recovery and Business Continuity Plan if it considers that a Disaster Event has occurred. Any implementation by the Contractor of the Disaster Recovery and Business Continuity Plan shall be at its own cost and expense and the Contractor will share reasonable details of all learning events with the Council.
- 43.5. For the purposes of this Clause 43, "Disaster Event" shall mean any event or circumstance of whatever nature which, in the absence of the implementation of the Disaster Recovery and Business Continuity Plan, would seriously threaten the Contractor's ability to provide the Goods and/or Services to the Contract Standard.
- 43.6. The occurrence of a Disaster Event shall not relieve the Contractor of its obligation to provide the Goods and Services to the Contract Standard unless it is also a Force Majeure Event when Clause 42 ("Force Majeure") shall apply. Any Losses incurred by the Contractor as a consequence of a Disaster Event shall be the sole responsibility of the Contractor.

44. RIGHT OF SET OFF

- 44.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter may become due to the Contractor under the Contract or under any other contract between the Contractor and the Council.
- 44.2. The Council shall be entitled to interest at a rate of 4% above the base rate published by the Bank of England on any sum properly due from the Contractor to the Council and which remains unpaid for a period of 30 (thirty) days from the issuing by the Council of an invoice. The Parties agree that this Clause 44 constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998 (as amended).

45. SPECIFIC PERFORMANCE

- 45.1. The Parties acknowledge that in the event of a Performance Default and/or any breach of Clause 33 the loss or damage suffered by the Council may be such that damages are not an adequate remedy. In such circumstances the Council shall have the right to specific performance of the Contractor's obligations and/or an injunction against any breach or breaches of Clause 33. Such remedies shall be in addition to, and not in lieu or limitation of, other remedies provided to the Council under the Contract, at law or in equity.

46. DISPUTE RESOLUTION

- 46.1. Unless the Contract has already been terminated, the Contractor shall continue to provide the Goods and Services.

- 46.2. Any disagreement or dispute concerning this Contract shall be first referred to a meeting of the Authorised Officer for the Council and the Contract Manager for the Contractor who shall enter into good faith negotiations to resolve the matter.
- 46.3. In the event that on the expiry of the period of 28 days from the date of the referral under Clause 46.2 or such longer period as the Parties may agree the dispute remains unresolved it shall be referred to:
- 46.3.1. a chief or deputy chief officer for the Council (or a person nominated by a chief or deputy chief officer for the Council) and a director for the Contractor (or a person nominated by a director of the Contractor); or
- 46.3.2. to an Expert in accordance with Clause 46.7 if the dispute is one in respect of which these conditions stipulate shall be referred to an Expert.
- 46.4. In the event that on the expiry of the period of 28 days from the date of the referral under Clause 46.3.1 or such longer period as the Parties may agree the dispute remains unresolved it shall be referred to a mediator appointed by the Centre for Effective Dispute Resolution ('Mediator').
- 46.5. The Mediator shall determine the rules and procedures by which the mediation shall be conducted save that;
- 46.5.1. each Party shall be entitled to make a written statement of its case to the Mediator prior to the commencement of the mediation provided that such statement shall be provided to the Mediator not less than 14 days or such other period as may be agreed by the Mediator before the mediation is to commence; and,
- 46.5.2. within 14 days of the conclusion of the mediation the Mediator shall provide a written report to the Parties which report shall set out the nature of the dispute and the nature of its resolution if any.
- 46.6. The Mediator shall be entitled to be paid his reasonable fee which the parties shall pay in equal shares.
- 46.7. Any matter or dispute to be determined by an Expert under the Contract shall be referred for determination to a person suitably qualified to determine such matter or dispute and who shall be nominated jointly by the Council and the Contractor or failing such agreement within five Working Days to such person as may be appointed, on the application of either the Council or the Contractor, by the President for the time being of the Law Society of England and Wales ('the Expert').
- 46.8. The Council and the Contractor shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Contractor shall use all reasonable endeavours to procure the prompt determination of such reference.
- 46.9. The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall (in the absence of manifest error) be conclusive and binding upon the Parties.
- 46.10. The costs of the Expert appointed under this Clause 46 shall be borne equally by the Contractor and the Council save as may be otherwise directed by the Expert.
- 46.11. Saving for emergencies neither Party shall be entitled to commence litigation procedures until the completion of the mediation in accordance with this Clause 46 and for the purposes of this Clause 46.11 emergencies shall include without limitation:
- 46.11.1. any matters which would cause either Party to be in breach of any statutory obligation or statutory duty;

- 46.11.2. any matters which would cause either Party to be liable to pay a fine levy or other similar imposition;
- 46.11.3. any matter which could cause either Party to incur any liability to a third party under a contract between that Party and the third party;
- 46.11.4. any matters which would put at risk the health safety or welfare of any employee or agent of either Party or any employee or agent of any contractor of either Party or of members of the public generally;
- 46.11.5. any other matters which in the reasonable opinion of either Party are such as to require an urgent resolution.

47. CIVIL CONTINGENCIES AND EMERGENCIES

- 47.1. The Contractor acknowledges that, under the Civil Contingencies Act 2004 the Council is obliged to ensure that its services (and therefore its contractors who are delivering services on its behalf) are able to operate effectively at all times in a way that meets the needs of the Council's residents and addresses the needs of the workforce in the event of a major civil incident. The Contractor shall ensure that it has appropriate plans and procedures in place to enable the continued operation of the Services during any form of major civil disruption.
- 47.2. Without prejudice to any of the Contractor's other obligations under the Contract if a Civil Emergency arises during the Contract Period the Council may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Council to assist the Council in its response to the Civil Emergency.
- 47.3. The reasonable and proper costs incurred by the Contractor of any additional or alternative services provided to the Council under Clause 47.2 shall be met by the Council.
- 47.4. For the purposes of this Clause 47 "Civil Emergency" means a major incident, natural disaster or the presentation of a major risk any of which has the potential to cause death, injury or serious disruption to the everyday life of Council customers and residents or others or the potential to cause serious damage to property, and the prevention or mitigation of which may require a special mobilisation and co-ordination of Council 's resources (which for this purpose shall include the resources of the Contractor) and/or the resources of the police, ambulance or fire services and/or other local, regional or central government bodies, departments or agencies with an interest in the welfare of the public and the prevention of such harm and/or damage.

48. CORRESPONDENCE AND COMPLAINTS

- 48.1. The Contractor shall respond promptly to all claims or complaints which relate to the Contract or the provision of Goods and/or Services by the Contractor ("Complaints") received by the Contractor from the Council, directly from any member of the public, or from any other source. All Complaints received by the Contractor (whether in writing or by telephone or in person) shall be accurately recorded by the Contractor and made available to the Authorised Officer on request.
- 48.2. Complaints which have an implication for the safety of an individual or individuals must be reported immediately to the Authorised Officer. A record of the Complaint must contain full details of the subject-matter, including the date, time, name, address and telephone number of the complainant.

- 48.3. Without prejudice to any liability or indemnity provisions contained elsewhere in the Contract, the Contractor shall indemnify the Council against any compensation or costs incurred by the Council for upheld Complaints. Any disputes in relation to this provision shall be referred to the Dispute Resolution Procedure and, if necessary, the Expert or Mediator.
- 48.4. Without prejudice to its obligation to perform the Goods and Services to the Contract Standard, the Contractor shall comply with any reasonable instruction given by an Authorised Officer to the Contractor in relation to a Complaint that has been investigated by an Authorised Officer.

49. SECURITY

- 49.1. The Contractor, its Employees and any invitees of the Contractor will only be allowed access to Council Premises in connection with the provision of the Goods and/or Services save as may otherwise be agreed between the Authorised Officer and the Contract Manager, such access being exercised jointly with the Authorised Officer and any of the Council's licensees or agents.
- 49.2. The Contractor shall ensure that any identity pass carried by and any key issued to any of its Employees are returned to the Contractor forthwith upon such Employees ceasing to be employed by the Contractor in connection with the provision of the Goods and/or Services.
- 49.3. The Contractor shall act as the bailee of any Data which may at any time be in the Contractor's possession or under its control and shall store such Data safely and separately from any data not relating to the Goods and/or Services and in a manner which makes it readily identifiable as Data relating to the Goods and/or Services.
- 49.4. The Contractor shall not store, copy, disclose, or use any Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.
- 49.5. The Contractor shall ensure that at all times it and all of its Employees agents sub-contractors and sub-consultants engaged by it in connection with the performance of any of its obligations arising under from or in connection with this Contract comply in respect of each such obligation with an information security policy that meets the Council's Policies relating to the handling and security of Data. From time to time during the Contract Period, and on demand, the Contractor shall provide a copy of its information security policy to the Contract Manager for approval.
- 49.6. If at any time the Contractor suspects or has reason to believe that there has been a breach of any of its obligations arising under from or in connection with this Contract in relation to the handling and security of Data, then the Contractor shall notify the Council immediately and inform the Council of the remedial action the Contractor proposes to take.

Malicious Software

- 49.7. The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
- 49.8. Notwithstanding clause 49.7, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

- 49.9. Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 49.8 shall be borne by the parties as follows:
- 49.9.1. by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor or the Council Data (whilst the Council Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Council when provided to the Contractor; and
 - 49.9.2. by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

50. PUBLICITY

50.1. The Contractor shall not:

- 50.1.1. make any press announcements, public statements, or otherwise publicise or release any information whatsoever about this Contract or the Goods and/or Services or the contents of any Contract Documents or anything relating or connected thereto in any way; or
- 50.1.2. use the Council's name or brand in any promotion, public statement, marketing or announcement whatsoever,

without the Council's prior written consent which consent it shall be absolutely entitled to withhold or make subject to such conditions as it may decide.

51. CHANGES TO THE CONTRACTOR

51.1. The Contractor shall immediately notify the Council of any proposed changes to its corporate/group structure and any change in the nature or identity of its parent company(s). In the event that the Contractor notifies the Council of a proposed change to its corporate/group structure which, in the Council's opinion, is to be made for purposes other than a bona-fide internal re-organisation and which would have the effect in the Council's opinion of amounting to the award of a new contract in contravention of the requirements of the Public Contracts Regulations 2015 (or any amendment or re-enactment thereof) then the Council shall have the right to object to the proposed change. In the event that the change to the Contractor's corporate/group structure is to proceed despite the Council's objection, the Contractor shall immediately notify the Council and the Council shall have the right to terminate the Contract without loss to the Council or liability to the Contractor.

52. NOT USED

53. WAIVER

53.1. The failure or neglect by either Party to enforce at any time any term or provision of this Contract or to exercise any right or remedy available to it under this Contract or at law shall not be construed nor be deemed to be a waiver thereof nor in any way affect the validity of the whole or any part of this Contract nor cause any diminution of the obligations established by this Contract nor shall any waiver of a breach constitute a waiver of any subsequent breach whether such breach shall be a like breach or not or of the same term or not nor shall

a waiver of any right to enforce any term or provision of this Contract constitute a waiver of the right to subsequently enforce such term or provision or any other term or provision.

- 53.2. No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated by the waiving Party to the other Party in writing

54. ENTIRE AGREEMENT

- 54.1. This Contract constitutes the entire agreement and understanding between the Parties in relation to the subject matter hereof and supersedes all prior representations, arrangements, understandings, agreements, statements, or warranties (whether written or oral) relating to the same.

- 54.2. The Contractor irrevocably and unconditionally waives any rights it may have to claim damages and/or to rescind this Contract for any misrepresentation or for breach of any warranty not contained in this Contract unless such misrepresentation or warranty was made fraudulently.

- 54.3. The provisions of Clauses 54.1 and 54.2 above shall not apply to any representations, statements or warranties given by the Contractor to the Council pursuant to any short listing process prior to or during the procurement process leading to the award of this Contract to the Contractor, which are deemed to have been restated immediately prior to the execution of this Contract. For the avoidance of doubt, the Council has relied on such statements, representations and warranties given by the Contractor and shall be entitled to rescind and/or terminate the Contract and/or seek damages and/or seek any other remedy in the event that any such statement, representation or warranty is misleading or untrue whether or not the Contractor and/or any natural person acting on behalf of the Contractor was aware that the statement, representation or warranty was misleading or untrue.

55. NO AGENCY PARTNERSHIP EMPLOYMENT OR TENANCY

- 55.1. Save as otherwise provided in this Contract or where a statutory provision otherwise requires, the Contractor shall not (and shall ensure that its Employees shall not):

55.1.1. be, act or hold itself out as an agent of the Council; nor

55.1.2. make any representations or give any warranties to third parties on behalf or in respect of the Council; nor

55.1.3. bind or hold itself out as having the power to bind the Council.

- 55.2. Nothing in this Contract shall create, or be deemed to create, a partnership or the relationship of employer and employee between the Parties nor any landlord and tenant relationship.

56. NOT USED

57. AMENDMENTS

- 57.1. No amendment to the Contract shall be binding unless it is:

57.1.1. in writing and signed by the representatives of the Council who are duly and specifically authorised for that purpose unless the Contractor is notified otherwise) and of the Contractor and expressed to be for the purpose of such amendment; or

57.1.2. made pursuant to the Variation procedure set out in Clause 58.

58. VARIATIONS

58.1. Subject to Clause 58.2 and in accordance with Clause 11.4 no Variation shall be effective unless it is recorded in writing and signed by both Parties and accordingly neither the Council nor the Contractor shall implement a variation other than one which is in accordance with this Clause 58.1.

58.2. The Council may by notice in writing to the Contractor, from time to time, require minor and/or non-substantial changes to the Goods and/or Services, the way the Goods and/or Services are provided or any of the Contract Documents such changes shall not be nor be considered to be a Variation to this Contract nor shall the Contract Price be affected thereby.

Council Variations

58.3. The Council may propose a Variation by giving written notice to the Contractor (“the Council Variation Notice”).

58.4. The Council Variation Notice shall:

58.4.1. set out the Variation required in sufficient detail to enable the Contractor to calculate and provide an estimate of any adjustment to the Contract Price in accordance with Clause 58.6 below (the “Estimate”);

58.4.2. state the date on or by which the Council wishes the Variation to be implemented.

58.5. The Council shall consult with the Contractor with respect to the Variation, and the Contractor shall provide the Council on or before the date falling 10 Working Days after the date of the Council Variation Notice with a reasonable Estimate of the increase or reduction in the Contract Price (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Council Variation Notice.

The Estimate

58.6. The Estimate shall be accompanied by a reasonably detailed breakdown of the manner in which the Estimate is calculated and shall include details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change together with any information which the Council may reasonably require including without limitation breakdowns of price and supporting material for the purpose of satisfying the Council that the proposed revised price is fair and reasonable.

58.7. To the extent it is possible to do so the Estimate shall be calculated:

58.7.1. using the rates and prices in the Contractor Proposals (as they may have been revised in accordance with this Contract); or

where it is not possible to calculate the adjustment using such rates and prices:

58.7.2. based on rates and prices that represent the market price current at the date on which the Council Variation Notice is issued.

58.8. The Estimate shall include a statement of the Contractor’s opinion on:-

58.8.1. any impact on the provision of the Goods and/or Services;

58.8.2. any amendment required to the Contract and/or any Contract Documents as a result of the change in the Goods and/or Services;

- 58.8.3. any capital expenditure that is required or no longer required as a result of the change in the Goods and/or Services.
- 58.9. As soon as practicable after the Council receives the Estimate, the Parties shall discuss and attempt to agree the issues set out in the Estimate. In such discussions the Council may:
 - 58.9.1. agree the Estimate in which case the Variation shall be implemented in accordance with the Council Variation Notice; or
 - 58.9.2. modify the Council Variation Notice in which case the Contractor shall as soon as practicable and in any event not more than 14 days after receipt of such modification, notify the Council of any consequential changes to the Estimate.
- 58.10. If the Parties cannot agree on the effects and consequences of the Estimate then the dispute will be determined by the Mediator in accordance with Clause 46 (Dispute Resolution).
- 58.11. As soon as practicable after the effects and consequences of the Estimate have been agreed or otherwise determined pursuant to Clause 46 (Dispute Resolution) the Council shall:-
 - 58.11.1. confirm in writing the Estimate (as modified) or;
 - 58.11.2. withdraw the Council Variation Notice;
- 58.12. If the Council does not confirm in writing the Estimate (as it may have been modified) within 30 days of the Estimate being agreed in accordance with Clause 58.9 or determined pursuant to Clause 58.11 above then the Council Variation Notice shall be deemed to have been withdrawn.

Contractor Variations

- 58.13. If the Contractor wishes to introduce a Variation to the Goods and/or Services it must serve a notice on the Council ('the Contractor Variation Notice').
- 58.14. The Contractor Variation Notice must:-
 - 58.14.1. set out the proposed Variation in sufficient detail to enable the Council to evaluate it in full;
 - 58.14.2. specify the Contractor's reasons for proposing the Variation;
 - 58.14.3. request the Council to consult with the Contractor with a view to deciding whether to agree to the Variation and, if so, what consequential changes the Council requires as a result;
 - 58.14.4. include an Estimate in accordance with Clause 58.6
 - 58.14.5. without prejudice to the remainder of this Clause 58, indicate if there is any date by which a decision by the Council is critical.
- 58.15. As soon as reasonably practicable after the Council receives the Contractor Variation Notice the Parties shall meet to discuss the issues in such notice. During such discussions either Party may propose modifications to the proposed Variation.
- 58.16. If the Council accepts the Contractor Variation Notice (with or without modification) the relevant Variation shall be implemented by any date specified in the Contractor Variation Notice or in the event that it is not practicable for any reason to implement the Variation by such date it shall be implemented by such other date as the Parties acting reasonably may agree.
- 58.17. If the Council rejects the Contractor Variation Notice it shall not be obliged to give its reasons for such a rejection.

- 58.18. Unless the Council's acceptance of the Contractor's proposed Variation specifically agrees to an increase in the Contract Price, there shall be no increase in the Contract Price as a result of a Variation proposed by the Contractor.
- 58.19. If the Variation proposed by the Contractor causes or will cause the Contractor's costs or those of a sub-contractor to decrease, there shall be a corresponding decrease in the Contract Price.
- 58.20. Neither Party shall be entitled to reject any Variation which has been proposed to enable the provision of the Goods and/or Services to conform to a change in law.

59. NOTICES

Form and Service of Notices

- 59.1. All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served in accordance with the provisions of this clause 59.
- 59.2. All certificates, notices or written instructions to be given under the terms of this Contract shall be served as an attachment to an email and also sent to the recipient by personal delivery or recorded delivery. The following table sets out the respective deemed time and proof of service for each manner of delivery.

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail addresses .
Personal delivery	On delivery, provided delivery is between 9.00am and 5.30pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by written statement.
Prepaid, Royal Mail signed for 1st Class post	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.30pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if delivery after 5.30pm)	Properly addressed prepaid and delivered as evidenced by a successful delivery report

- 59.3. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of services of notices under this Contract:

Contractor	Council
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[Name]	Ms Gerri Reed
[Address]	Corby Enterprise Centre, London Road, Priors Hall Park, Corby NN17 5EU 01536 560560
[e-mail address]	Gerri.Reed@corby.gov.uk

59.4. This Clause 59 does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any other method of dispute resolution.

60. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

60.1. The Contractor shall not assign, charge, novate or otherwise deal with its rights or obligations arising under the Contract or any part thereof without the prior written consent of the Council which consent the Council may at its absolute discretion withhold.

60.2. The Contractor shall not sub-contract the provision of the Goods and/or Services or any part thereof without the prior written consent of the Council which consent the Council may at its absolute discretion withhold.

60.3. The Council may withhold or delay its consent where it considers that:

60.3.1. the appointment of a proposed Sub-contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests of the Council; and/or

60.3.2. the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to either the Council or any of its other customers; and/or

60.3.3. the proposed Sub-contractor employs unfit persons; and/or

60.3.4. the proposed Sub-contractor poses security concerns to the Council; and/or

60.3.5. the proposed Sub-contractor is not financially and/or technically capable of providing the Goods and/or Services; and/or

60.3.6. the appointment of the proposed Sub-contractor would amount to the award of a new contract for the purposes of the EU Treaty, Directive 2015/23 EC or the Public Contracts Regulations 2015; and/or

60.4. the proposed assignment or novation would constitute the award of a new contract for the purposes of the EU Treaty, Directive 2015/23 EC or the Public Contracts Regulations 2015. The giving of any consent by the Council in accordance with Clause 59.2 shall not relieve the Contractor of any liability or obligation under this Contract so that the Contractor shall remain responsible for the acts, omissions and defaults of any Sub-contractor or any employees or agents of any Sub-contractor in all respects as though they were the acts, omissions and default of the Contractor or any of its agents or employees.

60.5. If the Council grants consent to the Contractor to sub-contract all or part of the Goods and/or Services, pursuant to Clause 60.2, the Contractor shall

60.5.1. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms;

- 60.5.2. provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Authorised Officer; and
- 60.5.3. shall perform its obligations under and observe all the terms of any sub-contract with a Sub-Contractor.
- 60.6. The Contractor shall not without the prior written consent of the Council change or replace any Sub-contractor that it has appointed to provide the Goods and/or Services or any part thereof. Any consent required from the Council in accordance with this Clause may be withheld at the Council's absolute discretion.
- 60.7. Any breach by the Contractor of Clauses 60.1 to 60.6 shall constitute at the very least a substantial and material breach of Contract by the Contractor.
- 60.8. Provided always that any proposed assignment does not constitute a substantial modification within the meaning of the Regulation 72 of the Public Contract Regulations 2015, the Council may, in its absolute discretion, novate or assign this Contract or any part thereof to any other body which has or will perform any of the functions that are being performed by the Council under this Contract and will give written notice of any such novation or assignment to the Contractor. This clause shall stand as the Contractor's consent to any such novation or assignment of the benefit, burden or whole contract by the Council.
- 60.9. This Contract and the Sub-Contracts and securities shall be binding on and shall ensure to the benefit of the Contractor and the Council and their respective successors and permitted assigns.

61. SEVERANCE

- 61.1. If one or more of the provisions of this Contract are to any extent invalid, illegal or unenforceable under any applicable law, the remainder of this Contract shall not be affected thereby and shall be valid, legal and enforceable to the fullest extent permitted by Law. The invalid provision shall be deemed replaced by that legally valid provision which most closely approximates the economic intent of the invalid provision. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 61.2. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

62. LAW AND JURISDICTION

- 62.1. This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the laws of England and Wales.
- 62.2. Subject to clause 45, the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

63. COUNCIL CHANGES

63.1. If there is a restructuring of the Council and/or its provision of services or fulfilment of functions, such that either:

63.1.1. the delivery of services or fulfilment of functions provided or fulfilled by the Council becomes the responsibility of another local Council (other than by succession pursuant to Clause 60.8), Government department, agency or other public body; or

63.1.2. the delivery of services or fulfilment of functions provided or fulfilled by another local authority, Government department, agency or other public body becomes the responsibility of the Council; or

63.1.3. the Council is required to take on new services or fulfil new functions; or

63.1.4. any of the Goods and/or Services or functions provided or fulfilled by the Council cease to be provided or fulfilled by the Council without being provided or fulfilled by any local Council, Government department, agency or other public body in place of the Council,

then the Parties shall (subject to Clauses 60.8 and 63.3 and to the fullest extent permissible by Law) negotiate in good faith in accordance with the Clause 58 (Variations) to agree a Variation to this Contract that appropriately reflect the amended obligations of the Parties in the light of the restructuring.

63.2. When there is a restructuring pursuant to Clause 63.1.1, the Contractor shall offer to deliver Goods and Services to the other local authority, Government department, agency or public body which takes on responsibility for the services or functions previously the responsibility of the Council, on terms broadly equivalent to those terms set out in this Contract.

63.3. When considering the impact of a restructuring pursuant to Clauses 63.1.1, 63.1.2, 63.1.3 or 63.1.4 in accordance with Clause 63.1 and Clause 58 (Variations), the following principles shall apply when agreeing the Variation and (as applicable) calculating any increase or decrease to the total amount of charges payable by the Council to the Contractor:

63.3.1. the Contractor must use all reasonable endeavours to minimise any increase in costs it may suffer and maximise the reduction in costs that it can achieve as a result of the restructuring;

63.3.2. the Contractor must limit or avoid to the fullest extent possible, any capital or other expenditure which it planned to incur (for example to replace or maintain assets) which will no longer be necessary or appropriate as a result of the restructuring;

63.3.3. (in the case of any restructuring pursuant to Clause 63.1.2 or 63.1.3) the Contractor will only be entitled to proceed with the Variation to the extent that it can demonstrate to the Council that the Variation is reasonable; and

63.3.4. (in the case of any restructuring pursuant to Clause 63.1.1) the Contractor must demonstrate that it has complied with its obligations pursuant to Clause 63.2 and where the Contractor enters into a contract for the provision of continuing services with another local authority, Government department, agency or public body under that clause: (i) the Contractor shall demonstrate that it has used reasonable endeavours to structure those arrangements so as to mitigate any costs associated with the restructuring of the Services under this Contractor (for example, by redeploying assets) and (ii) the Contractor shall not be entitled to recover as a cost or charge under this Contractor, amounts for which it is separately recovering a

charge under those alternate arrangements for any equivalent replacement service.

- 63.4. In the event that the Council merges with or is taken over by another contracting authority, agency or other public body (the “**Joining Council**”) during the Period of Contract, the Council and the Joining Council together shall be entitled to continue to receive the Goods and Services.

64. COUNTERPARTS

- 64.1. This Contract may be executed in any number of counterparts, each of which, when executed [**and delivered**], shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

IN WITNESS whereof the Council and the Contractor have executed this document as a deed on the date set out above

Executed as a deed by
affixing the common seal of
CORBY BOROUGH COUNCIL
in the presence of:

.....
Authorised signatory

.....
Print Name

.....
Authorised signatory

.....
Print Name

Executed as a deed by
XXXXXXXXXX LIMITED
acting by a director, in the presence
of a witness:

.....
Witness

.....
Witness name [ALL CAPITALS]
.....

.....
Witness address (ALL CAPITALS)
.....

.....
Witness occupation (ALL CAPITALS)

.....
Director

SCHEDULE 1**DEFINITIONS AND INTERPRETATION**

In this Contract the following words and expressions shall have the meanings given to them below:-

PHRASE	MEANING
Acceptance	means, subject to the provisions of Clause 7.17, the Council's acceptance of the Goods as notified to the Contractor or as otherwise deemed to have occurred under the Sale of Goods Act 1979 (as amended or superseded) (and "Accept" and "Acceptance" shall be construed accordingly);
Annual Sum	means the annual sum (subject to the Goods and/or Services having been provided) payable by the Council to the Contractor as set out in Schedule 3 (Contractor's Proposal), as calculated in accordance with the provisions of the Contract;
Authorised Officer	means the person or persons (together with any duly authorised deputies) appointed by the Council to act in such capacity in respect of this Contract, or any replacement notified by the Council to the Contractor;
Billing Information	means: <ul style="list-style-type: none"> (a) the Annual Sum; (b) any VAT or other taxes; (c) the date of the invoice; (d) the dates when the Goods and any ancillary Services subject of each of the charges detailed on the invoice were delivered; (e) the Council's Purchase Order number or contract reference number ; (f) a contact name and telephone number of a responsible person in the Contractor's finance department in the event of administrative queries; and (g) the banking details for payment to the Contractor via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
Commencement Date	the date on which the Contractor is to commence providing the Goods and/or Services being XXXXXXXXXXXXX
Conditions	means the terms and conditions set out in this document;
Confidential Information	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including trade secrets, Intellectual Property Rights and Know-How

PHRASE	MEANING
	of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all personal data and sensitive personal data within the meaning of Data Protection Legislation;
Contract	means the agreement entered into between the Parties incorporating the Contract Documents;
Contract Documents	these Conditions and schedules;
Contract Manager	means the person (together with any duly authorised deputies) appointed by the Contractor to act as manager in respect of this Contract from time to time or any replacement notified by the Contractor to the Council ;
Contract Period	means subject to Clause 3.4, the period beginning on the Commencement Date ending twenty four (24) calendar months later or if earlier the Termination Date;
Contract Price	means the Contractor's price for providing the Goods and Services and performing all its obligations under this Contract comprising: <ul style="list-style-type: none"> (a) the Annual Sum; and/or (as applicable) (b) the Detailed Rates as set out in the Contractor's Proposals (Schedule 3);
Contract Standard	the standard to which the Goods and Services are to be provided as defined in Clause 9;
Contract Year	any continuous period of twelve months during the Contract Period commencing on the Commencement Date or any subsequent anniversary of the Commencement Date;
Contractor	Means XXXXXXXXXXXX LIMITED and, if the context so permits, any of the Contractor's officers, Employees, sub-contractors or agents;
Contractor Related Party	<ul style="list-style-type: none"> (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person; (b) any Sub-Contractor of any tier and any of their officers, servants or agents;
Contractor System	the information and communications technology system used by the Contractor in performing the Goods and/or Services including the Software, the Contractor Equipment and related cabling (but excluding the Council System);
Contractor's Proposals	the Contract Document so described and attached at Schedule 3 comprising the offer submitted by the Contractor to provide the

PHRASE	MEANING
	Goods and/or Services incorporating, for the avoidance of doubt, but without limitation, the Contractor's form of tender, pricing document, method statement(s), supporting documents and any post-tender submissions which augmented, supplemented or amended the Contractor's offer;
Contractor's Equipment	means the goods, plant, equipment, technology and materials used or provided by the Contractor in the provision of the Goods and/or Services as such definition is augmented in Clause 26.2;
Council	<p>means the local Council named at the beginning of this Contract and for the purposes of this Contract acting as a:</p> <ul style="list-style-type: none"> (a) contracting authority; (b) land and/or property (whether tangible or intangible) owner; (c) lessee; and/or (d) trustee, <p>as applicable;</p>
Council Background IPRs	<ul style="list-style-type: none"> (a) Intellectual Property Rights owned by the Council before the Effective Date, including Intellectual Property Rights contained in any of the Council's Know-How, documentation, processes and procedures; (b) Intellectual Property Rights created by the Council independently of this Contract; and/or (c) crown copyright which is not available to the Contractor otherwise than under this Contract; <p>but excluding Intellectual Property Rights owned by the Council subsisting in the Council Software;</p>
Council Data	<ul style="list-style-type: none"> (a) data (including meta-data), record, document, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which is either: <ul style="list-style-type: none"> (i) communicated by the Council, its staff, Sub-Contractor and agents to the Contractor in writing, orally, electronically or by any other means; or (ii) is obtained, gleaned, generated, stored, transmitted, compiled or processed by the Contractor pursuant to this Contract; or (b) any Personal Data for which the Council is the Data Controller;

PHRASE	MEANING
Council Equipment	means all items provided by the Council or any Fellow Contractor for use by the Contractor in the provision of the Goods and/or Services;
Council Premises	means a building or location belonging to or leased by the Council and to which the Contractor may require access in the provision of the Services;
Council Related Party	means: <ul style="list-style-type: none"> (h) any officer, agent, or employee of the Council acting in the course of his office or employment; (ii) [any person visiting any Premises at the invitation (whether express or implied) of the Council]; and (iii) any person, company, partnership, firm, association and/or other body to whom the Council may at any time assign, novate, or otherwise transfer any right (s) and/or obligation (s) of the Council under this Contract, but excluding in each case the Contractor and any Contractor Related Parties;
Council Software	software which is owned by or licensed to the Council, including software which is or will be used by the Contractor for the purposes of providing the Goods and/or Services but excluding the Contractor Software;
Council System	the Council's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Contractor in connection with this Contract which is owned by or licensed to the Council by a third party and which interfaces with the Contractor System or which is necessary for the Council to receive the Goods and/or Services;
Data Controller	shall have the meaning given to the term "controller" as set out in Article 4 GDPR;
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
Data Processor	shall have the meaning given to the term "processor" as set out in Article 4 GDPR;
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	means:

PHRASE	MEANING
	<ul style="list-style-type: none"> i) the GDPR, the LED (as and when it comes into force under the DPA 2018) and any applicable national implementing Laws as amended from time to time; ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; iii) all applicable Law about the processing of personal data and privacy; and <p>any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body, all of which are current at the time of any Processing of Personal Data;</p>
Data Subject	Means: the meaning given to such term in the GDPR;
Data Subject Access Request	means: any request from such Data Subject under Chapter III Section 2 (information and Access to Data) of GDPR
Delivery	means the delivery of Goods by the Contractor to the Council;
Delivery Location(s)	means the location(s) to which Goods that are the subject of the relevant Goods Order shall be delivered by the Contractor;
Delivery Date(s) and Times(s)	means the date(s) and time(s) for the delivery of Goods specified in the relevant Goods Order;
Designated Space	the space described in the Specification and /or agreed between the Parties to be used by the Contractor solely in connection with the Services;
Disaster Recovery and Business Continuity Plan	means the Disaster Recovery and Business Continuity Plan within the meaning of Clause 43;
Dispute Resolution Procedure	the procedure described in Clause 46;
DPA	means the Data Protection Act 2018 and GDPR
Effective Date	the date on which this Contract is signed by both Parties
EIR	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Employees	means all persons engaged appointed, employed or deployed by the Contractor or any sub-contractor of the Contractor in the provision of the Goods and/or Services including without limitation the Contractor's partners, directors, employees, personnel, and staff and shall include the Contractor's agents and authorised sub-

PHRASE	MEANING
	contractors and their personnel and employees and “Employee” means any one of the Employees;
Equalities Legislation	all Laws which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and / or any preceding, successor or amending legislation concerning the same;
Expert	any person appointed from time to time in accordance with Clause 46;
Fellow Contractor	any other contractor or consultant engaged by the Council to carry out works or services on behalf of the Council;
Financial Regulations	the Council document so described (or any replacement thereof) the purpose of which is to regulate the conduct of the Council’s financial affairs and activities as such may be amended from time to time throughout the Contract Period;
FOIA	the Freedom of Information Act 2000 and any Subordinate Legislation made under that Act, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to that Act;
FOIA Code	the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA or any revision or replacement of that Code;
Force Majeure Event	<p>means:</p> <ul style="list-style-type: none"> (a) explosion; (b) war; (c) strikes, riots and civil commotion not confined to the Employees; (d) actual or threatened terrorist attack; (e) acts of local or central government or other competent authorities (other than the Council acting as a contracting authority, lessee, licensee, trustee and/or otherwise pursuant to this Contract); (f) radioactive contamination; or (g) floods constituting a major environmental disaster

PHRASE	MEANING
GDPR	means the EU General Data Protection Regulation 2016/679 or any successor or replacement legislation;
Goods	the goods (or any part of them) which are to be provided under this Contract by the Contractor set out in the Goods Order and which may be detailed further in the Specification;
Goods Legislation	means any applicable statutory rule, order, directive, regulation or other instrument having the force of law (including any directive or order promulgated by any competent supra-national body), all British and European standards, UKAS (United Kingdom Accreditation Service) and all other Legislation for the time being in force relating without limitation to the manufacturer (including raw materials or chemicals used in the production process), packaging, delivery, carriage, storage, installation and use of the Goods and any hazards in relation to such manufacture, packaging, delivery, carriage, storage, installation and use of the Goods;
Goods Order	means any order placed by the Council (in such form as the Council may in its absolute discretion determine from time to time) for some or all of the Goods in accordance with the provisions of Clause 7 (<i>Goods Orders</i>) of this Contract and which order shall contain details of the Goods required by the Council and the relevant Delivery Location(s) and Delivery Date(s) and Time(s);
ICT Environment	the Council System and the Contractor System;
Information	for the purposes of Clause 33, information as that term is defined in section 84 of the FOIA and which relates to the Contract (or any preceding tender process leading up to it), the Contractor or any sub-contractor, or the Goods and/or Services;
Insolvency Event:	<p>where:</p> <p>(a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply];</p> <p>(b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any</p>

PHRASE	MEANING
	<p>compromise or arrangement with its creditors;</p> <p>(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership);</p> <p>(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company or limited liability partnership or partnership);</p> <p>(e) the holder of a qualifying floating charge over the assets of the Contractor (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;</p> <p>(f) the Contractor (being an individual) is the subject of a bankruptcy petition or order;</p> <p>(g) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;</p> <p>(h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);</p>
Insurance	the policies of insurance which the Contractor is obliged to take out and maintain pursuant to Clause 16;
Intellectual Property Rights	any and all patents, trade marks, service marks, copyright, moral rights, rights in design, Know-How, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
Invitation to Tender	the invitation to tender issued by the Council;
Know-How	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Goods and/or Services but excluding know how already in the other Party's possession before this Contract;

PHRASE	MEANING
Laws	all relevant Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, by-laws and directives, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply and all applicable European Community legislation, which may be in force during the period of the Contract, as enacted, amended or interpreted from time to time;
LED	Law Enforcement Directive (Directive (EU) 2016/680);
Losses	any and all claims, proceedings, charges, fees, costs, expenses (including without limitation, the cost of legal or professional services on a solicitor/professional and own client basis and the cost of defending a claim and/or proceedings), loss, damages, demands and liabilities;
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
Mediator	any person appointed from time to time in accordance with Clause 46;
Order	means any order issued by the Council specifying the Services to be carried out in accordance with this Contract;
Party	means either the Council or the Contractor and 'Parties' shall be construed accordingly;
Performance Default	(a) any negligent act or omission; and/or (b) any breach of contract; and/or (c) any failure by the Contractor properly to perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;
Personal Data	means: the meaning given to such term in the GDPR;
Personal Data Breach	means: anything which constitutes a "personal data breach" as set out in as set out in Article 4 GDPR;
Prescribed Rate	means a rate of four per cent (4%) above the base lending rate published by the Bank of England from time to time;

PHRASE	MEANING
Processing	means: has the meaning given to such term in the Data Protection Act 2018 and the terms "Processed" and their derivatives shall be construed accordingly;
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
Request for Information (or "Request")	a request for Information within the meaning given in section 1 of the FOIA, or any request for Information under the EIR;
Services	the services, works and obligations of the Contractor as set out in, or reasonably implied by, the Contract Documents;
Software	Contractor Software and Third Party Software;
Specification	the Contract Document so described and attached at Schedule 2 (as may be amended in accordance with Clause 57 and/or varied in accordance with Clause 58 from time to time) setting out the Goods and Services required to be provided by the Contractor and related matters;
Sub-contractor	means a sub-contractor of the Contractor
Sub-processor	any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;
Subordinate Legislation	has the meaning given in section 84 of the FOIA;
Supervisory Employees	Employees performing a supervisory or managerial function;
Termination	termination or expiry of the Contract in accordance with its terms, in common law or in statute;
Termination Date	The date of early termination of this Contract in accordance with its terms;
Third Party Materials	the Third Party Software together with the documentation relating to the Third Party Software;
Third Party Software	software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Goods and/or Services;
Variation	an amendment to the terms of the Contract, or an amendment, omission, change or modification to the Goods and/or Services or

PHRASE	MEANING
	<p>part of the Goods and/or Services, or a change in the way in which the Goods and/or Services are to be provided, effected in accordance with Clause 58 including without limitation an amendment:</p> <ul style="list-style-type: none"> a) to omit any part of the Goods or to cease to provide any part of the Goods; b) to omit any part of the Services or to cease to provide any part of the Services in such sites or locations during such times and for such period or periods as the Authorised Officer may determine which period or periods may be either of a permanent or temporary nature; c) to provide the Goods and/or Services or any part thereof in such manner as the Authorised Officer may reasonably require (but, for the avoidance of doubt, any requirement to provide the Goods and/or Services to the Contract Standard shall not be a Variation); d) to provide such goods and/or services additional to the Goods and/or Services, including provision at additional or substituted sites or locations as the Authorised Officer may reasonably require, provided that such additional goods and/or services shall be the same as or similar in character to the Goods and/or Services; e) to comply with any obligations imposed on the Council by future Laws, regulations, directives, or orders of similar effect; f) to vary permanently the Goods and/or Services or any part thereof to be provided at any site or location as reasonably required by the Authorised Officer; or g) to provide the Goods and/or Services as instructed by the Council in accordance with Clauses 7.2 and 8.1.
Warranties	the warranties, representations and undertakings made and given by the Contractor pursuant to Clause 4;
Working Day and Working Hours	a day between 9am and 5pm Monday to Friday inclusive other than a day which is a public holiday or bank holiday in England and Working Hours shall be construed accordingly.

**SCHEDULE 2
SPECIFICATION**



CORBY ENTERPRISE CENTRE VOICE AND DATA SUPPLY

SPECIFICATION

CONTENTS

- 1. Definitions Page 3
- 2. Introduction Page 5
- 3. Background Page 5
- 4. Scope..... Page 6
- 5. Service Conditions and Environmental Factors Page 6
- 6. Business Continuity and Disaster Recovery Page 6
- 7. Statement of Requirements..... Page 7
- 8. Continuous Improvement Page 7
- 9. Data Management / General Data Protection Regulation (GDPR)..... Page 8
- 10. Quality Requirements..... Page 9
- 11. Whole of Life Support..... Page 9
- 12. Security Page 10
- 13. Training..... Page 10
- 14. Implementation Criteria Page 10
- 15. Monitoring Arrangements and Contract Management Page 11
- 16. Critical Service Level Failure Page 12
- 17. Performance Monitoring and Review..... Page 13
- 18. Risk Management Page 14
- 19. Other Relevant Details Page 14
- 20. Corporate Social Responsibility..... Page 15

1. DEFINITIONS

Achieved Performance Measure	In respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question.
Charges	The charges which shall become due and payable by the Authority to the Supplier in respect of the Goods, Services, Supplier and/or Works in accordance with the provisions of the Contract
Contract	The legal agreement between the Supplier and the Council, which details the Council's requirements, terms and conditions
Contract Year	A period of 12 months, commencing on the Contract Start Date
Critical Service Level Failure	A failure in service, deemed to be so critical to the continued operation of the Service and/or Contract that the Council is unable to continue its minimum level of service, as set out in this document.
Default	Failure by the Supplier to fulfil its obligations and/or maintain its minimum agreed service levels under the Contract
Failure	A failure by the Supplier to perform one or more of the requirements set out in the Contract
GDPR	The General Data Protection Regulation ((EU) 2016/679).
Government Data	Any data required for collection or use by any branch of Government
HTTPS	Hypertext Transfer Protocol Secure
IFNL	Independent Fibre Networks Ltd
ISDN	Integrated Services digital Network
ISP	Internet Service Provider
Performance Measure	The performance measurements and targets in respect of the Supplier's performance of the Contract
Month	A calendar month
OFNL	Open Fibre Networks Limited
Parties	Corby Borough Council and the successful Supplier
PBX	Phone exchange system
Performance Monitoring Report	The reports to be prepared and presented by the Supplier to include a comparison of Achieved Performance Measures with the Target Performance Measures in the measurement period in question and measures to be taken to remedy any deficiency in achieved Performance Measures.

Prohibited Act	<p>The following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; 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; c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; d) any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.
Reporting Date	A date, agreed by the Supplier and the Council, on which all reporting data will be provided
Representative	Means, in relation to a party, its employees, officers, representatives and advisors
Service Credit	A sum which the Authority is entitled to deduct or invoice for a Service Failure
Service Credit Cap	A payment ceiling, agreed between the Supplier and the Council, after which the Council would consider a Service Level Failure to be a Critical Service Level Failure
Service Level	The minimum level of service required of the Supplier by the Council when performing the service detailed in the Contract
Service Level Failure	A shortfall or failure by the Supplier to provide the Services in accordance with any Target KPI
Service Level Threshold	The minimum level of service the Council expects of the Supplier
Service Period	The agreed term, during which, Goods, Services, Supplies, Works, or any part, thereof will be provided by the Supplier or any of their representatives.
SSH	Secure Shell (SSH) is a cryptographic network protocol for operating network services securely over an unsecured network.
SIP Trunks	Session Initiation Protocol
Site	<p>any premises (including the Council's Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none"> a. the Deliverables are (or are to be) provided; or

	b. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables.
Start Date	The date the Contract start
Target KPI	The minimum level of performance for a KPI which is required by the Council
The Centre	Corby Enterprise Centre
The Council	Corby Borough Council
The Supplier	The company who wins the contract, following evaluation of all bids received by the Council
VoIP	Voice over Internet Protocol
Working Day	Monday to Friday, excluding any public holidays in England and Wales.

2. INTRODUCTION

- 2.1. The Council is seeking a suitably qualified and experienced Supplier to provide Voice and Data Supply for the Corby Enterprise Centre, which will include set-up for new tenants and assisting with any faults with the data or telephone provision.
- 2.2. The Centre requires fully resilient Internet connectivity services with SIP trunk provision; to include support for service dependant hardware (i.e. Router / Firewall)
- 2.3. The Supplier is to work with the fibre infrastructure provider to the Corby Enterprise Centre. This is in the form of ethernet service connectivity to the Supplier's network.
- 2.4. The circuit is to carry voice and data services with the relevant traffic shaping and control.
- 2.5. The requirement is for voice and data traffic for a multi occupancy site which operates 24/7, 365 days a year

3. BACKGROUND

- 3.1. Corby Enterprise Centre provides flexible serviced offices, studio space, co-working space, virtual offices and meeting rooms to growing companies within a professional and modern environment. The Centre is the perfect dynamic and inspirational environment to support and develop growing businesses. Businesses based at the Centre benefit from 24/7 access, including bank holidays and high speed fibre optic 100mb broadband connection.

- 3.2. The Centre provides voice and data service to businesses operating from the Centre. It is imperative a consistent and stable service is offered to tenants and visitors of the Centre, which is business critical for occupants.
- 3.3. The Centre offers provision of a shared high-speed connection with a first-class voice and data service to businesses operating from the Centre. It is imperative a consistent and stable service is offered to tenants and visitors of the Centre which is business critical for occupants.
- 3.4. Currently the Centre is receiving an uncontended 100/100 Mbps circuit directly to the site. The bandwidth for the circuit is split in an 80/20 share. 80% is dedicated to shared internet bandwidth for the Centre tenants with the remaining 20% dedicated to VoIP protocols.
- 3.5. Additionally, there are currently 4 analogue lines, 2 of which are allocated to lift and alarms, 2 of which are allocated for tenant use and are provided by See the Light. IFNL own the ISP; See the Light provide the service.
- 3.6. The Centre operates a traditional Mitel PBX phone system. This is installed with ISDN trunk cards. These cards are connected directly into the providers ISDN VoIP Gateway.

4. SCOPE

- 4.1. The incumbent provider is currently providing a 100mb uncontested service to the Centre, with demand ever increasing, the option to increase bandwidth in the future is a requirement within this contract.
- 4.2. Provision of voice & data services to include 100mb fibre ethernet circuit, 100 sip trunks and all associated hardware support.
- 4.3. The Supplier will be responsible for following guidelines for any service calls working on a Critical/Major/Minor category.
- 4.4. Fault Classification:
 - 4.4.1. Critical – Business effecting, mission critical fault – preventing business operations.
 - 4.4.2. Major – Partial system failure, not business critical but having a minor effect on normal service levels.
 - 4.4.3. Minor – Limited effect on day to day operations with minimal disruption where workaround is available.
- 4.5. Response times are set out for each Fault Classification, below:
 - 4.5.1. Critical – Helpdesk support 24 hours a day, 7 days a week, 365 days a year
 - a. Remote Support – 2 hours response
 - b. Onsite Technical support – 4 hours response.
 - 4.5.2. Major – Helpdesk support 24 hours a day, 7 days a week, 365 days a year
 - a. Remote Support – 2 hours response
 - b. Onsite Technical support – 4 hours response.
 - 4.5.3. Minor – Helpdesk support 24 hours a day, 7 days a week, 365 days a year
 - a. Remote Support – 4 hours response
 - b. Onsite Technical support – 8 hours response

5. SERVICE CONDITIONS AND ENVIRONMENTAL FACTORS

- 5.1. Where out of hours access may be required, the Centre Manager or Senior Administrator should be contacted in the first instance, who would contact the Centre Security provider, to attend site and enable access.

6. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 6.1. A high level of service is expected with a Business Continuity and Disaster Recovery Plan in place should any loss of supply occur.
- 6.2. At least thirty (30) Working Days prior to the Contract Start Date, the Supplier shall prepare and deliver to the Council, for Approval, a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- 6.2.1. ensure continuity of the business processes and operations supported by the Services, following any failure or disruption of any element of the Service; and
 - 6.2.2. the recovery of the Service in the event of a Disaster.
- 6.3. In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately implement the Business Continuity and Disaster Recovery Plan (and shall inform the Council promptly of this).

7. STATEMENT OF REQUIREMENTS

- 7.1. The Centre are seeking a Supplier to assume the responsibility of the existing services and propose suitable changes if deemed necessary.
- 7.2. The Supplier must be able to assume control of the service with minimal interruption or downtime to the Centre. This may be in the way of working with the incumbent provider for connectivity services and local network and telephone support company.
- 7.3. The Supplier must be able to adopt the existing /26 netblock of IP addresses to prevent downtime to the tenants
- 7.4. It is imperative that proactive monitoring be in place for the entire duration of service. This is to include detailed metrics such as:
- 7.4.1. Bandwidth utilisation per IP address.
 - 7.4.2. Total Throughput
 - 7.4.3. VOIP delay & Jitter measurements
 - 7.4.4. Service availability at each point in provider network
 - 7.4.5. Circuit errors, Interface error, Packet Loss, CRCs
- 7.5. A high level of customer support is required with regular service monitoring; a dedicated account manager who would be available to ensure any identified issues are dealt with in a timely and appropriate manner.
- 7.6. The Current contract has expired looking for stability and continuation of service.
- 7.7. It is imperative that the Supplier has a close working relationship with OFNL and has direct and fast reporting lines for raising fault cases and change controls.
- 7.8. All faults and changes will need to be presented to the existing network support provider. This includes proactive support cases being raised to the network support provider's helpdesk.

8. CONTINUOUS IMPROVEMENT

- 8.1. The Supplier must, throughout the Contract Term, identify new or potential improvements to the provision of the Service with a view to reducing the Council's costs (including the Charges) and/or improving the quality and efficiency of the Service and their supply to the Council.
- 8.2. The Supplier must adopt a policy of continuous improvement in relation to the Service, which must include regular reviews with the Council of the Service and the way it provides them, with a view to reducing the Council's costs (including the Charges) and/or improving the quality and efficiency of the Service. The Supplier and the Council must provide each other with any information relevant to meeting this objective.
- 8.3. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 8.4. Once any improvements have been approved by the Council:
 - 8.4.1. the Supplier shall use all reasonable endeavours to implement any agreed Service in accordance with the agreed proposals; and
 - 8.4.2. the Supplier and the Council will meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Supplier and the Council) to review the Supplier's progress against the agreed proposals.
- 8.5. Should the Supplier's costs in providing the Service to the Council be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Council by way of a consequential and immediate reduction in the Charges for the Service.
- 8.6. At any time during the Contract, the Supplier may make a proposal for gainshare. If the Council deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

9. DATA MANAGEMENT / GENERAL DATA PROTECTION REGULATION (GDPR)

- 9.1. Any information provided or accessed by the Supplier as a part of this Service are subject to the General Data Protection regulation, with which, the Supplier must comply. Further details are set out within the General Terms and Conditions, however, if the Supplier does not follow the requirements of the GDPR, they will be in breach of contract.
 - 9.1.1. the processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to the Council's customers;
 - 9.1.2. details of the duration of the processing will be no longer than the Contract term;
 - 9.1.3. the nature and purpose of the processing will be any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination,

- restriction, erasure or destruction of data (whether or not by automated means) etc;
 - 9.1.4. the type of personal data being processed may include name, address, date of birth, NI number, telephone number, pay, images;
 - 9.1.5. the categories of the data subjects are staff (including volunteers, agents, and temporary workers), customers / clients, suppliers, members of the public, users of a particular website;
 - 9.1.6. the obligations and the rights of the Council under the General Data Protection regulation remain in place until the contract has concluded;
 - 9.1.7. the Supplier must act on the documented instructions of the Council;
 - 9.1.8. the Supplier must delete or return any and all personal data at the end of the provision of the service;
 - 9.1.9. the Supplier must implement appropriate technical and organisational measures; and
 - 9.1.10. the Council retains a right to audit the Supplier at the Council's absolute discretion, in relation to this matter.
- 9.2. The Supplier must:
- 9.2.1. process the personal data only on the documented instructions of the Council;
 - 9.2.2. comply with security obligations equivalent to those imposed on the Council (implementing a level of security for the personal data appropriate to the risk);
 - 9.2.3. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 9.2.4. only distribute personal data with the Council's prior specific or general written authorisation. Any party to whom the successful bidder is authorised to distribute the personal data shall be bound by these terms. The successful bidder must inform the Council of intended changes in arrangements with any persons to whom they have distributed these details;
 - 9.2.5. make available to the Council all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council - and the successful bidder shall immediately inform the Council if, in its opinion, an instruction infringes GDPR or other EU or member state data protection provisions;
 - 9.2.6. assist the Council in carrying out its obligations with regard to requests by data subjects to exercise their rights under chapter III of the GDPR, noting different rights may apply depending on the specific legal basis for the processing activity (and should be clarified by the Council up-front);
 - 9.2.7. assist the Council in ensuring compliance with the obligations to implementing a level of security for the personal data appropriate to the risk, taking into account the nature of processing and the information available to the successful bidder;
 - 9.2.8. assist the Council in ensuring compliance with the obligations to carry out Data Protection Impact Assessments, taking into account the nature of processing and the information available to the successful bidder; and
 - 9.2.9. notify the Council without undue delay after becoming aware of a personal data breach.

10. QUALITY REQUIREMENTS

- 10.1. Service Level response times will need to be monitored closely within the Supplier's service desk and breaches raised and reported in the review meetings with the Council's Representative.
- 10.2. All works undertaken on-site should be made with due care and diligence to provide a clear and clean environment for the equipment and staff to operate around. Examples of this are careful cable management, clear labelling of devices and connections, safe use of tools in cabinet areas.

11. WHOLE OF LIFE SUPPORT

- 11.1. All service dependent equipment should be covered under a full manufacturer warranty for the life of the contract. Patches, fixes and upgrades should be factored in to this warranty and deployed on a regular basis with minimal service interruption.

12. SECURITY

- 12.1. All personal and commercial information should be handled in a secure manner as it becomes available to all parties. This could include but not limited to traffic usage, types, web browsing history, faults etc.
- 12.2. Management of the provided service should be performed using secure methods with encrypted protocols (HTTPS, SSH). The Supplier should have an established security policy in place and will need to be provided to the Council's Representative.

13. TRAINING

- 13.1. Any training required for the Centre staff and associated companies should be delivered in a good time and be signed off. This could be for processes of raising support requests, Change management requests or portal access of any kind.

14. IMPLEMENTATION CRITERIA

- 14.1. Due to the nature of the private fibre provision by OFNL to the Centre a limited number of service types and media can be provided to the site with major disruption. As such this cannot be changed.
- 14.2. It is a requirement of the service provider to install all hardware, make live all services and fully tested in parallel to the incumbent before go-live.
- 14.3. An implementation and testing plan will need to be presented to the Council's Representative, for approval, before services are made live.

15. MONITORING ARRANGEMENTS AND CONTRACT MANAGEMENT

- 15.1. The Supplier shall at all times provide the Service to meet or exceed any Performance Measure for the Service.
- 15.2. The Supplier shall cooperate in good faith with the Council to develop relevant performance measures for this Contract.
- 15.3. The metrics that are to be implemented to measure performance shall be developed and agreed between the Council and the Supplier.
- 15.4. The ongoing progress and development of performance measures shall be reported through regular meetings, which will take place at least monthly.

- 15.5. Management Information Reports must be completed (even where there are no transactions to report) and returned to the Council by the Reporting Date every Month during the contract term and thereafter, until all transactions relating to the Service have permanently ceased.
- 15.6. The Management Information Report should report (among other things) on performance measures during the Month to which they relate, regardless of when the work was actually completed. For example, if a system outage is raised in October but the work was actually completed in September, the Supplier must report the system outage in October's Management Information Report and not September's.
- 15.7. If the Supplier discovers any errors in any reported Management Information, it will inform the Council and provide corrections in the next Management Information Report.
- 15.8. The Supplier agrees to attend meetings with the Council in person to discuss the circumstances of any Service Level Failure(s) at the request of the Council. If the Council requests such a meeting, the Supplier shall propose and document measures to ensure that any Service Level Failures are rectified and do not occur in the future.
- 15.9. The Supplier acknowledges that any Service Level Failure shall entitle the Council to the rights set out in this Section including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Council as a result of the Supplier's Service Level Failure.
- 15.10. The Supplier shall send Performance Monitoring Reports to the Council detailing the level of service which was achieved in accordance with the requirements of this Specification.
- 15.11. A Service Credit shall be the Council's exclusive financial remedy for a Service Level Failure except where:
- 15.11.1. the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or
 - 15.11.2. the Service Level Failure:
 - a. exceeds the relevant Service Level Threshold;
 - b. has arisen due to a Prohibited Act or wilful Default by the Supplier;
 - c. results in the corruption or loss of any Government Data; and/or
 - d. results in the Council being required to make a compensation payment to one or more third parties; and/or
 - 15.11.3. the Council is otherwise entitled to or does terminate its Contract with the Supplier.
- 15.12. Not more than once in each Contract Year, the Council may, on giving the Supplier at least three (3) Months' notice, change the weighting of a Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
- 15.12.1. the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

- 15.12.2. the principal purpose of the change is to reflect changes in the Council's business requirements and/or priorities or to reflect changing industry standards; and
- 15.12.3. there is no change to the Service Credit Cap.

16. OTHER RELEVANT DETAILS

- 16.1. In order for Suppliers to ensure their tender submissions reflect as accurately as possible the Council's specification and requirements, the Council strongly recommends that Suppliers undertake a site visit in order for each Supplier to satisfy itself so far as is possible that its proposed tendered price to be submitted in its bid is correct, realistic and sustainable. Such site visits may be arranged as follows:
- 16.2. Booking of time and date listed below (please note bookings are first come, first served basis).
 - 16.2.1. 12th February 2019 @ 11:00hrs – 1hr slot
 - 16.2.2. 12th February 2019 @ 14:00hrs – 1hr slot
 - 16.2.3. 13th February 2019 @ 11:00hrs – 1hr slot
 - 16.2.4. 13th February 2019 @ 14:00hrs – 1hr slot
- 16.3. All questions asked by Suppliers during site visits will be distributed to all Suppliers, including answers.
- 16.4. Site visits will not be scored or evaluated, but the council makes available this opportunity to Suppliers in accordance with the principles of openness, fairness, transparency and non-discrimination so as to enable each Supplier so far as is reasonable to submit its most competitive bid.
- 16.5. **For the avoidance of doubt please be aware that following award of contract should the successful Supplier subsequently find that its proposed solution is not accurate and sustainable then the successful Supplier will be not be permitted to amend their pricing bid so as to request any further monies associated with the full provision of this service.**

17. CRITICAL SERVICE LEVEL FAILURE

- 17.1. On the occurrence of a Critical Service Level Failure:
 - 17.1.1. any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
 - 17.1.2. the Council shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period, provided that the operation of this paragraph shall be without prejudice to the right of the Council to terminate this Contract and/or to claim damages from the Supplier for material Default.

17.2. Service Levels

- 17.2.1. If the level of performance of the Supplier:
- a. is likely to or fails to meet any Performance Measure; or
 - b. is likely to cause or causes a Critical Service Failure to occur, the Supplier shall immediately notify the Council in writing and the Council, in its absolute discretion and without limiting any other of its rights, may:
 - i. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Council and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
 - ii. instruct the Supplier to comply with the Rectification Plan Process;
 - iii. if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Council; and/or
 - iv. if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

17.3. Service Credits

- 17.3.1. The Council shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 17.3.2. Service Credits are a reduction of the amounts payable in respect of the Service and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with the calculation formula in Table A, below.
- 17.3.3. Table A: Services Levels and Service Credits

Performance Measure	Polarity	Target	Example Performance	Difference
1. Critical Faults resolved in time	Higher is better	100%	100%	0%
2. Major Faults resolved in time	Higher is better	100%	100%	0%
3. Minor Faults resolved in time	Higher is better	100%	96%	4%
Service Credits				4%

- 17.3.4. The Service Credits shall be calculated on the basis of the following Worked Example:
- a. 0.5% Service Credit will be gained for each percent below the Target.
 - b. Based on the example performance provided in the table above, 1 Performance Measure has underperformed, to the total value of 4% (Performance Measure 3 by 4%).

- c. Therefore, if the monthly service payment is £2,500, the Service Credit will be £50.

18. PERFORMANCE MONITORING AND REVIEW

- 18.1. Within twenty (20) Working Days of the Contract Start Date, the Supplier shall provide the Council with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Supplier and the Council which the Supplier and the Council will agree as soon as reasonably possible.
- 18.2. The Supplier shall provide the Council with Performance Monitoring Reports in accordance with the process and timescales agreed which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 18.2.1. for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 18.2.2. a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 18.2.3. details of any Critical Service Level Failures;
 - 18.2.4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 18.2.5. the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 18.2.6. such other details as the Council may reasonably require from time to time.
- 18.3. The Supplier and the Council shall attend meetings to discuss Performance Monitoring Reports as required by the Council. These meetings will be the forum for the review by the Supplier and the Council of the Performance Monitoring Reports. These meetings shall:
 - 18.3.1. take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Council shall reasonably require;
 - 18.3.2. be attended by the Supplier's Representative and the Council's Representative; and
 - 18.3.3. be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Council's Representative and any other recipients agreed at the relevant meeting.
- 18.4. The minutes of the preceding Month's meeting will be agreed by both the Supplier's Representative and the Council's Representative at each meeting.
- 18.5. The Supplier shall provide to the Council such documentation as the Council may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
- 18.6. The Council may undertake satisfaction surveys in respect of the Supplier's provision of the Service. The Council shall be entitled to notify the Supplier of any aspects of their

performance of the provision of the Service which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Specification.

19. RISK MANAGEMENT

19.1. The Supplier and the Council shall pro-actively manage risks attributed to them under the terms of this Contract.

19.2. The Supplier shall develop, operate, maintain and amend, as agreed with the Council, processes for:

- 19.2.1. the identification and management of risks;
- 19.2.2. the identification and management of issues; and
- 19.2.3. monitoring and controlling project plans.

19.3. The Supplier will allow the Council to inspect, at any time within working hours, the accounts and records which the Supplier is required to keep.

19.4. The Supplier will maintain a risk register of the risks relating to the Service, which the Council and the Supplier have identified.

20. OTHER RELEVANT DETAILS

20.1. A decision was made by the Secretary of State, regarding the proposed reorganisation of local government in Northamptonshire on Tuesday, 14th May 2019, to abolish the 8 existing councils in Northamptonshire and replace them with 2 new councils of North Northamptonshire and West Northamptonshire. Corby Borough Council will be one of 4 Councils, which also includes elements of Northamptonshire County Council, making up the North Northamptonshire authority, alongside East Northamptonshire District Council, Kettering Borough Council and the Borough Council of Wellingborough.

20.2. Work is currently taking place across Northamptonshire, to ensure these new arrangements are operational from Thursday, 1st April 2021 (Vesting Day), at which time Corby Borough Council will cease to exist.

20.3. The Council are currently uncertain how this will affect current contracts, which run beyond Vesting Day, but will keep all relevant parties updated as more information is made available.

20.4. Initially, suppliers should be aware that contracts which run beyond Vesting Day may be concluded earlier than the advertised contract term. Alternatively, suppliers awarded contracts which run beyond Vesting Day may be required to undertake and/or provide the same and/or comparable goods, service(s), supplies and/or work(s) (as detailed in this Specification) to and/or on behalf of the newly established North Northamptonshire authority, for either a defined period or until conclusion of the advertised contract term.

20.5. The Council wishes to make suppliers aware that this may affect the contract value.

21. CORPORATE SOCIAL RESPONSIBILITY

21.1. Requirements

- 21.1.1. In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of Suppliers who work with government.
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)
- 21.1.2. The Council expects its Suppliers and Sub-Contractors to meet the standards set out in that Code. In addition, the Council expects its Suppliers and Sub-Contractors to comply with the standards set out in this Section.
- 21.1.3. The Supplier acknowledges that the Council may have additional requirements in relation to corporate social responsibility. The Council expects that the Supplier and its Sub-Contractors will comply with such corporate social responsibility requirements as the Council may notify to the Supplier from time to time.

21.2. Equality and Accessibility

- 21.2.1. In addition to legal obligations, the Supplier shall support the Council in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
- a. eliminate discrimination, harassment or victimisation of any kind; and
 - b. advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

21.3. Modern Slavery, Child Labour and Inhumane Treatment

- 21.3.1. Modern Slavery Helpline - means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.
- 21.3.2. The Supplier:
- a. shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
 - b. shall not require any Supplier Staff or Sub-Contractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
 - c. warrants and represents that it has not been convicted of any slavery or human trafficking offenses anywhere around the world;
 - d. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any

- allegation of slavery or human trafficking offenses anywhere around the world;
- e. shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offenses anywhere around the world;
- f. shall have and maintain throughout the term of any of its Contracts, its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
- g. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under any of its Contract;
- h. shall prepare and deliver to the Council, upon request, a slavery and human trafficking report, setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with an annual certification of compliance;
- i. shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;
- j. shall not use or allow child or slave labour to be used by its Sub-Contractors;
- k. shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Council and Modern Slavery Helpline.

21.4. Income Security

21.4.1. The Supplier shall:

- a. ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- b. ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- c. All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- d. not make deductions from wages:
 - i. as a disciplinary measure;
 - ii. except where permitted by law; or
 - iii. without expressed permission of the worker concerned.
- e. record all disciplinary measures taken against Supplier Staff; and
- f. ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

21.5. Working Hours

21.5.1. The Supplier shall:

- a. ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
 - b. that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
 - c. ensure that use of overtime used responsibly, taking into account:
 - i. the extent;
 - ii. frequency; and
 - iii. hours worked; by individuals and by the Supplier Staff as a whole.
- 21.5.2. The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
- 21.5.3. Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
 - a. this is allowed by national law;
 - b. this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce; appropriate safeguards are taken to protect the workers' health and safety; and
 - c. the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 21.5.4. All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

21.6. Sustainability

- 21.6.1. The Supplier shall meet the applicable Government Buying Standards, which can be found online at:
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

**SCHEDULE 3
CONTRACTOR'S PROPOSALS**

SCHEDULE 4
PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Description	Details
Subject matter of the processing	Provision of fully resilient internet connectivity services with SIP trunk provision to Corby Enterprise Centre and Tenants.
Duration of the processing	3 years (2+1)
Nature and purposes of the processing	The supplier does not have access to personal information, however the supplier is able to interrogate an ip address to identify what information is being accessed. The user would be identified by ip address only and not personally.
Type of Personal Data	There is no personal data sharing, however the supplier is able to interrogate an ip address to identify what information is being accessed.
Categories of Data Subject	Categories of data may include information of sites being visited however this information is not a direct subject of identification to an individual.