

Dated

2017

RUTLAND COUNTY COUNCIL

AND

MELTON BOROUGH COUNCIL

AND

[XXX]

AGREEMENT FOR THE PROVISION OF ARBORICULTURAL SERVICES

This Agreement is made the day of 2017

BETWEEN:

- (1) **Rutland County Council** of [,], (the “**RCC**”); and **Melton Borough Council** of [] (the “**MBC**”)
- (2) [XXX], a [company limited by guarantee] [(Company No.)] [and registered as a charity (Charity No.)] whose registered office is at [XXX] (the “**Provider**”).

(together “the Parties” and each a “Party”).

BACKGROUND

The Parties have agreed that the Provider shall provide the Services and the Council shall pay to the Provider the Price in respect of those Services, on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

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

“Agreement”	means these terms and conditions and any Schedules and Annexes, as amended or varied from time to time (and for the avoidance of doubt the Schedules and Annexes shall form part of the Agreement as if set out in the main body).
“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Provider to act as the representative of the Council for the purpose of the Agreement from time to time.
“Authority”	RCC and or MBC
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England in each case after the date of this Agreement.
“Commencement Date”	10 th October 2017

“Confidential Information”	any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all Personal Data and sensitive Personal Data.
“Contract Manager”	the person duly appointed by the Provider and notified in writing to the Council to act as the representative of the Provider for the purpose of the Agreement from time to time.
“Contractor”	Provider
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Council”	Rutland County Council including parish councils within Rutland, the Town Councils of Oakham and Uppingham or Melton Borough Council where the context so admits, includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“Council Manager”	Any person appropriately authorised by the Authority as its representative to monitor and or instruct the Provider in respect of the Services
“DPA”	The Data Protection Act 1998.
“Employee(s)”	any persons employed or engaged by the Provider to perform its obligations under the Agreement which will also include the Provider's (and any sub-contractor's) servants, agents, voluntary and unpaid workers, sub-contractors and representatives or, in respect of clause 35 (TUPE) and any other TUPE obligation, an individual employed by the Provider in the performance of the Services.

“Employment Checks”	means full and proper checks in accordance with the Law, Good Industry Practice and the policies of the Council, for the vetting of Employees and proposed Employees for:
	(a) eligibility to work in the UK;
	(b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure; and
	(c) (if the Services concern Regulated Activity) the carrying out of Regulated Activity.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a Party of its obligations under this Agreement arising from any act beyond its reasonable control and affecting either Party, including without limitation: acts of God, war, industrial action (subject to clause 33.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier or contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Agreement.
“HRA”	The Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Law”	any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or

brought.

“Materials”

any and all works of authorship and materials developed, written or prepared on whatever media for the purposes of or in connection with the Services including, without limitation, any and all reports, studies, data, databases, diagrams, charts, specifications, software, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto.

“Personal Data”

as defined in the DPA 1998.

“Price”

the price of the Services as set out in Schedule 2. Unless otherwise stated, any figures shall be regarded as being stated exclusive of properly chargeable VAT which shall be separately accounted for provided that a full and proper VAT invoice has been provided.

“Prohibited Act”

each of the following constitute a Prohibited Act:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Council or person working for or engaged by the Council, any gift, reward, advantage or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council; or
 - (ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council; or
 - (iii) for the improper performance of a relevant function or activity; or
- (b) committing any offence:
 - (i) under the Bribery Act 2010; or
 - (ii) under s117(3) of the Local Government Act 1972; or
 - (iii) under legislation creating offences in respect of fraudulent acts; or
 - (iv) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council; or
 - (v) defrauding or attempting to defraud or conspiring to defraud the Council; or
 - (vi) breach of or failure to carry out the Employment Checks.

“Provider”

[XXXX] named above as a Party, and where applicable this shall include the Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.

“Regulated Activity”

in relation to children, shall have the meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults shall have the meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

“Replacement Provider”	any company, organisation or person who replaces the Provider following termination or expiry of all or part of this Agreement.
“Schedules”	any schedules attached to this Agreement.
“Services”	the services, duties and responsibilities to be provided, performed and observed by the Provider pursuant to this Agreement and as specified in the Specification.
“Service Provider”	the ‘Provider’
“Specification”	as contained in Schedule 1 which the Provider shall comply with.
“Term”	the period of five years from the Commencement Date to [] 2022 (inclusive) unless terminated earlier in accordance with the terms of this Agreement, or extended pursuant to clause 5.2.
“Transparency Code”	Local Government Transparency Code 2015
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2. Reference in this Agreement to:

- 1.2.1. any statute, statutory instrument, order, regulation or other similar instrument ("legislation") shall be construed as a reference to the legislation as amended or re-enacted from time to time and shall include any subordinate legislation for the time being in force made under it;
- 1.2.2. (except where the context otherwise requires) words denoting the singular include the plural and vice-versa, words denoting any gender include all genders and words denoting persons include the Provider, any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings and vice-versa; and
- 1.2.3. any Clause, sub-clause or Schedule shall mean a clause or a sub-clause of or schedule to this Agreement.

1.3. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.4. Any obligation in this Agreement placed upon the Provider:-

- 1.4.1. shall be construed so as to include an obligation upon the Provider to ensure that the Employees comply with that obligation;

- 1.4.2. shall be construed as being without prejudice to any other obligation contained within the Agreement, unless expressly stated to the contrary; and
- 1.4.3. shall be deemed to require the obligation to be complied with and/or carried out at the Provider's own expense, unless expressly stated to the contrary.

2. HEADINGS

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

3 NOTICES

- 3.1 Any notice required by this Agreement to be given by either Party to the other shall be in writing and shall be served personally, or by sending it by registered post or recorded delivery to the address detailed for that Party at the beginning of this Agreement. Either Party may change their address to which notices are to be sent by giving written notice to the other Party.
- 3.2 Any notice shall be deemed to have been duly received, when sent in accordance with clause 3.1:
- (i) if served personally on a Business Day before 4.30p.m., on that day, or in any other case of personal service, at 9.00a.m. on the next Business Day after that day;
 - (ii) if sent by post, at 9.00a.m. on the second Business Day after posting, or if the date and time recorded by the delivery service is earlier, at that time.

4 ENTIRE AGREEMENT, PRECEDENCE and INCORPORATION

- 4.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 4.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 4.2 The schedules attached hereto form part of this Agreement. In case of conflict between the body of the Agreement and the Schedules the main body shall have precedence over Schedule One 'The Specification' and the Specification shall have precedence over Schedule Two 'The Special Conditions' which shall have precedence over Schedule Three 'The Pricing Schedule'.

5 TERM

- 5.1 This Agreement shall commence on the Commencement Date and, [subject to clause 5.2,] shall continue for the Term unless terminated earlier in accordance with this Agreement.

- 5.2 The Council shall have the option to extend this Agreement for up to a further period of Five Years in increments of at least 12 months at a time and if the Council wishes to exercise that option, the Provider shall be notified in writing at least 90 days prior to the commencement of the extension. Any such extension shall be construed as part of the Term and shall be governed by the terms of this Agreement.

6 PERFORMANCE

- 6.1 The Provider shall perform the Services in accordance with the Specification and the terms and conditions set out in the Agreement and shall comply and co-operate with any reasonable instructions given by the Authorised Officer.
- 6.2 The Council will have the right to observe the Provider's performance of the Services at any time, if the Services are not being performed on the Council's premises.
- 6.3 The Provider shall provide the Services, or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice and in accordance with all applicable Laws.
- 6.4 Subject as hereinafter provided the Provider shall devote such time, attention, skill, knowledge and experience as may be necessary for the proper discharge of its duties and obligations under this Agreement.
- 6.5 The Provider will not, during the Term, undertake any additional activities or accept other engagements which would directly interfere with or preclude the performance of the duties required from time to time under this Agreement or which might lead to any conflict of interest between the Provider and the best interests of the Council.
- 6.6 The Provider is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Agreement.
- 6.7 The Provider will be responsible at its own cost and expense for the provision of all necessary staff, materials and equipment for the management and execution of all obligations under the Agreement.
- 6.8 If the Provider at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Provider from performing the Services in accordance with the Agreement, the Provider shall inform the Council immediately and the Council may, at its absolute discretion, extend the Term accordingly.
- 6.9 If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Agreement, the Provider shall inform the Council immediately.
- 6.10 If the Provider has a change in Control, the Provider shall inform the Council as soon as reasonably practicable.
- 6.11 The Council retains the Provider for the performance of the Services on a non-exclusive basis and the Provider accepts such appointment to provide the Services on the terms of this Agreement.

- 6.12 The Council is not obliged to provide the Provider with any work under this Contract

7 CONTRACT MANAGER

- 7.1 The Provider shall appoint a competent and authorised Contract Manager empowered to act on behalf of the Provider for all purposes connected with the Agreement and shall ensure that the Council is aware who the Contract Manager is and who, in their absence, is suitable and authorised to act.
- 7.2 The Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Provider shall give maximum possible notice to the Council before changing its Contract Manager.

8 WARRANTIES

- 8.1 The Provider warrants and represents to the Council that:

- 8.1.1 it has the authority to enter into this Agreement and to perform the Services;
- 8.1.2 it has and will continue to have all necessary rights in and to any software or Intellectual Property Rights or any other Materials made available by the Provider to the Council necessary to perform the Services and its obligations under this Agreement; and
- 8.1.3 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document required by Law which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform the Services or its obligations under this Agreement.

- 8.2 The Provider warrants and represents to the Council that the Services will be provided:

- 8.2.1 in a proper, skilful and workmanlike manner;
- 8.2.2 by a sufficient number of appropriately qualified, trained and experienced Employees with a high standard of skill, care and due diligence, in accordance with Good Industry Practice and who have been subject to the Employment Checks (and any breaches – or potential breaches - of safeguarding are notified to the Council immediately);
- 8.2.3 in accordance in all respects with the requirements of any applicable Law from time to time in force and that the Provider has and will continue to hold all necessary (if any) regulatory approvals from any regulatory body necessary to perform the Provider's obligations under the Agreement;
- 8.2.4 in accordance with the Agreement and any descriptions provided by the Provider;
- 8.2.5 to the reasonable satisfaction of the Council; and
- 8.2.6 in a way that the Provider takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Provider.

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

- 8.3.1 be free from defects in design, material and workmanship; and

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

8.4 NOT USED

8.5 Without prejudice to the Council's rights to terminate under clause 12 (Termination), if any of the Services supplied are not in accordance with the Agreement, the Council shall be entitled to:

8.5.1 require the Provider to provide replacement Services in accordance with the Agreement as soon as reasonably practicable and in any event within 7 days of a request to do so; or

8.5.2 subject to clause 17 (Liability and Insurance) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

9 PROVIDER'S EMPLOYEES

9.1 The Council reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council, any of the Employees whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

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

9.3 The Provider shall ensure that Employees engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at those premises and when outside those premises.

9.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

9.5 The Provider shall train and ensure that all Employees are trained to an appropriate standard for the purposes of performing the Services and shall carry out the Employment Checks for all Employees.

9.6 The Provider shall replace any of the Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any such Employees for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 9.7 Without prejudice to the generality of clause 6.7, the Provider shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

PRICE AND PAYMENT

- 10.1 The Council shall pay the Price for the Services to the Provider, which shall be inclusive of all costs and expenses incurred by the Provider in providing the Services and complying with its obligations under this Agreement.
- 10.2 The Price shall be paid by the Council monthly in arrears in accordance with Part B (Tender Submission), provided that the Provider shall, within 15 calendar days of the end of each month submit to the Council a proper invoice containing appropriate details together with documentary evidence as may be required by the Authorised Officer. Each invoice must quote the correct purchase order number and failure to do so will result in the invoice being returned unpaid. The Provider shall send all invoices to the Council's Authorised Officer until advised otherwise by the Council.
- 10.3 Payment of any undisputed invoice will be made no later than thirty (30) calendar days following the date of receipt and agreement of the invoice by the Council for Services completed to the satisfaction of the Council.
- 10.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- 10.5 The Council will be entitled (but not obliged) at any time or times, without notice to the Provider, to set off any liability of the Council to the Provider against any liability of the Provider to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of the Council are payable under this Agreement. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Agreement or otherwise.
- 10.6 The Council may from time to time propose an increase, decrease or change in the scope, frequency or performance of the Services. Any such proposed variation must be discussed with the Provider and the Parties shall cooperate to seek to agree any fair and proportionate consequential change in the Price. Where such proposed variation is agreed between the Parties, this shall be confirmed in writing and signed by both Parties and the Provider shall be bound to carry out the Services as so varied.

11 RECOVERY OF SUMS

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

12. TERMINATION

12.1 The Council shall be entitled to terminate this Agreement and the Provider's engagement (without any payment in lieu of notice, compensation or damages) forthwith upon the Council becoming aware of the following:

12.1.1 if the Provider shall be in material or persistent breach of any of its obligations in this Agreement or shall wilfully neglect or refuse to carry out any of the Services or to comply with any reasonable instructions of the Council; or

12.1.2 if the Provider or anyone providing Services as part of or on behalf of the Provider shall act in any way which may, in the opinion of the Council, bring the Council into disrepute or be materially adverse to the interests of the Council; or

12.1.3 if the Provider or Employees or anyone acting on the Provider's behalf (whether with or without the knowledge of the Provider) commits a Prohibited Act or breaches clause 34;

and the Council shall be entitled to recover from the Provider all sums which the Council incurs, losses or suffers arising from or connected to the termination, including all costs incurred by the Council in making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Term.

12.2 The Council may terminate the Agreement by notice in writing with immediate effect with no liability to make any further payment to the Provider (other than in respect of any amounts accrued in accordance with clause 13.1) where the Provider:

12.2.1 undergoes a change of Control, which, in the opinion of the Council, impacts adversely and materially on the performance of the Agreement; or

12.2.2 becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, has an administrator appointed for it on behalf of a creditor, is subject to an application for the appointment of an administrator, is subject to a notice to appoint an administrator, is in circumstances which entitle a Court or a creditor to appoint a receiver, manager or administrator or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or

12.2.3 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Provider ceases to trade; or

12.2.4 commits any serious or repeated breach or non-observance of any of the provisions of the Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council or the Authorised Officer.

12.3 Either Party may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the other Party with immediate effect if that other Party commits a material breach and if:

12.3.1 the material breach is not remedied within 30 calendar days, or such

other period as may be agreed between the Parties, after issue of a written notice specifying the material breach and requesting it to be remedied; or

12.3.2 the material breach is not capable of remedy.

- 12.4 For the purposes of clause 12.3 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Party would otherwise derive from a substantial portion of this Agreement, and in deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 12.5 The Council reserves the right to terminate this Agreement in whole or in part, at any time by giving at least three calendar months prior notice in writing to the Provider.
- 12.6 The proper exercise by the Council of its right of termination under this clause 12 shall be without prejudice to any other rights or remedies which the Council may have or be entitled to exercise against the Provider.

13. CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Agreement pursuant to clause 12.2.1, 12.2.2, 12.2.3, 12.5 or 33.5 the Council shall pay to the Provider sums due in respect of Services provided to the Council up to the date of termination, provided that any such sum payable in accordance with this clause shall only be payable by the Council if it would have been payable in accordance with this Agreement if it had not been terminated.
- 13.2 If the Agreement is terminated early (for any reason), the Provider shall, immediately upon request, refund an appropriate proportion of the Price paid in advance to the Provider for Services not yet provided, on a pro-rata basis.

14. DISPUTE RESOLUTION PROCEDURE

- 14.1 If a dispute arises between the Parties in connection with the Agreement, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level within 10 Business Days of written notice of dispute being served by one on the other, without recourse to legal proceedings.
- 14.2 If a dispute is not resolved within 10 Business Days of referral under clause 14.1 then either Party may refer it to senior representatives of each Party for resolution who shall meet for discussion within 10 Business Days or such longer period as the Parties may agree.
- 14.3 Provided that both Parties consent, a dispute not resolved in accordance with clauses 14.1 and 14.2, shall first be referred to mediation or other alternative dispute resolution procedure as agreed between the Parties, each acting in good faith. If the Parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre of Dispute Resolution at Exchange Tower, 1 Harbour Exchange Square, London, E14 9GB. Unless otherwise agreed, the Parties will share equally the costs of mediation and the use of mediation will be without prejudice to the rights of the Parties in all respects if the mediation does not

achieve an agreed resolution of the dispute within 60 calendar days (or such longer period as the parties may agree) of the notice of dispute being served.

- 14.4 Unless the Agreement shall have already been terminated or abandoned the Provider shall in every case continue to proceed with the Services in accordance with this Agreement.

15. SURVIVAL

- 15.1 The following clauses will survive termination or expiry of the Agreement: Clause 13 (Consequences of Termination), Clause 17 (Liability And Insurance) Clause 19 (Intellectual Property), Clause 20 (Confidentiality), Clause 22 (Data Protection), Clause 23 (Freedom of Information), Clause 24 (Record Keeping and Monitoring), Clause 31 (Severance), Clause 35 (TUPE), and Clause 40 (Law & Jurisdiction).

16 EXIT ARRANGEMENTS

- 16.1 The Provider shall support and assist the Council in managing the smooth and timely transition of the Services in respect of the expiry or termination of the Agreement, by providing all necessary reasonable resources, records and information relating to the Services and/or handing over the Services to the Council or any Replacement Provider. The Provider shall also provide a detailed exit plan to the Council at least three months prior to the expiry of the Agreement, for the Council's approval.

17 LIABILITY AND INSURANCE

- 17.1 The Provider shall maintain insurance necessary to cover any liability arising under the Agreement and in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, with reputable insurers or underwriters.
- 17.2 The terms of any insurance or the amount of cover shall not relieve or limit the Provider of any liabilities under the Agreement.
- 17.3 The Provider shall, prior to the Commencement Date and on each anniversary of the Commencement Date and at such other times as the Council requests, provide certified copies of a statement of its insurance cover, copies of insurance policies, endorsements, cover notes, premium receipts and any other documents which the Council requests, evidencing that insurance is maintained as required under this Agreement, and all premiums paid.
- 17.4 Neither Party excludes or limits liability to the other for death or personal injury caused by its negligence or for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or any such liability which it is not permissible to exclude by Law.
- 17.5 The Provider shall indemnify and keep indemnified the Council fully against all Liabilities whatsoever arising out of, in respect of, or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by an act or omission of the Provider. This clause shall not apply to the extent that the Provider

is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Employees or by any circumstances within its or their control.

- 17.6 The Provider shall notify the Council as soon as possible and in any event within 48 hours of any incident that may lead to any claim, demand or proceedings and shall supply such particulars or details thereof as the Council shall reasonably require.
- 17.7 The Provider shall fully and promptly indemnify the Council in respect of any damage whatsoever caused by any Employees (whether such damage be caused by negligence or in any other way whatsoever) to any land, building or chattel in the ownership, occupation or possession of the Council arising out of or in consequence of the performance of this Agreement or the performance of the Services.
- 17.8 The provisions of this Clause shall survive the expiry or termination of this Agreement for whatever reason.

18. LIMITATION OF LIABILITY

- 18.1 Subject to clause 17.4, the Council's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:
 - 18.1.1 for non-payment of invoices for Services purchased, to the amount unpaid; or
 - 18.1.2 for any other type of liability, to the amount paid for the Services under the Agreement.
- 18.2 Subject to clause 17.4, the Provider's total liability to the Council arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to five (5) million pounds or one hundred and twenty five percent (125%) of the total Price, whichever is the greater.
- 18.3 Subject to clause 17.4, neither Party will be liable to the other Party for:
 - 18.3.1 any indirect, special or consequential loss or damage; or
 - 18.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 18.4 Subject to clause 18.2 the Council may, amongst other things, recover as a direct loss:
 - 18.4.1 any additional operational and/or administrative costs and expenses arising from the Provider's default;
 - 18.4.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's default;

18.4.3 the additional cost of procuring replacement Services for the remainder of the Term; and

18.4.4 any anticipated savings.

19. INTELLECTUAL PROPERTY

19.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

19.1.1 provided to the Provider by the Council shall remain the property of the Council;

19.1.2 prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Agreement shall belong to the Council.

19.2 The Council shall be entitled to use, modify, arrange and copy all property, copyright and all other Intellectual Property Rights (including but without limitation the database rights in any database) in the Materials developed, originated, written or prepared by the Provider (whether individually or jointly with the Council) for the purposes of this Agreement (the "Intellectual Property"), and the Provider hereby assign the Intellectual Property to the Council with full title guarantee.

19.3 The Provider grants the Council a non-exclusive licence to use any pre-existing Intellectual Property Rights in order to make use of the Services.

19.4 At the request of the Council the Provider shall do all such things and sign all documents or instruments reasonably necessary in the Council's opinion to enable the Council to obtain, defend and enforce its Intellectual Property and Intellectual Property Rights in such Materials.

19.5 The Provider warrants that the Materials will (so far as they do not comprise Material originating from the Council) be original works of authorship and the use or possession by the Council will not subject the Council to any claim for infringement of any proprietary rights of any third party.

19.6 The Provider agrees to notify the Council in writing of any breach or claim of breach of any intellectual property in use for the purposes of this Agreement and shall indemnify the Council against any and all Liabilities which the Council may incur or suffer as a result of a breach by the Provider of the obligations and/or warranties set out in this clause.

19.7 The Provider agrees that the Council is entitled to all property, copyright and other Intellectual Property Rights in all Materials developed, originated, written, prepared or contributed to by the Council whether or not changed or developed by the Provider.

19.8 Upon the termination or expiry of the Agreement, the Provider shall, at the request of the Council, immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

20. CONFIDENTIALITY

- 20.1 The Provider and the Council shall keep confidential all Confidential Information shared between them obtained under or in connection with this Agreement and shall not divulge the same to any third party without the written consent of the Party in whom the ownership of the Confidential Information is vested (save as permitted by this Agreement).
- 20.2 The provisions of this clause shall not apply to:
- 20.2.1 any information in the public domain (otherwise than by breach of this Agreement);
 - 20.2.2 information obtained from a third party who is free to divulge the same;
 - 20.2.3 any information which is personally developed; or
 - 20.2.4 any information required to be disclosed by Law (which shall include disclosures pursuant to clause 23).
- 20.3 The Parties shall divulge Confidential Information only to those persons who are directly involved in providing the Services under this Agreement and shall ensure that such persons are aware of and comply with these obligations as to confidentiality.
- 20.4 The provisions of this clause shall continue for the maximum period permitted by law.

21. PUBLICITY AND STATEMENTS

- 21.1 The Provider will not use any corporate logos of the Council nor refer to the Council or this Agreement or the Services, directly or indirectly, in connection with any product, promotion or publication, without the prior written consent of the Council. For the avoidance of doubt, the restriction contained in this clause shall apply equally to any references to the Council in any form or medium.
- 21.2 The Provider shall not at any time whether during the Term or thereafter make any public statement in relation to the Council or its businesses, affairs, customers or Councils unless authorised by the Council and shall not, after this Agreement has been terminated or expired, wrongfully represent themselves as being engaged by or connected to the Council.

22. DATA PROTECTION

- 22.1 The Provider shall (and shall procure that any Employees involved in the provision of the Services) comply with any requirements under the DPA and the Cabinet Office report on Data Handling Procedures in Government and will process Personal Data in compliance with all Laws and Good Industry Practice and in accordance with any security policy notified by the Council to the Provider from time to time
- 22.2 Without prejudice to the generality of clause 22.1, the Provider warrants and undertakes that it shall:

- 22.2.1 process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of this Agreement and in accordance with the Council's instructions from time to time and shall not process the Personal Data for any other purpose;
- 22.2.2 keep a record of any processing of Personal Data it carries out on behalf of the Council;
- 22.2.3 promptly comply with any request from the Council requiring the Provider to amend, transfer or delete Personal Data;
- 22.2.4 if it receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the DPA, immediately notify the Council providing a copy and fully co-operate and assist the Council with any such complaint, notice or communication;
- 22.2.5 at the Council's request, provide to the Council a copy of all Personal Data held by it in the format and on the media reasonably specified by the Council;
- 22.2.6 not transfer the Personal Data outside the European Economic Area without the prior written consent of the Council;
- 22.2.7 promptly inform the Council if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable or is subject to unauthorised or unlawful processing, and restore such Personal Data at its own expense;
- 22.2.8 not disclose Personal Data to any third party (other than as permitted by the terms of this Agreement) without the prior written agreement of the Council;
- 22.2.9 ensure that access to the Personal Data is limited to only those Employees who need access to the Personal Data in order for the Provider to meet its obligations under this Agreement and is strictly necessary for the performance of that Employee's duties;
- 22.2.10 ensure that all Employees are properly trained and informed in respect of the confidential nature of Personal Data and the Laws relating to the handling of Personal Data;
- 22.2.11 take appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the Council's compliance with the DPA; and
- 22.2.12 only authorise a third party or sub-contractor to process Personal Data with the Council's prior written consent (and in the event the Council gives such consent, the Provider's agreement with the sub-contractor must be on terms substantially the same as those set out in this Agreement and terminate automatically upon the expiry or termination of this Agreement). Notwithstanding any consent given by the Council

under this clause 22.2.12, the Provider shall remain responsible and liable to the Council in respect of any breach of the obligations of this clause 22 and the DPA.

- 22.3 All Personal Data provided to the Provider and/or collected on behalf of the Council under this Agreement remains the property of the Council and shall be either returned or securely destroyed (at the Council's option) by the Provider upon the expiry or termination of this Agreement or at the earlier request of the Council.

23. FREEDOM OF INFORMATION

- 23.1 Notwithstanding anything to the contrary contained or implied in any documents, negotiations leading to the formation of this Agreement, the Provider acknowledges that the Council is subject to the requirements of the FOIA, Transparency Code and the EIR and that:

23.1.1 the Council shall be entitled to publish and/or release any and all terms or conditions of this Agreement, the contents of any documents and/or information relating to the formation of this Agreement or any other documentation and/or information, under the provisions of the FOIA, Transparency Code or the EIR as it sees fit; and

23.1.2 nothing contained in this Agreement shall prevent the Council from disclosing and/or publishing under the FOIA, Transparency Code or the EIR any term or condition or information contained in or relating to the formation of this Agreement.

- 23.2 The Provider shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its information disclosure requirements and shall:

23.2.1 transfer any request for information it receives to the Council as soon as practicable after receipt, and in any event within 2 Business Days of receiving it;

23.2.2 provide the Council with a copy of all information, documentation and data in its possession or power in the form that the Council requires within 5 Business Days (or such other period as the Council may specify) of the Council's request; and

23.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in the FOIA, Transparency Code and EIR.

- 23.3 The Council shall be responsible for determining at its absolute discretion whether any information is commercially sensitive and/or any whether it is exempt from disclosure in accordance with the FOIA, Transparency Code or EIR or whether it is to be disclosed.

- 23.4 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Council.
- 23.5 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA, Transparency Code or the EIR to disclose Information:
- 23.5.1 without consulting the Provider; or
- 23.5.2 following consultation with the Provider and having taken its views into account,
- provided always that where clause 23.5 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 23.6 The Provider shall ensure that all information produced in the course of or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 23.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council may disclose information on its website in relation to monthly expenditure over £500 (five hundred pounds), in relation to this Agreement. The information will include the Service Provider's name and the monthly Periodic Payment paid or other as may be required. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

24. RECORD KEEPING AND MONITORING

- 24.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six years (or such longer time period required in accordance with any specific legislation) after the end of the Term, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall, upon request, allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with this Agreement.
- 24.2 The Provider will, at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Agreement and shall comply with any monitoring and reporting arrangements and obligations detailed within the Specification or as otherwise requested by the Council from time to time.
- 24.3 In the event that the Provider fails, at any time, to achieve any of the acceptable minimum levels of service in respect of any Key Performance Indicators (KPIs) detailed within the Specification, the Council may (at its option, upon giving written

notice to the Provider) require a meeting of the Parties, as soon as reasonably possible, to discuss and explore the matter fully and the Provider shall provide the Council with such information and documentation as the Council requests, in advance of the meeting. The Provider shall comply with all reasonable requests of the Council in respect of actions required to remedy the failures.

25. HEALTH AND SAFETY

- 25.1 The Provider and all Employees shall comply fully with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, all health and safety policies of the Council and any Laws relating to the health and safety of employees and others who may be affected by the Provider's work activities.

26. CORPORATE REQUIREMENTS

- 26.1 The Provider shall comply with all terms of the HRA as if it were a public body and was subject to its terms and shall undertake, or refrain from undertaking such acts as the Council requests, so as to enable the Council to comply with its obligations under the HRA.

- 26.2 The Provider shall comply with all Council policies and rules, such as, but not limited to:

- 26.2.1 equality and diversity policies;
- 26.2.2 sustainability;
- 26.2.3 information security rules;
- 26.2.4 whistleblowing and/or confidential reporting policies; and
- 26.2.5 all site rules relevant to the fulfilment of the Provider's obligations in the performance of the Services.

- 26.3 The Provider shall (and shall procure that the Employees shall) at all times comply with the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment. The Provider shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Equality Act 2010 and to seek to eliminate unlawful discrimination and promote equality of opportunity.

- 26.4 The Provider shall comply with all relevant Laws relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

- 26.5 If the Provider has a finding against it, is subject to any investigation or has any proceedings brought against it, relating to its obligations under clause 26.3 or 26.4 it shall:

- 26.5.1 Provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- 26.5.2 Attend (and shall permit a representative from the Council to attend) any associated meetings;
- 26.5.3 promptly allow access to any relevant documents and information; and

26.5.4 co-operate fully and promptly with the investigatory body, court or tribunal.

26.6 The Provider shall include in the conditions of contract for any sub-contractors obligations substantially similar to those set out in this clause 26.

27. CHANGE IN LAW

27.1 On the occurrence of a Change in Law which has a direct effect upon the Price the Parties shall meet within 10 Business Days of the Provider notifying the Council of the Change in Law, to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Provider. If the Parties, within 10 Business Days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either Party may refer the matter to dispute resolution in accordance with clause 14.

27.2 Any agreed change in the Price as a result of the operation of clause 27.1 shall be confirmed in writing and signed by both Parties. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs.

28. CONTRACT VARIATION

28.1 No variation or modification to the Agreement is valid unless it is in writing and signed by the Council and the Provider.

29. THIRD PARTY RIGHTS

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

30. NO WAIVER

30.1 Failure by either Party at any time to enforce any one or more of the provisions of this Agreement or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of the Agreement or any part of it or the right of the Parties to enforce any provision in accordance with its terms.

30.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 3 (Notices).

31. SEVERANCE

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

32. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- 32.1 Neither the Council nor the Provider shall assign or sub-contract this Agreement or any part thereof without the prior written consent of the other Party. Sub-contracting any part of the Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under the Agreement.
- 32.2 The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.
- 32.3 In the event that the Council novates, assigns, transfers, charges, mortgages, sub-contracts, delegates or deals in any other manner with all or any of its rights under the Agreement the Provider shall continue to provide the Services as agreed under this Agreement, at no additional cost in so far as no additional obligations are placed upon the Provider in performing the Services.

33. FORCE MAJEURE

- 33.1 Neither party shall be liable for failure or delay to perform its obligations under the Agreement if such failure or delay results from Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement.
- 33.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Council nor entitle the Provider to terminate the Agreement.
- 33.3 Industrial action by, or illness or shortage of the Employees, failure or delay by any of the Provider's suppliers to supply goods, components, services or materials and breach of the Provider's warranties under this Agreement shall not be regarded as an event of Force Majeure.
- 33.4 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue.
- 33.5 If the event of Force Majeure continues for more than 2 calendar months either Party may give written notice to the other to terminate the Agreement immediately or on a set termination date.

- 33.6 If the Agreement is terminated in accordance with clause 33.5 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

34. PREVENTION OF BRIBERY

- 34.1 The Provider:

34.1.1 shall not, and shall procure that any Employees shall not, in connection with this Agreement, commit a Prohibited Act;

34.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

- 34.2 The Provider shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

- 34.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any sub-contractor or Employees from committing a Prohibited Act and shall enforce it where appropriate.

- 34.4 If any breach of clause 34 is suspected or known, the Provider must notify the Council immediately. If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 34, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

- 34.5 The Council may terminate this Agreement in accordance with clause 12.1.3 if the Provider or any Employees (in all cases whether or not acting with the Provider's knowledge) breach any obligations contained in this clause 34.

- 34.6 Despite clause 14 (Dispute Resolution), any dispute relating to:

34.6.1 the interpretation of clause 34; or

34.6.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

- 34.7 Any termination under clause 34.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

35. TUPE

- 35.1 The Council makes no assurances or representations as to the effect of TUPE on this Agreement or any subsequent transfer of the provision of the Services from the Provider to a Replacement Provider or to the Council.

- 35.2 The Provider acknowledges that it has formed its own view as to whether TUPE applies in respect of the Services and any future transfer of the provision of the Services.
- 35.3 It is agreed between the Council and the Provider that the Price will not be varied after the commencement of this Agreement on the grounds that TUPE does or does not apply, irrespective of the belief of either Party prior to the Commencement Date.
- 35.4 The Provider shall immediately upon request by the Council provide the Council with details of any measures which the Provider (or sub-contractor) envisages it or they will take in relation to any Employees who are or will be subject to any transfer from the Provider (and sub-contractor) and shall indemnify the Council and any Replacement Provider against all Liabilities resulting from any failure by the Provider or sub-contractor to comply with this obligation.
- 35.5 In the event of any future transfer to the Council or any Replacement Provider or sub-contractor on the expiry or termination of this Agreement or as a consequence of part of the Agreement and/or Services not being provided by the Provider, the Provider will use all reasonable endeavours to procure that it and any sub-contractors will:-
- 35.5.1 comply with its obligations under TUPE; and
- the 35.5.2 immediately upon request provide to the Council a list containing details of Employees eligible to transfer and such other appropriate information reasonably required by the Council to enable it to disclose as appropriately to third parties invited to tender or submit a quotation for any subsequent contract(s) covering the Services. This list to be provided to the Council shall contain the following:-
- nature of job/job description;
 - current salary;
 - length of service;
 - contracted hours and percentage of those contracted hours spent on the Contract;
 - retirement age;
 - arrangements for overtime and whether this is contractual;
 - any factors that may affect redundancy entitlement;
 - any outstanding industrial injury claims or other claims or actions;
 - whether any probationary period is current;
 - period of notice to terminate employment;
 - current pay agreement and any agreed settlement yet to come into effect;
 - age;
 - gender;
 - annual leave entitlement;
 - sick leave entitlement;
 - maternity and paternity leave arrangements;
 - special leave entitlement;
 - other benefits eg. season tickets, loans, car provision;
 - whether they are a member of a company pension scheme;
 - location and contractual provisions relating to this;
 - terms and conditions of employment;
 - details of company pension scheme; and
 - any other information reasonably requested by the Council.

35.6 The Provider warrants and undertakes that the above information when provided to the Council will be accurate and complete in all respects, that it will immediately inform the Council in writing of any changes to that information between the date provided and the date of any replacement contract and that it will have discharged all known liabilities relating to its Employees. The Provider shall indemnify the Council and any Replacement Provider against all direct and indirect Liabilities resulting from any failure to comply with this obligation. If the Provider fails to provide the required information or does not provide it accurately and completely, updated as necessary, the Council reserves the right to exclude the Provider from being invited to tender or submit a quotation for any subsequent contract(s) (if the Provider would otherwise have qualified for invitation) or to disqualify the Provider from submitting a bid for any subsequent contract(s) or to reject a bid from the Provider for any subsequent contract(s).

35.7 The Provider warrants to the Council and any Replacement Provider that it shall take all reasonable steps to ensure that, otherwise than in the bona fide course of business, it (or its sub-contractors) will not without the consent of the Council in any period between the date on which the information is provided and any expiry or termination of the Contract:-

35.7.1 vary or purport to vary the terms and conditions of employment of Employees eligible for TUPE transfer;

35.7.2 increase the number of transferring Employees; or

35.7.3 assign or redeploy any transferring Employees to other duties unconnected to the Agreement to avoid a transfer.

35.8 The Provider will use its reasonable endeavours (and likewise its sub-contractor) to procure that any Employee eligible for TUPE transfer is not dismissed for a reason connected to the transfer and will indemnify the Council and any Replacement Provider against direct or indirect Liabilities suffered or incurred by the Council and/or any Replacement Provider:-

35.8.1 in relation to the employment or termination of employment of any Employee during the period leading up to a TUPE transfer;

35.8.2 in relation to a breach or non-observance of any collective agreement, custom, practice or arrangement (whether legally binding or not) with a trade union or staff association in respect of Employees eligible to TUPE transfer;

35.8.3 in relation to any failure by the Provider (or by any of its sub-contractors) to comply with obligations under TUPE in respect of Employees eligible for transfer; and

35.8.4 in relation to vicarious liability owed to third parties arising or connected with the eligible Employees' contracts of employment, which arises from any act or omission on the part of the transferring Employee in the period leading up to the TUPE transfer.

36. SAFEGUARDING

- 36.1 To the extent that the Services concern Regulated Activity, the Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 36.2 The Provider shall:
- 36.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;
 - 36.2.2 monitor the level and validity of the checks under this clause 36.2 for each Employee;
 - 36.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to users of the Services.
- 36.3 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any Employee is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 36.4 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 36 have been met.
- 36.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to users of the Services, children or vulnerable adults.

37. COSTS AND EXPENSES

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

38. NO AGENCY OR PARTNERSHIP

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

39. INSPECTION OF PROVIDER'S PREMISES

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

40. LAW AND JURISDICTION

- 40.1 This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.
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SCHEDULE 1 SERVICE SPECIFICATION (to be included in final Contract)

SCHEDULE 2 SPEICAL CONDITONS (to be included in final Contract)

SCHEDULE 3 Pricing Schedule – Schedule of Rates (to be included in final Contract)

SCHEDULE 4 - REPRESENTATIVES

Council's Contract Manager- RCC	Provider's Contract Manager
<p>Name:</p> <p>NAME, JOB TITLE</p> <p>Rutland County Council Catmose, Oakham. LE15 6HP Telephone: 01572 722577 Email: xxx@rutland.gov.uk</p>	<p>Name:</p> <p>NAME, JOB TITLE</p> <p>Address: XXX XXX XXX XXX</p> <p>Telephone: XXX</p> <p>Email: XXX.XXX@XXX</p>
Contract Manager - MBC	Provider's Contract Manager
<p>Name:</p> <p>Job Title:</p> <p>Melton Borough Council Parkside, Station Approach, Burton Road Melton Mowbray Leicestershire LE13 1GH</p> <p>(phone)</p> <p>(Email)</p>	<p>Name:</p> <p>Job Title</p> <p>(phone)</p> <p>(Email)</p>
Council's second representative	Provider's second representative
<p>Name:</p> <p>NAME, JOB TITLE</p> <p>Address:</p> <p>Rutland County Council Catmose, Oakham. LE15 6HP Telephone: 01572 722577 Email: xxx@rutland.gov.uk</p>	<p>Name:</p> <p>NAME, JOB TITLE</p> <p>Address: XXX XXX XXX XXX</p> <p>Telephone: XXX</p> <p>Email: XXX.XXX@XXX</p>

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

[EXECUTION]