

ESSEX COUNTY COUNCIL

REQUEST FOR QUOTATION

GOODS AND SERVICES AGREEMENT

THE CONTRACT

RFQ for the supply of consultancy services NET ZERO CARBON VIABILITY AND TOOLKIT STUDY

THIS AGREEMENT is made on [xx/xx/2021]

BETWEEN

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex CM1 1LX (the “Authority”);
and
- (2) **The winning bidder as detailed within the award Letter issued upon completion of the Request for Quotation process.**

THIS AGREEMENT expires on 31/04/2022

The Contract is made up of the following documents:

- 1. The RFQ issued on 30.09.21
- 2. The Terms and Conditions
- 3. The Specification
- 4. The RFQ Evaluation
- 5. The Award Letter
- 6. The Bidder's RFQ response

Where there is any conflict between the Bidder's RFQ Response and Essex County Councils documents, Essex County Council's documents shall take precedence.

GOODS AND SERVICES AGREEMENT

1. DEFINITIONS AND INTERPRETATION

The terms and expressions used in this Agreement shall have the meanings set out in Schedule 1. Any references in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Agreement) and including all subordinate legislation made under it from time to time.

2. COMMENCEMENT AND DURATION

This Agreement and the rights and obligations of the Parties under this Agreement shall take effect on the Commencement Date and shall continue for the Agreement Term.

3. THE SUPPLY OF GOODS AND SERVICES

3.1 In consideration of the Authority's agreement to pay the Services Payment, the Contractor shall supply the Goods and Services to the Authority for the Agreement Term subject to and in accordance with the terms and conditions of the Agreement.

3.2 The Contractor shall provide the Goods and Services during the Agreement Term to the Authority in accordance with:

3.2.1 the Authority's requirements as set out in the requirements as per sections 1 to 15 of the electronic Request for Quotation issued by the Authority as part of the procurement process;

3.2.2 the Authority's requirements as set out in Schedule 2 (Information Handling) for the supply of goods or services which require the handling of personal information;

3.2.3 all applicable Legislation.

3.2.4 the Authority's Policies as the same may be updated by the Authority from time to time and as notified by the Authority to the Contractor; and

3.2.5 Good Industry Practice.

3.3 The Authority may by written notice to the Contractor at any time request a variation to the scope of the Goods and Services. In the event that the Contractor agrees to any variation to the scope of the Goods and Services, the Services Payment shall be subject to fair and reasonable adjustment to be agreed in writing between the Authority and the Contractor.

3.4 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

3.5 The Contractor shall use reasonable endeavours to contribute to the Authority's corporate objectives to achieve positive social, economic and environmental impacts on the community and wider environment in Essex and shall seek to deliver value for money, continuous

improvement and innovative solutions in relation to the Goods and Services provided pursuant to this Agreement.

4. SERVICES PAYMENT

- 4.1 In consideration of the provision of the Goods and/or Services, the Authority shall pay the Services Payment to the Contractor within thirty (30) days from receipt of a correct and valid invoice in accordance with Schedule 3 (Payment) of this Agreement
- 4.2 The Contractor shall invoice the Authority as specified in the Agreement. Each invoice shall be submitted to the address detailed on the purchase order and include supporting information required by the Authority to verify the accuracy of the invoice, including the relevant purchase order number. The Purchase Order number must be quoted on all invoices and delivery notes and failure to do so will result in the invoice being returned unpaid. The Authority may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 4.3 The Contractor shall only provide the Goods or Services to the Authority upon receipt of an official purchase order, which has been raised via Proactis by the Authority.
- 4.4 If there is a dispute between the Parties as to the amount invoiced, the Authority shall notify the Contractor within seven (7) days of receipt of the invoice. The parties shall then communicate with one another with a view to resolving the dispute. The Authority shall only make payment once the dispute has been resolved. Payment will be made within thirty (30) days after the date that the dispute has been resolved. The Contractor shall not suspend the supply of Goods or Services unless the Contractor is entitled to terminate the Agreement for failure to pay undisputed sums in accordance clause 12. Any disputed amounts shall be resolved through the dispute resolutions procedure detailed in clause 14.
- 4.5 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.6 The Contractor shall seek to pay its supply chain within thirty (30) days
- 4.7 The Contractor shall not, whether himself, or by any person employed by him, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Goods and/or Services other than the Payment.
- 4.8 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.
- 4.9 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has any authority to make any commitments on the other Party's behalf.

5. DELIVERY

- 5.1 The Contractor shall deliver the Goods to the Authority on or by the Date of Delivery, on the date and to the location specified in the Specification, purchase order or to such other location as shall be agreed between the Parties, unless otherwise agreed in writing by the Authority.
- 5.2 Where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle or, if so required by the Specification, when the Goods are unloaded, stacked or installed by the Contractor's suppliers or carriers under the direction of the Authority at such place as the Authority or duly authorised person shall reasonably direct. Where the Goods are collected by the Authority from the Contractor the point of delivery shall be when the Goods are loaded onto the Authority's vehicle.
- 5.3 Where any access to the Authority's Property is necessary in connection with delivery or installation, the Contractor and the Contractor's subcontractors or suppliers shall at all times comply with the reasonable requirements of the Authority's security procedures. Any access to the Authority's premises and any labour and equipment that may be provided by the Authority in connection with delivery of the Goods shall be provided without acceptance by the Authority of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Authority or its servant or agent. The Contractor shall indemnify the Authority in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Authority may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of his sub-contractors.
- 5.4 A delivery note quoting the number of the delivery or consignment must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 5.5 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Contractor to remove them within twenty eight (28) days of receipt by the Contractor of such notice and to refund to the Authority any expenses incurred by the Authority as a result of such over-delivery (including, but not limited to, the costs of moving and storing them) failing which, the Authority shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by the Contractor or disposed of or purchased by the Authority, as appropriate.
- 5.6 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery set out in the Specification.
- 5.7 Unless expressly agreed to the contrary, the Authority shall not be obliged to return to the Contractor any packaging or packing materials for the Goods.
- 5.8 The time of delivery of the Goods is of the essence to this Agreement.
- 5.9 Where the Contractor (i) fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of the Specification or purchase order, then without limiting any of its other rights or remedies implied by statute or common law, the Authority shall be entitled to:
 - 5.9.1 terminate the Agreement;

- 5.9.2 request the Contractor, free of charge, to deliver substitute Goods within the timescales specified by the Authority;
- 5.9.3 require the Contractor, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 5.9.4 reject the Goods (in whole or part) and return them to the Contractor at the Contractor's own risk and expense and the Authority shall be entitled to a full refund on those Goods or part of Goods duly returned;
- 5.9.5 buy the same or similar Goods from another contractor and to recover any expenses incurred in respect of buying the Goods from another contractor which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

6. PASSING OF PROPERTY AND GUARANTEE OF TITLE

- 6.1 Without prejudice to any rights or remedies of the Authority, title and risk in Goods shall pass to the Authority when Delivery of the Goods is complete (including off-loading and stacking).
- 6.2 The Contractor warrants that:
 - 6.2.1 it has full clear and unencumbered title to all the Goods;
 - 6.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Authority. On Delivery the Authority shall acquire a valid and unencumbered title to the Goods.
 - 6.2.3 all other warranties, conditions or terms relating to the Goods, whether express or implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, or by other statute or common law or otherwise are included to the fullest extent.

7. ACCEPTANCE AND REJECTION

- 7.1 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.
- 7.2 The Authority shall be entitled to reject any Goods delivered which are not in accordance with this Agreement Supply, and shall not be deemed to have accepted any Goods until the Authority has had a reasonable opportunity to inspect them following delivery or, if later, within twenty one (21) days.

8. GUARANTEE

Where the Contractor is not the manufacturer of the Goods, the Contractor shall use reasonable endeavours to transfer to the Authority the benefit of any warranty or guarantee given to the Contractor.

9. SUFFICIENCY OF INFORMATION

The Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information whether obtained from the Authority or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

10. INDEMNITY AND LIABILITY

- 10.1 Nothing in this Agreement is to be deemed to exclude or limit either party's liability in respect of death or personal injury arising as a result of that party's negligence, fraud or any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 10.2 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.
- 10.3 The Contractor shall be responsible for and indemnify the Authority, its employees, agents and contractors on demand from and against all Losses arising out of or in connection with this Agreement including in respect of death and personal injury, loss of or damage to property and breach of statutory duty which is caused directly or indirectly by the performance or non-performance by the Contractor of its obligations under this Agreement.
- 10.4 This clause 10 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, loss or damage to property or breach of statutory duty was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

11. INSURANCE

- 11.1 The Contractor shall during the Agreement Term take out and maintain or procure the maintenance of the following insurances:
 - 11.1.1 Employer's liability insurance to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
 - 11.1.2 Third party public liability to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
 - 11.1.3 Professional Indemnity insurance to provide an indemnity of not less than five (5) hundred thousand pounds (£500,000) in respect of any one claim or series of claims arising out of one incident; and
 - 11.1.4 any other insurances that may be required by law.
- 11.2 The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause 11.
- 11.3 If the Contractor is in breach of this clause 11, the Authority may pay any premium required to keep such insurances in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 11.4 Failure to comply with the insurance provisions of this Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Agreement.

12. TERMINATION

Termination on Authority Break Point

- 12.1 The Authority may terminate the Agreement on any of the Authority Break Point Dates by complying with its obligations under clauses 12.2 to 12.3 below.
- 12.2 If the Authority wishes to terminate the Agreement under clause 12.1, it must give notice to the Contractor stating:
 - 12.2.1 that the Authority is terminating the Agreement under clause 12.1; and
 - 12.2.2 that the Agreement will terminate on the date specified in the notice, which must be a minimum of falling thirty (30) Days after the date of receipt of the notice.
- 12.3 The Agreement shall terminate on the date specified in the notice referred to in clause 12.2 above.

Termination on Contractor Default

- 12.4 Subject to clause 12, the Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Contractor Default and if:
 - 12.4.1 the Contractor is in continuing or material breach of any terms of the Agreement and the breach is incapable of remedy;
 - 12.4.2 the Contractor is in continuing or material breach of any terms of the Agreement and, the breach is capable of remedy, but the Contractor fails to remedy such breach within fourteen (14) days service of a written notice from the Authority, specifying the breach and requiring it to be remedied;
 - 12.4.3 the Contractor has not remedied the Contractor Default to the satisfaction of the Authority within twenty five (25) Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Contractor Default and requesting it to be remedied; or
 - 12.4.4 the Contractor Default is not, in the opinion of the Authority, capable of remedy; or
 - 12.4.5 the Contractor Default is a material breach of the Agreement.
- 12.5 If the Contractor Default which has occurred is an Insolvency Event of Default, the Authority may in its sole discretion give notice terminating this Agreement whereupon this Agreement shall terminate with immediate effect.

13. CONSEQUENCES OF EXPIRY OR TERMINATION

- 13.1 The Contractor and the Authority shall each carry out their respective responsibilities in accordance with this Agreement until the Expiry Date or earlier termination in accordance with this Agreement.
- 13.2 The Contractor shall use all reasonable endeavours to assist the Authority to effect an orderly continuation of the Services after termination or expiry of this Agreement in such a manner as the Authority may reasonably require.
- 13.3 The costs of any assistance provided by the Contractor under clause 13.2 shall be borne by the Contractor.

- 13.4 On termination or expiry of this Agreement, neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Agreement shall not affect the continuing rights and obligations of the Parties under clauses 10 (Indemnity), 14 (Dispute Resolution Procedure), 16 (Confidentiality), 17 (Assignment and Sub-Contracting) and (Law and Jurisdiction) or under any other provision of this Agreement that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination.

14. DISPUTE RESOLUTION PROCEDURE

- 14.1 Any dispute or difference arising out of or in connection with this Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 14.
- 14.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question.
- 14.3 In the event that a Dispute is not resolved within seven (7) Days of it having been referred to a managerial level for discussion then either Party may refer it to Chief Executive or equivalent officer of each Party for resolution and the same shall meet for discussion within fourteen (14) Days thereafter or such longer period as the Parties may agree.
- 14.4 If the dispute is not resolved within twenty (20) Days of escalation of the dispute in accordance with clauses 14.1 to 14.3, the parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.
- 14.5 If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.
- 14.6 The parties shall use their reasonable endeavours to conclude the mediation within forty (40) Days of referral of the dispute to mediation.
- 14.7 If
- 14.7.1 either Party is dissatisfied with or otherwise wishes to challenge the Mediator's decision;
or
 - 14.7.2 both Parties agree
- then either Party may, within fifteen (15) Days of the conclusion of the mediation, notify the other Party of its intention to refer the dispute to litigation and for such purposes the parties agree that the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.
- 14.8 Where any Dispute is referred to litigation the Courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations of the Mediator and, where appropriate, to order financial compensation to be paid by one party to the other.
- 14.9 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every recommendation of the Mediator and the Courts delivered under this clause.

15. INTELLECTUAL PROPERTY

- 15.1 Where the Goods and/or Services are designed, created or otherwise developed by or for the Contractor pursuant to the Agreement, then all intellectual property rights therein or relating thereto throughout the world (including without limitation, patents, copyrights, design rights, registered designs, trademarks, service marks and know-how and the rights to apply for any of the foregoing) ("the Intellectual Property Rights") shall belong to the Authority absolutely. The Contractor hereby assigns the Intellectual Property Rights to the Authority with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in the Authority.
- 15.2 The Contractor shall at the Authority's request (and notwithstanding the termination of the Agreement) sign and execute and procure the signature and execution of all such documents and do all such acts as the Authority may reasonably require:
- 15.2.1 to vest the legal title in, apply for, obtain and maintain in force in the Authority's sole name (unless it otherwise directs) any Intellectual Property Rights;
 - 15.2.2 to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights; and
 - 15.2.3 to bring any proceedings for infringement of any of the Intellectual Property Rights.
- 15.3 The Contractor irrevocably undertakes that neither it nor any other person will assert against the Authority or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this clause 15 "**moral rights**" shall have the meaning ascribed thereto by the Copyright, Designs and Patents 1988 Act and all rights similar or corresponding thereto subsisting in any other country of the world from time to time.

16. CONFIDENTIALITY, EQUALITY, HUMAN RIGHTS, AND MODERN SLAVERY

- 16.1 The Contractor will note the Authority's obligations under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Equality Act 2010, the Human Rights Act 1998, and the Modern Slavery Act 2015 and any codes of practice and best guidance notes issued by the Government and appropriate enforcement agencies. The Contractor must comply with this legislation in so far as it places obligations on it as well as facilitating the Authority's compliance. The Contractor should particularly note that the Authority may be required to provide information relating to this Agreement or information relating to the Contractor to a person in order to comply with the Authority's obligations under the aforementioned legislation.
- 16.2 The Contractor shall not unlawfully discriminate within the meaning and scope of the provision of the Equality Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions or agents of the Contractor and all Sub-Contractors employed in the execution of this Agreement.
- 16.3 The Contractor shall operate, monitor and review its equality and diversity policies, particularly in relation to employment in order to ensure good practice. The Contractor shall monitor the take up of services by groups protected under the Equality Act to ensure fair and proportionate service provision is made available as well as address gaps in data and/or performance.
- 16.4 If a complaint is made under the Equality Act 2010 about the acts or omissions of the Contractor or its employees, volunteers or agents when undertaking work for the Authority, the Contractor may be the subject of an investigation by the Authority. In such circumstances the Contractor

shall make documents available and co-operate with the investigation, and to the extent that breaches of the Authority's duties under the Act(s) are found to have occurred due to the acts or omissions of the Contractor, its employees, volunteers or agents, then in such circumstances the Contractor shall indemnify the Authority in respect of any loss, damages, compensation, fines and costs which may be suffered or imposed and the Contractor shall pay any such loss, damages/compensation, fines or costs incurred awarded or recommended by the court, tribunal or ombudsman.

16.5 The Contractor shall not hold another person in slavery, servitude or forced or compulsory labour or arrange or facilitate human trafficking within the meaning and scope of the provision of the Modern Slavery Act 2015 or any statutory modification or re-enactment. The Contractor shall take all reasonable steps to secure the observance of these provisions or agents of the Contractor and all Sub-Contractors employed in the execution of this Agreement.

16.6 The Contractor shall operate, monitor and review its supply chain in order to ensure good practice. The Contractor shall ensure that they issue a slavery and human trafficking statement under the Modern Slavery Act were required to do so.

17. DATA PROTECTION

17.1 The parties agree to comply with their obligations under the Data Protection Legislation as set out in:

17.1.1 The Data Protection Schedule at Schedule 4 of this Agreement;

17.1.2 The Authority's Information Handling Schedule at Schedule 2 of this Agreement; and

17.1.3 The Authority's Information Policy.

18. FREEDOM OF INFORMATION

18.1 The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") the Environmental Information Regulations 2004 ("EIR") and the Safeguarding Vulnerable Groups Act 2006 ("SVGA 2006") and any subordinate legislation made under these Acts or Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

18.2 The Contractor shall and shall procure that its sub-contractors shall:

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

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

- 18.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA , regulation 5 of the EIR or section 37 of the SVGA 2006.
- 18.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA, SVGA 2006 or the EIR;
- 18.3.2 is to be disclosed in response to a Request for Information, and
- 18.4 in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 18.5 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-
- 18.5.1 without consulting with the Contractor, or
- 18.5.2 following consultation with the Contractor and having taken its views into account.
- 18.6 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 18.7 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 18.4.

ASSIGNMENT AND SUB-CONTRACTING

- 18.8 The Contractor shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 18.9 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 18.10 Where the Authority has consented to the placing of sub-contracts, the Contractor shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 18.11 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

19. VARIATION

This Agreement can only be varied or amended provided that such variation or amendment is agreed in writing by an authorised representative of the Authority and the Contractor.

20. ENTIRE AGREEMENT

The Parties acknowledge that this Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

21. NO WAIVER

21.1 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 22 Notices).

21.2 No waiver under clause 20.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

22. SEVERANCE

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision of this Agreement shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

23. NOTICES

23.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded post, fax or email to the address of the relevant Party set out within the Specification, purchase order, or such other address as that Party in accordance with this clause 22.

23.2 Any notice served personally will be deemed to have been served on the day of delivery provided delivery is before 5.00pm on a given Day, otherwise delivery shall be deemed to occur on the next day. Any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched. An email shall be deemed delivered when sent unless an error message is received.

23.3 Notices under clause 12 (Termination) may be served by email or fax only if the original notice is then sent to the recipient personal delivery or recorded delivery in the manner set out in clause 22.1 above.

24. DATA

24.1 The Contractor shall assume full responsibility for ensuring that programs or other data downloaded, uploaded or in any way transmitted electronically to the Authority are free from viruses, or any other items of a destructive nature whatsoever.

24.2 The Authority makes every effort to virus check information make available for download from Proactis; however the Authority does not accept any responsibility for any loss, disruption or damage to data or computer systems which may occur whilst using material derived from Proactis. The Authority recommends that users recheck downloaded material with their own virus check software.

25. MONITORING AND EVALUATION

The Contractor is required to maintain record to account for the payments made. Such records shall be maintained:

- (a) in accordance with generally accepted accounting principles;
- (b) in a form enabling the Authority to compare actual expenditure in total and by individual budget head with the expenditure indicated in the Agreement; and
- (c) in sufficient detail as to enable the Authority to satisfy itself that the Service is being delivered in accordance with this Agreement.

Such records are to be made available to the Authority upon reasonable request.

26. RECOVERY OF SUMS DUE

If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Authority. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

27. REMEDIES

Except as otherwise expressly provided by the Agreement, all remedies available to the Contractor or to the Authority for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of any other remedies.

28. LAW AND JURISDICTION

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the courts of England.

29. THIRD PARTY RIGHTS

The parties to the Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third parties) Act 1999 by any person not a party to the Agreement.

30. PUBLICITY

The Contractor shall not by itself, its employees or agents and shall procure that its sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written approval of the Authority.

SIGNATURE UNDERHAND

This Agreement is entered into on the date stated at the beginning of it.

Signed for and on behalf of **Essex County Council**

(Signed)

(Name)

Signed for and on behalf of **[insert name of Contractor]**

(Signed)

(Name)

SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

1. The terms and expressions used in this Agreement shall have the meanings set out below:

“Agreement”

means this Agreement which forms the contract between the Authority and the Contractor;

“Agreement Term”

means the period from and including the Commencement Date to the Expiry Date or, if earlier, the date of termination of the Agreement for any reason;

“Accelerated Payment Rebate Scheme (APRS)”

means the programme of improvements in the Authority’s purchase-to-pay processes, enhanced supplier relationships and the opportunity to benefit from the early payment of invoices.

“Authority Break Point Dates”

means the date(s) set out in the Goods and/or Services Specification on which the Authority may voluntarily terminate this Agreement.

“Authority Data”

means:

- (a) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Contractor or provided to the Contractor for processing under this Agreement which at all times shall remain the property of the Authority or;
- (b) any documentation and information produced by or received from or on behalf of the Authority in relation to the Services and stored on whatever media;
- (c) any information or data provided by, obtained or created on behalf of the Authority in delivering the Services and in the case of Personal Data, any data processed on behalf of the Authority where the Authority is the Controller;

“Authority’s Information Policy”

means the Authority’s information policy requirements for contractors (version 2018) or such version as updated from time to time.

“CEDR”

means the Centre for Effective Dispute Resolution;

“Commencement Date”

means the date of this Agreement;

“Contractor”

means a person or organisation that undertakes a contract to provide goods, services, materials and labour to deliver the Authority’s specification.

“Contractor Default”

means one of the following events:

- (a) in relation to the Contractor:
 - i. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
 - ii. any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
 - iii. any voluntary arrangement is made for a composition of debts or a scheme or arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor;
 - iv. an administration order is made, or an administrator is appointed in respect of the Contractor;
- (b) a breach by the Contractor on any of its obligations under this Agreement which materially and adversely affects the performance of the Services or delivery of Goods;
- (c) a breach by the Contractor of its obligation to take out and maintain the insurances referred to in clause 11;
- (d) a breach of the Contractor of its obligations in clause 17 (Assignment and Sub-Contracting);

“Data Protection Legislation”:

(i) the GDPR, the LED and any applicable national implementing Legislation 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; and (iii) all applicable Legislation about the processing of personal data and privacy;

"Date of Delivery"

means that date by which the goods must be Delivered to the Authority, as specified in the Specification, purchase order, or such other date as shall be agreed between the parties;

“Day”

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Deliver"

means handover the Goods to the Authority at the address and on the date specified in the Specification, purchase order, or such other location as shall be agreed between the parties, which shall include unloading and any other specific arrangements agreed in accordance with clause 5. Delivered and Delivery shall be construed accordingly;

"Dispute"

shall have the meaning given to it in clause 14 (Dispute Resolution Procedure);

"Dispute Resolution Procedure"

means the procedure to deal with disputes as set out at clause 14 (Dispute Resolution Procedure);

DPA 2018:

Data Protection Act 2018.

"Environmental Information Regulations"

together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations as amended or re-enacted from time to time and any Act substantially replacing the same;

"Expiry Date"

means the date the Agreement becomes no longer effective ;

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation as amended or re-enacted from time to time and any Act substantially replacing the same;

GDPR:

the General Data Protection Regulation (*Regulation (EU) 2016/679*).

"Good Industry Practice"

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor in the delivery of the Services seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

"Goods"

means all or part of the goods set out in the requirements as per sections 4 and 5 of the electronic Request for Quotation issued by the Authority as part of the procurement process to be supplied by the Contractor in accordance with the terms of this Agreement;

"Information"

has the meaning given under Section 84 of the Freedom of Information Act 2000 (FOIA), which shall include (but is not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programs, (including the source code of any programs which the Authority has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to Information shall include reference to the medium in which it is stored.

“Information Breach”

means any event that results, or may result, in unauthorised access to Authority Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Authority Data in breach of this Agreement, including any Personal Data Breach.

“Insolvency Event of Default”

means any of the events listed in limb (a) of the definition of Contractor Default;

“Intellectual Property Rights”

means any and all patents, trademarks, service marks, copyright, data base rights, moral rights, rights in a design, know-how, confidential information, and all or any other intellectual 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;

“LED”

Law Enforcement Directive (*Directive (EU) 2016/680*).

“Legislation”

means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom and for the avoidance of doubt includes in particular the Information Legislation.;

“Loss”

means all losses, liabilities, damages, costs, claims, actions, proceedings, compensation, demands, fines, awards, expenses (including reasonable legal fees and disbursements), penalties and interest;

“Party”

means a party to this Agreement and “Parties” shall be construed accordingly;

“Requests for Information”

has the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

“Services”

means the whole or any part of the services set out in the requirements as per sections 4 and 5 of the electronic Request for Quotation issued by the Authority as part of the procurement process to be provided by the Contractor to the Authority under this Agreement;

“Services Payment”

means the payment by the Authority to the Contractor for the provision of the Goods and/or Services;

“Specification”

means the specification setting out the Authority’s detailed requirements in relation to the supply of Goods and Services as set out in the requirements as per sections 4 and 5 of the electronic Request for Quotation issued by the Authority as part of the procurement process;

“Staff”

means all persons employed or engaged by the Contractor including volunteers to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;

“Sub-Contractor”

means a person to whom the Contractor sub-contracts any of its obligations under this Agreement;

- 1.1 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.2 Save where it is stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.4 References to clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and the Schedules to this Agreement.
- 1.5 Except as otherwise expressly provided in this Agreement, all remedies available to the Contractor or to the Authority under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.6 In the case of conflict, the following descending order of precedence shall apply:

The terms and conditions set out in the main body of this Agreement;

Schedule 1 of this Agreement;

The remainder of the Schedules of this Agreement with the exception of Schedule 3 the Contractor's Response; and

The Contractor's Response at Schedule 3 of this Agreement.

SCHEDULE 2 – INFORMATION HANDLING

1. Definitions and Interpretation

1.1 In this Schedule, the definitions set out in the Agreement will apply.

2. Resolution of Inconsistency

2.1 The Contractor shall immediately upon becoming aware of the same notify the Authority of any inconsistency between the provisions of the Legislation and the standards, guidance and policies applicable under this schedule (or between those standards, guidance and policies) and the Authority, as soon as practicable, shall advise the Contractor which provision the Contractor shall be required to comply with (but not so as to place the Contractor in breach of any Legislation).

3. Protection of Information

3.1 The Contractor acknowledges that the confidentiality, integrity and availability of Information and on the security provided in relation to Information is a material element of this Contract.

3.2 The Contractor shall and shall at all times provide a level of security which:

3.2.1 is in accordance with Good Industry Practice, Legislation and this Contract;

3.2.2 complies with the Authority's Information Policy;

3.2.3 meets any specific security threats identified from time to time by the Authority;
and

3.2.4 complies with applicable ISO standards and in particular ISO/IEC27001 and ISO/IEC27002.

- 3.3 The Contractor shall ensure that it provides comparable technical and policy coverage of security to Information as if it were being processed directly by the Authority. This shall include but not limited to the following:
- 3.3.1 All mobile storage systems and hardware shall be encrypted to at least industry standards.
 - 3.3.2 All Staff shall be appropriately vetted before use in the services which are the subject of this Contract.
 - 3.3.3 All staff shall receive adequate information governance training which shall be regularly refreshed.
 - 3.3.4 All buildings and physical environments shall be subject to appropriate physical security and protection.
 - 3.3.5 When handling NHS data, the Contractor shall apply Safe Haven usage to at least NHS standard.
 - 3.3.6 The Contractor shall permit access to Information by employees of the Authority only as may be specifically designated by the Authority.
 - 3.3.7 The Contractor shall securely destroy all Information provided or created under this Contract and no longer required to be retained in accordance with this Contract.
- 3.4 The Contractor will have in place fully tested and effective disaster recovery and business continuity plans.
- 3.5 The Contractor shall observe the following principles when handling data.
- 3.5.1 Every proposed use or transfer of Personal Data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.
 - 3.5.2 Personal Data must not be used unless it is absolutely necessary. Personal Data should not be used unless there is no alternative.
 - 3.5.3 The minimum necessary Personal Data is to be used. Where use of Personal Data is considered essential, each individual item of information should be justified with the aim of reducing identification.

- 3.5.4 Access to Personal Data should be on a strict need to know basis. Only those individuals who need access to Personal Data should have access to it, and they should only have access to the data that they need to see.
- 3.5.5 All Staff handling Personal Data must be aware of their responsibilities and obligations to respect personal confidentiality.
- 3.5.6 All persons handling Personal Data must understand and comply with the Legislation. Every use of Personal Data information must be lawful.
- 3.6 Any Information received by the Contractor from the Authority under this Contract or generated by the Contractor pursuant to this Contract shall remain at all times the property of the Authority. It shall be identified, clearly marked and recorded as such by the Contractor on all media and in all documentation.
- 3.7 The Contractor shall not, save as required by this Contract, without the prior written consent of the Authority disclose to any other person any Information provided by the Authority under this Contract.
- 3.8 The Contractor shall advise the Authority of any intention to procure the services of any other agent or subcontractor in connection with this Contract and shall pay due regard to any representations by the Authority in response.
- 3.9 The Contractor shall observe and comply with the Authority's scheme of confidentiality requirements applicable from time to time.
- 3.10 The Contractor shall take all necessary precautions to ensure that all Information obtained from the Authority under or in connection with this Contract, is given only to such of the Contractor's staff and professional advisors or consultants engaged to advise the Contractor in connection with this Contract as is strictly necessary for the performance of this Contract, and is treated as confidential and not disclosed (without prior written approval) or used by any such staff or such professional advisors or consultants otherwise than for the purposes of this Contract.
- 3.11 The Contractor shall not use any Information it receives from the Authority otherwise than for the purposes of this Contract.
- 3.12 With regard to Authority Data:
 - 3.12.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
 - 3.12.2 The Contractor shall not store, copy, disclose, or use the Authority 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 Authority.

- 3.12.3. To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in a mutually agreed format.
- 3.12.4. The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data
- 3.12.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- 3.12.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Authority's Information Policy.
- 3.12.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
 - 3.12.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data in full and in not later than three Days (subject to any agreed business continuity and disaster recovery plan); and/or
 - 3.12.7.2 in default thereof itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
 - 3.12.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

4. Disclosures by the Authority

- 4.1 Nothing in this Contract shall prevent the Authority disclosing any Information:
 - 4.1.1 for the purpose of the examination and certification of the Authority's accounts; or
 - 4.1.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - 4.1.3 to any government department or any other contracting authority (as defined in The Public Contracts Regulations 2015). All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a Contractor which is not part of any government department or any contracting authority; or

- 4.1.4 to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Contract provided that in disclosing information the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

5. Accessibility of Data

- 5.1 Where the Contractor is undertaking work on behalf of the Authority to develop new systems, practices or documentation in processing of data, the Contractor shall ensure that these have the ability to extract data in an accessible format.

6. Know-how

- 6.1 Nothing in this Contract shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in a disclosure of Information the subject of this Contract.

7. Information Breach

- 7.1 The Contractor shall ensure any Information Breach is reported to the Authority within 1 working day whether actual, potential or attempted.
- 7.2 The Contractor will ensure any Information Breach is internally investigated, and appropriate remedial action is taken, along with supporting the Authority in any investigation by it.
- 7.3 The Contractor will immediately take all reasonable steps to remedy such breach and to protect the integrity of both parties against any actual, potential or attempted breach or threat and any equivalent attempted breach in the future.

8. Breach, termination and continuance

- 8.1 The Contractor shall indemnify the Authority for any breach of the requirements of this schedule which renders the Authority liable for any costs, fines, claims or expenses under Legislation howsoever arising.
- 8.2 A material failure on the part of the Contractor to comply with the provisions of this schedule shall entitle the Authority to terminate this Contract with immediate effect and to recover the costs incurred in consequence as a civil debt from the Contractor.
- 8.3 On termination of this Contract howsoever arising the Contractor shall when directed to do so by the Authority, and instruct all its agents and Sub-Contractors to:
- 8.3.1 transfer to the Authority the whole or any part of the Personal Data and other Information received or acquired by the Contractor for the purposes of or in the course of the delivery of the services the subject of this Contract; and
- 8.3.2 destroy or erase the whole or any part of such Personal Data and other Information retained by the Contractor and provide to the Authority such proof of destruction as the Authority may reasonably specify.

- 8.4 The provisions of this paragraph shall continue in effect notwithstanding termination of this Contract.

SCHEDULE 3 PAYMENT

1. AGREED ALTERATIONS TO PAYMENT TERMS

The Authority may alter standard payment provisions if required, including liquidated damages, service payments and/or KPIs. Any alterations to the standard payment in this Schedule are to be defined in the specification and request for quotation response. No alterations to the payment terms specified within this schedule will be deemed as accepted unless formally agreed by Authority's Executive Director for Corporate and Customer Services.

2. PAYMENT TERMS

- 2.1 The Authority will not be liable to pay for the Goods and/or Services unless requisitioned by an Official Order through the Proactis system
- 2.2 The Authority will pay any invoice issued under Schedule 4 clause 2 above within 30 days of receipt of a valid invoice following the delivery of the service. On the thirtieth day the payment will leave the account of the Authority. The Authority will not be liable for any time after that taken to clear through the banking system
- 2.3 Subject to Clause 12, the Authority will make payment direct to the Contractor or his/her lawful attorney or a legal equitable assignee of the Agreement but not to any agent of the Contractor, nor to a sub-contractor.
- 2.4 The receipt or payment of any sum by either party shall be without prejudice to the correctness of the sum and either party may require the correction of incorrect payments.
- 2.5 All sums payable under this Agreement unless otherwise stated are exclusive of VAT
- 2.6 Any VAT payable in respect of such sums shall be payable in addition to such sums.
- 2.7 The prices for the goods, services or materials shall remain fixed unless otherwise agreed by the Authority and the supplier
- 2.8 Goods, services and material shall be exclusive of Value Added Tax ("VAT"). VAT shall be due at the rate applicable at the tax point date of the suppliers invoice.
- 2.9 The Supplier shall submit an invoice to the address stated on the Purchase Order within 28 days of supplying any goods of services.
- 2.10 The Purchase Order number must be quoted on all invoices and delivery notes and failure to do so will result in the invoice being returned unpaid.
- 2.11 Save where an invoice is in dispute the Authority shall pay the supplier by bank automatic clearing service (BACS) within thirty (30) days of the date the invoice was received and if not paid when due the supplier may claim interest on such overdue sum from the due date until payment is made at the legally agreed percentage rate per annum above the Bank of England base rate as varied from time to time.
- 2.12 The Authority reserves the right to use other methods of payments where its absolute discretion is appropriate.

- 2.13 The Supplier shall seek to pay its supply chain within thirty (30) days.
- 2.14 Where any sum invoice is disputed by the Authority, the Authority shall notify the supplier within seven (7) days of receipt of the invoice. The parties shall then communicate with one another with a view to resolving the dispute. The Authority shall only make payment once the dispute has been resolved. Payment will be made within thirty (30) days after the date that the dispute has been resolved.
- 2.15 The supplier and the Authority shall use their best endeavours to negotiate in good faith and settle any invoice payment dispute or differences that may arise out of or relate to the Purchase Order. In addition, before resorting to litigation, the dispute should be referred to mediation in accordance the Centre for Effective Dispute Resolution Model Mediation Procedure. The supplier shall continue to provide the disruption while a dispute or disagreement is being resolved unless the Authority request in writing that the supplier does not do so.
- 2.16 The Authority shall be entitled to deduct any monies due to the Authority from sums payable to the supplier under these Terms and Conditions or any other contract the supplier has with the Authority.

3. APRS

- 3.1 The APRS **does/does not** apply to this Contract.

If the APRS applies to the contract the clauses below must remain in the contract and the Percentage Rebate Schedule must be completed.If the APRS does not apply, the clauses below must be deleted.

Definitions	
“APRS”	the “Accelerated Payment Rebate Scheme”.
“APRS Clauses”	the clauses in Schedule 3 (Payment) of this Contract under the heading entitled “APRS” which give effect to and govern the APRS.
“ECC Payment System”	such payment processes and systems as the Authority has in place to pay invoices.
“Invoice Payment Date”	a date that the Authority creates a payment for release to BACS on the ECC Payment System. Creation of the payment will be subject to the Authority’s matching and validation processes. Payment by BACS will be 3 working days after an Invoice Payment Date and does not include an Invoice Payment Date itself.
“Gross Amounts”	the gross amounts in relation to the Contract that remain to be invoiced to the Authority by the Contractor and “Gross Amount” shall be construed accordingly.
“Rebate”	such amounts calculated in accordance with clause 3.9 of this Schedule and deducted from each invoice submitted.
“Rebate Period”	the number of days calculated by the ECC Payment system being the days elapsed between the Trigger Date and the Invoice Payment Date.
“Trigger Date”	the valid invoice receipt date on the ECC Payment System.

- 3.2 The parties agree that the APRS shall apply to the Contract for the duration of the Contract Term (including any extension of the Contract) unless and until disapplied by the Authority PROVIDED that:

(i) The Authority shall be entitled at its sole option to terminate the application of the APRS to the Contract at any time on one months' notice. Where for any reason, the APRS no longer applies to the Contract, the APRS Clauses will from the date of the disapplication of the APRS cease to apply to the Contract and the Contract shall otherwise continue in full force and effect.

(ii) In respect of any Gross Amounts that have been invoiced but remain unpaid up to and including the date of disapplication of the APRS, the APRS Clauses shall survive in respect of any such invoiced amounts until payment has been effected.

3.3 The Contractor acknowledges and agrees that in consideration of the Authority paying a Gross Amount owed to the Contractor in relation to the Contract earlier than the standard 30 day payment terms, the Authority shall be entitled to deduct and retain the Rebate from that Gross Amount for its own benefit.

3.4 The parties agree that the gross amounts set out in the Contract are unamended by the APRS Clauses.

3.5 The Rebate Percentages Schedule sets out the rebate percentages that will apply to the Contract

3.6 The Contractor must use an appropriate mutually agreed identifier on all invoices in accordance with processes agreed with the Authority in order for the APRS to apply to such invoices and the parties note and shall comply with the conditions and obligations below:

(i) the Authority has implemented a fully automated purchase to pay system;

(ii) the Contractor must submit electronic invoices within 10 calendar days of the end of the month to which it relates (but not before the end of the relevant month) using the Authority's system. Where an invoice does not relate to a specific month, the invoice must be submitted within 10 calendar days of agreement from the Authority;

(iii) each invoice must contain separate lines to identify the costs that form the total payment requested;

(iv) the Contractor shall provide the Authority with a central e-mail address to which orders will be sent electronically via the Authority's system. It is the Contractor's responsibility to ensure that continuity of service is maintained at all times and that orders are processed promptly;

(v) the Contractor will submit electronic invoices. The Contractor will achieve this through turning any outstanding purchase orders into electronic invoices by utilising the PO Flip method;

(vi) the Authority's standard payment terms are 30 days following the receipt of a valid invoice;

(vii) services should only be provided/carried out on receipt of an official purchase order, which has been raised via the Authority's system;

(viii) the Contractor assumes full responsibility for ensuring that programs or other data downloaded, uploaded or in any way transmitted electronically to the Authority are free from viruses, or any other items of a destructive nature whatsoever. The Authority does not accept any responsibility for any loss, disruption or damage to the Contractor's data or computer system which may occur whilst using material derived from the Authority's system. The Authority recommends that users recheck all downloaded material with their own virus check software.

3.7 In the event that due to technical issues with the ECC Payment System, the Trigger Date is incorrect, the Authority shall amend such date(s) to match up to the actual dates such events occurred to ensure that the Rebate Period is calculated correctly.

3.8 In the event of any disputed invoice or part thereof, the Authority shall agree with the Contractor in relation to the relevant dispute as to how such invoice is to be treated which may include payment of the undisputed amounts by amendment of the invoice on the ECC Payment System in order to process the payment of the undisputed amounts and shall apply the Rebate (if any) applicable to such undisputed amounts or it may involve suspension of the invoice until such time as the dispute is resolved. The calculation of any Rebate shall be agreed by the parties.

3.9 All invoices must be submitted by the Contractor at the monthly gross price and such invoices will be processed by the Authority including the carrying out of any matching and validation processes and if approved, the Authority will create a payment for release to BACS and payment by BACS will be three (3) working days after the Invoice Payment Date and does not include the Invoice Payment Date itself. Thereafter:

(i) the Rebate Period will be determined; and

(ii) the relevant Rebate Percentage identified - the relevant rebate percentage (%) will be calculated to 14 decimal places and it is this value that will be applied in all calculations. However, for simplicity, the rebate % displayed in the table at Rebate Percentages Schedule has been rounded to 2 decimal places; and

(iii) the Rebate will be calculated - rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described in the clause above, against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Contractor's invoice on early payment of the invoice;

(iv) by way of illustration only:

Example:

- Trigger Date: Friday 1 November 2019
- Invoice Payment Date: Friday 8 November 2019
- Funds received by Contractor Wednesday 13 November 2019
- Rebate Period: 7 days
- The applicable Rebate Percentage will be identified from the rates set out in Rebate Percentages Schedule
- The relevant Rebate will be calculated using the relevant Rebate Percentage applied against the relevant gross price of the invoice.

(v) the Authority shall issue a debit note indicating the value of the Rebate that has been applied.

3.10 In the event the Contractor, acting reasonably, considers that the Authority has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Authority's Service Centre (whose details will be provided to the Contractor by the Authority, as updated from time to time) within seven (7) days of the relevant payment being received by the Contractor. If the Contractor does not raise a genuine query under this clause 3.10 within seven (7) days of the relevant Rebate being applied, the Authority shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate. The parties shall use reasonable endeavours to resolve any query raised in accordance with this clause 3.10 in a timely manner, including making relevant personnel available for the purpose.

3.11 For the avoidance of doubt, nothing in this Contract shall:

(i) affect the 30 day payment date by which payment of an Gross Amount is required to be made by the Authority; or

(ii) require the Authority to make early payment to the Contractor in respect of any Gross Amount.

Rebate Percentages Schedule

**THE TABLE BELOW NEEDS TO BE COMPLETED TO REFLECT THE
PERCENTAGE REBATE THE CONTRACTOR OFFERED IN ITS RESPONSE TO
TENDER.**

Rebate Period	Percentage Rebate
0	[●]%
1	[●]%
2	[●]%
3	[●]%
4	[●]%
5	[●]%
6	[●]%
7	[●]%
8	[●]%
9	[●]%
10	[●]%
11	[●]%
12	[●]%
13	[●]%
14	[●]%
15	[●]%
16	[●]%
17	[●]%
18	[●]%
19	[●]%
20	[●]%
21	[●]%
22	[●]%
23	[●]%
24	[●]%
25	[●]%
26	[●]%
27	[●]%
28	[●]%
29	[●]%
30	[●]%

SCHEDULE 4 – DATA PROTECTION

BELOW ARE 3 SETS OF DRAFTING TO COVER THE FOLLOWING SCENARIOS

OPTION 1 - ECC AND THE CONTRACTOR ARE BOTH DATA CONTROLLERS

OPTION 2 - THE CONTRACTOR IS A DATA PROCESSOR FOR ECC

OPTION 3 - ECC IS ACTING AS A DATA PROCESSOR – WHERE ECC IS A
SUPPLIER/CONTRACTOR

YOU WILL NEED TO SELECT THE DRAFTING THAT APPLIES TO YOUR CONTRACT AND
DELETE THE DRAFTING THAT DOES NOT APPLY. FOLLOW THE GUIDANCE NOTES THAT
ARE RELEVANT TO THE DRAFTING YOU ARE USING. IF YOU HAVE ANY QUERIES CONTACT
ELS

IF ECC OR THE SUPPLIER WILL BE SENDING PERSONAL DATA OUTSIDE OF THE EEA
PLEASE CONTACT INFORMATION GOVERNANCE OR ELS FOR FURTHER ADVICE

[Option 1 Drafting for Data Controller to Data Controller]

This drafting is to be used when ECC and the contractor will both be data controllers. The drafting includes the basis of sharing data and therefore there is no need for a separate data sharing agreement or protocol to be prepared. You will need to liaise with Information Governance to tailor the categories of Shared Personal Data in the Share Data Schedule.

The terms and expression used in this Schedule 4 shall have the meanings set out below in so far as they are not defined in main body of the Agreement.

“Agreed Purposes” means such data sharing of Personal Data for the purposes of:

- (a) the Parties being enabled to discharge their respective legal and contractual obligations under this Agreement and the Data Protection Legislation for the benefit of the individuals (both Staff and Service Users) providing and receiving the Services under this Agreement ;
- (b) the Authority being enabled to discharge its statutory functions and duties and corporate aims and objectives arising from its duty to commission and ensure the provision of the Services under this Agreement and such other services similar or complementary to the Services under this Agreement;
- (c) the Authority being enabled to ensure that the practices of the Contractor, its Sub-contractors and any Staff are compliant with all safeguarding requirements in the provision of Services under this Agreement;

“Controller” has the meaning given in the GDPR;

“Data Discloser” means a party that discloses Shared Personal Data to the other party;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Authority under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Officer” has the meaning given in the GDPR;

“Data Subject” has the meaning given in the GDPR;

“Data Subject Right Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation;

“Permitted Recipients” means the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement, and **ADD ANY OTHER PERMITTED RECIPIENTS**;

“Personal Data” has the meaning given in the GDPR;

“Personal Data Breach” has the meaning given in the GDPR;

“Protective Measures” means 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.

“Shared Personal Data” means:

(a) all such Personal Data shared between the Parties in relation to any adults and/or children and/or service user in receipt of the Services provided by the Service Provider; and/or

(b) all such Personal Data that is reasonably required by the Authority in order to assess the level of need, care and/or intervention required by the adult and/or child and/or service user to ensure compliance with the Council's statutory duties and other duties in relation to the health and wellbeing of the population of Essex,

in accordance with the categories of specified personal data and special category personal data set out in Schedule 5 (*Shared Personal Data*) and all practices, protocols and agreements agreed between the Parties from time to time;

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

1. Each party, including its sub-contractors and their staff shall comply with all applicable requirements of the Data Protection Legislation. The provisions in this Schedule 4 are in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
2. The Contractor shall give all reasonable assistance to the Authority necessary to enable it to comply with its obligations under the Data Protection Legislation and to meet its duties in the commissioning and deliver of the Services. The parties shall comply with Schedule 2 (*Information Handling*). Each party shall not knowingly or negligently by any act or omission, place the other party in breach, or potential breach, of the Data Protection Legislation.
3. In the event that the Contractor does not have a security policy that complies with the Authority's relevant standard, the Authority shall be entitled to establish its own systems audit for evaluating and monitoring the effectiveness of the Contractor's data protection systems and shall be entitled to deduct the reasonable cost of maintaining such systems from sums due to the Contractor.
4. The parties acknowledge that each party is a Controller and each party agrees that the disclosure of the Shared Personal Data is necessary and such sharing and disclosure shall be compliant with the Agreed Purposes and the Data Protection Legislation.
5. Where the processing of the Authority Data is required in order for the Contractor to supply goods and/or Services under this Agreement, the Contractor agrees to:
 - 5.1. process the Authority Data in accordance with the Data Protection Legislation and on the Authority's instructions; and
 - 5.2. enter into an appropriate form of data processing agreement.

6. Where it is necessary for the purposes of the supply of the Services under this Agreement for the Authority and the Contractor to share Personal Data, the Parties agree to:
 - 6.1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 6.2. give full information to any data subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - 6.3. process the Shared Personal Data only for the Agreed Purposes;
 - 6.4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 6.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
 - 6.6. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - 6.7. not transfer any Personal Data received from the Data Discloser outside the EEA unless the transferor:
 - (a) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - (b) ensures that: (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
7. The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
8. The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing the Services. Such assistance may, at the discretion of the Authority, include:
 - 8.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 8.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 8.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 8.4. the measures envisaged to address the risks, including safeguards, security measures and

mechanisms to ensure the protection of Personal Data.

9. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

9.1. process that Personal Data only in accordance with the Data Protection Legislation;

9.2. ensure that it has in place Protective Measures that comply with the Data Protection Legislation and the Authority's Information Policy to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

9.3. ensure that:

- (a) the Staff do not process Personal Data except in accordance with this Agreement;
- (b) it takes all reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Contractor's duties under this Schedule 4 (*Data Protection*) and Schedule 2 (*Information Handling*). and Schedule 5 (*Shared Personal Data*);
 - ii. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - iii. 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 Authority or as otherwise permitted by this Agreement; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and

9.4. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (a) the Authority or 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 Authority;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) 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 Authority in meeting its obligations); and

- (d) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 9.5. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Legislation to retain the Personal Data.
- 10. The Authority reserves the right to review the Protective Measures at any point and the Contractor shall facilitate such review. Where the Protective Measures in Clause 9.2 do not comply with the Data Protection Legislation or the Authority's Information Policy, the Contractor shall implement any remedial changes to the Protective Measures requested by the Authority at the Contractor's expense.
- 11. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:
 - 11.1. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 11.2. promptly notify the other party if it receives any Data Subject Right Request or purported Data Subject Right Request);
 - 11.3. promptly notify the other party if it receives a request to rectify, block or erase any Personal Data;
 - 11.4. promptly notify the other party if it receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 11.5. promptly notify the other party if it receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 11.6. promptly notify the other party if it 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 Legislation
 - 11.7. promptly notify the other party if it becomes aware of a Data Loss Event;
 - 11.8. provide the other party with reasonable assistance in complying with any Data Subject Right Request;
 - 11.9. not disclose or release any Shared Personal Data in response to a Data Subject Right Request without first consulting the other party wherever possible;
 - 11.10. assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
 - 11.11. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 11.12. at the written direction of the Data Discloser, delete or return Shared Personal Data and

copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the Personal Data;

- 11.13. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 11.14. maintain complete and accurate records and information to demonstrate its compliance with this Clause 11 and allow for audits by the other party or the other party's designated auditor; and
 - 11.15. provide the other party with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
12. The parties' obligation to notify shall include the provision of further information to the other party in phases, as details become available.
13. Taking into account the nature of any processing, the Contractor shall provide the Authority with full assistance in relation to either party's obligations under the Data Protection Legislation and any complaint, communication or request made (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 13.1. the Authority with full details and copies of the complaint, communication or request;
 - 13.2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Right Request within the relevant timescales set out in the Data Protection Legislation;
 - 13.3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 13.4. assistance as requested by the Authority following any Data Loss Event;
 - 13.5. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
14. The Contractor shall allow for audits of its data processing activity by the Authority or the Authority's designated auditor.
15. . The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
16. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 16.1. notify the Authority in writing of the intended Sub-processor and processing;
 - 16.2. obtain the written consent of the Authority;
 - 16.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 4 (*Data Protection*)] such that they apply to the Sub-processor; and

- 16.4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
17. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
18. The Authority may in complying with a statutory obligation or any guidance issued by the Information Commissioner's Office on not less than thirty (30) Working Days' notice, revise this Schedule 4 (*Data Protection*) by amending, revising or replacing it with any provisions which are compliant and/or 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 Agreement).
19. The Parties agree to take account of any rulings and/or guidance issued by the Information Commissioner's Office.
20. Nothing in this Schedule 4 (*Data Protection*) shall affect the Authority's right to ensure that it is discharging its statutory functions and duties, corporate aims and objectives arising from its duty to commission and ensure the provision of the Services under this Agreement. The Contractor shall at all times during the Term permit the Authority's representatives and/or any designated person authorised by the Authority access on reasonable notice during normal working hours (save in the case of emergency where no notice shall be required) to any premises used by the Contractor for the provision of the Services for the purpose of:
- 20.1 quality inspections, monitoring and observing/inspecting work being performed in order to provide the Services;
 - 20.2 inspecting any or all records and documents in the possession, custody or control or held by the Contractor in connection with the provision of the Services;
 - 20.3 interviewing the Contractor's employees, officers, agents and any Subcontractor's employees, officers and agents in connection with the provision of the Services; and
 - 20.4 inspecting equipment, systems and procedures used by the Contractor to provide the Services,

and the Contractor acknowledges that where the Authority may require access to Personal Data in order to carry out the activities set out in this Clause 20, the Contractor shall provide the Authority with such access and any such Personal Data shall fall within the definition of Shared Personal Data.

21. The Authority and the Contractor shall agree which data relating to the Services (whether the Authority Data or otherwise) may be retained by the Contractor following expiry or termination. The Authority may direct that any data must be returned or destroyed in accordance with the relevant provisions of this Agreement.
22. Any records or data to be returned to the Authority and/or passed on to a replacement or future contractor, must be returned and/or passed on in the manner and format stipulated by the Authority. The Contractor shall work with and agree with the Authority and/or any replacement or future contractor, protocols for proposed change to systems to ensure compatibility with the Authority's and/or any replacement or future contractor's systems, and for the return of any data at the end of the Term. Any cost incurred by the Contractor associated with the formulation of protocols or the conversion of data into the Authority's specified format shall be borne by the Contractor.

SCHEDULE 5 – SHARED DATA

Contact Information Governance for assistance in completing this schedule

1. The following types of Personal Data will be shared between the parties during the Term of this Agreement and the parties will review and update this list during the Term as necessary to ensure that the Authority has access to such Shared Personal Data as is necessary for the Agreed Purposes:

[insert categories of personal data to be shared here]

2. The following types of special categories of Personal Data will be shared between the parties during the Term of this Agreement:

[insert special categories of personal data to be shared here]

3. The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.]

[OPTION 2 Drafting where the Contractor is a Data Processor for ECC

This drafting is to be used when the Contractor is acting as a Data Processor for ECC. You will need to liaise with Information Governance to complete the Data Processing Schedule

The terms and expression used in this Schedule 4 shall have the meanings set out below in so far as they are not defined in main body of the Agreement.

“Controller” has the meaning given in the GDPR;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Authority under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach;

“Data Processing Schedule” means Schedule 5 to this agreement that sets out the processing the Supplier is authorised to undertake under this Agreement

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Officer” has the meaning given in the GDPR;

“Data Subject” has the meaning given in the GDPR;

“Data Subject Right Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation;

“Personal Data” has the meaning given in the GDPR;

“Personal Data Breach” has the meaning given in the GDPR;

“Processor” has the meaning given in the GDPR;

“Protective Measures” means 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.

“Records of Processing Activities” takes the meaning given in the GDPR

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1. Each party, including its sub-contractors and their staff shall comply with all applicable requirements of the Data Protection Legislation. The provisions in this Schedule 4 (*Data Protection*) are in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. The Contractor shall give all reasonable assistance to the Authority necessary to enable it to comply with its obligations under the Data Protection Legislation and to meet its duties in the commissioning and deliver of the Services. The parties shall comply with Schedule 2 (*Information Handling*). Each party shall not knowingly or negligently by any act or omission, place the other party in breach, or potential breach, of the Data Protection Legislation.
2. In the event that the Contractor does not have a security policy that complies with the Authority's relevant standard, the Authority shall be entitled to establish its own systems audit for evaluating

and monitoring the effectiveness of the Contractor's data protection systems and shall be entitled to deduct the reasonable cost of maintaining such systems from sums due to the Contractor

3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Data Processing Schedule at Schedule 5 of this Agreement by the Authority and may not be determined by the Contractor.
4. The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
5. The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
 - 5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 6.1 process that Personal Data only in accordance with the Data Processing Schedule of this Agreement, unless the Contractor is required to do otherwise by Legislation. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Legislation;
 - 6.2 ensure that it has in place Protective Measures that comply with the Data Protection Legislation and the Authority's Information Policy to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 6.3 ensure that:
 - (a) the Staff do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Contractor duties under this Schedule 4 (*Data Protection*) and Schedule 2 (*Information Handling*) and Schedule 5 (*Data Processing*);

- (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (iii) 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 Authority or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 6.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - 6.1 the Authority or 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 Authority;
 - 6.2 the Data Subject has enforceable rights and effective legal remedies;
 - 6.3 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 Authority in meeting its obligations); and
 - 6.4 the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 6.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Legislation to retain the Personal Data.
- 7. The Authority reserves the right to review the Protective Measures at any point and the Contractor shall facilitate such review. Where the Protective Measures in Clause 6.2 do not comply with the Data Protection Legislation or the Authority's Information Policy, the Contractor shall implement any remedial changes to the Protective Measures requested by the Authority at the Contractor's expense.
- 8. The Contractor shall notify the Authority immediately if it:
 - 8.1 receives any Data Subject Right Request;
 - 8.2 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 8.3 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 8.4 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 Legislation; or
 - 8.5 becomes aware of a Data Loss Event.
- 9. The Contractor's obligation to notify shall include the provision of further information to the Authority in phases, as details become available.

10. Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - 10.1 the Authority with full details and copies of the complaint, communication or request;
 - 10.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Right Request within the relevant timescales set out in the Data Protection Legislation;
 - 10.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 10.4 assistance as requested by the Authority following any Data Loss Event;
 - 10.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
11. The Contractor shall maintain complete and accurate Records of Processing Activities. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
 - 11.1 the Authority determines that the processing is not occasional;
 - 11.2 the Authority 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
 - 11.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
12. The Contractor shall allow for audits of its data processing activity by the Authority or the Authority's designated auditor.
13. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
14. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
 - 14.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 14.2 obtain the written consent of the Authority;
 - 14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 4 (*Data Protection*) such that they apply to the Sub-processor; and
 - 14.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
15. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

16. The Authority may in complying with a statutory obligation or any guidance issued by the Information Commissioner's Office on not less than thirty (30) Working Days' notice, revise this Schedule 4 (*Data Protection*) by amending, revising or replacing it with any provisions which are compliant and/or 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 Agreement).
17. The Parties agree to take account of any rulings and/or guidance issued by the Information Commissioner's Office.

SCHEDULE 5 – DATA PROCESSING

Contact Information Governance for assistance in completing this schedule

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

DETAILS	DESCRIPTION
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as 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. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	In line with termination clauses within this Agreement.

[OPTION 3 - Drafting for ECC as Data Processor – where ECC is the Supplier

This drafting is to be used when ECC is acting as a Data Processor for a customer. You will need to liaise with Information Governance to complete the Data Processing Schedule or to check the Data Processing Schedule if completed by the customer.

The terms and expression used in this Schedule 4 shall have the meanings set out below in so far as they are not defined in main body of the Agreement.

“Controller” has the meaning given in the GDPR;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Authority under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach;

“Data Processing Schedule” means Schedule 5 to this agreement that sets out the processing the Supplier is authorised to undertake under this Agreement;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Officer” has the meaning given in the GDPR;

“Data Subject” has the meaning given in the GDPR;

“Data Subject Right Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation ;

“Personal Data” has the meaning given in the GDPR;

“Personal Data Breach” has the meaning given in the GDPR;

“Processor” has the meaning given in the GDPR;

“Protective Measures” means 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.

“Records of Processing Activities” takes the meaning given in the GDPR

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule 4 (*Data Protection*) is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation
2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Schedule 5 (*Data Processing*) sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
3. The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

4. The Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 4.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by Legislation to otherwise process that Personal Data. Where the Supplier is relying on the Legislation of a member of the European Union or European Union Legislation as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Legislation unless the Legislation prohibit the Supplier from so notifying the Customer;
 - 4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 4.2 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 4.3 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - 4.4 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 4.5 notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 4.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Legislation to store the Personal Data; and
 - 4.7 maintain complete and accurate records and information to demonstrate its compliance with this Schedule 4 (*Data Protection*).
5. The Customer does not consent to the Supplier appointing any third party processor of Personal

Data under this agreement.

6. Either party may, at any time on not less than 30 days' notice, revise this Schedule 4 (*Data Protection*) 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 replaced by attachment to this agreement).]