



**Milton Keynes Council
General Terms and Conditions
of Contract for Services**

(1) MILTON KEYNES COUNCIL

-and-

(2) DPS SUPPLIER

SUPPLIER AGREEMENT

relating to the provision of regular services for Home to School Transport
and Children's Services Transport and other Passenger Transport

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THIS AGREEMENT is made on the Commencement Day stated in the Service Agreement

BETWEEN

- (1) **MILTON KEYNES COUNCIL** of Civic Offices 1 Saxon Gate East Milton Keynes MK9 3EJ (the "Council"); and
- (2) **the DPS SUPPLIER**

RECITALS:

- (A) The Council placed a Contract Notice in Find A Tender ("**FTS**") on **[23 April 2021]** to establish a Dynamic Purchasing System ("**DPS**") for the procurement of Passenger Transport Services, namely Home to School Transport and Children Services Transport.
- (B) In accordance with Regulation 34 of the Public Contracts Regulations 2015, as amended, ("Regulations"), the Council has used the restricted procedure to establish a DPS.
- (C) The Council has contracted with adam HTT Limited trading as *adam* (registered company 07716565 – the "Technology Provider") to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Parties from time to time (the "Technology"), to procure Services via the DPS as set out in the Regulations, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.
- (D) The Council admits to the DPS any Supplier that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Specification and any additional documents produced by the Council.
- (E) For the avoidance of doubt, there is no obligation on the Council to award any contracts under the DPS during its Term.
- (F) The Council sought proposals for the supply of the Services under the DPS.
- (G) The Council has selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED:

1. This Contract is comprised of the following documents together known as 'Contract Documents':
 - 1.1 These Articles of Agreement;
 - 1.2 The Contract Particulars;
 - 1.3 The Conditions of Contract;
 - 1.4 The Schedules (excluding Schedule 3 (the Tender));
 - 1.5 Any Appendices (where applicable); and
 - 1.6 Schedule 3 (the Tender)
 - 1.7 The Self – Billing Agreement
 - 1.8 The Operational Guide
 - 1.9 The Application Guide

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

- 2. Terms and expressions used in this Contract shall have the meanings given in clause 1.1 of the Conditions of Contract.
- 3. In consideration for payment of the Contract Price, the Supplier undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

EXECUTION AS A DEED:

(also attached as a separate document for execution by Supplier)

1.1 The Supplier acknowledges and accepts that they have fully read and understood the terms of the Contract (as defined within the Supplier Agreement).

1.2 By execution of this Signature Document, the Supplier agrees to enter into the Contract and all associated Contract Documents to provide the Services to the Council from time to time in accordance with the Contract.

1.3 This Signature Document forms part of the Contract and shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under the laws of England and Wales.

IN WITNESS whereof the Parties have executed and delivered the Contract as a deed on the date on the face of this execution document.

Executed by **Milton Keynes Council** by
affixing its common seal in the presence of

(Authorised Officer)

Executed as a DEED by:

(Name of
Company):..... of

Registered
Office:.....

Acting by a Director and its Secretary or two Directors:

Signature.....
(Director)

Print Name

Signature:.....
(Director/Secretary)

Print Name.....

OR

By the Signature of a Director in the presence of a witness

Executed as a DEED by:

(Name of Company):.....

Registered Office:.....

Acting by a Director

Signature.....

(Director)

Print Name

In the presence of:

.....

Signature of witness

Name:

Address:

.....

.....

Occupation:

1 Scope of Supplier Agreement

- 1.1 This Contract governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the DPS. The Supplier must agree to the terms of the Contract prior to acceptance into the DPS. For the avoidance of doubt, the Supplier's acceptance of the Contract shall not guarantee the Supplier's acceptance onto the DPS, which shall be subject to successful completion of the Accreditation and Enrolment.
 - 1.2 The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the Term of the DPS. The Council shall be entitled at all times to decline to make an award for its requirement.
 - 1.3 The Council may update the Supplier Entry Guide at any time throughout the validity of the DPS and during the term of the Contract, provided that the Council provides all Suppliers with fair and open access to such changes with reasonable advance notice.
 - 1.4 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract and may perform audit checks of any such or existing Accreditation or Enrolment information.
 - 1.5 The Supplier acknowledges that once agreed via the Technology, a Service Agreement is a legally binding agreement between the Suppliers and the Council and must be adhered to in accordance with the terms of the Contract.
-

CONTRACT PARTICULARS

1	Commencement Date:	As stated in the Service Agreement	(clauses 1.1 and 2.1)
2	Contract Period:	As stated in the Service Agreement	(clause 1.1)
3	Contract Price:	As stated in the Service Agreement	(clause 1.1)
4	Contract Extension:	As stated in the Service Agreement	(clause 2.2)
5	Address for Service of Notices	As stated in the Service Agreement	(clause 5.3)
6	Key Personnel	clause 10 does not apply	
7	Safeguarding	Clauses 12.2 -12.9 apply	
8	TUPE and Pensions	clause 13 applies.	(clause13)
		Pensions Bond value: does not apply	
9	Licence to Occupy Council Premises	clause 15 does not apply	
10	Parent Company Guarantee	clause 17.1 and Schedule 8 applies (where the value of contract is £250k and above)	

11	Performance Bond	clause 18 and 0 do not apply	
12	Payment and VAT	A. Payment Periods: monthly in arrears	
13	Price Adjustment	clause 22 does not apply	
14	Audit	Period for which records must be maintained after the end of the contract: 12 years	(clause 20.7, 23.5, 33 and 34)
15	Liability and Indemnity	Subject to clause 45.4 the Supplier's liability under this Contract shall be unlimited for each and every claim arising under or in connection with this Contract	(clause 45.4)
16	Insurance	Public Liability Insurance: £5,000,000 per claim Employer's Liability Insurance: £5,000,000 per claim	(clause 46.1) (clause 46.1)
17	Additional Insurances	Professional Indemnity Insurance is NOT required	(clause 46.5 and 46.6)

- | | | |
|----|------------------------------------|--|
| 18 | Break clause | clause 50 applies
The notice period is one (1) month |
| 19 | Force Majeure | clause 54 applies
The period referred to in clause 54.3 is 1 month |
| 20 | Disaster Recovery | clause 55 applies |
| 21 | Commercially Sensitive Information | Schedule 11 applies where any commercially sensitive information is notified by either party |

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Appendix”	means an appendix to this Contract.
“Appropriate Pension Provision”	means a pension provision that is compliant with all applicable laws relating to pensions.
“Approval”	means the written consent of the Council.
“Catastrophic Failure”	(a) a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster. (b) any action by the Supplier, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Council has or may cause significant harm to the reputation of the Council.
“Charges”	means the amount to be paid by the Council to the Supplier for the provision of the Services
“Change”	means any change to this Contract arising from the Supplier’s obligations in clause 34.3
“Change Control Note”	means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.
“Change Control Procedure”	means the procedure for changing this Contract as set out in Schedule 5.
“Council”	means Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Central Milton Keynes MK9 3EJ.
“Commencement Date”	means the date stated in the Contract Particulars or if none is stated, the date of this Contract.
“Commercially Sensitive Information”	means the information listed in Schedule 11 (Commercially Sensitive Information) comprised of information: (a) which is provided by the Supplier to the Council in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the GDPR. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 28 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract” means this written agreement between the Council and the Supplier which is more particularly described in the Articles of Agreement.

“Contracting Authority” means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015.

“Contract Particulars” means the contract particulars contained in this Contract.

“Contract Period” means the period stated in the Contract Particulars and includes any extension to the Contract Period.

“Supplier” means the person, firm or company with whom the Council enters into the Contract.

“Controller”, “Processor”, “Data Subject”, “Personal Data”, Personal Data Breach” and “Data Protection Officer” shall have the same meaning as set out in the GDPR.

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

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

“Data Protection Legislation” the General Data Protection Regulations 2016/679, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the

subject-matter of the Contract and in respect of which such Party is liable to the other.

“Disaster”	means an event defined as a disaster in the Disaster Recovery Plan.
“Disaster Recovery Plan”	means a plan prepared by the Supplier in accordance with clause 55 and which sets out the procedures to be adopted by the Supplier in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), and which will be incorporated in Schedule 10.
“DPA 2018”	Data Protection Act 2018
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Equipment”	means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.
“Exit Manager”	has the meaning set out in paragraph 4 of 0;
“Exit Obligations”	means the obligations set out in paragraph 2 of 0;
“Exit Period”	means the period determined in accordance with paragraph 5 of 0;
“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 or relevant government department in relation to such legislation.
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: (a) any industrial action occurring within the Supplier’s or any Sub-Contractor’s organisation; or (b) the failure by any Sub-Contractor to perform its obligations under any sub-contract.
“GDPR”	means the General Data Protection Regulation 2016/679 and any subordinate legislation made under such Regulation from time to time as may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Information”	has the meaning given under section 84 of the FOIA.
"Information Governance"	means the way organisations process or handle information relating to the service and/or service users
"Information Governance Toolkit Requirements"	means the requirements set out in the Local Authority model of the NHS Information Governance Toolkit as published by the Department of Health and amended from time to time for: <ul style="list-style-type: none">(a) Information Governance management,(b) Confidentiality and data protection(c) Information security
"Intellectual Property Rights"	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.
“Key Personnel”	means those persons named in the Specification as being key personnel.
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.
“LED”	means the Law Enforcement Directive (Directive (EU) 2016/680)
“Real Living Wage”	means the figure set annually for areas outside London by the Centre for Research and Social Policy currently at Loughborough University or its successor or any other body which subsequently takes up responsibility for setting the figure.
“Real Living Wage Criteria”	means circumstances where an individual works at any of the Premises owned or managed by the Council for at least 2 hours per day over a period of 8 consecutive weeks

“Relevant Employees”	means any employees who may be the subject of a Relevant Transfer.
“Losses”	shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual clause in question or to its breach
“Month”	means calendar month.
“Party”	means a party to the Contract.
“Premises”	means the location where the Services are to be supplied, including as may be set out in the Specification.
“Price Review Date”	has the meaning given in the Contract Particulars.
“Processing and process”	has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.
“Procurement Legislation”	shall include the Public Contract Regulations 2015 as amended; and the Concession Contracts Regulations 2016 on the award of concession contracts.
“Prohibited Act”:	the following constitute Prohibited Acts: <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity;(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;(c) committing any offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010;(ii) under legislation creating offences concerning fraudulent acts;(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or

- (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Property”	means the property, other than real property, issued or made available to the Supplier by the Council in connection with the Contract.
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
“Public Sector Contracting Authorities”	means public sector bodies that are subject to the Public Contracts Regulations 2015 as amended and respective successor legislation.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or European equivalent or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Regulations”	The Public Contracts Regulations 2015 as amended
“Regulated Activity”	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
“Relevant Convictions”	means a conviction that is relevant to the nature of the Services or as listed by the Council.
“Relevant Index”	means the index specified in the Contract Particulars;
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE.
“Replacement Supplier”	means any third party Supplier appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Schedule”	means a schedule attached to, and forming part of, the Contract.
“Services”	means the whole of the service or any part of it, as described in the Specification, to be provided by the Supplier pursuant to this Contract, or such of it as may from time to time remain the subject of this Contract and includes any modification or variation made pursuant to the Contract.
“Self-Billing Agreement”	an agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Technology for the billing of the appropriate price and payment
“Self Bill Invoice”	the invoice produced via the Technology on the Supplier’s behalf, through which the Technology Provider shall process payment
“Service Receipt”	the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties
“Service Agreement”	the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties
“Signature Document”	the signed document between the Council and the Supplier which constitutes the Parties’ agreement to this Contract and the creation of the overall Contract
“Supplier Entry Guide”	the entry guide issued by the Council detailing the operation of the DPS
“Supplier Party”	means the Supplier's agents and contractors, including each Sub-Contractor.
“Specification”	means the description of the Services to be supplied under the Contract as set out in the Specification including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
“Special Conditions”	means the special conditions (if any) set out in 0.
“Staff”	means all and any persons employed or engaged by the Supplier in whatever capacity to perform its obligations under the Contract including the Supplier’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council’s procedures for the vetting of personnel and as advised to the Supplier by the Council.
“Sub-Contract”	means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.
“Sub-Contractor”	means the contractors that enter into a Sub-Contract with the Supplier.
“Sub-Processor”	means any third party appointed to process Personal Data on behalf of the Supplier in relation to this Contract
“Technology Provider”	

the owner and provider of the Technology, adam HTT Limited t/a *adam* (registered company number 07718565), who shall also act as the Council's payment service provider

- “Tender”** means the document(s) submitted by the Supplier to the Council in response to the Council's invitation to suppliers for formal offers to supply it with the Services.
- “Transfer Date”** means any date when any Relevant Employees are transferred to the employment of the Service Provider or a Sub-Contractor
- “Variation”** has the meaning given to it in clause 37 (Variation) of the Conditions of Contract.
- “TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
- “VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
- “Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. CONTRACT PERIOD AND EXTENSION

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or by operation of law, or extended under clause 2.2.
- 2.2 Where stipulated in the Contract Particulars, the Council may, by giving written notice to the Supplier extend the Contract for such further period as is stated in the Contract Particulars. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 22 (Price Adjustment)) throughout any such extended period.

3. SUPPLIER'S STATUS

At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

4. COUNCIL'S OBLIGATIONS

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting authority and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Supplier.

5. NOTICES

- 5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.
- 5.3 For the purposes of clause 5.2, the address of each Party shall be the address stipulated in the Contract Particulars:
- 5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

6. MISTAKES IN INFORMATION

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Supplier in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

7. CONFLICTS OF INTEREST

- 7.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

- 8.1 The Supplier shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification)
 - 8.1.2 Good Industry Practice;
 - 8.1.3 the Law; and
 - 8.1.4 the requirements of the Contract.
- 8.2 The Council may inspect and examine the manner in which the Supplier supplies the Services during normal business hours on reasonable notice.
- 8.3 If the Council informs the Supplier in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

9. PROVISION AND REMOVAL OF EQUIPMENT

- 9.1 The Supplier shall provide all the Equipment necessary for the supply of the Services.
- 9.2 Not Used.
- 9.3 All Equipment used in the supply of the Services shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default.. Unless otherwise agreed, Equipment used in the supply of the Services will remain the property of the Supplier.
- 9.4 The Supplier shall maintain all items of Equipment in a safe, serviceable and clean condition at its sole cost.
- 9.5 The Supplier shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- 9.5.1 remove any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
 - 9.5.2 replace such item with a suitable substitute item of Equipment.
- 9.6 Not used.

10. KEY PERSONNEL (NOT USED)

- 10.1 This clause 10 (Key Personnel) shall apply if so stated in the Contract Particulars.
- 10.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 10.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

- 10.4 The Council shall not unreasonably withhold its agreement under clauses 10.2 or 10.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

11. SUPPLIER'S STAFF

- 11.1 The Council may, by written notice to the Supplier, refuse to agree to, or withdraw permission to remain involved in the delivery of the Services to:

11.1.1 any member of the Staff; or

11.1.2 any person employed or engaged by any member of the Staff,

whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.

- 11.2 At the Council's written request, the Supplier shall provide a list of the names and addresses of all persons who will be used in the provision of the Services, specifying the capacities in which they are concerned with the Contract, the status of their DBS checks and relevant Licences and giving such other particulars as the Council may reasonably request.

- 11.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

- 11.4 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 11.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council requires the Supplier to carry out a Disclosure and Barring Service check in respect of any person to be employed or engaged in the provision of the Services. The Supplier shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of or through a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

- 11.6 If the Supplier fails to comply with clause 11.2 within 21 days of the date of the request the Supplier shall be in Default of its obligations under the Contract.

- 11.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Supplier has failed to comply with clause 11.2 shall be final and conclusive and the Supplier shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under clause 11.1.

- 11.8 The Supplier shall pay at least a Real Living Wage to all its employees who are employed in connection with the Contract and who meet the Real Living Wage Criteria.

- 11.9 The Supplier acknowledges that revised rates of the Real Living Wage are set annually in November and this may mean an increase to the Real Living Wage Rates.

- 11.10 The Supplier shall keep up to date with any revised rates of the Real Living Wage and where the rates increase, the Supplier shall implement the same from the 1 April immediately following.

- 11.11 The Supplier's Staff shall be suitably trained to provide the Services.

12. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 12.1 Clauses 12.2 to 12.9 shall apply where stipulated in the Contract Particulars. Notwithstanding clauses 12.1 – 12.9, Clause 12.10 shall apply to all Suppliers.
- 12.2 The Parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 12.3 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
- 12.3.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
- 12.3.2 the Supplier shall monitor the level and validity of the checks under this clause 12.3 for each member of staff.
- 12.4 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 12.5 The Supplier shall immediately provide the Council with any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 12 have been met.
- 12.6 The Supplier shall refer information about any person carrying out the Services to the Independent Safeguarding Authority where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 12.7 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 12.8 Where the Services are provided to any adult, the Supplier shall comply at all times with the current Milton Keynes Safeguarding Adults Multi Agency Policy and Procedures (June 2015) and any amendments and additions to the document.
- 12.9 Where the Services are provided to any persons aged 16 years and above, the Supplier shall comply with and shall ensure that all its Staff comply with the Mental Capacity Act 2005 and with the current Milton Keynes Mental Capacity Act – Deprivation of Liberty Safeguards (DoLS) Policy and Practice Guidance (April 2015) and any amendments and additions to the document.
- 12.10 To the extent that the Supplier is not a Regulated Activity Provider within the meaning of Safeguarding Vulnerable Groups Act 2006, the Supplier shall nevertheless ensure that, where delivery of the Services brings any of its Staff into contact with children and/or vulnerable adults, it shall comply with all relevant provisions under this Contract including the Specification and such Staff shall be appropriately checked and appropriately trained on issues of safe working practices and on issues of safeguarding children and vulnerable adults from harm.

13. TUPE AND PENSIONS

- 13.1 The parties do not generally anticipate that staff will transfer under TUPE Regulations at the Commencement Date or during the Contract Period. However, the Service Provider shall undertake its own due diligence and where necessary, seek independent legal advice to inform itself of whether or not TUPE applies and of the consequences where TUPE is applicable. The

Contract Price shall be deemed inclusive of any costs associated with TUPE and associated matters such as pensions.

- 13.2 In the event of application of TUPE Regulations during the Contract Period, the Service Provider shall comply with and shall ensure that any Sub-contractors comply with all obligations under the TUPE Regulations.
- 13.3 The Service Provider shall comply with all relevant legislation in relation to pension provision and protection for its staff including any Relevant Employees. The Service Provider shall ensure, and shall procure in relation to any Sub-Contractor that all its staff engaged in the provision of the Services including the Relevant Employees are offered Appropriate Pension Provision with effect from the Commencement Date or Transfer Date, as may be applicable, up to and including the end date of the Contract Period or the date of termination or any later completion of the provision of the Services
- 13.4 The provision of clause 13.3 shall be directly enforceable by an affected employee against the Service Provider.
- 13.5 Without prejudice to any other remedies under the law or the Contract, the Council shall have the right to set off against any payments due to the Contractor under this Contract or any other contract with the Council, an amount equal to any unpaid employer and employee contributions including pension contributions for which the Service Provider or any of its Sub- Contractors is responsible under the Contract.
- 13.6 The Service Provider shall indemnify and keep indemnified the Council from and against all direct losses suffered or incurred by it which arise from the failure by the Service Provider to comply with the provisions of this clause 13.

14. DUE DILIGENCE

Unless the Council otherwise directs, the Supplier is deemed before submitting its Tender to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

15. LICENCE TO OCCUPY COUNCIL PREMISES (NOT USED)

- 15.1 This clause 15 applies where stipulated in the Contract Particulars.
- 15.2 Any land or Premises made available from time to time to the Supplier by the Council in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 15.3 The Supplier shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 15.4 Should the Supplier require modifications to the Premises, such modifications shall be subject to prior Approval. Ownership of such modifications shall rest with the Council.
- 15.5 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 15.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

16. PROPERTY

- 16.1 Where the Council issues Property free of charge to the Supplier such Property shall be and remain the property of the Council and the Supplier irrevocably licences the Council and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Council. The Supplier shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.
- 16.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Council otherwise within 5 Working Days of receipt.
- 16.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 16.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 16.5 The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Supplier shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

17. PARENT COMPANY GUARANTEE

- 17.1 This clause 17 shall apply where stipulated in the Contract Particulars.
- 17.2 The Supplier shall procure the delivery of a parent company guarantee substantially in the form contained in 0, prior to or by the Commencement Date.

18. PERFORMANCE BOND (NOT USED)

- 18.1 This clause 18 shall apply where stipulated in the Contract Particulars.
- 18.2 The Supplier shall procure the delivery of a performance bond substantially in the form contained in 0, prior to the Commencement Date.

19. CONTRACT PRICE

- 19.1 In consideration of the Supplier's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause 20 (Payment and VAT).
- 19.2 Where applicable, the Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

20. PAYMENT AND VAT

- 20.1 The payments provisions in this clause and Schedule 4 shall apply to the Contract. The Council shall pay all sums due to the Supplier within 30 days of receipt of a valid invoice (Self-Bill invoice), submitted weekly in arrears.
- 20.2 The Supplier shall ensure that each Service Receipt contains all appropriate references and a detailed breakdown of the Services supplied which will be used to generate the Self-Bill invoice and that it is supported by any other documentation reasonably required by the Council to substantiate the Self-Bill invoice.
- 20.3 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 20.4 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 20.5 The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 20.5 shall be paid by the Supplier to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
- 20.6 The Supplier shall not suspend the supply of the Services for failure to pay undisputed sums of money.
- 20.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

21. RECOVERY OF SUMS DUE

- 21.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Council.
- 21.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 21.3 The Supplier shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.
- 21.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

22. PRICE ADJUSTMENT (NOT USED)

- 22.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.
- 22.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change which shall be the change

in the latest published Relevant Index compared to the value of the Relevant Index as published twelve months before the relevant Price Review Date.

23. PREVENTION OF BRIBERY AND CORRUPTION

23.1 The Supplier:

23.1.1 shall not, and shall procure that any Supplier Staff or Supplier Party shall not, in connection with this Contract commit a Prohibited Act;

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

23.2 The Supplier shall:

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

23.2.2 within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 23 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

23.3 The Supplier shall have an anti-bribery policy and shall ensure that its anti-bribery policy is provided to the Council on request.

23.4 If any breach of clause 23.1 is suspected or known, the Supplier must notify the Council immediately.

23.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of clause 23.1, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Contract.

23.6 The Council may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 23.1.

23.7 Any notice of termination under clause 23.6 must specify:

23.7.1 the nature of the Prohibited Act;

23.7.2 the identity of the party whom the Council believes has committed the Prohibited Act

23.8 Despite clause 57 (Dispute resolution), any dispute relating to:

23.8.1 the interpretation of clause 23; or

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

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

- 23.9 Any termination under clause 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

24. EQUALITIES

- 24.1 The Supplier shall and shall ensure its Sub-Contractors and Staff at all times comply with the requirements of the Equality Act 2010 and all other related statutory and regulatory requirements and the Council's policies and procedures copies of which are available on request relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity, marriage and civil partnerships.
- 24.2 The Supplier shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this clause 24.

25. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless expressly stated in this Contract, a person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

26. HEALTH AND SAFETY

- 26.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 26.2 While on Council premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 26.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 26.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons in the performance of its obligations under the Contract.
- 26.5 The Supplier shall ensure that it has in place a health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) and that this is made available to the Council on request.
- 26.6 The Supplier shall promptly provide to the Council, on request, any further information as may reasonably be required by the Council with regard to the Supplier's Health and Safety obligations under the Contract.

27. DATA PROTECTION

Information Governance – General Responsibilities

- 27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 2 by the Council and may not be determined by the Supplier.
- 27.2 The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation

27.3 The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data

27.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 2 unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- (c) ensure that:
 - (i) the Supplier Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 2);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause 27;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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 (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.
- (e) at the written direction of the Council, delete, destroy, or return Personal Data (and any copies of it) to the Council at any time during the Contract Period or on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data;
- (f) where the Supplier is destroying Personal Data pursuant to clause 27.4 (e) above, it shall do so in a secure manner and it shall provide certificated evidence of secure destruction to the required standards (HMG Information Security Standards)

27.5 Subject to clause 27.6 the Supplier shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event; Personal Data Breach or any breach of data protections obligations under this Contract or under the Data Protection Legislation.

27.6 The Supplier's obligation to notify of the Council under clause 27.5 shall include the provision of further information to the Council in phases, as details become available.

27.7 The Supplier shall provide the Council with full assistance in relation to either party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 27.5 (within the timescales reasonably required by the Council) including promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office.

27.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 27.

27.9 The Supplier shall allow and shall procure that all Sub-Processors allow for audits of their Data processing activity by the Council or the Council's designated auditor. The Supplier shall comply with and shall procure that the Sub-Processors comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Supplier and the Sub-Processors are in full compliance with the obligations under this Contract.

27.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation to do so.

27.11 The Supplier shall nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of Data Loss Event and breach of confidence. The Supplier shall ensure that the Council is at all times kept informed of the identity and contact details of the data protection lead.

27.12 The Supplier agrees to indemnify and keep the Council indemnified and to defend the Council at its own expense against all losses, costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Supplier or its Staff or Supplier Party to comply with any of their obligations under this Clause 27 and/or under the Data Protection Legislation and/or under any other provision of this Contract. The Council may recover as a debt from the Supplier any sums owed under this indemnity provision.

Responsibilities when engaging Sub-Contractors as a Sub-processor

27.13 In addition to the provisions of clause 35 (Transfer and Sub-Contracting) if the Supplier is to require any Sub-Contractor to be a Sub-processor, and before allowing the processing of Personal Data by such a Sub-Contractor, the Supplier must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) where Council consent is given, enter into a written Contract with the Sub-processor which give effect to the terms set out in this clause 27 such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

27.14 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor

- 27.15 The Council may at any time on not less than thirty (30) days' notice to the Supplier revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract)
- 27.16 The Council may at any time on not less than thirty (30) days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 27.17 The Supplier shall comply with and shall ensure that any Sub-processor complies with all relevant obligations under the Data Protection Legislation.
- 27.18 The provision of this clause 27 shall apply during the Contract Period and indefinitely after its expiry.

28. CONFIDENTIAL INFORMATION

- 28.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 28.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 28.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 28.2 Clause 28.1 shall not apply to the extent that:
 - 28.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 29 (Freedom of Information);
 - 28.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 28.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 28.2.5 it is independently developed without access to the other Party's Confidential Information.
- 28.3 The Supplier may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 28.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 28.5 At the written request of the Council, the Supplier shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 28.6 Nothing in this Contract shall prevent the Council from disclosing the Supplier's Confidential Information:

28.6.1 to any government department, any Contracting Authority, any employee of the Council, consultant or any other person engaged by the Council in its ordinary course of business or in connection with the Contract;

28.6.2 for the purpose of the examination and certification of the Council's accounts; or

28.6.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

28.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 28.6 is made aware of the Council's obligations of confidentiality.

28.8 Nothing in this clause 28 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

29. FREEDOM OF INFORMATION

29.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

29.2 The Supplier shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

29.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

29.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

29.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

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

29.5 The Supplier acknowledges that (notwithstanding the provisions of clause 29) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:

29.5.1 without consulting the Supplier; or

29.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where 29.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 29.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 29.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 29.

30. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 30.1 The Supplier shall not make any press announcement or publicise the Contract, the Services or any aspects thereof in any way, except with the prior written consent of the Council.
- 30.2 The Supplier shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with clause 30.1.

31. SECURITY (NOT USED)

- 31.1 The Supplier shall be responsible for maintaining the security of the Premises.

32. INTELLECTUAL PROPERTY RIGHTS

- 32.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

32.1.1 furnished to or made available to the Supplier by or on behalf of the Council shall remain the property of the Council; or

32.1.2 prepared by or for the Supplier on behalf of the Council for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Council;

and the Supplier shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 32.2 The Supplier hereby assigns to the Council, absolutely with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 32.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by or for the Supplier. The Supplier shall execute and shall where necessary, procure the execution of all documentation necessary to execute this assignment.

- 32.3 The Supplier shall waive and/or procure a waiver of any moral rights subsisting in any copyright produced by the Contract or the performance of the Contract.

- 32.4 The Supplier shall to the extent possible procure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services to the Council.

- 32.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- 32.5.1 items or materials based upon designs supplied by the Council; or
- 32.5.2 the use of data supplied by the Council which is not required to be verified by the Supplier under any provision of the Contract.
- 32.6 The Council shall notify the Supplier in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 32.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
 - 32.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 32.7.2 shall take due and proper account of the interests of the Council; and
 - 32.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 32.8 The Council shall at the reasonable request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under the Contract and the Supplier shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 32.5.1 or 32.5.2.
- 32.9 The Council shall not unreasonably make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Supplier in connection with the performance of its obligations under the Contract.
- 32.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:
 - 32.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatismutandis to such modified Services or to the substitute Services; or
 - 32.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,and in the event that the Supplier is unable to comply with clauses 32.7.1 or 32.7.2 within 15 Working Days of receipt of the Supplier's notification the Council may terminate the Contract with immediate effect by notice in writing.
- 32.11 The Supplier grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Council reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

33. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 33.1 The Supplier shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.
- 33.2 Any requirement for a Change shall be subject to the Change Control Procedure.
- 33.3 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Authorised Representative quarterly in each Contract Year on:
- 33.3.1 the emergence of new and evolving relevant technologies which could improve the Services;
 - 33.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
 - 33.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 33.3.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 33.4 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 33.3 shall be addressed by the parties using the Change Control Procedure.
- 33.5 Notwithstanding anything which is contained within the provisions of this clause 33 or elsewhere in the Contract, any Change proposed by the parties under the provisions of this clause 33 must be lawful including within the meaning of any applicable Procurement Legislation for the time being in force.

34. AUDIT

- 34.1 The Supplier shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including but not limited to the Services supplied under it, and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

35. TRANSFER AND SUB-CONTRACTING

- 35.1 The Supplier shall not assign, sub-contract, novate or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.
- 35.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- Where the Council has consented to a sub-contract(s), copies of each sub-contract shall, at the request of the Council, be sent by the Supplier to the Council as soon as reasonably practicable.
- 35.3 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 35.3.1 any Contracting Authority; or

35.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

35.3.3 private sector body which substantially performs the functions of the Council,

("the Transferee")

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

35.4 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

35.5 The Council may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

35.6 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

36. WAIVER

36.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

36.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).

36.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

37. VARIATION

37.1 Subject to the provisions of this clause 37, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".

37.2 The Council may request a Variation by notifying the Supplier in writing of the "Variation" and giving the Supplier sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Supplier shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Supplier accepts the Variation it shall confirm the same in writing.

37.3 In the event that the Supplier is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;

37.3.1 allow the Supplier to fulfil its obligations under the Contract without the variation to the Specification;

37.3.2 terminate the Contract with immediate effect.

- 37.4 The Supplier may propose variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a variation. A variation proposed by the Supplier shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

38. SEVERABILITY

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

39. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 39.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in 0 (Contract Management).
- 39.2 In the event that the Council is of the reasonable opinion that there has been a fundamental breach of the Contract by the Supplier, then the Council may, without prejudice to its rights under clause 48 (Termination on Default), do any of the following:
- 39.2.1 without terminating the Contract, suspend the Supplier from performing the all or part of the Services and itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Council that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
 - 39.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 39.2.3 terminate, in accordance with clause 48 (Termination on Default), the whole of the Contract.
- 39.3 Without prejudice to its right under clause 21 (Recovery of Sums Due), the Council may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 39.4 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.
- 39.5 In the event that:
- 39.5.1 the Supplier fails to comply with clause 39.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - 39.5.2 the Supplier persistently fails to comply with clause 39.4 above,

the Council may terminate the Contract with immediate effect by notice in writing.

40. REMEDIES CUMULATIVE

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract 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 other remedies.

41. CONTRACT MANAGEMENT

The Supplier shall comply with the monitoring and contract management arrangements set out in the 0 (Contract Management) including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

42. PERFORMANCE REVIEW

- 42.1 The Supplier shall in good faith comply with the provisions of this clause 42.
- 42.2 Throughout the Contract Period the parties shall, acting reasonably, work together to ensure that the Contract and the Supplier's performance of the Services represents value for money and best value generally for the benefit of the Council.
- 42.3 The Supplier shall provide performance and management information including where required, any written reports in accordance with Schedule 12 (Contract Management).
- 42.4 The information provided by the Supplier pursuant to this clause 42 shall contain, inter alia and to the extent reasonably possible, the following matters:
 - 42.4.1 An analysis of the performance of the Service throughout the past contract year to the date of the report focusing on those areas which are considered successful, in comparison to the requirements of the Contract, and those areas which require improvement or which could be improved;
 - 42.4.2 The reasons for the successes and/or weaknesses identified;
 - 42.4.3 An action plan setting out the Supplier's suggested measures that might be taken by either party, to improve on the Services;
- 42.5 The Supplier and the Council shall discuss the contents of the performance and management information and the Council may, in its absolute discretion, accept or reject any of the recommendations contained in such information, implement any other measures which it might reasonably consider necessary to ensure value for money and/or where appropriate issue modifications or variations in accordance with the provisions of the Contract.
- 42.6 For the avoidance of doubt the presentation by the Supplier to the Council of the performance and management information shall be without prejudice to any monitoring, performance review or Default measures which may be carried out by the Council under the terms of the Contract.

43. ENTIRE AGREEMENT

- 43.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

44. COUNTERPARTS

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

45. LIABILITY AND INDEMNITY

45.1 Neither Party excludes or limits liability to the other Party for:

45.1.1 death or personal injury caused by its negligence; or

45.1.2 Prohibited Act; or

45.1.3 fraudulent misrepresentation; or

45.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

45.2 Subject to clause 45.3 and 45.4 the Supplier shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:

45.2.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract;

45.2.2 the act, omission or default of the Supplier, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party; and

45.2.3 any other loss which is caused directly or indirectly by any act or omission of the Supplier.

45.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

45.4 Subject to clause 45.1, the Supplier's liability under this Contract shall be limited to the amount stated in Contract Particulars. The limitation of liability as contained in the contract particulars shall not extend to:

45.4.1 Any liability against which the Supplier is required to have insurance cover under clause 46 of the contract;

45.4.2 Any liability of the Supplier to indemnify the Council under clause 32.5 for breach of third party Intellectual Property;

45.4.3 Any liability of the Supplier to indemnify the Council for breach of data protection provisions under clause 27.12 which liability shall be limited to £5 million in aggregate in any Contract Year.

46. INSURANCE

46.1 The Supplier shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:

46.1.1 public liability insurance;

46.1.2 employer's liability insurance,

- 46.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 46.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 46.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 46.5 Where stipulated in the Contract Particulars, the Supplier shall effect the additional insurances stipulated in the Contract Particulars.
- 46.6 Where professional indemnity insurance is required in accordance with the Contract Particulars the Supplier shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in the Contract Particulars. Such insurance shall be maintained for a minimum of the period specified in the Contract Particulars following the expiration or earlier termination of the Contract.

47. WARRANTIES AND REPRESENTATIONS

The Supplier warrants and represents that:

- 47.1.1 all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council reserves the right to, at its sole discretion, expel the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract; and
- 47.1.2 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Supplier; and
- 47.1.3 in entering the Contract it has not committed any Prohibited Act; and
- 47.1.4 it has not committed any of the offences under the Modern Slavery Act 2015 and it does not use any form of forced or compulsory labour within the meaning of the Modern Slavery Act 2015;
- 47.1.5 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
- 47.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract; and

- 47.1.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract; and
- 47.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 47.1.9 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- 47.1.10 in the three 3 years prior to the date of the Contract:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

48. TERMINATION FOR DEFAULT

- 48.1 The Council may terminate the Contract with immediate effect by the service of written notice on the Supplier in the following circumstances:
 - 48.1.1 if the Supplier has committed a Default under the Contract provided that if the Default is capable of remedy, the Council may only terminate the Contract under this clause 48.1 if the Supplier has failed to remedy such Default within 10 days of receipt of notice from the Council (a **Remediation Notice**) to do so; or
 - 48.1.2 if the Supplier commits a Default which in the reasonable opinion of the Council is not capable of being remedied; or
 - 48.1.3 if the Supplier commits a Default which is a fundamental breach of Contract; or
 - 48.1.4 if a consistent failure has occurred; or
 - 48.1.5 if a Catastrophic Failure has occurred; or
 - 48.1.6 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom; or
 - 48.1.7 if this Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations; or
 - 48.1.8 if the Supplier has, at the time of this Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure.
- 48.2 The Council may terminate the Contract in accordance with the provisions of clause 23 (Prevention of Bribery and Corruption) and clause 54 (Force Majeure).
- 48.3 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier shall indemnify the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

- 48.4 If the Council fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 21 (Recovery of Sums Due).

49. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 49.1 The Council may terminate the Contract with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:

- 49.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 49.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 49.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- 49.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 49.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 49.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 49.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 49.1.8 any event similar to those listed in clauses 49.1.1-49.1.7 occurs under the law of any other jurisdiction.

- 49.2 The Council may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:

- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
- 49.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
- 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 49.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 49.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole

or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or

- 49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- 49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

49.3 The Supplier shall notify the Council immediately if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Council may terminate the Contract by notice in writing with immediate effect within six months of being notified that a change of control has occurred; or

- 49.3.1 where no notification has been made, the date that the Council becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

50. BREAK CLAUSE

50.1 Where stipulated in the Contract Particulars, the Council shall have the right to terminate the Contract at any time by giving written notice (of not less than the period specified in the Contract Particulars) to the Supplier.

50.2 Where the Council exercises its right to terminate the Contract under clause 50.1, the Supplier shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Supplier in respect of any other losses whatsoever whether:

- 50.2.1 loss of future profits;
- 50.2.2 redundancy or Sub-Contractor breakage costs; or
- 50.2.3 any other costs whatsoever incurred by the Supplier as a consequence of such termination.

51. CONSEQUENCES OF EXPIRY OR TERMINATION

51.1 Where the Council terminates the Contract under clause 49 (Termination on Default):

51.1.1 the Council may recover from the Supplier the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.

51.1.2 no further payments shall be payable by the Council to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

51.1.3 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

51.2 Save as otherwise expressly provided in the Contract:

- 51.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 51.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Supplier under clauses 20 (Payment and VAT), 21 (Recovery of Sums Due), 23 (Prevention of Bribery and Corruption), 27 (General Data Protection Regulations), 28 (Confidential Information), 29 (Freedom of Information), 32 (Intellectual Property Rights), 34 (Audit), 40 Remedies Cumulative), 45 (Liability and Indemnity), 46 (Insurance), 51 (Consequences of Expiry or Termination), 53 (Recovery upon Termination) and 56 (Governing Law and Jurisdiction).

52. DISRUPTION

- 52.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 52.2 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 52.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 52.4 If the Supplier's proposals referred to in clause 52.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 52.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Supplier may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

53. RECOVERY UPON TERMINATION

- 53.1 On the termination of the Contract for any reason, the Supplier shall:
 - 53.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - 53.1.2 Immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Supplier under clause 16. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 53.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress.
 - 53.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Supplier to conduct due diligence.
- 53.2 If the Supplier fails to comply with clause 53.1.1 and 53.1.2, the Council may recover possession thereof and the Supplier grants a licence to the Council or its appointed agents to enter (for the

purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

- 53.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 53.1.3 and 53.1.4 free of charge. Otherwise, the Council shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

54. FORCE MAJEURE

- 54.1 This clause 54 shall apply where stipulated in the Contract Particulars.
- 54.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for the period stipulated in the Contract Particulars, either Party may terminate the Contract with immediate effect by notice in writing.
- 54.3 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 54.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 54.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

55. DISASTER RECOVERY

- 55.1 This clause 55 shall apply where stipulated in the Contract Particulars.
- 55.2 The Supplier shall no later than 1 calendar month from the Commencement Date have in place a Disaster Recovery Plan which the Supplier shall make available to the Council on request. The Council may request reasonable amendments to the Supplier's Disaster Recovery Plan and the Supplier shall promptly make any amendments to such plan as may be required by the Council.
- 55.3 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:
- 55.3.1 implement the Disaster Recovery Plan;
 - 55.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
 - 55.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- 55.4 To the extent that the Supplier complies fully with the provisions of this clause 55 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Supplier), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedule 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

56. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 56, the Council and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

57. DISPUTE RESOLUTION

57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the director of Adults' or Children's Services as appropriate (or equivalent) of each Party.

57.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

57.3 If the dispute cannot be resolved by the Parties pursuant to clause 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 57.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.

57.4 The obligations of the Parties under the Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

57.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

57.5.1 a neutral adviser or mediator (the "**Mediator**") shall be appointed by the Centre for Effective Dispute Resolution.

57.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

57.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

57.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

57.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

58. TRANSPARENCY

The Council may disclose to other Public Sector Contracting Authorities any of the Suppliers information, tender documentation and supporting documentation (including any that the Supplier has indicated to be confidential and/or Commercially Sensitive Information) such as

specific tender information which has been submitted by the Supplier as part of the tender process. The Supplier shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Supplier acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such disclosure by the Council as a part of the tender process and the Council shall have no liability to the Supplier under this clause or otherwise and the Supplier shall indemnify and keep indemnified the Council against any Losses in respect of the same.

SCHEDULE 1

SPECIAL CONDITIONS – NOT USED

SCHEDULE 2**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

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

Description	Details
Subject Matter of the Processing	Individual call-off contracts (service agreements) for the provision of home to school transport and children services transport.
Duration of the Processing	For the Contract Period
Nature and Purposes of the Processing	The nature of the processing is the <i>collection, recording, storage, transmission and disclosure of personal information to enable the provision the Services</i> . The purpose of the processing is to ensure the provision provided meets the needs of the service users as stated in the individual contracts service specification based on school transport applications received into the service thus fulfilling the Council's statutory duty to provide eligible service users with home to school transport.
Type of Personal Data	Names, addresses, service user needs, dates of birth, telephone numbers, email addresses, family information
Categories of Data Subject	Service users
Plan for return and/or destruction of the data once the processing is complete UNLESS required under union or member state law to preserve that type of data.	Data should only be retained for the duration of the Contract or for a longer period if required by the law. At the end of the Contract the data should be returned to the Council and any copies should be deleted or destroyed securely and the Supplier shall confirm this to the Council in writing. Where the Supplier is required by law to retain any data after the end of Contract, the Supplier shall notify the Council in writing with regard to (i) the relevant law, (ii) the length of retention that is applicable and (iii) which data is to be retained. The Supplier shall not retain any data for longer than is necessary.

SCHEDULE 3

TENDER

This Schedule incorporates the tender submission by the Supplier

SCHEDULE 4

PRICING/PAYMENT SCHEDULE

1. In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Supplier in accordance with the Self-Billing Agreement.
- 2 The Supplier shall submit all Service Receipts within the Technology within a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in the Self-Billing Agreement.
- 3 The Council shall only raise a Self-Bill Invoice on behalf of the Supplier once the appropriate Service Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.
- 4 The Council shall pay the Charges which have become payable in accordance with the Self-Billing Agreement within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.
- 5 For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council via the Technology Provider, acting as the Council's payment service provider. To this extent, the Supplier acknowledges and accepts the Technology Provider can only pay the Supplier once it has received cleared funds from the Council. Any disputes regarding payment or the amount payable must first be directed to the Council.

SCHEDULE 5

CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Supplier sees a need to change this Contract pursuant to the provisions of clause 33 (Change Control and Continuous Improvement), the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this schedule 5, shall be undertaken entirely at the expense and liability of the Supplier

2. PROCEDURE

- 2.1 Discussion between the Council and the Supplier concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this Contract by the Council; or
 - (c) a recommendation to change this Contract by the Supplier
- 2.2 Where a written request for an amendment is received from the Council, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this Contract by the Supplier shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
- (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;

- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Supplier

2.5 For each Change Control Note submitted by the Supplier the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this Contract.

SCHEDULE 6

EXIT ARRANGEMENTS

1. General

- (a) The Supplier acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract howsoever occurring an orderly transfer of the Services either back to the Council or to a Replacement Supplier and for this reason the Council relies significantly on the Supplier fulfilling its obligations under this Schedule.
- (b) If this Contract is terminated in whole or part or expires in accordance with its terms, the Supplier will, during the Exit Period, co-operate with the Council and where applicable any Replacement Supplier to ensure the orderly migration of, and transfer of responsibility for, the Services.

2. Exit Obligations

- (a) During the Exit Period the Supplier shall:
 - (i) provide all reasonable assistance and appropriate resources to the Council and any Replacement Supplier to facilitate the orderly transfer of the Services to the Council or the Replacement Supplier;
 - (ii) continue to provide the Services in accordance with any relevant Service Levels in force at the date of termination or expiry on the terms set out in this Contract;
 - (iii) provide such information and assistance as detailed in paragraph 4;
 - (iv) provide such copies of the Council's data in its possession as are requested by the Council and at no additional charge to the Council;
 - (v) carry out such security tasks necessary to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks;
 - (vi) immediately prior to the end of the Exit Period provide the Council with a detailed description and status report of all errors which have not been corrected, problems not resolved or agreed changes to the Services which have not been fully implemented at the termination of the Exit Period.
- (b) The Supplier shall carry out the Exit Obligations in such a manner so as to cause as little disruption as possible to the Council's business.

3. Documentation and Due Diligence

- (a) During the Exit Period, the Supplier will comply with any reasonable request by the Council for any information in relation to the Services to ensure the smooth transition of the Services. Following such a request the Supplier will within two (2) days of such request make the relevant information available to the Council for inspection or on the Council's authorisation to the Replacement Supplier and shall within two (2) days of such inspection provide copies of the relevant information to the Council and/or (if so requested by the Council) the Replacement Supplier.
- (b) The Supplier shall promptly and diligently answer any questions about the Services which may be asked by the Council or by any Replacement Supplier as necessary in order (i) to explain the manner in which the Services have been provided; and (ii) to allow

the Council or Replacement Supplier to conduct all such due diligence as is reasonably required to enable it to take over responsibility for the provision of the Services (or any part thereof).

- (c) The Council shall procure that any Replacement Supplier agrees to be bound by (i) an obligation of confidentiality in respect of any confidential information of the Supplier which is made available to it under this Schedule and (ii) an obligation to use any of the Supplier's confidential information solely for the purpose of evaluating and/or providing to the Council the services which will replace the Services.

4. Exit Manager

- (a) The Supplier will appoint a person as Exit Manager at the commencement of the Exit Period and will notify the Council as soon as possible of the name and contact details of such person. The Council shall have the right to require the replacement of the Exit Manager if it reasonably believes that such person is unsuitable for the position.
- (b) The Exit Manager will be the Council's primary point of contact in connection with the matters referred to in this Schedule. The Supplier shall ensure that the Exit Manager liaise with the Council in relation to all issues relevant to the termination (in whole or part) or expiry of this Contract and all matters connected with this Schedule.

5. Exit Period

- (a) The Exit Period shall be:
 - (i) a period of up to twelve (12) months prior to the end of the Contract;

SCHEDULE 7
TUPE AND PENSIONS – (NOT USED)

SCHEDULE 8
PARENT COMPANY GUARANTEE

(Required where the value of the contract is at least £250k and the Supplier has a parent)

THIS DEED is dated 202[]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Guarantor).
- (2) **MILTON KEYNES COUNCIL** of Civic Offices, 1 Saxon Gate East, Central Milton Keynes MK9 3EJ ("the Council").

BACKGROUND

- (A) By an agreement dated on or about the date of this guarantee (Agreement which term includes all amendments to variations of or supplements to it from time to time in force) the Council has agreed to engage [INSERT NAME] (Supplier) to provide Temporary Accommodation, nightly lets services.
- (B) It is a condition of the Agreement that the Supplier procures the execution and delivery to the Council of a parent company guarantee substantially in the form of this guarantee.
- (C) The Guarantor has agreed to guarantee the due performance of the Agreement by the Supplier.
- (D) It is the intention of the parties that this document be executed as a deed.

AGREED TERMS

3. INTERPRETATION

- 3.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Agreement shall apply in this guarantee.
- 3.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

4. OBLIGATIONS OF THE GUARANTOR

In consideration of the Council entering into the Agreement with the Supplier, the Guarantor:

- (a) as primary obligor guarantees to the Council the due and punctual performance by the Supplier of each and all of the obligations, representations, warranties, duties and undertakings of the Supplier under and pursuant to the Agreement when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of such Agreement;
- (b) agrees, in addition to its obligations set out in clause 4(a), to indemnify the Council on demand against all losses which may be awarded against the Contracting Authority or which the Council may otherwise incur arising out of, under or otherwise in connection with the Agreement whether arising under statute, contract or at common law including without limitation by reason of any breach by the Supplier of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Agreement save that, subject to the other provisions of this guarantee (including without

limitation clause 4(c)), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Supplier under the Agreement; and

- (c) agrees to indemnify the Contracting Authority on demand against all losses whether arising under statute, contract or at common law which may be awarded against the Council or which the Contracting Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

5. LIABILITY

The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- (a) any arrangement made between the Supplier and the Council; or
- (b) any alteration in the obligations undertaken by the Supplier whether by way of any addendum or variation referred to in clause 6 or otherwise; or
- (c) any waiver or forbearance by the Council whether as to payment, time, performance or otherwise; or
- (d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person; or
- (e) any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Supplier's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
- (f) any legal limitation, disability, incapacity or other circumstances relating to the Supplier, or any other person; or
- (g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Supplier or any other person.

6. ADDENDUM OR VARIATION

The Guarantor by this guarantee authorises the Supplier and the Council to make any addendum or variation to the Agreement, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

7. GUARANTEE

7.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Council shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Supplier, to make any claim against or any demand of the Supplier, to enforce any other security held by it in respect of the obligations of the Supplier under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Supplier. In the event that the Council brings proceedings against the Supplier, the Guarantor shall be bound by any findings of fact, interim or final decision award or judgement made by an adjudicator, arbitrator or court in such proceedings.

7.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Supplier, the Guarantor or any other person)

until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Supplier under the Agreement have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Council may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

8. OUTSTANDING PAYMENTS

8.1 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Council or claim or prove in competition with the Council against the Supplier or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Council.

8.2 The Guarantor shall not hold any security from the Supplier in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Council.

8.3 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 8.1 and clause 8.2) the Guarantor has any rights of subrogation against the Supplier or any rights to prove in a liquidation of the Supplier, the Guarantor agrees to exercise such rights in accordance with the directions of the Council.

9. CHANGE OF CONTROL

The Guarantor shall procure that, during the term of this guarantee, there shall be no Change of Control of the Supplier.

10. PAYMENT AND EXPENSES

10.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Council receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

10.3 The Guarantor shall reimburse the Council for all legal and other costs (including VAT) incurred by the Council in connection with the enforcement of this guarantee.

11. SETTLEMENT

Any settlement or discharge between the Council and the Supplier and/or the Guarantor shall be conditional upon no settlement with security or payment to the Council by the Supplier or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Council's other rights hereunder) the Council shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Council has placed upon such settlement or security or the amount of any such payment.

12. WARRANTIES

12.1 The Guarantor warrants and confirms to the Council :

- (a) that it is duly incorporated with limited liability and validly existing under the laws of England;
- (b) that it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
- (c) that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
- (d) that it has been duly authorised to enter into this guarantee;
- (e) that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
- (f) that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
- (h) that it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

12.2 The Guarantor warrants and undertakes to the Council that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

12.3 The Guarantor warrants and confirms to the Council that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Council (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

13. ASSIGNMENT

The Council shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

14. NOTICES

14.1 Any notice to or demand on the Guarantor to be served under this guarantee may be delivered or sent by first-class recorded delivery post or telex or facsimile transmission to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Council in accordance with this clause 14.

14.2 Any such notice or demand shall be deemed to have been served:

- (a) if delivered, at the time of delivery; or
- (b) if posted, at 10.00 am on the second day after it was put into the post; or

- (c) if sent by telex or facsimile process, at the expiration of 2 hours after the time of despatch, if despatched before 3.00 pm on any day, and in any other case at 10.00 am on the next day.

14.3 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class recorded delivery letter or that the telex or facsimile message was properly addressed and despatched, as the case may be.

15. WAIVER

15.1 No delay or omission of the Council in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Council provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

15.2 A waiver given or consent granted by the Council under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

15.3 A waiver by the Council shall not constitute a continuing waiver and shall not prevent the Council from subsequently enforcing any of the provisions of this guarantee.

16. SEVERABILITY

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 13.

18. GOVERNING LAW

18.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.

18.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims).

19. ENTIRE AGREEMENT

19.1 This guarantee contains the whole agreement between the parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the parties relating to the transactions.

19.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 19.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

19.3 Nothing in clause 19.1 limits or excludes any liability for fraud.

This deed has been entered into on the date stated at the beginning of it.

THE COMMON SEAL OF)

MILTON KEYNES COUNCIL)

was affixed to this deed)

in the presence of:)

Authorised Signatory

EXECUTED AND DELIVERED)

as a deed by [THE GUARANTOR])

acting by the signatures of)

Director

Director/Secretary

SCHEDULE 9
PERFORMANCE BOND – (NOT USED)

SCHEDULE 10
DISASTER RECOVERY PLAN –

The Suppliers Disaster Recovery Plan as required by clause 55 shall be incorporated into this schedule 10.

SCHEDULE 11

COMMERCIALLY SENSITIVE INFORMATION

Any commercially sensitive information that is notified by the parties is incorporated into this schedule.

SCHEDULE 12
CONTRACT MANAGEMENT

The Contract shall be managed in accordance with the provisions of Schedule 20 of the Specification – Contract Management.