

Dated **2022**

SWALE BOROUGH COUNCIL

-and-

[REDACTED]

AGREEMENT

relating to

[REDACTED]

Mid Kent Legal Services

Ref: **S0xxxx**

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SCHEDULE 1	SPECIAL CONDITIONS
SCHEDULE 2	SPECIFICATION
SCHEDULE 3	PRICING SCHEDULE
SCHEDULE 4	TENDER
SCHEDULE 5	SCHEDULE OF AGREEMENTS
SCHEDULE 6	SERVICE LEVELS AND SERVICE CREDITS
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SCHEDULE 8	PARENT COMPANY GUARANTEE
SCHEDULE 9	PERFORMANCE BOND
SCHEDULE 10	DISASTER RECOVERY PLAN
SCHEDULE 11	COMMERCIALLY SENSITIVE INFORMATION
SCHEDULE 12	CONTRACT MANAGEMENT

THIS AGREEMENT is made on the day of **2022**

BETWEEN

- (1) **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent ME10 3HT (the "Council"); and
- (2) [REDACTED] (registered company number [REDACTED]) whose registered office is at [REDACTED] (the "Contractor") (together "the Parties").

RECITALS:

- (A) The Council is a local authority as defined by section 270 of the Local Government Act 1972.
- (B) Following a tendering process the Council has appointed the Contractor to provide the Services in accordance with this Contract.

IT IS AGREED:

1. this Contract is comprised of the following documents:

- 1.1 This Form of Agreement;
- 1.2 The Contract Particulars;
- 1.3 The Special Conditions (if any);
- 1.4 The Conditions of Contract;
- 1.5 The Schedules (excluding Schedule 4 (the Tender));
- 1.6 The Appendices; - and
- 1.7 Schedule 4 (the Tender)

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 Contractor undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

EXECUTION AS A DEED

IN WITNESS whereof this Agreement has been executed by the Parties as a deed:

THE COMMON SEAL of **THE**)
SWALE BOROUGH COUNCIL)
was hereunto affixed in the)
presence of:

Authorised Signatory

EXECUTED AS A DEED by)
acting by [])

[NAME OF FIRST
DIRECTOR], a director and

Director/Company Secretary

[NAME OF SECOND
DIRECTOR OR
SECRETARY], [a director OR
its secretary]

EXECUTION UNDER HAND

IN WITNESS whereof this Agreement has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of)
SWALE **BOROUGH**)
COUNCIL:)

Authorised Signatory

Signed for and on behalf of)
[THE CONTRACTOR]:)
)

Director/Company Secretary

CONTRACT PARTICULARS

- 1 Commencement Date: [] (clauses 1.1 and 2.1)
- 2 Contract Period: [] months/years *(delete as appropriate)* (clause 1.1)
- 3 Contract Price: £ [] excluding VAT (clause 1.1)

OR

As set out in Schedule 3

(delete as appropriate)

- 4 Contract Extension: *Yes/No (delete as appropriate)* (clause 2.2)

If Yes, the period of the extension shall not exceed [] months

- 5 Address for Service of Notices For the Council: [] (clause 5.3)
[insert address and contact details]

For the Contractor: []

[insert address and contact details]

- | | | | |
|----|------------------------------------|--|----------------------------|
| 6 | Service Levels and Service Credits | Clause 9 applies/ does not apply

<i>(delete as appropriate)</i> | (clause 9, Schedule 6) |
| 7 | Key Personnel | clause 11 applies/does not apply

<i>(delete as appropriate)</i>

The Key Personnel are:

<i>(delete as appropriate)</i> | |
| 8 | Safeguarding | clause 13 applies/does not apply | |
| 9 | TUPE and Pensions | clause 14 applies.

Pensions Bond value: £[]
applies/does not apply | (clause 14 and Schedule 7) |
| 10 | Licence to Occupy Council Premises | clause 16 applies/does not apply | |
| 11 | Parent Company Guarantee | clause 18.1 and Schedule 8 apply/does not apply

<i>(delete as appropriate)</i> | |
| 12 | Performance Bond | clause 19 and Schedule 9 apply/do not apply

<i>(delete as appropriate)</i> | |

Bond Value: £[]

13 Payment and
VAT

A. Payment Periods:

monthly/quarterly in arrears

Or

monthly/quarterly in advance

Or

following achievement of the
Payment Milestones set out in the
Schedule 3 (Pricing Schedule)

(delete as appropriate)

14 Price
Adjustment

clause 23 applies/does not apply

(delete as appropriate)

Relevant Index: means the index
specified Schedule 3 (Pricing
Schedule) or if none is specified,
the Consumer Prices Index (CPI)

If clause 23 applies, the Price
Review Date is: 1st/2nd /3rd
anniversary of the

Commencement Date and every anniversary thereafter *(delete or amend as appropriate)*

15 Audit

Period for which records must be maintained after the end of the contract:

(clause 34,35, 21.7 and 24.5)

Where the contract is signed under hand: 6 years

Where the contract is executed as a deed:12 years

16 Liability and Indemnity

The Contractor's liability under this Agreement shall be limited to the sum of £[]

(clause 46.4)

for each and every claim arising under or in connection with this Agreement

OR

in the aggregate over the Contract Period

(delete as appropriate)

17 Insurance

Public Liability Insurance: £10 million per claim

(clause 47.1)

Employer's Liability Insurance: £5 million per claim

(amend as appropriate)

18 Additional Insurances

Professional Indemnity Insurance is required/is not required

(clause 47.5 and 47.6)

(delete as appropriate)

Where professional indemnity insurance is required:

Limit of indemnity is: £[]

On a per claim/aggregate basis

(delete as appropriate)

Period for which Professional Indemnity Insurance is required following expiry or termination:

Where the contract is signed under hand: 6 years

Where the contract is executed as a deed: 12 years

[List other required insurances, including: indemnity limit, basis of cover and duration of cover here]

19 Break clause

clause 51 applies/ does not apply

(delete as appropriate)

The notice period is []
months

20 Force Majeure clause 55 applies/ does not apply

(delete as appropriate)

21 Disaster Recovery clause 56 applies/ does not apply

(delete as appropriate)

22 Commercially Sensitive Information Schedule 11 applies/does not apply

(delete as appropriate)

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:

“Achieved Service Level” means in respect of any Service in any measurement period, the standard of performance actually achieved by the Contractor in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 6).

“Appendix” means an appendix to this Agreement.

“Approval” means the written consent of the Council.

“Council” means Swale Borough Council of Swale House, East Street, Sittingbourne, Kent ME10 3HT.

“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 Contractor 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 DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 30 (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 Contractor which is more particularly described in the Form of Agreement.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

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

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

“Contractor Party” means the Contractor's agents and contractors, including each Sub-Contractor.

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

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Council under the Contract, as set out in the Contract Particulars, for the full and proper performance by the Contractor of its obligations under the Contract.

“Data Controller” shall have the meaning given to the term "controller" as set out in the DPA;

“Data Processor” shall have the meaning given to the term "processor" as set out in the DPA;

“Data Protection Legislation” means the DPA and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations (including amended, supplemental or replacement laws and regulations) applicable in the United Kingdom and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body, all of which are current at the time of any Processing of Personal Data;

“Data Subject” shall have the same meaning as set out in the DPA;

“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 which sets out the procedures to be adopted by the Contractor in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Contractor in planning and providing for any such event), the Disaster Recovery Plan at the date of this agreement being set out in Schedule 10.

“DPA” means the 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 Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

“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 Contractor’s or any sub-contractor’s organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

“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:

- (a) Information Governance management,
- (a) Confidentiality and data protection
- (b) Information security,

"Intellectual Property” means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise,

including patents, utility models, trade marks, 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 Contractor is bound to comply.

“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.

“Personal Data” shall have the meaning given to such term in the DPA;

“Personal Data Breach” anything which constitutes a "personal data breach" as set out in as set out in the DPA;

“Premises” means the location where the Services are to be supplied, as set out in the Specification.

“Price Review Date” has the meaning given in the Contract Particulars.

“Processing” shall have the meaning given to such term in the DPA and the terms "Processed" and their derivatives shall be construed accordingly;

“Prohibited Act”: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (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 Agreement;
- (c) committing any offence:
 - (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 Contractor by the Council in connection with the Contract.

“Public Sector Contracting Authorities” means public sector bodies that are subject to the Procurement Regulations 2006 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 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 Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Receipt” means the physical or electronic arrival of the invoice at the address of the Council set out in the Contract Particulars or at any other address given by the Council to the Contractor for the submission of invoices.

“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 Contractor” means any third party service provider 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.

“Service Credits” means the sums attributable to a Service Failure as specified in Schedule 6.

“Service Failure” a failure by the Contractor to provide the Services in accordance with any individual Service Level

“Service Levels” the service levels to which the Services are to be provided, as set out Schedule 6.

“Services” means the services to be supplied as specified in the Specification.

“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 Schedule 1.

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

“Staff Vetting Procedure” means the Council’s procedures for the vetting of personnel and as advised to the Contractor by the Council.

“Sub-Contract” means any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Services from that third party.

“Sub-Contractor” means the contractors or contractors that enter into a Sub-Contract with the Contractor.

“Subject Access Request” means any request from a Data Subject under the DPA.

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

“Tender” means the document(s) submitted by the Contractor to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

“Variation” has the meaning given to it in clause 38 (Variation).

“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 Contractor 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 23 (Price Adjustment)) throughout any such extended period.

3. CONTRACTOR'S STATUS

At all times during the Contract Period the Contractor 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 counterparty 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 Contractor.

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 by facsimile transmission or electronic mail (confirmed in either case by letter). 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 facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission 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 Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor 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 Contractor shall take appropriate steps to ensure that neither the Contractor 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 Contractor and the duties owed to the

Council under the provisions of the Contract. The Contractor 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 Contractor 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 Contractor 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 Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

- 8.3 If the Council informs the Contractor 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 Contractor 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. SERVICE LEVELS AND SERVICE CREDITS

- 9.1 This clause 9 shall apply where stated in the Contract Particulars.

- 9.2 Where any part of the Services is stated in Schedule 6 to be subject to a specific Service Level, the Contractor shall provide that part of the Services in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

- 9.3 The Contractor shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 42.

- 9.4 If the Contractor fails to provide the Services in accordance with any individual Service Level, the Contractor shall pay to the Council the Service Credit set out in Schedule 6.

- 9.5 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Contractor has taken the Service Credit into account in setting the level of the Contract Price.

10. PROVISION AND REMOVAL OF EQUIPMENT

- 10.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- 10.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 10.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 10.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.5 The Contractor shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- 10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
 - 10.5.2 replace such item with a suitable substitute item of Equipment.
- 10.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

11. KEY PERSONNEL

- 11.1 This clause 11 (Key Personnel) shall apply if so stated in the Contract Particulars.
- 11.2 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.
- 11.3 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.
- 11.4 The Council shall not unreasonably withhold its agreement under clauses 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

12. CONTRACTOR'S STAFF

12.1 The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:

12.1.1 any member of the Staff; or

12.1.2 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.

12.2 At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

12.3 The Contractor'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.

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

12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Contractor 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 Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor 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.

12.6 If the Contractor fails to comply with clause 12.2 within 21 days of the date of the request the Contractor shall be in Default of its obligations under the Contract.

12.7 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 Contractor has failed to comply with clause 12.2 shall be final and conclusive and the Contractor shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under clause 12.1.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

13.1 This clause 13 shall apply where stipulated in the Contract Particulars.

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

- 13.3 The Contractor shall ensure that all individuals engaged in the provision of the Services are:
- 13.3.1 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
 - 13.3.2 the Contractor shall monitor the level and validity of the checks under this clause 13.3 for each member of staff.
- 13.4 The Contractor warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 13.5 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 13 have been met.
- 13.6 The Contractor shall refer information about any person carrying out the Services to the ISA 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.
- 13.7 The Contractor 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.

14. TUPE AND PENSIONS

The parties agree that the provisions of Schedule 7 shall apply to any Relevant Transfer of staff under or in connection with this Contract.

15. INSPECTION OF PREMISES

Unless the Council otherwise directs, the Contractor is deemed to have inspected the Premises before submitting its Tender and 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.

16. LICENCE TO OCCUPY COUNCIL PREMISES

- 16.1 This clause 16 applies where stipulated in the Contract Particulars.
- 16.2 Any land or Premises made available from time to time to the Contractor by the Council in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- 16.3 The Contractor 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 Contractor 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.
- 16.4 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Contractor's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.
- 16.5 The Contractor 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 Contractor shall pay for the cost of making good any damage caused by the Contractor 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.
- 16.6 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 Contractor 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.

17. PROPERTY

- 17.1 Where the Council issues Property free of charge to the Contractor such Property shall be and remain the property of the Council and the Contractor irrevocably licences the Council and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Council. The Contractor 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.
- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Contractor 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.
- 17.4 The Contractor 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.
- 17.5 The Contractor 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 Contractor shall inform the Council within 2 Working Days of

becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

18. PARENT COMPANY GUARANTEE

18.1 Where stipulated in the Contract Particulars the Contractor shall procure the delivery of a parent company guarantee substantially in the form contained in Schedule 8.

19. PERFORMANCE BOND

Where stipulated in the Contract Particulars the Contractor shall procure the delivery of a performance bond substantially in the form contained in Schedule 9.

20. CONTRACT PRICE

20.1 In consideration of the Contractor's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause 21 (Payment and VAT).

20.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

21. PAYMENT AND VAT

21.1 Unless otherwise specified in Schedule 3, the Council shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted monthly in arrears.

21.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

21.3 Where the Contractor 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 Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

21.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

21.4A The Council is the end user for the purposes of section 55A of the VAT Act 1994 reverse charge for building and construction services. The Contractor should issue a normal VAT invoice, with VAT charged at the appropriate rate. The Council will not account for the reverse charge.

21.5 The Contractor 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 Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 21.5 shall be

paid by the Contractor to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.

21.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 50.3 (Termination on Default) for failure to pay undisputed sums of money.

21.7 The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. 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.

21.8 The Council shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing.

21.9 For the purposes of clause 21.8, an electronic invoice complies with the standard where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

22. RECOVERY OF SUMS DUE

22.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor 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 Contractor under the Contract or under any other agreement or contract with the Council.

22.2 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.

22.3 The Contractor shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

22.4 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.

23. PRICE ADJUSTMENT

23.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.

23.2 Where stipulated in the Contractor Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change in the Relevant Index as published in the December preceding the relevant Price Review Date.

24. PREVENTION OF BRIBERY AND CORRUPTION

24.1 The Contractor:

24.1.1 shall not, and shall procure that any Contractor Staff or Contractor Party shall not, in connection with this Agreement commit a Prohibited Act;

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

24.2 The Contractor shall:

24.2.1 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;

24.2.2 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 Contractor) compliance with this clause 24 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

24.3 The Contractor shall ensure that its anti-bribery policy is provided to the Council on request.

24.4 If any breach of clause 24.1 is suspected or known, the Contractor must notify the Council immediately.

24.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 24.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Agreement.

24.6 The Council may terminate this Agreement by written notice with immediate effect if the Contractor, Contractor Party or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 24.1.

24.7 Any notice of termination under clause 24.6 must specify:

24.7.1 the nature of the Prohibited Act;

24.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

24.7.3 the date on which this Agreement will terminate.

- 24.8 Despite clause 58 (Dispute resolution), any dispute relating to:
- 24.8.1 the interpretation of clause 24; or
 - 24.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 24.9 Any termination under clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

25. EQUALITIES

- 25.1 The Contractor shall and shall ensure its sub-contractor's 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..
- 25.2 The Contractor shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor or this Condition 24.

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

Unless expressly stated in this Agreement, 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.

27. ENVIRONMENTAL REQUIREMENTS

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

28. HEALTH AND SAFETY

- 28.1 The Contractor 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. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 28.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

- 28.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Contractor 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 working on the Premises in the performance of its obligations under the Contract.
- 28.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

29. DATA PROTECTION ACTS

Information Governance – General Responsibilities

- 29.1 The provision of this clause 29 shall apply during the Contract Period and indefinitely after its expiry.
- 29.2 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Council is a Data Controller and that the Contractor is a Data Processor OR, where relevant, that the Council and the Contractor are joint Data Controllers.
- 29.3 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 29.4 The Contractor shall:
- 29.4.1 process the Personal Data only in accordance with the written instructions of the Council and only to the extent that is necessary for the provision of the Services under this Agreement or as is required by law or any regulatory body;
 - 29.4.2 not engage a sub-processor to undertake any Processing of any Personal Data without the prior written authorisation of the Council. Where such authorisation is granted by the Council (at its sole discretion), the Contractor shall ensure that it enters into a contract with that sub-processor on the same or equivalent terms as are set out in this **clause**;
 - 29.4.3 ensure that persons authorised to Process the Personal Data are aware of and comply with the Contractor's duties under this clause;
 - 29.4.4 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 29.4.5 ensure that none of the Contractor's employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

- 29.4.6 ensure that persons authorised to Process the Personal Data have been trained in the use, care, protection and handling of Personal Data;
- 29.4.7 not transfer any Personal Data to any country or territory outside the European Economic Area without the prior written consent of the Council;
- 29.4.8 at the written direction of the Council, delete or return all the Personal Data to the Council after the end of the provision of Services, and delete existing copies, unless the Contractor has a statutory duty to retain that Personal Data. If the Contractor believes that it does have such a statutory duty, this should be notified to the Council in writing at least three (3) months prior to the expiry or termination (whichever is earlier) of this Agreement;
- 29.4.9 assist the Council by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council's obligation to respond to Subject Access Requests, as well as providing all assistance and cooperation as the Council may require to investigate or deal with any such Subject Access Requests;
- 29.4.10 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
- 29.4.11 insofar as this is possible given the nature of Processing and the information available to the Contractor, assist the Council in ensuring compliance with its obligations pursuant to the Data Protection Legislation;
- 29.4.12 notify the Council of any actual or potential Personal Data Breach within 24 hours of its occurrence (or, in the case of a potential breach, the Contractor becoming aware of such breach), along with all supporting facts and information sufficient to allow the Council to make any required report(s) to any relevant Data Subjects, the Information Commissioner or other regulatory or governmental body or bodies to which it is subject;
- 29.4.13 notify the Council immediately if it receives:
- a) a request from a Data Subject to have access to that person's Personal Data;
 - b) a request to rectify, erase or cease processing Personal Data;
 - c) any communication from the Information Commissioner or any other regulatory authority;
 - d) 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
 - e) a complaint or request relating to the Council's obligations under the Data Protection Legislation;

- 29.4.14 provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
- a) providing the Council with full details of the complaint or request;
 - b) complying with a Subject Access Request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
 - c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
 - d) providing the Council with information requested by the Council;
- 29.4.15 make available to the Council, at reasonable intervals and within twenty one (21) days following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council.

29.5 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.

29.6 The Contractor shall indemnify and keep indemnified the Council against all demands, actions, proceedings, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this **clause** by the Contractor and/or any act or omission of any Sub-Contractor appointed by the Contractor.

29.7 The provisions of this **clause** shall apply during the continuance of the Agreement and indefinitely after its termination.

29.8 In the event of conflict between any provision in the Agreement and this clause the provisions of this clause shall take precedence.

30. CONFIDENTIAL INFORMATION

30.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

30.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

30.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

30.2 clause 30.1 shall not apply to the extent that:

30.2.1 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 31 (Freedom of Information);

- 30.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 30.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 30.2.5 it is independently developed without access to the other party's Confidential Information.
- 30.3 The Contractor 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.
- 30.4 The Contractor 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 Agreement.
- 30.5 At the written request of the Council, the Contractor 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 Agreement.
- 30.6 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:
- 30.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 30.6.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - 30.6.3 for the purpose of the examination and certification of the Council's accounts; or
 - 30.6.4 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.
- 30.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 30.6 is made aware of the Council's obligations of confidentiality.
- 30.8 Nothing in this clause 30 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement 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.

31. FREEDOM OF INFORMATION

31.1 The Contractor 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.

31.2 The Contractor 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;

31.2.1 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

31.2.2 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.

31.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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

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

31.5 The Contractor acknowledges that (notwithstanding the provisions of clause 31) 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 Contractor or the Services in certain circumstances:

31.5.1 without consulting the Contractor; or

31.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 30.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

31.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

31.7 The Contractor 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 31.

32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

32.1 The Contractor 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.

32.2 The Contractor shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 32.1.

33. SECURITY

33.1 The Council shall be responsible for maintaining the security of the Premises over which the Council has control in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements.

34. INTELLECTUAL PROPERTY RIGHTS

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

34.1.1 furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; and

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

and the Contractor 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.

34.2 The Contractor hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 34.1.2. 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 the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

34.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

34.4 The Contractor shall ensure 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 Contractor or to any other third party supplying services to the Council.

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

34.5.1 items or materials based upon designs supplied by the Council; or

34.5.2 the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.

34.6 The Council shall notify the Contractor 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 Contractor.

34.7 The Contractor 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 Contractor, provided always that the Contractor:

34.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

34.7.2 shall take due and proper account of the interests of the Council; and

34.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

34.8 The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor 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 34.5.1 or 34.5.2.

34.9 The Council shall not 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 Contractor in connection with the performance of its obligations under the Contract.

34.10 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 Contractor is likely to be made, the Contractor 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:

- 34.10.1 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 mutates mutandis to such modified Services or to the substitute Services; or
- 34.10.2 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 Contractor is unable to comply with clauses 34.7.1 or 34.7.2 within 15 Working Days of receipt of the Contractor's notification the Council may terminate the Contract with immediate effect by notice in writing.

- 34.11 The Contractor 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 Contractor owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

35. RECORDS, AUDIT AND INSPECTION

- 35.1 The Contractor shall and shall procure that its sub-contractors shall:
 - 35.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Contractor's obligations under this Contract and all transactions entered into by the Contractor for the purposes of this Contract including time-sheets for the Staff where such records are material to the calculation of the Contract Price ("Records");
 - 35.1.2 retain all Records during the Contract Period and return such Records (including all data and / or information covered by the Data Protection Act 2018 and GDPR) to the Council immediately at the end of the Contract, whether by expiry or termination, for retention by the Council for a period of not less than six (6) twelve (12) years (or such longer period as may be required by law).
- 35.2 The Contractor shall on request, at any point during the Contract Period, 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.

36. TRANSFER AND SUB-CONTRACTING

- 36.1 The Contractor shall not assign, sub-contract 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 Contractor of any of its obligations or duties under the Contract.

- 36.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 36.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.
- 36.4 The Contractor shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment.
- 36.5 The provisions of clause 21 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.
- 36.6 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 36.6.1 any Contracting Authority; or
 - 36.6.2 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
 - 36.6.3 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 Contractor's obligations under the Contract.
- 36.7 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.
- 36.8 The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor'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 Contractor'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.
- 36.9 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.
- 37. WAIVER**
- 37.1 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.

37.2 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).

37.3 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.

38. VARIATION

38.1 Subject to the provisions of this clause 38, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".

38.2 The Council may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor 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 Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

38.3 In the event that the Contractor 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;

38.3.1 allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;

38.3.2 terminate the Contract with immediate effect.

38.4 The Contractor 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 Contractor shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

39. 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.

40. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

40.1 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 Contractor'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 Schedule

12(Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause 50 (Termination on Default) of the Contract.

40.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Council may, without prejudice to its rights under clause 50 (Termination on Default), do any of the following:

40.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;

40.2.2 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

40.2.3 terminate, in accordance with clause 50 (Termination on Default), the whole of the Contract.

40.3 Without prejudice to its right under clause 22 (Recovery of Sums Due), the Council may charge the Contractor 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 Contractor for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

40.4 If the Contractor 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 Contractor to remedy the failure and the Contractor 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.

40.5 In the event that:

40.5.1 the Contractor fails to comply with clause 40.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

40.5.2 the Contractor persistently fails to comply with clause 40.4 above, the Council may terminate the Contract with immediate effect by notice in writing.

41. 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.

42. CONTRACT MANAGEMENT

The Contractor shall comply with the monitoring and contract management arrangements set out in the Schedule 12 (Contract Management) including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

Key Performance Indicators KPIs

[may be appropriate for below threshold contracts to track successful performance of the contract and / or mitigate identified contract risks.]

[KPI categories typically include delivery, product / service quality, best practice and continuous improvement, asset / service availability, customer focus, environmental factors and ethical and social issues. Remember to choose to measure what matters most.

Key things to remember when developing KPIs include being able to:

- identify what success looks like;
- measure success; and
- define in SMART (specific, measurable, attainable, relevant and time-bound) terms that are easily understood by both the Organisation and the supplier.

The number of KPIs selected should be proportionate to the value, complexity and importance of the contract and detailed in Schedule 12.]

43. ANNUAL REVIEW

43.1 On each anniversary of the Commencement Date, the Council shall be entitled to carry out a review of the Contract and of the Council's requirements for the Services. As a result of the review, the Council shall (in its discretion) be entitled to:

43.1.1 affirm that the Contract shall continue in accordance with its terms; or

43.1.2 reduce the Contract Period; or

43.1.3 exercise the option to terminate the Contract in accordance with clause 51; or

43.1.4 require a reduction in the volume or scope of the Services (which shall take effect as a Variation in accordance with clause 38) in return for a reduction in the Contract Price; or

43.1.5 require a reduction in the Contract Price, where there has been a reduction in the Council's budget for the provision of the Services.

43.2 The Council shall notify the Contractor in writing of the results of the annual review and the Contractor shall take all necessary steps to implement the review

within 4 weeks of receiving such notice (or such other reasonable period as may be specified by the Council).

44. ENTIRE AGREEMENT

44.1 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.

45. 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.

46. LIABILITY AND INDEMNITY

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

46.1.1 death or personal injury caused by its negligence; or

46.1.2 Prohibited Act; or

46.1.3 fraudulent misrepresentation; or

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

46.2 Subject to clause 46.3 and 46.4 the Contractor 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:

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

46.2.2 the act, omission or default of the Contractor, 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

46.2.3 any other loss which is caused directly or indirectly by any act or omission of the Contractor.

46.3 The Contractor 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.

46.4 Subject to clause 46.1, the Contractor's liability under this Agreement shall be limited to the amount stated in Contract Particulars.

47. INSURANCE

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

47.1.1 public liability insurance; and

47.1.2 employer's liability insurance

with the levels of indemnity cover for each claim stipulated in the Contract Particulars.

47.2 The Contractor 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.

47.3 If, for whatever reason, the Contractor 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 Contractor.

47.4 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

47.5 Where stipulated in the Contract Particulars, the Contractor shall effect the additional insurances stipulated in the Contract Particulars.

47.6 Where professional indemnity insurance is required in accordance with the Contract Particulars the Contractor 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 Contractor shall ensure professional indemnity insurance held by the Contractor 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.

48. WARRANTIES AND REPRESENTATIONS

The Contractor warrants and represents that:

48.1.1 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 Contractor;

48.1.2 in entering the Contract it has not committed any Prohibited Act;

48.1.3 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;

- 48.1.4 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;
- 48.1.5 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;
- 48.1.6 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 Contractor 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 Contractor's assets or revenue;
- 48.1.7 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;
- 48.1.8 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.

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 Contractor is a company and in respect of the Contractor:
 - 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 47.1(a)-(g) 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 Contractor 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 Contractor's creditors; or
- 49.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor'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 Contractor 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 Contractor'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 Contractor shall notify the Council immediately if the Contractor 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:

- 49.3.1 being notified that a change of control has occurred; or
- 49.3.2 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. TERMINATION ON DEFAULT

50.1 The Council may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- 50.1.1 the Contractor has not remedied the Default to the satisfaction of the Council within 15 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 50.1.2 the Default is not, in the opinion of the Council, capable of remedy; or
- 50.1.3 the Default is a material breach of the Contract.

50.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor 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.

50.3 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor 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 Contractor 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 22 (Recovery of Sums Due).

51. BREAK CLAUSE

51.1 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 Contractor

51.2 Where the Council exercises its right to terminate the Contract under clause 51.1, the Contractor 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 Contractor in respect of any other losses whatsoever whether:

- 51.2.1 loss of future profits;
- 51.2.2 redundancy or sub-contractor breakage costs; or
- 51.2.3 any other costs whatsoever incurred by the Contractor as a consequence of such termination.

52. CONSEQUENCES OF EXPIRY OR TERMINATION

52.1 Where the Council terminates the Contract under clause 50 (Termination on Default):

52.1.1 the Council may recover from the Contractor 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.

52.1.2 no further payments shall be payable by the Council to the Contractor (for Services supplied by the Contractor 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.

52.2 Save as otherwise expressly provided in the Contract:

52.2.1 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

52.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 24 (Prevention of Bribery and Corruption), 29 (Data Protection Act), 30 (Confidential Information), 31 (Freedom of Information), 34 (Intellectual Property Rights), 35 (Audit), 41 Remedies Cumulative), 46 (Liability and Indemnity), 47 (Insurance), 52 (Consequences of Expiry or Termination), 54 (Recovery upon Termination) and 57 (Governing Law and Jurisdiction).

53. DISRUPTION

53.1 The Contractor 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.

53.2 The Contractor 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.

53.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

53.4 If the Contractor's proposals referred to in clause 53.3 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.

53.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Contractor may

request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

54. RECOVERY UPON TERMINATION

- 54.1 On the termination of the Contract for any reason, the Contractor shall:
- 54.1.1 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;
 - 54.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Contractor under clause 17. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 54.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
 - 54.1.4 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 Contractor to conduct due diligence.
- 54.2 If the Contractor fails to comply with clause 54.1.1 and 54.1.2, the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 54.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 54.1.3 and 54.1.4 free of charge. Otherwise, the Council shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

55. FORCE MAJEURE

- 55.1 This clause 55 shall apply where stipulated in the Contract Particulars.
- 55.2 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 a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

55.3 Any failure or delay by the Contractor 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 Contractor.

55.4 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 55.2 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.

56. DISASTER RECOVERY

56.1 This clause 56 shall apply where stipulated in the Contract Particulars.

56.2 The Contractor shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

56.3 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:

56.3.1 implement the Disaster Recovery Plan;

56.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and

56.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

56.4 To the extent that the Contractor complies fully with the provisions of this clause 56 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Contractor), the Service Levels (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.

57. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 58, the Council and the Contractor 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.

58. DISPUTE RESOLUTION

58.1 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 finance director (or equivalent) of each Party.

- 58.2 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.
- 58.3 If the dispute cannot be resolved by the Parties pursuant to clause 58.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 58.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 58.4 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 Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 58.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 58.5.1 a neutral adviser or mediator (the “**Mediator**”) shall be appointed by the Centre for Effective Dispute Resolution.
- 58.5.2 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.
- 58.5.3 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.
- 58.5.4 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.
- 58.5.5 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.
- 58.5.6 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.

59. TRANSPARENCY

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

been submitted by the Contractor as part of the tender process. The Contractor shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Contractor 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 Contractor under this clause or otherwise and the Contractor shall indemnify and keep indemnified the Council against any Losses in respect of the same.

60. WHISTLEBLOWING

60.1 The Contractor shall comply with the Public Interest Disclosure Act 1998 and with the Council's whistleblowing policy.

61. MODERN SLAVERY

61.1 The Contractor shall comply with the provisions of the Modern Slavery Act 2015.

62. PREVENT

62.1 The Contractor shall ensure their employees and agents have a good understanding of the need to prevent people being drawn into terrorism; and

62.2 in the event of there being a concern about a person, notify the Authority.

63. BUSINESS CONTINUITY PLAN

63.1 The Contractor shall have in place by the Commencement Date of this Agreement a Business Continuity Plan ("**BCP**") a copy of which shall be provided to the Contract Manager. The BCP shall be current and up to date and prepared to ISO 22301 or at least to an equivalent standard.

63.2 The BCP shall be maintained and regularly tested by the Contractor throughout the Term of this Agreement. The results of such testing shall be forwarded to the Contract Manager within five Working Days of the test being completed. The Contract Manager shall then have the right within 20 Working Days, by written statement, to require reasonable alterations to the BCP to be made by the Contractor at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

64. EFFECTS OF BREXIT

64.1 Brexit means a change in the United Kingdom's membership of the European Union (including but not limited to where the United Kingdom leaves the European Union pursuant to Article 50 of the Treaty of Lisbon or enters into a transitional arrangement).

64.2 The Contractor shall be entitled to an extension of time where delaying completing the Services is proven to be caused by the effects of Brexit as defined in the following circumstances:

64.2.1 delay to the Services caused by a delay to the delivery or importation or unavailability of goods and / or materials into the United Kingdom (regardless of which countries comprise the UK at such date) caused by Brexit; and

64.2.2 delay to the Services caused by shortage of or restrictions / restraints to the immigration of labour to the United Kingdom (regardless of which countries comprise the UK at such date) or from the European Union (regardless of which countries comprise the EU at such date) caused by Brexit.

64.3 The Parties agree that any increase in costs caused by the imposition of, or any change to, customs duties, tariffs, levies or changes of fees, caused by Brexit, shall be shared equally.

SCHEDULE 1
SPECIAL CONDITIONS

[Insert any special conditions, if you don't have any state "Not Used"]

Materials / Workmanship / Design

Materials

All materials are to be of a good quality, appropriate and fit for purpose and meet the requirements of the Specification. Where a British Standard is current and appropriate, goods and materials shall, where appropriate, be in accordance with that specification. All materials shall be obtained from approved suppliers and manufacturers and used strictly in accordance with the manufacturer's instructions unless otherwise specified.

Workmanship

Workmanship and labour shall be of a good standard. The whole of the works are to be carried out in accordance with specification and relevant Codes of Practice and other guidance.

Design

The Service Provider shall accept responsibility for ensuring that the works are adequately designed to meet the performance specification requirements.

The Service Provider shall in respect to any inadequacy in the design have the like liability to the client whether under statute or otherwise as would an appropriate professional designer holding themselves out as a competent person to take on work for such design.

SCHEDULE 2

SPECIFICATION

[Insert Specification]

SCHEDULE 3
PRICING SCHEDULE

[Insert any pricing provisions as appropriate]

SCHEDULE 4

TENDER

[If you feel that this is not required state not used]

SCHEDULE 5

SCHEDULE OF AGREEMENTS

[if not used state "Not Used"]

SCHEDULE 6

SERVICE LEVELS AND SERVICE CREDITS

[if not used state "Not Used"]

SCHEDULE 7
TUPE AND PENSIONS

SCHEDULE 8

PARENT COMPANY GUARANTEE

[If not used state "Not Used" and delete text below]

THIS DEED is dated [DATE]

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) **THE SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent ME10 3HT (hereinafter together called "the Contracting Authority").

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 Contracting Authority has agreed to engage [INSERT NAME] (Contractor) to provide [] services.
- (B) It is a condition of the Agreement that the Contractor procures the execution and delivery to the Contracting Authority 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 Contractor.
- (D) It is the intention of the parties that this document be executed as a deed.

AGREED TERMS

1. INTERPRETATION

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

2. OBLIGATIONS OF THE GUARANTOR

In consideration of the Contracting Authority entering into the Agreement with the Contractor, the Guarantor:

- (a) as primary obligor guarantees to the Contracting Authority the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor 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 14(a), to indemnify the Contracting Authority on demand against all losses which may be awarded against the Contracting Authority or which the Contracting Authority 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 Contractor 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 14(c)), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor 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 Contracting Authority 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 Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. 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 Contractor and the Contracting Authority; or
- (b) any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in clause 16 or otherwise; or
- (c) any waiver or forbearance by the Contracting Authority 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 Contractor or any other person; or
- (e) any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Contractor'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 Contractor, 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 Contractor or any other person.

4. ADDENDUM OR VARIATION

The Guarantor by this guarantee authorises the Contractor and the Contracting Authority 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.

5. GUARANTEE

5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Contracting Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor. In the event that the Contracting Authority brings proceedings against the Contractor, 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.

5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor 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 Contracting Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6. OUTSTANDING PAYMENTS

6.1 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 Contracting Authority or claim or prove in competition with the Contracting Authority against the Contractor 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 Contracting Authority.

6.2 The Guarantor shall not hold any security from the Contractor 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 Contracting Authority.

6.3 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 18.1 and clause 18.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Contracting Authority.

7. CHANGE OF CONTROL

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

8. PAYMENT AND EXPENSES

8.1 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 Contracting Authority 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.

8.2 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.

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

9. SETTLEMENT

Any settlement or discharge between the Contracting Authority and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Contracting Authority by the Contractor 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 Contracting Authority's other rights hereunder) the Contracting Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Contracting Authority has placed upon such settlement or security or the amount of any such payment.

10. WARRANTIES

10.1 The Guarantor warrants and confirms to the Contracting Authority :

(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.

10.2 The Guarantor warrants and undertakes to the Contracting Authority 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.

10.3 The Guarantor warrants and confirms to the Contracting Authority 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 Contracting Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

11. ASSIGNMENT

The Contracting Authority 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.

12. NOTICES

12.1 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 Contracting Authority in accordance with this clause 24.

12.2 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.

12.3 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.

13. WAIVER

13.1 No delay or omission of the Contracting Authority 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 Contracting Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

13.2 A waiver given or consent granted by the Contracting Authority 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.

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

14. 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.

15. 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 23.

16. GOVERNING LAW

16.1 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.

16.2 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).

17. ENTIRE AGREEMENT

17.1 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.

17.2 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 29.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

17.3 Nothing in clause 29.1 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)

SWALE BOROUGH 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

[If not used state "Not Used" and delete text below]

THIS DEED is dated **[DATE]**

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Surety");
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Contractor");
- (3) **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent ME10 3HT ("Contracting Authority")

BACKGROUND

- (A) By the Contract the Contractor has agreed with the Contracting Authority to perform the Services therein described upon and subject to the terms and conditions therein set out.
- (B) The Surety has agreed with the Contracting Authority at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Performance Bond.

AGREED TERMS

18. INTERPRETATION

18.1 The definitions and rules of interpretation in this clause apply in this deed.

"Contract": an agreement in writing dated [DATE] between the Contracting Authority and the Contractor.

"Contract Period" has the meaning given in the Contract.

"Contract Sum": the Contract Sum of the Contract.

"Business Day": a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

"Maximum Amount": the sum of £[].

"Services": the services referred to in the Contract, provided by or on behalf of the Contractor in accordance with the Contract.

18.2 Clause headings shall not affect the interpretation of this deed.

- 18.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 18.4 The annex forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the annex.
- 18.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 18.6 Words in the singular shall include the plural and vice versa.
- 18.7 A reference to one gender shall include a reference to the other genders.
- 18.8 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 18.9 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 18.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 18.11 Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 18.12 A reference to writing or written includes faxes but not e-mail.
- 18.13 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.
- 18.14 References to clauses or the annex are to the clauses or the annex of this deed.
- 18.15 Where the words include(s), including or in particular are used in this deed, they are deemed to have the words "without limitation" following them.

19. PROMISE TO PAY UP TO MAXIMUM AMOUNT

- 19.1 If the Contractor fails to pay any sum that becomes due from it to the Contracting Authority under or in connection with the Contract (including any debt, damages, interest or costs), the Contracting Authority may give notice to the Surety requiring the Surety to pay that sum, up to the Maximum Amount, to the Contracting Authority. The Surety shall pay that sum to the Contracting Authority within 10 Business Days of receipt of the Contracting Authority's notice. The Contracting Authority's notice may be in the form set out in the Annex.
- 19.2 The Contracting Authority may give different notices to the Surety on different occasions, each requiring the Surety to pay the sum referred to in clause 31.1, but the Surety shall not be obliged to pay to the Contracting Authority more than the Maximum Amount in total.

20. AMENDMENTS TO THE CONTRACT

- 20.1 The Contract or the Services may be modified, amended or supplemented in any way without the consent of the Surety. No such modification, amendment or

supplement shall affect, release or impair the liability of the Surety under this deed. The Surety's liability shall extend to all the liabilities of the Contractor under the Contract as modified, amended or supplemented.

20.2 The invalidity, avoidance or termination of the Contract shall not affect, release or impair the liability of the Surety under this deed.

20.3 No waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor shall affect, release or impair the liability of the Surety under this deed. The terms of this deed shall apply to the terms of any such waiver, concession, allowance of time, compromise or forbearance as they apply to the Contract.

21. CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY

21.1 For the purposes of this deed, any money judgment or adjudicator's decision against the Contractor in favour of the Contracting Authority under or in connection with the Contract shall be conclusive evidence of any liability of the Contractor to which that judgment or decision relates.

21.2 Subject to clause 34.1, the Surety may rely on any term of the Contract and may raise equivalent rights of defence in respect of any claim by the Contracting Authority under this deed as it would have had if the Surety had been named as a joint contractor with the Contractor under the Contract (excluding any set-off or counterclaim against the Contracting Authority).

21.3 The inability of the Contractor to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or the entry of the Contractor into liquidation, administration, receivership, bankruptcy or any compromise or arrangement with some or all of its creditors (or any equivalent process in any other jurisdiction) shall not reduce, release or impair the liability of the Surety under this deed.

21.4 The Contracting Authority shall not be obliged to pursue any means of recourse against the Contractor before being entitled to enforce this deed against the Surety.

21.5 The Contracting Authority may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this deed.

22. EXPIRY

22.1 Subject to clause 34.2, this deed shall expire at the end of the Contract Period.

22.2 If the Contracting Authority has given any notice under clause 31.1 before the end of the Contract Period, clause 35.1 shall not affect that notice and the Contracting Authority may continue its claim under that notice.

23. ASSIGNMENT

23.1 The Contracting Authority may assign or charge the benefit of this deed, without the consent of the Surety or of the Contractor or to any person to whom the Contracting Authority assigns the benefit of the Contract.

23.2 The Contracting Authority may notify the Surety and the Contractor of any assignment. If the Contracting Authority fails to do this, the assignment shall still be valid.

23.3 The Contractor and the Surety shall not contend that any person to whom the benefit of this deed is assigned may not recover any sum (including any debt, damages, interest or costs) under this deed because that person is an assignee and not a named party to this deed.

24. NOTICES

24.1 Any notice required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

(a) [CONTRACTING AUTHORITY]: [CONTACT] [ADDRESS]

(b) [CONTRACTOR]: [CONTACT] [ADDRESS]

(c) [SURETY]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

24.2 Any notice shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause; or

(b) if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

24.3 A notice required to be given under this deed shall not be validly given if sent by e-mail.

24.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action (including any adjudication, litigation or arbitration).

25. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under or in connection with it.

26. GOVERNING LAW AND JURISDICTION

26.1 This deed and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England.

26.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with

this deed or its subject matter or formation (including non-contractual disputes or claims).

27. TRANSPARENCY

27.1 The Council may disclose to other Public Sector Contracting Authorities any of the Contractors information, tender documentation and supporting documentation (including any that the Contractor has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Contractor as part of the tender process. The Contractor shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Contractor 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 Contractor under this clause or otherwise and the Contractor shall indemnify and keep indemnified the Council against any Losses in respect of the same.

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

THE COMMON SEAL OF)
SWALE BOROUGH COUNCIL)
was affixed to this deed)
in the presence of:)

Authorised Signatory

EXECUTED AND DELIVERED)
as a deed by [THE SURETY])
acting by the signatures of)

Director

Director/Secretary

EXECUTED AND DELIVERED)
as a deed by [THE CONTRACTOR])
acting by the signatures of)

Director

Director/Secretary

Annex Form of notice

[Referred to in clause 2.1.]

From: [CONTRACTING AUTHORITY'S ADDRESS: SEE clause 8]

To: [SURETY'S ADDRESS: SEE clause 8]

CC: [CONTRACTOR'S ADDRESS: SEE clause 8]

Sent by [hand OR first-class pre-paid post OR recorded delivery OR commercial courier].

Dear Sirs

Demand under a bond dated [DATE] (Bond) relating to the Contract

This letter is a notice under the Bond. Defined terms used in this letter have the same meanings as in the Bond.

[We are the assignee of the benefit of the Bond by a [deed of assignment OR an assignment agreement] dated [DATE] between [PARTY] and [PARTY].]

The Contractor has failed to properly pay a sum due to us under or in connection with the Contract. We require you to pay to us £[SUM] OR [, the Maximum Amount] within 10 Business Days.

[We attach a copy of the [money judgment OR adjudicator's decision] against the Contractor in our favour as conclusive evidence of your liability to us under the Bond.]

OR

[The sum due to us from the Contractor is summarised in the attachment to this notice.]

Please make payment to [PAYMENT DETAILS].

Yours faithfully

[SIGNED]

For and on behalf of the Contracting Authority

Enclosure.

SCHEDULE 10

DISASTER RECOVERY PLAN

[if not used state "Not Used"]

SCHEDULE 11

COMMERCIALLY SENSITIVE INFORMATION

[if not used state "Not Used"]

SCHEDULE 12

CONTRACT MANAGEMENT

[if not used state "Not Used"]