

SWALE BOROUGH COUNCIL

TERMS AND CONDITIONS CONSULTANCY CONTRACT

CONTENTS

Clauses

1. Definitions and Interpretation
2. Commencement and Duration
3. Services
4. Fees and Charges
5. Payment Procedures and Approvals
6. Service Provider's Warranties
7. Contract Management
8. Health and Safety
9. Staff and Key Personnel
10. Performance and Monitoring
11. Records, Audit and Inspection
12. Set-Off
13. Indemnities
14. Insurance
15. Data Protection
16. Intellectual Property Rights
17. Confidentiality
18. Freedom of Information
19. Termination
20. Consequences of Termination and Expiry
21. Dispute Resolution
22. Business Continuity Plan
23. Sustainability
24. Equality
25. Waiver
26. Severability
27. Third Party Rights
28. Authority's Standing Orders
29. No Agency or Partnership
30. Prevention of Bribery
31. Survival of Terms
32. Notices
33. Assignment, Sub-Contracting and Change of Ownership
34. Variation
35. Costs
36. Entire Agreement
37. Modern Slavery
38. Prevent
39. Safeguarding
40. Governing Law and Jurisdiction

Swale Borough Council ("the Authority") has selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

In the Agreement (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

"Agreement"	means this Agreement, including any other documents referred to in this Agreement;
"Agreement Commencement Date"	means the date for commencement of this Agreement specified on the Purchase Order;
"Authority's Data"	means all information and documentation provided by the Authority to the Service Provider pursuant to and in connection with this Agreement;
"Confidential Information"	means all information (whether written or oral) that by its nature may reasonably be regarded as confidential by the Authority (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, and/or software, telecommunications, networks, trade secrets, know-how or personnel of the Authority;
"Contract Details Notice"	shall have the same meaning as set out in the Procurement Act 2023;
"Contract Information"	(i) this Agreement in its entirety (including from time to time agreed changes to the Agreement); and (ii) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
"Service Provider's Representative"	means [];
"Service Provider's"	means all such employees, officers, suppliers, sub-Service Providers and agents of the Service

Personnel	Provider as are engaged in the performance of any of the Services and including the Key Personnel;
“Contract Manager”	means the Authority’s Representative [];
“Data Controller”	shall have the same meaning as set out in the Data Protection Act 2018;
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 2018;
“Data Protection Legislation”	the Data Protection Act 2018 (“ DPA ”), the UK GDPR (General Data Protection Regulation) 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Privacy and Electronic Communications Regulations 2018 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
“Data Subject”	shall have the same meaning as set out in the Data Protection Act 2018;
“Debarment list”	shall have the same meaning as set out in the Procurement Act 2023;
“Excluded or excludable supplier”	shall have the same meaning as set out in the Procurement Act 2023;
“FOI Legislation”	means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
“Force Majeure Event”	means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe, including pandemic, or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“ Affected Party ”) to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to

the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

“Information”

means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority;

“Information Request”

means a request for any Information under the FOI Legislation;

“Insolvency Event”

means any of the following:

- (a) the Service Provider and/or the holding company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Service Provider and/or the holding company;
- (c) being a company, the Service Provider and/or the holding company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) the Service Provider and/or the holding company ceasing or threatening to cease to carry on its business for any;
- (e) being a firm or partnership, upon its dissolution;
- (f) any similar event to those in (a) to (e) above occurring in relation to the Service Provider and/or the holding company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent

or similar effect in each case in the United Kingdom and anywhere else in the world;

"Key Personnel"	means the Service Provider's key personnel;
"Losses"	means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
"Milestone"	means an event which is the completion of one or more of the specified activities as may be set out in the Purchase Order;
"Parties"	means the Authority and the Service Provider (including their successors and permitted assignees) and "Party" shall mean either of them as the case may be;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 2018;
"Prohibited Act"	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity;(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;(c) committing any offence:<ul style="list-style-type: none">(i) under the Bribery Act;(ii) under legislation or common law concerning fraudulent acts;(iii) defrauding, attempting to defraud or conspiring to defraud the

Authority.

- (d) any activity, practice or conduct which would constitute one of the offences listed under paragraph (c), if such activity, practice or conduct had been carried out in the UK.

“Project Plan” means the plan (if any) in relation to the performance and timing of the Services which may include Milestones;

“Services” means:

- (a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider; and
- (b) any responsibilities, services, or functions which may be reasonably regarded as incidental to the Services or activities and which may be reasonably inferred;

“Specification” means the plan (if any) and other requirements set out in the Purchase Order;

“Term” means the period during which this Agreement continues in force as set out in the Purchase Order;

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;

“Working Day” means any day excluding Saturdays, Sundays or public or bank holidays in England;

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to them whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 references to Clauses and are, unless otherwise provided, references to Clauses of the Agreement;

- 1.7 except as otherwise expressly provided in this Agreement, if there is any inconsistency between any of these Clauses or any other document referred to in or incorporated into this Agreement the order of priority for the purposes of construction is:
- 1.7.1 the Clauses;
 - 1.7.2 any other document referred to in or incorporated by reference into this Agreement.
- 1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.9 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. COMMENCEMENT AND DURATION

This Agreement commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.

3. SERVICES

- 3.1 The Service Provider acknowledges that it has sufficient information about the Authority, the Services and the Specification (if any) and that it has made all appropriate and necessary enquiries to enable it to perform the Services.
- 3.2 The Service Provider shall provide the Services:
- 3.2.1 with the high degree of skill, care, ability and diligence normally exercised by recognised professional firms or by highly skilled and experienced Service Providers providing services of a similar scope, type and complexity as the Services in this Agreement and with sufficient resources including project management resources;
 - 3.2.2 in compliance in all respects with the Specification and so that the Services fulfil the purpose indicated by or to be reasonably inferred from the Specification; and
 - 3.2.3 in a safe manner and free from any unreasonable or avoidable risk to any person’s health and well-being and in an economic and efficient manner.
- 3.3 The Service Provider shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.
- 3.4 Unless it has been specifically authorised to do so by the Authority in writing, the Service Provider shall not:
- 3.4.1 have any authority to incur any expenditure in the name of or for the account of the Authority; or
 - 3.4.2 hold itself out as having authority to bind the Authority.

4. FEES AND CHARGES

- 4.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 5 and in consideration of, and subject to the due performance of the Services by the Service Provider, the Authority shall pay the Service Provider the Fees and Charges in accordance with those procedures.
- 4.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in its written quotation or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.
- 4.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

5. PAYMENT PROCEDURES AND APPROVALS

- 5.1 The Service Provider shall invoice the Authority in respect of the Fees and Charges monthly in arrears during or at such dates as agreed by the Parties in writing.
- 5.2 It is a condition precedent of the submission of an invoice on completion of a milestone (if applicable) that all preceding milestones have been completed.
- 5.3 The Service Provider shall submit invoices to the address set out in the Purchase Order, each such invoice shall contain all information required by the Authority including the Authority's Account Details, the Service Provider's name and address, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 5.3A The Authority is the end user for the purposes of section 55A of the VAT Act 1994 reverse charge for building and construction services. The Service Provider should issue a normal VAT invoice, with VAT charged at the appropriate rate. The Authority will not account for the reverse charge.
- 5.4 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Service Provider where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 5.5 For the purposes of clause 5.4, an electronic invoice complies with the standard on electronic invoicing where it complies with the standard on electronic invoicing in the Public Procurement (Electronic Invoices etc.) Regulations 2019.
- 5.6 In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional fees or charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.

5.7 If the Authority considers that the Charges claimed by the Service Provider in any invoice have:

5.7.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System ("**BACS**")) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice; or

5.7.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.

5.8 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or its Contract Manager (whether related to payment or otherwise) shall:

5.8.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider or absolve the Service Provider from any obligation or liability imposed on the Service Provider; or

5.8.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. The Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt due under this Agreement.

5.9 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

5.9.1 provisions having the same effect as clause 5.3 to clause 5.9 of this Agreement; and

5.9.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 5.3 to clause 5.9 of this Agreement.

In this clause 5.9, "**Sub-Contract**" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

6. SERVICE PROVIDER'S WARRANTIES

6.1 The Service Provider warrants and represents that:

6.1.1 it has the full capacity and has taken all steps and obtained all approvals and consents required to enable it to lawfully enter into and perform each of its obligations under this Agreement;

- 6.1.2 this Agreement shall be executed by its duly authorised representatives;
- 6.1.3 the information supplied by the Service Provider is true and accurate in all material respects;
- 6.1.4 there are no material facts or circumstances in relation to the financial position or operational constitution of the Service Provider which have not been fully and fairly disclosed to the Authority and which, if disclosed, might reasonably have been expected to affect the decision of the Authority to enter into this Agreement; and
- 6.1.5 it has not committed any Prohibited Act.

7. CONTRACT MANAGEMENT

- 7.1 The Authority authorises its Contract Manager to act as its Authorised Representative for all purposes in connection with this Agreement and the Service Provider shall deal with the Contract Manager (or his or her Nominated Representative) in respect of all matters arising under this Agreement.
- 7.2 The Service Provider shall appoint a Service Provider's Representative who shall be duly authorised for all purposes in connection with this Agreement and the Service Provider shall provide the Key Personnel. The Service Provider's Representative and the Key Personnel shall:
 - 7.2.1 diligently supervise the performance of the Services;
 - 7.2.2 attend all contract meetings with the Authority the location, frequency and time of may be specified by the Contract Manager; and
 - 7.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement at such time periods as may be specified by the Contract Manager.
- 7.3 The Service Provider may only make any changes to the Service Provider's Representative or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority which shall not be unreasonably withheld.
- 7.4 No act of or omission by or approval from the Authority or its Contract Manager in performing any of their respective duties under or in connection with this Agreement shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement.

8. HEALTH AND SAFETY

- 8.1 The Service Provider shall have regard to the Authority's Health and Safety policies and safe working practices when preparing its own statements copies of which are available to download on request to the Authority.

- 8.2 Whilst on the Authority's owned premises the Service Provider shall require the Service Provider's Personnel to comply with the reasonable directions and requirements of the Authority's safety advisers.
- 8.3 The Service Provider shall nominate a senior manager to be responsible for ensuring that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the Service Provider's approved Health and Safety Policy and the Health and Safety at Work etc., Act 1974 and other relevant legislation including the Health and Safety (Amendment) (EU Exit) Regulations 2018.
- 8.4 The Service Provider shall conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Authority's employees and the Service Provider's Personnel and other staff carrying out the Services.
- 8.5 The Service Provider shall direct the Service Provider's Personnel to comply with the Health and Safety Policy and shall conduct regular reviews and audits of that policy to ensure that the provision of the Services is made in accordance with it. In the event that there are revisions of the Health and Safety Policy these must be notified to the Authority in writing 10 Working Days prior to the proposed alteration to the Health and Safety Policy coming into effect and the Authority shall be entitled to challenge such alteration to the Health and Safety Policy if in its discretion it considers that a change in any way dilutes the minimum standard set out in the Health and Safety Policy.

9. STAFF AND KEY PERSONNEL

9.1 Service Provider's Staff

- 9.1.1 The Service Provider shall at all times during the Term ensure that the Service Provider's Personnel engaged in the provision of the Services have sufficient skill and ability and have been properly trained in order to carry out the Services in accordance with this Agreement;
- 9.1.2 The Service Provider shall at all times be fully responsible for the payment of full income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any person engaged by the Service Provider in the performance of the Services and shall indemnify the Authority in respect of any liabilities which may arise to the Authority as a result of the failure by the Service Provider to comply with the obligation in this Clause 9.1.2; and
- 9.1.3 The Authority shall be entitled to notify and require the Service Provider to discipline or remove from the performance of the Services any of the Service Provider's Personnel engaged in the provision of the Services. The Authority shall not be liable to either the Service Provider or to such Service Provider's Personnel for any claims arising from any disciplinary action or removal as a result of the Authority's notice to the Service Provider and the Service Provider shall indemnify the Authority against any such claims.

10. PERFORMANCE AND MONITORING

10.1 Performance Standards

The Service Provider shall throughout the Term perform the Services so as to meet the minimum performance standards agreed by the Parties.

10.2 Review and Monitoring of Performance

The performance of the Services shall be subject to monitoring by the Authority and through the performance management and monitoring procedure which has been agreed between the Contract Manager and the Service Provider's Representative.

10.3 Key Performance Indicators (KPIs)

10.3.1 The Contractor shall comply with the Key Performance Indicators (KPIs) set out in **Annex 1** of this Agreement.

10.3.2 The Authority shall publish a Contract Performance Notice on a [monthly/quarterly/annual] basis that will include the Consultant's performance against the KPIs.

10.3.3 Failure to meet the KPIs may result in [penalties/termination of the contract], as detailed in Schedule 4.

10.4 Contract Details Notice

10.4.1 Within 30 days (120 days if it is a light touch) of the commencement of this Agreement, the Authority shall publish a Contract Details Notice, which will include:

10.4.1.1 The KPIs as set out in Schedule 4.

10.4.1.2 Details of the Agreement (title, reference number, name of the parties)

10.4.1.3 The Agreement's duration and any extension options.

10.4.1.4 The Parties acknowledge and agree that all procurement activities under this Agreement shall comply with the requirements of the Procurement Act 2023, including but not limited to the publication of mandatory notices. The Parties shall ensure that all mandatory notices as required under the Act, are duly published in accordance with the timelines and procedures set forth in the Act and its associated regulations.

11. RECORDS, AUDIT AND INSPECTION

11.1 The Service Provider shall and shall procure that its sub-Service Providers shall:

11.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service

Provider's obligations under this Agreement and all transactions entered into by the Service Provider for the purposes of this Agreement including time-sheets for the Service Provider's Personnel where such records are material to the calculation of the Fees and Charges ("**Records**");

11.1.2 retain all Records during the Term and return such Records (including all data and / or information covered by the Data Protection Act 2018) to the Authority immediately at the end of the Agreement, whether by expiry or termination, for retention by the Authority for a period of not less than six (6) twelve (12) years (or such longer period as may be required by law).

11.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Term on giving to the Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services and the Service Provider shall give all reasonable assistance to the Authority or its nominees in conducting such inspection, including making available documents and staff for interview.

12. SET-OFF

The Authority shall be entitled at any time to set off any liability of the Service Provider to the Authority against any liability of the Authority to the Service Provider.

13. INDEMNITIES

13.1 Subject to Clause 13.2, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless the Authority (including its employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement by the Service Provider's Personnel including in each case any non-performance or delay in performance of this Agreement or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider's Personnel.

13.2 The Service Provider is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by the Authority and/or any of its employees or agents.

13.3 Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for fraud or fraudulent misrepresentation or for death or personal injury caused by its negligence.

14. INSURANCE

14.1 The Service Provider shall at all times have in force with reputable insurers or underwriters, approved by the Authority, the following insurances for the period of the Term of this Agreement:

14.1.1 Public liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim;

- 14.1.2 Employers liability insurance with a limit of indemnity of not less than **£10 million** in relation to any one claim;
- 14.1.3 Professional indemnity insurance with a limit of indemnity of not less than **£2 million**; and
- 14.1.4 All other insurances required by law.
- 14.2 The Service Provider shall notify the Contract Manager as soon as reasonably practicable upon the notification of any event which may give rise to a claim of more than ten thousand pounds (£10,000) sterling.
- 14.3 The Service Provider shall, prior to the Commencement Date of this Agreement and thereafter annually, on the anniversary of the Commencement Date and at any other reasonable times as the Contract Manager may require supply the Contract Manager with evidence of all of the insurance policies referred to in clause 14.1.
- 14.4 In the event that in the opinion of the Contract Manager any policies of insurance referred to in Clause 14.1 do not effect sufficient cover to comply with this Agreement then the Contract Manager shall be entitled to notify the Service Provider of the Authority's requirement for the Service Provider to effect any such insurances as will ensure that the Service Provider complies with its obligation in terms of Clause 14.1. Upon receipt of such notice the Service Provider shall immediately procure and affect such insurance as notified by the Contract Manager.
- 14.5 In the event that the Service Provider does not effect such insurance the Authority may take out such insurance on behalf of the Authority in which case the Service Provider shall pay on demand the cost to the Authority of taking out such insurance.

15. DATA PROTECTION

- 15.1 The Service Provider acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's Data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the Authority's Data.
- 15.2 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.
- 15.3 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Data Controller and that the Service Provider is a Data Processor.
- 15.4 The Service Provider shall:
 - 15.4.1 Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Agreement;

- 15.4.2 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;
- 15.4.3 not disclose or transfer the Personal Data to any third party or Service Provider Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);
- 15.4.4 take all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that the Service Provider Personnel:
 - 15.4.4.1 are aware of and comply with the Service Provider's duties under this Clause and Clause 17 (Confidentiality);
 - 15.4.4.2 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - 15.4.4.3 have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- 15.4.5 notify the Authority within five Working Days if it receives:
 - 15.4.5.1 from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, block or erase any Personal Data; or
 - (C) any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - 15.4.5.2 any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - 15.4.5.3 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;
- 15.4.6 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause 15.4.5, including by promptly providing:

- 15.4.6.1 the Authority with full details and copies of the complaint, communication or request;
 - 15.4.6.2 where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - 15.4.6.3 the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- 15.4.7 if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 15.5 The Service Provider shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Effective Date, the Service Provider or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:
- 15.5.1 the Service Provider shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 15.3.2 to 15.3.4
 - 15.5.2 the Service Provider shall set out in its Change Request and/or Impact Assessment details of the following:
 - 15.5.2.1 the Personal Data which will be transferred to and/or Processed in any Restricted Countries;
 - 15.5.2.2 the Restricted Countries which the Personal Data will be transferred to and/or Processed in; and
 - 15.5.2.3 any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - 15.5.2.4 how the Service Provider will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
 - 15.5.3 in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and

codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

15.5.4 the Service Provider shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:

15.5.4.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and

15.5.4.2 procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

(A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

(B) a data processing agreement with the Service Provider on terms which are equivalent to those agreed between the Authority and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which the Service Provider acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

15.6 The Service Provider shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Save as the Parties may otherwise agree (in writing), the Service Provider hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in all documents, drawings, computer software and any other work or data prepared or developed by and on behalf of the Service Provider in the provision of the Services ("**the Products**") provided that such assignment shall not include items not prepared or developed specifically for the purposes of proving the Services.

- 16.2 The Service Provider shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.

17. CONFIDENTIALITY

- 17.1 Subject to Clauses 15 and 17.6, the Service Provider shall keep confidential:

17.1.1 the terms of this Agreement and any agreed variation thereto; and

17.1.2 all Confidential Information that it may acquire in relation to the Authority.

- 17.2 The Service Provider will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement. The Service Provider will ensure that the Service Provider's Personnel will comply with the provisions of Clause 17.1.

- 17.3 The obligations of the Service Provider set out in Clause 17.1 shall not apply to any Confidential Information which:

17.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 17); or

17.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

- 17.4 The Service Provider shall keep secure all data and materials containing any information in relation to the Agreement and its performance.

- 17.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or that it is providing the Services to the Authority or in relation to any matter under or arising from the Agreement unless granted consent in writing by the Authority. The Authority shall have the right to approve any public announcement before it is made.

- 17.6 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing, and in its absolute discretion, the Authority may take account of the exemptions that would be available in relation to information requested under the FOI Legislation. The Authority may, in its absolute discretion, consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to this Clause 17.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

18. FREEDOM OF INFORMATION

- 18.1 The Service Provider acknowledges that the Authority:

18.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and

- 18.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 18.2 Without prejudice to the generality of Clause 18.1, the Service Provider shall and shall procure that its sub-Service Providers (if any) shall:
- 18.2.1 transfer to the Contract Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Request relevant to this Agreement or the Services that it or they (as the case may be) receive as soon as practicable and in any event within two Working Days of receiving such Information Request; and
- 18.2.2 in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within 5 Working Days of a request from the Authority or such other period and in such forms as the Authority may reasonably specify.
- 18.3 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 18.4 The Service Provider acknowledges that the Authority is subject to the Local Government Transparency Code 2015 ("the Code") and is obliged to publish details of all new contracts which will mean that data will be disclosed in compliance with the Code.

19. TERMINATION

- 19.1 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement on giving not less than 1 month's written notice to the Service Provider.
- 19.2 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement immediately upon giving notice to the Service Provider, if the Service Provider:
- 19.2.1 has committed any material or persistent breach of this Agreement and, in the case of such a breach that is capable of remedy fails to remedy that breach within ten Working Days (or such other period as specified in writing by the Authority) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or
- 19.2.2 is subject to an Insolvency Event; or
- 19.2.3 commits a breach of Clause 6 (Service Provider's Warranties); or
- 19.2.4 commits a breach of Clause 17 (Confidentiality); or

19.2.5 commits a Prohibited Act; or

19.2.6 commits a breach of Clause 31 (Assignment, Sub-contracting and Change of Ownership).

19.3 **Force Majeure**

19.3.1 Neither Party shall be in breach of any obligation under this Agreement if it is unable to perform that obligation in whole or in part by reason of a Force Majeure Event.

19.3.2 If either Party seeks to rely on this Clause it shall immediately give notice to the other with full particulars of the act or matter claimed as a Force Majeure Event. The Party so affected shall take all reasonable steps to remedy the failure to perform and to keep the other Party informed of the steps being taken to mitigate the effects of the Force Majeure Event.

19.3.3 Without prejudice to any accrued rights or remedies, if a Force Majeure Event lasts for more than 30 Working Days either Party may, following consultation with the other Party, give notice of termination of this Agreement.

19.4 **Replacement Service Provider**

19.4.1 In the event that the Authority terminates this Agreement in accordance with Clause 19.1, then the Service Provider shall indemnify the Authority in respect of procuring the performance of the Services by a Replacement Service Provider in accordance with Clause 19.4.2.

19.4.2 On termination of this Agreement under Clause 22.1, the Authority may enter into any agreement with any third party or parties to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure ("**Costs**") reasonably incurred by the Authority in having such services carried out including, but not limited to, direct loss and expense, legal and other costs and damages incurred in consequence of such termination. The Authority may deduct such Costs from the Fees and Charges or otherwise recover such Costs from the Service Provider as a debt due.

19.5 **Debarment**

19.5.1 The Authority reserves the right to terminate this Agreement if the Consultant or any of its sub-contractors become an excluded or excludable supplier and/or enters the debarment list as per Section 62 of the Procurement Act 2023 or the Authority becomes aware of such status after the Agreement Commencement Date.

19.5.2 The Consultant shall notify the Authority immediately upon becoming aware of such inclusion.

19.5.3 In the event of termination under this clause, the Authority shall not be liable for any costs or damages incurred by the Consultant as a result of such termination.

20. CONSEQUENCES OF TERMINATION AND EXPIRY

- 20.1 Upon termination, the Service Provider shall continue to provide the Services in accordance with the terms of this Agreement and will ensure that there is no degradation in the standards of the Services until the expiry of the termination period and, for a reasonable time thereafter, shall answer such questions from the Authority's Contract Manager as may be relevant to the transfer of the Services to a Replacement Service Provider.
- 20.2 Notwithstanding the provisions of Clause 17 (Confidentiality) whenever the Authority chooses to put out to tender for a replacement Service Provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 20.3 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to the Parties prior to or after such termination or expiry.
- 20.4 Upon termination (howsoever caused) or expiry of this Agreement:
- 20.4.1 the Service Provider shall at the request of the Authority immediately return to the Contract Manager all information (including but not limited to data (including personal data), data bases, lists, correspondence, documents, specifications) and property) belonging to the Authority which may be in its possession, custody or control as acquired or developed in connection with the performance of the Services; and
- 20.4.2 the Authority shall (subject to its accrued rights of set off and deduction) pay the Service Provider any Fees or Charges remaining due in relation to any Services properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with Clause 5 or as otherwise reasonably determined by the Authority.

21. DISPUTE RESOLUTION

- 21.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference ("**Dispute**") that may arise out of or relate to this Agreement before issuing proceedings in the High Court.
- 21.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of 10 Working Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 21.3 If the Dispute is not resolved within 20 Working Days of referral to the Senior Personnel, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a Mediator. The costs of the Mediator shall be borne equally by the Parties.

- 21.4 Where a Dispute is referred to mediation under Clause 21.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedure as the Mediator may recommend.
- 21.5 If the Parties reach agreement in mediation, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 21.6 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Working Days of the service of the Mediation Notice either Party may commence proceedings in the High Court.
- 21.7 Unless otherwise instructed by the Authority, the Service Provider shall continue to provide the Services in accordance with this Agreement without delay or disruption while the Dispute is being resolved pursuant to this Clause 21.
- 21.8 Neither Party shall be prevented from seeking any order for specific performance or injunctive relief as a result of the provisions of this Clause 21 which shall not apply to any dispute where these or any other equitable remedies are sought.

22. BUSINESS CONTINUITY PLAN

- 22.1 The Service Provider 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.
- 22.2 The BCP shall be maintained and regularly tested by the Service Provider 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 Service Provider at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

23. SUSTAINABILITY

The Service Provider shall make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist the Authority in discharging its Best Value Duty in relation to the Services and either Party may propose alternative methods for the improvement of the economy, efficiency and environmental aspects of the Services or the introduction of or change in any information technology in use to support the provision of the Services and the Parties will co-operate to evaluate and, if appropriate, introduce such proposals as a variation of this Agreement.

24. EQUALITY

- 24.1 The Service Provider is required to have in place an equal opportunities (Equalities) policy at the Commencement Date of this Agreement and throughout the Term. This policy must specify that the Service Provider will not treat the Service Provider's Personnel less favourably on the grounds of their colour, race, ethnic, or national origin, nationality (including citizenship), marital status, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation, age, religion or belief or because they have a disability.
- 24.2 The Service Provider shall take all reasonable steps to secure that the Service Provider's Personnel do not unlawfully discriminate and comply with the Service Provider's obligations under Clause 24.1.
- 24.3 In the performance of the Services and in its dealings with service users, the Authority's employees and members of the general public the Service Provider shall comply and shall ensure that the Service Provider's Personnel comply with:
- 24.3.1 the Human Rights Act 1998 as if the Service Provider was a public body (as defined in the Human Rights Act 1998);
 - 24.3.2 all law relating to equal opportunities including without limitation relating to disability, discrimination, sex discrimination, and race relations; and
 - 24.3.3 the Authority's equal opportunities ("**Equalities**") policies and procedures as may be adopted and amended from time to time and as notified to the Service Provider.

25. WAIVER

- 25.1 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 31 (Notices). The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.
- 25.2 The rights of each Party under this Agreement may be exercised as often as that Party considers appropriate, are cumulative and apply in addition to their rights under the general law and may be waived only in writing and specifically. Not exercising or delay in exercising any right is not a waiver of that right.

26. SEVERABILITY

- 26.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the proper law of this Agreement that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement and the other terms and provisions of this Agreement shall remain valid and enforceable so long as the legal substance of the transactions contemplated thereby is not affected in any manner adverse to any Party.

- 26.2 Upon the determination by a court of competent jurisdiction that any provision is invalid, illegal or unenforceable the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated thereby are fulfilled to the fullest extent possible.

27. THIRD PARTY RIGHTS

No third party or other person who is not a Party to this Agreement may enforce any of its terms under the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 which is hereby expressly excluded.

28. NO AGENCY OR PARTNERSHIP

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

29. PREVENTION OF BRIBERY

- 29.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Commencement Date:

29.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

29.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 29.2 The Service Provider shall not during the term of this Agreement:

29.2.1 commit a Prohibited Act; and/or

29.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, service providers, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 29.3 The Service Provider shall during the term of this Agreement:

29.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

29.3.2 keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Authority on request.

- 29.4 The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 29.1 and/or Clause 29.2, or has reason to believe that it has or any of the Service Provider's Personnel have:
- 29.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 29.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 29.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 29.5 If the Service Provider makes a notification to the Authority pursuant to Clause 29.4, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 11 (Records, Audit and Inspection).
- 29.6 If the Service Provider is in Default under Clause 29.1 and/or Clause 29.2, the Authority may by notice:
- 29.6.1 require the Service Provider to remove from performance of this Agreement any Service Provider's Personnel whose acts or omissions have caused the Default; or
 - 29.6.2 immediately terminate this Agreement.
- 29.7 Any notice served by the Authority under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

30. SURVIVAL OF TERMS

The provisions of this Agreement shall be binding on any successors of the Parties. Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.

31. NOTICES

- 31.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or email and if by post must be addressed to the recipient at its registered office, the address stated in the Purchase Order or any other address (including an email address) notified to the other Party in writing in accordance with this Clause 31 as an address to

which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

31.1.1 if delivered by hand, at the time of delivery;

31.1.2 if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays); or

31.1.3 if delivered by email, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party or Parties within 24 hours after transmission.

32. AUTHORITY'S STANDING ORDERS

32.1 The Service Provider shall comply with all the requirements of the Authority's constitution and/or standing orders for the time being enforced which are available for inspection during normal working hours by prior appointment with the Contract Manager at the Authority's normal address.

32.2 Notwithstanding anything to the contrary in this Agreement, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.

33. ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF OWNERSHIP

33.1 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority.

33.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:

33.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-Service Provider is required to provide;

33.2.2 be responsible for payments to that person; and

33.2.3 remain solely responsible and liable to the Authority for any breach of performance, non-performance, part-performance or delay in performance of any of the Services by any sub-Service Provider to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider.

33.3 The Service Provider shall:

33.3.1 not without the prior written consent of the Authority undergo any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and

33.3.2 give notice to the Authority in the event that there is any change in the ownership of the holding company where such change relates to 50% or more of the issued share capital of the holding company, such

notice to be given within ten Working Days of the date on which such change takes effect.

- 33.4 The Authority may assign, novate or otherwise transfer this Agreement (in whole or in part) without the consent of the Service Provider.
- 33.5 Within ten Working Days of a written request from the Authority, the Service Provider shall at its own expense execute such agreement as the Authority or and/or may reasonably require to give effect to any such transfer of all or part of the rights and obligations under this Agreement to one or more persons nominated by the Authority.

34. VARIATION

- 34.1 This Agreement may only be varied or amended with the written agreement of both Parties to this Agreement.
- 34.2 Where the Authority and the Service Provider wish to vary or amend the Services the details of any variations or amendments shall be set out in a form determined by the Authority and such variation or amendment shall not be binding upon the Parties unless the form is completed and executed by the duly authorised representatives of the Authority and the Service Provider.
- 34.3 Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.

35. COSTS

Each Party will pay its own charges, costs and expenses in the performance of its own obligations in this Agreement and the negotiation, preparation and execution of this Agreement.

36. ENTIRE AGREEMENT

- 36.1 Subject to Clause 36.2:
 - 36.1.1 this Agreement and any and all documents referred to in this Agreement contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement which shall supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. No Party has been induced to enter into this Agreement by a statement which it does not contain; and
 - 36.1.2 without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.
- 36.2 Nothing in this Clause 36 excludes any liability which a Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

37. MODERN SLAVERY

- 37.1 The Service Provider must have awareness of and shall comply (and shall procure that the Service Provider's Personnel comply) with the provisions of the Modern Slavery Act 2015. In the event of there being a concern about a person, the Service Provider shall notify the Authority.

38. PREVENT

- 38.1 The Service Provider shall ensure that the Service Provider's Personnel have a good understanding of the need to prevent people being drawn into terrorism and shall (and shall procure that the Service Provider's Personnel shall) comply with the requirements of the Counter-terrorism and Security Act 2015 (CTSA15) (including any guidance, amendments and all subsequent regulations made pursuant to this Act and any Authority policies) and will co-operate with the Authority in ensuring the Authority's compliance with its obligations under CTSA15 and in particular the obligation under section 26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty"); and
- 38.2 in the event of there being a concern about a person, notify the Authority.

39. SAFEGUARDING

The Service Provider shall provide meaningful controls proportionate to the level of risk. Where controls need to be applied the Service Provider shall take a positive action (e.g. provide safeguarding training to their staff) rather than a passive action (e.g. provide a copy of their safeguarding policy). Where relevant, the Service Provider should have their own safeguarding policy and procedures in place. Where the Service Provider outsources any part of the Services to a third party, the third party is required to have adequate safeguarding procedures in place.

The Authority shall determine and notify the Service Provider of the Level of Risk this Agreement requires as detailed below;

- 39.1 This is a back office service where there is no contact with vulnerable people.

OR

- 39.1 The Service Provider shall take the following actions in respect of safeguarding where;

Bronze Level - there is limited contact with children, young people or vulnerable adults, or where contact is indirect, peripheral and in a public space or environment. The Service Provider shall ensure that Service Provider Personnel have been provided with a basic level of safeguarding training providing an awareness and understanding of the Service Provider's safeguarding responsibilities and how to report any safeguarding concerns regarding a child or adult at risk.

OR

Silver Level – the Services will be delivered to the public and there is likely to be regular contact with children, young people and/or vulnerable adults.

The Service Provider shall create and maintain a risk assessment of the way it provides the Services and shall appropriately assess the level of responsibility and contact Service Provider Personnel will have with children and vulnerable adults. If such contact is likely to occur, the Service Provider Personnel shall be given appropriate training according to access and risk. The Service Provider shall also ensure that all Contractor Personnel engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' or children's barred list, as appropriate, and the Service Provider shall monitor the level and validity of these checks for each individual annually.

The Service Provider warrants that at all times, for the purposes of this agreement, it has no reason to believe that any Service Provider Personnel engaged by the Service Provider 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.

The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 39.1 have been met.

The Service Provider 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 as defined in the Safeguarding Vulnerable Groups Act 2006 or who may otherwise present a risk to service users.

The Service Provider will liaise with the Contract Manager as a confidential point of contact in order for the Service Provider to provide the Authority with a summary of safeguarding concerns that the Service Provider has had to manage.

OR

Gold Level – the Services will be delivered directly to children, young people and/or vulnerable adults.

The Service Provider shall create and maintain a risk assessment of the way it provides the Services and shall appropriately assess the level of responsibility and contact Service Provider Personnel will have with children and vulnerable adults. All Service Provider Personnel shall be given appropriate training according to access and risk.

The Service Provider shall provide confirmation that training is completed, and details of scheduled refresher training provided, to the Authority. Regular contract monitoring meetings with the Service Provider (see Clause 7.2.2) shall incorporate information exchange about safeguarding concerns or incidents.

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

The Service Provider shall ensure that all Contractor Personnel engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the

adults' or children's barred list, as appropriate, and the Service Provider shall monitor the level and validity of these checks for each individual annually.

The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any Service Provider Personnel engaged by the Service Provider 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.

The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 39.1 have been met.

The Service Provider 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.

The Service Provider will liaise with the Contract Manager as a confidential point of contact in order for the Service Provider to provide the Authority with a summary of safeguarding concerns that the Service Provider has had to manage and to refer information about any person carrying out the Services where the Service Provider has or intends to remove 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.

40. GOVERNING LAW AND JURISDICTION

- 40.1 This Agreement 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 Laws of England.
- 40.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

ANNEX 1 – KEY PERFORMANCE INDICATORS (KPIs)

ADD DETAILS