**Dated 2022**

1. **City of Bradford Metropolitan District Council**
2. **[Insert Provider Name]**

**Contract for Services**

**[Insert Contract Title]**

**[Insert Contract Reference]**

**\*\*NOTE TO TENDERERS\*\***

THIS DOCUMENT IS ISSUED AS PART OF THE TENDER PROCESS FOR INFORMATION AND TRANSPARENCY PURPOSES. BIDDERS ARE NOT REQUIRED TO INPUT ANY INFORMATION INTO THE TERMS OR SCHEDULES WHEN SUBMITTING THEIR TENDER.

BIDDERS ARE INFORMED THAT, SUBJECT TO COMPLETION OF THE RELEVANT HIGHLIGHTED INFORMATION AND SCHEDULES, THESE ARE THE TERMS AND CONDITIONS THAT WILL GOVERN THE CONTRACT. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO ENTER INTO THESE **WITHOUT AMENDMENT.**

BIDDERS SHALL NOT BE ENTITLED TO NEGOTIATE OR VARY ANY OF THE TERMS AND CONDITIONS, UNLESS THIS WAS SPECIFICALLY PERMITTED IN THE RELEVANT INVITATION TO TENDER DOCUMENT(S) ISSUED BY THE COUNCIL.

**NOTE TO PROCURERS**

THERE ARE DRAFTING NOTES (“DN”) IN BLUE TEXT CONTAINED IN THIS MODEL FORM CONTRACT THAT WILL REQUIRE COMPLETION **BEFORE PUBLISHING THE CONTRACT AS PART OF THE TENDER DOCUMENTS.**

* ALL DN, INCLUDING THIS NOTE, ARE TO BE REMOVED AND THE RELEVANT CLAUSES AMENDED AS REQUIRED **BEFORE PUBLISHING THE TENDER**.

THE NOTE TO TENDERERS ABOVE SHOULD REMAIN **UNTIL THE FINAL CONTRACT IS ISSUED**

* FIELDS WITH SQUARE BRACKETS ([…]) REQUIRE COMPLETION ONCE THE SUCCESSFUL PROVIDER HAS BEEN IDENTIFIED, AND **BEFORE THE FINAL CONTRACT IS ISSUED.**
* THE EXECUTION BLOCK AT THE END OF THE CONTRACT TERMS IS TO BE UPDATED TO REQUIRE EITHER A SIGNATURE OR APPLICATION OF THE SEAL, AS APPROPRIATE, **BEFORE PUBLISHING THE TENDER**.

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**Date: 2022**

**Parties:**

* + - * 1. **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall Centenary Square Bradford BD1 1HY (“the Council”); and
        2. **[Insert Name]** a registered company number [Insert] whose registered office is at [Insert] (“the Provider”)

**Introduction**

1. The Council {sought} / {placed a contract notice on the Find a Tender Portal, reference number INSERT seeking} {expressions of interest} / {tenders} from providers for the provision of the Services under this Contract. [DN: Select applicable description for the tender process]
2. The Provider submitted an expression of interest in response.
3. The Council invited potential service providers (including the Provider) to tender for the Services.

[DN: Delete B&C if only one-stage process]

1. The Provider submitted a tender for the provision of the Services.
2. On the basis of the Provider’s tender, the Council selected the Provider to deliver the Service in accordance with the terms and conditions of the Contract.

**Agreed Terms**

Part A - Contract Details

1. Definitions and Interpretation
   1. In the Contract unless the context otherwise requires, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **Achieve KPI** | in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question |
| **BACS** | means Bacs Payment Schemes Limited |
| **Business Continuity Incident** | means an event or incident defined as a business continuity incident, disaster or event in the Business Continuity Plan |
| **Business Day** | means any day other than a Saturday or Sunday or public holiday in England and Wales . |
| **Change** | means a variation to the Contract or its Schedules |
| **Change Notice** | means a notice to be prepared for the consideration of any Change in accordance with the change control procedure at clause 18 |
| **Charges** | means the charges payable by the Council to the Provider in respect of the Services under the terms of this Contract as such charges are set out in Schedule 2. |
| **Commencement Date** | means [DN: insert date] |
| **Commercially Sensitive Information** | means any information identified by the Provider when it is provided to the Council as information that would cause significant commercial disadvantage or material financial loss if disclosed and/or any information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business. |
| **Confidential Information** | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;  and the Commercially Sensitive Information. |
| **Conflict of Interest** | means any actual or potential conflict of interests between the personal or pecuniary interests of the Provider or any of its Staff and the duties owed to the Council by the Provider under the provisions of the Contract. |
| **Council Cause** | Means any breach of the obligations of the Council or any other default, act, omission, negligence or statement of the Council, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Council is liable to the Provider; |
| **Council Data** | means all Personal Data and other information belonging or originating with the Council or any of its subsidiaries and only held or processed by the Provider (or any of its subcontractors) for or on behalf of the Council in relation to the Services or the Contract. |
| **Council Equipment** | means any equipment, plant, materials and / or such other items supplied and / or used by the Provider in the performance of its obligations under the Contract which belongs to the Council. |
| **Council Premises** | means those premises belonging to the Council where the Services are to be provided as shall be set out in the Specification. |
| **Data Protection Legislation** | means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended |
| **DBS** | means the Disclosure and Barring Service |
| **Default Notice** | means a notice served in accordance with clause 15 |
| **Dispute** | means any disagreement or conflict of views that arises between the Parties out of or in connection with the Contract |
| **EIR** | means the Environment Information Regulations 2004 |
| **Existing IPR** | shall mean any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract |
| **Exit Management** | means the plan set out in 4 as supplemented by a plan presented by the Provider and accepted by the Council under clause 48. |
| **Expiry Date** | means [DN: insert date] |
| **Fairtrade** | means the Fairtrade Foundation, a registered charity number 1043886 |
| **FOIA** | means the Freedom of Information Act 2000 |
| **Force Majeure Event** | any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding:   1. any industrial dispute relating to the Provider, the Provider Staff (including any subsets of them) or any other failure in the Provider or the subcontractor's supply chain; 2. any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; 3. any failure of delay caused by a lack of funds; 4. any outbreak of an infectious or communicable disease or infestation unless the same shall be the subject of Regulations made under the Public Health (Control of Diseases) Act 1984 that require the Provider to take measures that substantially prevent it from supplying:    1. the Services; or    2. such amended services and terms as the Council shall propose in writing to the Provider in consequence of such Regulations in order to enable the Contract to remain substantially capable of performance |
| **Good Industry Practice** | means standards, practices, methods and procedures conforming to the Law, and that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected of a skilled and experienced operator engaged in a similar type of undertaking under the same or similar circumstances, having regard to factors such as the nature and size of the parties, the term, the pricing structure and any other relevant factors. |
| **Insolvency Event** | in respect of a person:   1. if that person is insolvent; 2. if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); 3. if an administrator or administrative receiver is appointed in respect of the whole or any part of the person’s assets or business; 4. if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction. |
| **Intellectual Property Rights** | means patents, inventions, trademarks, service marks, logos, design rights, heraldic rights, rights in coats of arms (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| **Invoice Management System** | means the Council’s system for processing invoices with a supplier portal, up to date details of which can be found via the Council’s website at [www.bradford.gov.uk](http://www.bradford.gov.uk). |
| **KPI** | Key Performance Indicator, as set out in the Specification |
| **Key Personnel** | means any individual identified in the Specification as being key personnel. |
| **Law** | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply |
| **Management Report** | means the reports to be prepared and presented by the Provider in accordance with clause 13 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs, as well as any other matters required under the Contract and by the Council |
| **Mobilisation Period** | means the period set out in the Specification |
| **Mobilisation Services** | means the services set out in the mobilisation plan submitted as part of the Provider’s Tender |
| **New IPR** | means IPRs in Services provided by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of the Contract and all updates and amendments of these items |
| **Prohibited Act** | means any of the following Acts:   1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:    * 1. induce that person to perform improperly a relevant function or activity; or      2. reward that person for improper performance of a relevant function or activity; 2. 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 the Contract; 3. committing any offence:    * 1. under the Bribery Act 2010;      2. under legislation or common law concerning fraudulent acts; or      3. of defrauding, attempting to defraud or conspiring to defraud the Council. 4. any activity, practice or conduct which would constitute one of the offences listed under clause (c), if such activity, practice or conduct had been carried out in the UK. |
| **Provider Insolvency Event** | (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;  (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;  (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;  (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);  (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;  (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;  (g) the Provider (being an individual):  (i) is the subject of a bankruptcy petition or order;  (ii) dies; or  (iii) by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;  (h) a creditor or encumbrancer of the Provider 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 other party's assets and such attachment or process is not discharged within 14 days;  (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or  (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business. |
| **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. |
| **Representative** | means the officer named as the contract representative for each Party in the Specification and Tender Return respectively |
| **Request for Information** | means a request for information or an apparent request for information under the FOIA or the EIR and the meaning of the terms Request and Information shall be as defined in the FOIA and/or EIR |
| **Service Rectification Plan** | means a plan produced under clause 15 |
| **Service Rectification Process** | Means the process set out at clause 15 |
| **Shared Personal Data** | the Personal Data to be shared between the parties under this Contract. |
| **Specification** | means the specification for the Services set out in Schedule 1. |
| **Staff** | means employees, staff, other workers, agents and consultants of the Provider and any Sub-Contractors who are engaged by the Provider for the provision of the Services and used in the performance of the Provider’s obligations under the Contract. |
| **Staff Vetting Procedures** | means vetting procedures that accord with Good Industry Practice or, where applicable, the Council’s procedures for the vetting of personnel as provided to the Provider from time to time. |
| **Sub-Contract** | any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party and Sub-Contractor shall mean any third party that enters a sub-contract with the Provider. |
| **Target KPI** | means the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in the Specification |
| **Tender** | means the tender submitted by the Provider and accepted by the Council as set out in Schedule 3. |
| **VAT** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994. |
| **Worker** | means any one of the Provider’s Staff which the Council, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies in respect of the Services. |

* 1. In the Contract, unless the context otherwise requires:
     1. the terms Data Controller, Processor, Data Subject, Personal Data, Processing, Personal Data Breach, Subject Access Request and “appropriate technical and organisational measures” shall have the meanings prescribed under the Data Protection Legislation.
     2. references to clauses and schedules are references to the relevant clause of and schedule to these terms and conditions unless otherwise stated;
     3. the schedules form part of this Contract
     4. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     5. the headings in this Contract are for information only and do not affect the interpretation of the Contract;
     6. references to writing include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
     7. the singular includes the plural and vice versa;
     8. words importing a gender include all genders;
     9. references 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
     10. a reference to any Law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law;
     11. the words “including”, "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".
     12. any obligation on a Party to perform any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
     13. subject to any express provisions of this Contract to the contrary, the obligations of any Party are to be performed at that Party's own expense.

1. Term
   1. The Contract shall take effect on the Commencement Date and shall expire automatically on the Expiry Date unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended in accordance with the provisions of the Contract.
   2. The Council may request to extend the Term, by giving not less than one month’s notice, prior to the Expiry Date if it has been provided for in the Specification, subject to the extension provisions described in the Specification. The Provider shall confirm its acceptance or rejection of the offer of extension in accordance with the timescales set out in the request to extend. The terms and conditions of this Contract shall apply throughout any extended period.
2. Warranties and Representations
   1. The Provider acknowledges and confirms that:
      1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant, and has received all information requested from the Council, for the purpose of establishing whether it is able to provide the Services in accordance with the terms of the Contract;
      2. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council;
      3. it has raised all relevant due diligence questions with the Council before the Commencement Date;
      4. it shall promptly notify the Council in writing if it becomes aware during the performance of the Contract of any inaccuracies in any information provided to it by the Council which materially and adversely affects its ability to perform the Services or meet any Target KPIs; and
      5. it has entered into the Contract in reliance on its own due diligence.
   2. The Provider warrants and represents that:
      1. it has full capacity and authority to enter into and to perform the Contract;
      2. the Contract is executed by its authorised representative;
      3. it is a legally valid and existing organisation incorporated in the place it was formed;
      4. as at the Commencement Date, all information, statements and representations contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
      5. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
      6. it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
      7. it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
      8. in entering the Contract it has not committed any Prohibited Act; and
      9. it is not impacted by an Insolvency Event.
   3. The warranties and representations in clause 3.2 are repeated each time the Provider provides Services under the Contract.
   4. The Provider indemnifies the Council against each of the following:
      1. wilful misconduct of the Provider, any of its Sub-Contractor and/or Provider Staff that impacts the Contract; and
      2. non-payment by the Provider of any tax or National Insurance.
   5. If the Provider becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Council.
   6. All third party warranties and indemnities covering the Services must be assigned for the Council's benefit by the Provider.
   7. Save as provided in the Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
3. Council’s Obligations
   1. 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 Provider. Any instruction, caveat, or other exercise of duties and powers in any other capacity shall not be taken as an express or implied instruction under the Contract.
4. Order of Precedence
   1. In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
      * 1. the clauses of the Contract;
        2. the Specification;
        3. the Schedules (other than the Specification); and
        4. any other document referred to in the clauses of the Contract,

Part B - The Delivery of the Services

1. Supply of Services
   1. In consideration of the Council’s payment of the Charges, the Provider shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of the Contract and in accordance with the Council’s requirements as set out in the Specification, the Tender, the Law, Good Industry Practice.
   2. The Provider is not given any sole or exclusive rights in relation to the provision of the Services.
   3. Without prejudice to the provisions of the Specification and the rest of this Contract, the Provider shall where applicable provide:
      1. the Mobilisation Services during the Mobilisation Period; and
      2. the Services with effect from the Commencement Date.
   4. The Provider must provide the Services:
      * 1. in compliance with all of the Council’s instructions;
        2. in accordance with all descriptions and specifications set out in the Specification;
        3. to a professional standard;
        4. using reasonable skill and care;
        5. using Good Industry Practice;
        6. using its own policies, processes and internal quality control measures to the extent that they do not conflict with the Contract;
        7. using staff who are suitably skilled and experienced to perform tasks assigned to them;
        8. on the dates agreed; and
        9. in compliance with all Laws.
   5. Where timescales for delivery are agreed, late delivery of the Services will be a default of the Contract.
   6. If, at any time, the Provider becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Provider’s performance of its obligations under this Contract it shall immediately notify the Council in writing, providing details of the potential or actual delay. The Provider shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in this clause upon the Council.
   7. The Council is entitled to withhold payment for partially delivered or undelivered Services, but doing so does not stop it from using its other rights under the Contract. All withheld payments shall be of a proportional amount of the Charges that would otherwise have been due and notified to the Provider in accordance with clause 11.10.
   8. If the Council informs the Provider 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 Provider 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. Without prejudice to clause 7, the Provider shall provide the Services, or procure that they are provided:
      * 1. with all reasonable skill and care;
        2. In accordance with any requirements and service standards detailed in the Contract Details;
        3. in all respects in accordance with the Council's requirements and policies set out in Schedule 1; and
        4. in accordance with all applicable Law.
2. Council Cause
   1. If the Provider fails to comply with the Contract as a result of a Council Cause:
      * 1. the Council cannot terminate the Contract under clause 44;
        2. the Provider is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
        3. the Provider is entitled to additional time needed to deliver the Services; and
        4. the Provider cannot suspend the ongoing supply of Services
   2. Clause 7.1 only applies if the Provider:
      * 1. gives notice to the Council within 10 Business Days of becoming aware;
        2. demonstrates that the failure only happened because of the Council Cause; and
        3. has mitigated where possible the impact of the Council Cause.
3. Provider Staff
   1. The Provider must allocate sufficient resources and appropriate expertise to the Contract.
   2. The Provider Staff involved in the performance of the Contract must:
      * 1. be appropriately trained and qualified;
        2. be vetted using Good Industry Practice and in accordance with any instructions set out in the Specification or any Staff Vetting Procedures; and
        3. comply with all conduct requirements when on Council Premises.
   3. Where the Council determines that a member of the Provider's Staff is not suitable to work on the Contract, the Provider must replace them with a suitably qualified alternative.
   4. The Provider must provide a list of Provider Staff and Sub-Contractors who require access to Council Premises and explain the reasons for access to be required.
   5. The Providers shall limit access to Council Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Council Premises as the Council may reasonably request.
   6. The Provider shall (and shall ensure that its Staff and Sub-Contractors shall) observe and comply with such rules and regulations and security requirements as may be in force at any time for the use of such Council Premises and conduct of personnel at the Council Premises as determined by the Council.
   7. Where applicable, the Council reserves the right to refuse to admit to Council Premises any person, employed or engaged by the Provider or a Sub-Contractor, whose admission would, in the opinion of the Council present a risk to the Council, any third party or the Council’s property and shall not be obliged to give any reasons for such refusal. The decision of the Council shall be final and conclusive.

* 1. If requested, the Provider must replace any person whose acts or omissions have caused the Provider to breach this clause 8.
  2. The Provider indemnifies the Council against all claims brought by any person

employed by the Provider caused by an act or omission of the Provider or any Provider Staff.

* 1. The Provider shall use those persons nominated in its Tender (if any) to provide the Services and shall not remove or replace any of them without the Council’s prior written approval (such approval not to be unreasonably withheld or delayed) unless:
     + 1. requested to do so by the Council;
       2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
       3. the person's employment or contractual arrangement with the Provider or any Sub-Contractor is terminated for material breach of contract by the person.

1. Premises
   1. Save as the Council may otherwise direct, the Provider is deemed to have inspected any land or Council Premises where the Services are to be carried out 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.
   2. If any Council Premises are to be used to deliver the Services, the Council shall provide the Provider with reasonable access to such Council Premises at reasonable times to supply the Services. The Provider shall have the use of Council Premises solely for the purpose of performing its obligations under the Contract as a non-exclusive licensee and shall vacate the same on completion, termination or abandonment of the Contract
   3. The Provider must take all reasonable care to ensure performance at any Council Premises or other location does not disrupt any of the Council's operations, employees or other contractors.
   4. The Provider will at all times when using the Council Premises ensure they are kept properly secure and it will comply and cooperate with the Council’s directions regarding health and safety, security and access to the Council Premises.
   5. The Provider shall notify the Council immediately upon becoming aware of any damage caused by the Provider, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council Premises or to any property of any other recipient of the Services in the course of providing the Services.
   6. On completion of the Services, the Provider is responsible for leaving any of the Council Premises it has used for or delivered the Services at in a clean, safe and tidy condition and making good any damage that it has caused to the Council Premises or property, other than fair wear and tear.
   7. The Council may inspect and examine the manner in which the Provider supplies the services at the Council Premises or any other premises (which for the purposes of this Clause includes the Provider’s own premises) during normal business hours on reasonable notice.
2. Equipment
   1. The Provider must at its own risk and expense provide all equipment required to deliver the Services. The Provider must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
   2. Any Council Equipment provided by the Council to the Provider for supplying the Services remains the property of the Council and is to be returned to the Council on expiry or termination of the Contract. Such Council Equipment shall be used only for the purposes of supplying the Services and shall not be removed from the Council Premises unless expressly permitted under the Contract or by the Council.
   3. On completion of the Services, the Provider is responsible for returning any of the Council Equipment it has used for the Services at in a clean, safe and tidy condition and making good any damage that it has caused to the Council's Equipment, other than fair wear and tear.
   4. The Provider will at all times ensure the Council Equipment is kept properly secure and it will comply and cooperate with the Council’s directions regarding health and safety, security and use of the Council Equipment.

Part C - Charges

1. Invoicing and Payment
   1. In exchange for the Services, the Provider shall be entitled to invoice the Council for the Charges in arrears on a periodical basis as set out in the Pricing Schedule. The Provider shall raise invoices promptly and in any event within 90 days from when the charges are due.
   2. All Charges:
      * 1. exclude VAT, which is payable on provision of a valid VAT invoice; and
        2. include all costs connected with the supply of Services.
   3. The Provider shall add VAT to the Charges at the prevailing rate as applicable.
   4. The Provider 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 Provider’s failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause shall be paid by the Provider to the Council not less than five (5) Business Days before the date upon which the tax or other liability is payable by the Council.
   5. The Council must pay the Provider the charges within 30 days of receipt by the Council of a valid, undisputed invoice, in cleared funds to the Provider's account on the invoice.
   6. A Provider invoice is only valid if it:
      * 1. unless agreed otherwise in writing, is submitted by email to [APInvoices@bradford.gov.uk](mailto:APInvoices@bradford.gov.uk) in accordance with the Council’s Invoice Management System as amended from time to time. Invoices must:
           1. be in pdf format;
           2. be separated so only one invoice is included in each pdf file;
           3. quote a Council Purchase Order Number;
           4. be dated;
           5. have a unique invoice number;
        2. includes all appropriate references and other details reasonably requested by the Council;
        3. includes a detailed breakdown of Services which have been delivered (if any); and
        4. is supported by any other documentation reasonably required by the Council to substantiate the invoice.
   7. The Provider shall:
      * 1. receive all purchase orders and submit all invoices by email and receive payment by BACS; or
        2. where the Provider cannot submit invoices electronically at the Commencement Date, take all necessary steps such that he will be in a position to do so within a time period agreed with the Council.
   8. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Provider shall not suspend the provision of the Services unless the Provider is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 44.3.7. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20. Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2013
   9. The Council may retain or set-off payment of any amount owed to it by the Provider under the Contract or under any other agreement or contract with the Council if notice and reasons are provided.
   10. If the Council wishes to
       * 1. set-off any amount owed by the Provider against any amount due to the Provider as set out in clause 11.9; or
         2. exercise its right pursuant to clause 6.7 withhold payment of a proportion of or the whole of the Charges,

it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority’s reasons for withholding or retaining the relevant Charges.

* 1. Any overpayment by either Party, whether of the Charges 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.
  2. The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
  3. The Provider must ensure that all Sub-Contractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Council can publish the details of the late payment or non-payment.

1. Charges Adjustment on Extension
   1. The Charges shall apply for the Term, subject to the provision of this clause.
   2. In the event that the Council extends the Contract in accordance with clause 2.2 the Council may at its own discretion in the six month period prior to the Expiry Date enter into good faith negotiations with the Provider to agree any necessary changes to the Charges.
   3. Any changes which are agreed to the Charge shall take effect from the first day of the period of extension of the Contract.
   4. Any changes agreed to the Charges shall have regard to:
      * 1. any changes to the Provider’s costs of providing the Services;
        2. any changes to the Services to be supplied;
        3. the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 months before the end of the Term.

Part D - Contract Governance

1. Progress Monitoring
   1. The Provider must ensure that suitably qualified representatives attend progress meetings with the Council and provide progress reports when specified in the Specification.
   2. The Council may monitor the performance of the Services and the KPIs by the Provider.
   3. The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 13.2 at no additional charge to the Council.
   4. The Provider shall provide all Management Reports and such data and information as the Provider may be required to produce under the Contract in the form and at the intervals set out in the Specification and as specified by the Council from time to time.
   5. The Representatives and relevant Key Personnel shall meet in accordance with the details set out in the Specification (if any), or as specified by the Council from time to time and the Provider shall, at each meeting, present its previously circulated Management Reports in the format specified by the Council.
   6. From the Commencement Date, the Parties will for the first six (6) months of the Contract meet monthly to monitor progress and consider any other matters reasonably required by either Party to ensure continuous improvement of the delivery of the Services.
   7. From month 7 after the Commencement Date, the Parties will meet every three (3) months to review quarterly progress.
   8. The Parties shall annually review the Provider’s contract performance and the contract budget (“Annual Review”). The Parties shall agree the date of the first Annual Review within three months of the Commencement Date and if not, then the first Annual Review will be within 1 month of the anniversary of the Commencement Date. The Council will issue and the Provider may contribute to the agenda for this meeting by one month prior to the meeting date.
2. Key Performance Indicators
   1. Where any Service is stated in the Specification to be subject to a specific Target KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the Target KPI.
   2. The Provider must, where required under the Specification, include detailed analysis of the Provider’s performance against the Target KPIs in the Management Reports referred to in clause 13.
   3. If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within Schedule 1.
   4. In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Council may have, the provisions of clause 15 shall apply.
   5. Failure to meet Target KPIs shall be dealt with as set out in the Specification.
   6. Repeated failure to meet the Target KPIs shall be considered a default to be treated in accordance with the Service Rectification Process set out at clause 15.
3. Service Rectification Process
   1. In the event that the Provider is in default of any of its obligations under this Contract and the default is capable of remedy, the Council may not terminate this Contract without first operating the Service Rectification Process. If the Provider commits such a default, the Council shall serve the Provider with a notice in writing setting out the details of the Provider's default (a Default Notice) and the actions that the Provider needs to take to remedy the default.
   2. The Council may, where it has the right to serve a Default Notice on the Provider, also require the Provider to prepare a Service Rectification Plan which sets out how the default will be rectified by the Provider and the timescales in which such rectification will take place. This right may be exercised by the Council regardless of whether or not it has served a Default Notice and may be used either as an alternative to service a Default Notice or to supplement a Default Notice.
   3. Upon receipt of a Service Rectification Plan, the Council may either approve or reject the plan, provided that rejection must be accompanied with sufficient reasons to allow the Provider to understand why the Service Rectification Plan did not meet the needs of the Council. In such circumstances, the Provider shall address all such concerns in a revised Service Rectification Plan, which it shall submit to the Council within 5 Business Days of its receipt of the Council’s comments.
   4. Where the Council approves a Service Rectification Plan, the Provider must carry out that Service Rectification Plan in accordance with the provisions of the Contract.
   5. Unless the Council indicates otherwise in writing, time shall be of the essence in respect of any timescales for actions to be carried out by the Provider which are set out in a Service Rectification Plan.
   6. If, despite the measures taken under clause 15.3, a Service Rectification Plan cannot be agreed within 10 Business Days then the Council may elect to end the Service Rectification Process and serve notice of termination.
   7. If a Service Rectification Plan is agreed between the parties, but the Provider fails to implement or successfully complete the Service Rectification Plan by the required completion date, the Council may:
      * 1. terminate this agreement by serving a Termination Notice;
        2. give the Provider a further opportunity to resume full implementation of the Service Rectification Plan; or
        3. refer the matter for resolution under the Dispute Resolution Procedure.
   8. If, despite the measures taken under clause 15.7, the Provider fails to implement the Service Rectification Plan in accordance with its terms, the Council may elect to end the Service Rectification Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
   9. The Council shall not be obliged to follow the Service Rectification Process if there is a repetition of substantially the same default by the Provider as had previously been addressed in a Service Rectification Plan within a period of six months following the conclusion of such previous Plan. In such event, the Council may serve a Termination Notice.
4. Complaints
   1. Where the provision of the Services is made directly to service users for and on behalf of the Council, then the Provider shall ensure that it has in place a comprehensive and effective complaints management procedure to receive, process and decide complaints from service users 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 Provider's obligations under the Contract.The Provider shall inform the Council of all such complaints made by service users and the Council shall be entitled, at its sole discretion, to intervene and investigate such a complaint itself, or alternatively to investigate the Provider’s resolution of a complaint*.*
   2. Where a complaint under clause 16.1 is investigated by the Council, or a complaint is received by the Council 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 Provider’s obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with clauses 15 (Service Rectification Process) or clause 44.1 (Termination on Provider Default).
   3. Without prejudice to any other rights of the Council including its rights under clause 44 (Termination on Provider Default), in the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, do any of the following:
      * 1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
        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 Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
        3. terminate, in accordance with clause 44 (Termination on Provider Default), the whole of the Contract; and/or
        4. charge the Provider for and the Provider shall pay any costs reasonably incurred by the Council (including 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
5. Cumulative Remedies
   1. 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.
6. Variation and Change Control
   1. Either Party may request or recommend a Change to this contract in accordance with the change control procedure as set out in this clause 18.
   2. The Council may request a variation, provided that such Change will not constitute a significant variation to the Contract, by providing written notice to the Provider of the proposed Change with sufficient detail to allow the Provider to prepare a Change Notice.
   3. The Provider shall prepare a Change Notice for any Change requested by the Council, or recommended by the Provider. The Change Notice shall contain:
      * 1. the title of the Change;
        2. the originator and date of the request or recommendation for the Change;
        3. the purpose of the Change;
        4. full details of the Change, including any specifications;
        5. the price implications, if any, of the Change;
        6. a timetable for implementation, together with any proposals for acceptance of the Change;
        7. a schedule of payments if appropriate;
        8. details of the likely impact, if any, of the Change on other aspects of the Contract including:
           1. the timetable for the provision of the Change;
           2. the personnel to be provided;
           3. the Charges;
           4. the documentation to be provided;
           5. the training to be provided;
           6. working arrangements;
           7. other contractual issues;
        9. provision for signature by the Council and the Provider; and
        10. details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of the Contract will be apportioned.
   4. In assessing the implications to the Charges of any Change the Provider shall ensure that any alteration reflects a fair and proportionate change based upon the reasonable costs of a well-run provider of Services. Any change to the Charges must be reasonable having regard in particular to the prices and/or rates tendered by the Provider.
   5. The Provider shall accept a Change unless it can demonstrate in the Change Notice that it will result in: -
      * 1. a material change to the nature of the Services; or
        2. a material and adverse impact on the provision of the Services; or
        3. a material and adverse impact on the Provider’s organisation which is not compensated for by the proposed change in pricing
   6. Upon receipt of a Change Notice from the Provider, the Council, unless otherwise agreed between the Parties, shall have fifteen (15) Business Days to consider the implications of the Change Notice and either:
      * 1. request further detail form the Provider;
        2. notify the Provider that it accepts the Change Notice; or
        3. notify the Provider that it rejects the Change Notice.
   7. Until such time as a Change is agreed in accordance with this clause, the Parties shall, unless otherwise agreed in writing, continue to perform the Contract in compliance with its terms before such Change.
   8. If the Council accepts the Change Notice, the Parties shall record the detail of the Change Notice in a variation agreement which shall be binding once signed by the Parties.
7. Ongoing Improvement
   1. The Provider shall for the duration of the Term work to achieve ongoing improvement in the Contract. As part of this. the Provider shall provide a report to the Council every six months identifying any:
      * 1. new or emerging relevant technologies which could be utilised to improve the Services;
        2. potential improvements that could be made to the Services, including to improve quality, responsiveness, procedures, performance methods or customer support services in relation to the Services;
        3. potential improvements that could be made in relation to the integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; or
        4. changes in ways of working that could be implemented to enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.
   2. In the event that any report under clause 19.1 identifies a potential Change to the contract, such Change will be dealt with via a Change Notice under the change control procedure in clause 18.
8. Dispute Resolution
   1. In the event of any Dispute between the Parties arising out of or in connection with the Contract, the Parties’ Representatives shall seek in good faith to resolve it between themselves within fifteen (15) Business Days.
   2. If the period of fifteen (15) Business Days set out in clause 20.1 elapses without resolution by the Representatives, the Dispute shall be escalated to the Parties’ Chief Executive officers to seek to meet and settle the Dispute in good faith.
   3. If the Chief Executives cannot for any reason resolve the Dispute within twenty (20) Business Days of it being referred to them, the Parties will attempt to settle the Dispute by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 28 days after the date of the ADR notice.
   4. The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 62 which clause shall apply at all times.
   5. The Provider agrees that the Council has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
   6. The Council has the right to refer a dispute to arbitration even if the Provider has started or has attempted to start court proceedings, unless the Council has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 20.5.

* 1. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by any Dispute or during any Dispute resolution process and the Provider shall comply fully with the requirements of the Contract at all times.

Part E – Information Handling

1. Data Protection Legislation
   1. It is agreed and acknowledged by the Parties that where the Provider Processes Personal Data in performance of the Provider’s obligations under this Contract, the Provider carries out such Processing as a Data Controller, and not as a Processor.
   2. It is agreed and acknowledged that the Council is the Data Controller for the Personal Data that it holds and shares with the Provider under this Contract.
   3. As Controllers in common the Council and the Provider agree to share and Process the Personal Data on the terms set out in this clause 21 and the schedules to this Contract and the Parties will comply with all the requirements of the Data Protection Legislation throughout the duration of this Contract.
   4. The Parties agree that the sharing of Personal Data is necessary for the purposes of this Contract as defined in the Specification, namely: [insert detail as required] (“the Agreed Purpose”) and the Parties shall not Process Shared Personal Data other than for the Agreed Purpose.
   5. Each Party will Process all Personal Data as set out in the Schedule of Processing, Personal Data and Data Subjects below.
   6. Each Party will implement appropriate technical and organisational measures to
      1. prevent:
         1. unauthorised or unlawful Processing of the Shared Personal Data; and
         2. the accidental loss or destruction of, or damage to, the Shared Personal Data; and
      2. ensure a level of security appropriate to:
         1. the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
         2. the nature of the Shared Personal Data to be protected

in such a manner that all Processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of Data Subjects.

* 1. Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the Processing of Shared Personal Data.
  2. Each Party in sharing Personal Data with the other, shall ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 13 of the UK GDPR including, if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.
  3. Each Party in receiving Personal Data from the other, undertakes to inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the UK GDPR including, if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.
  4. The Parties each agree to provide such assistance as is reasonably required to enable the other P**a**rty to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
  5. Each Party is responsible for maintaining a record of individual requests for information from Data Subjects, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the Data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
  6. Subject to any statutory or stated retention periods, the Parties shall not retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose.
  7. Any Personal Data that has been shared with a Party shall, at the direction of the other, disclosing, Party be returned or destroyed in the following circumstances:
     1. on termination of the Contract;
     2. on expiry of the Term of the Contract;
     3. once Processing of the Shared Personal Data is no longer necessary for the Agreed Purpose for which it was originally shared;

unless required by law to continue to store such Personal Data

* 1. If a Party appoints a third party Processor to Process the Shared Personal Data it shall comply with Article 28 and Article 30 of the UK GDPR and shall remain liable to the other Party for any breach, non-performance or non-observance of this Appendix by such other Processor in the same way and to the same extent as if such breach, non-performance or non-observance had been committed by the appointing Party.
  2. A Party may not transfer Shared Personal Data to a third party located outside the EEA unless it;
     1. complies with the provisions of Articles 26 of the UK GDPR (in the event the third party is a joint Controller); and
     2. ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or (iii) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.
  3. It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with the technical and organisational security measures together with any other applicable national data protection laws and guidance and have entered into confidentiality agreements relating to the Processing of Personal Data.
  4. Each Party shall each comply with its obligation to report a Personal Data Breach to the other without undue delay and (where applicable) Data Subjects under Article 33 of the UK GDPR. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner, including providing details of the nature of such Personal Data Breach, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned, together with details of the likely consequences of the Personal Data Breach, and the measures taken or proposed to be taken to address the Personal Data Breach including, where appropriate, measures to mitigate its possible adverse effects.
  5. In the event of a dispute or claim brought by a Data Subject concerning the Processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will co-operate with a view to settling them amicably in a timely fashion.
  6. Each Party undertakes to indemnify the other and hold the other harmless from any claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of a breach or purported breach of the Data Protection Legislation or the performance or non-performance by that Party of its obligations under this Contract in relation to the Data Protection Legislation, including loss of or damage to property, financial loss arising from any breach of the Data Protection Legislation, or any other loss which is caused directly or indirectly by any act or omission of the Party arising from any breach of the Data Protection Legislation.
  7. The provisions of this clause 21 shall apply during the Term of this Contract and indefinitely after its expiry.

1. Information Governance
   1. The Provider shall comply with the Law and Good Industry Practice in regards to information governance and where sub-contracting has been approved by the Council the Provider shall procure that all sub-contractors similarly comply.
   2. The Provider must, as a minimum, take the following information good practice measures in relation to all information involved in the performance of the services:
      * 1. Ensure that removable devices such as laptops & other mobile devices are encrypted;
        2. Maintain secure file storage;
        3. Shred and securely dispose of all confidential paper waste;
        4. Make secure arrangements for the scrapping/disposal of any computer hard drives or other electronic media;
        5. Lock away all unsecured material;
        6. Ensure that vacated furniture, vehicles, rooms and buildings are clear of unsecured information;
        7. Move information in a secure fashion in both digital and paper media;
        8. Ensure that all removable media such as USB flash drives is securely encrypted;
        9. Not process Personal Data or Confidential Information in public places;
        10. Follow email good practice as follows:
            1. Encrypt all emails containing Confidential Information or Personal Data;
            2. Ensure that only the information required is sent in any email.
   3. Where the Provider hosts the Services externally to the Council’s network, the Provider shall maintain technical security to the standards (or equivalent) set out in the Government’s Cyber Essentials[[1]](#footnote-1) scheme which shall include as a minimum*:*
      * 1. Boundary firewalls and internet gateways;
        2. Secure configuration;
        3. Access control capabilities;
        4. Malware protection;
        5. Patch management;
        6. Regular (at least annual) penetration test and other security assessments/reports;
        7. Back up and resilience measures tested regularly;
        8. Transporting and transmitting data by secure method;
        9. Incident management procedures including data breach procedures.
   4. The Provider shall ensure staff are sufficiently trained in information governance procedures in order to comply with this clause 22.
2. Confidentiality
   1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, both Parties shall:
      1. keep all Confidential Information it receives from the other Party confidential and secure;
      2. not disclose, use or exploit the other Party's Confidential Information without that Party's prior written consent, except for the purposes anticipated under the Contract; and
      3. immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of its Confidential Information.
   2. Notwithstanding clause 23.1 Confidential Information received by a Party may be disclosed by that Party in any of the following instances:
      * 1. disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
        2. the recipient Party already had the information in its possession without obligation of confidentiality before it was disclosed by the disclosing Party;
        3. the information was given to it by a third party without obligation of confidentiality;
        4. the information was in the public domain at the time of the disclosure;
        5. the information was independently developed without access to the disclosing Party’s Confidential Information;
        6. where it is required by the Party’s auditors or for the purposes of regulatory requirements;
        7. where a Party discloses the information to its professional advisors on a need to know basis and subject to a duty of confidentiality; or
        8. to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
   3. The Provider may disclose Confidential Information on a confidential basis to its Staff who are directly involved in the provision of the Services and on a need-to-know basis to allow the Provider to meet its obligations under the Contract. The Provider shall ensure its Staff are aware of and comply with the obligations of confidentiality set out in this clause. The Provider shall, where the Council reasonably requests, require its Staff to sign a confidentiality agreement prior to the disclosure of any Confidential Information.
   4. The Council may, disclose Confidential Information where it is or is related to an item of business at a meeting of the Council or of any committee, sub-committee or joint committee of the Council or is or is related to a decision of the Executive and it is not reasonably practicable for that item of business to be transacted or for that executive decision to be made without reference to the Confidential Information PROVIDED THAT where the Confidential Information is exempt information within the meaning of section 101 of the Local Government Act 1972 (as amended) the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in so doing shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.
   5. The Council shall not be prevented by this clause from disclosing any Confidential Information:
      * 1. where requested by Parliament, or in the circumstances described in clause24.2.
        2. on a confidential basis to any other Local Authority, any successor body to a Local Authority or any company that the Council transfers or proposes to transfer all or any part of its business;
        3. 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;
   6. Neither Party shall be prevented from using any techniques, ideas or know-how which were in its possession prior to the commencement of this Contract or which are gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
3. Freedom of Information
   1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and the Provider shall:
      * 1. provide assistance and cooperation to the Council to enable the Council to comply with its Information disclosure obligations;
        2. transfer to the Council all Requests for Information that it receives in relation to the Contract as soon as practicable and in any event within 2 Business Days of receipt;
        3. provide the Council with a copy of all Information requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Business Days (or such other period as the Council may reasonably specify) of the Council requesting such;
        4. not respond directly to a Request for Information.
   2. The Provider acknowledges that the Council may be obliged under the FOIA and EIR to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.
   3. The Provider acknowledges that the Council may be required to publish specified information pertaining to the Contract pursuant to the Local Government Transparency Code 2015 (or any amendment or replacement of that code) as published by the Ministry for Housing, Communities and Local Government.
   4. Where the Provider considers that any information in relation to the Contract should not be available for disclosure, it will identify it specifically and explain the grounds for exemption from disclosure and the time period applicable to that sensitivity. Such identification shall be of indicative value only and is subject to the obligations of disclosure on the Council as described in this clause 24.
4. Intellectual Property Rights
   1. In the absence of prior written agreement between the Parties to the contrary, all New IPR created by a Party’s employee, agent or subcontractor in the course of performing the Services shall vest in the Party creating the New IPR and that Party shall grant to the other a perpetual, royalty-free, non-exclusive licence to use the New IPR.
   2. The Council grants to the Provider a licence to use any Existing IPR for the purpose of fulfilling its obligations under the Contract.
   3. Each Party shall retain ownership of its own Existing IPR. The Provider gives the Council a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use and sub-license the Provider's Existing IPR to enable it and its sub- licensees to both:
      1. receive and use the Services; and
      2. use any New IPR.
   4. Neither Party has the right to use the other Party's Intellectual Property Rights, including any use of the other Party's names, logos or trademarks, except as provided in this clause 25 or otherwise agreed in writing.
   5. The Provider shall, in the event that any material used in the performance of the Services is or may be subject to any third party Intellectual Property Rights, secure from that third party a non-exclusive licence or sub-licence for the Council to use, reproduce, and maintain the material. Such licence or sub-licence shall be granted at no cost to the Council.
   6. If a claim is made or anticipated that any part of the Services infringes or allegedly infringes a third party's Intellectual Property Rights the Provider shall immediately 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:-
      * + 1. replace or modify the relevant item with substitutes which do not infringe any Intellectual Property Rights without adversely affecting the functionality or performance of the Services; or
          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.
   7. The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council’s acts or omissions.
5. Publicity
   1. The Provider shall not, and shall ensure that its Staff and Sub-Contractors shall not:
      * 1. make any press announcements or publicise the Contract or its contents in any way; or
        2. use the Council’s name or logo in any promotion or marketing or announcement of orders,

except as required by Law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

* 1. The Provider acknowledges that:
     + 1. the Council shall publish any information relating to the Contract which it is required to publish pursuant to Part 2 of the Local Government Transparency Code 2015 (the Transparency Code) (including without limitation paragraphs 26 and 27 of the Transparency Code); and
       2. the Council may publish any information relating to the Contract referred to in Part 3 of the Transparency Code.
  2. The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.
  3. The provisions of this clause 26 shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.

1. Audit Rights
   1. The Provider must ensure that suitably qualified representatives attend progress meetings with the Council and provide progress reports when specified in the Specification.
   2. The Provider must keep and maintain full and accurate records and accounts on all matters related to the Contract for seven years after the date of expiry or termination of the Contract.
   3. The Provider must allow any auditor appointed by the Council access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
   4. The Provider must provide information to the auditor and reasonable co-operation at their request.
   5. If the Provider is not providing any of the Services, or is unable to provide them, it must immediately:
      * 1. tell the Council and give reasons;
        2. propose corrective action; and
        3. provide a deadline for completing the corrective action.
   6. If the Council, acting reasonably, is concerned as to the financial stability of the Provider such that it may impact on the continued performance of the Contract then the Council may:
      * 1. require that the Provider provide to the Council (for its approval) a plan setting out how the Provider will ensure continued performance of the Contract and the Provider will make changes to such plan as reasonably required by the Council and once it is agreed then the Provider shall act in accordance with such plan and report to the Council on demand; and
        2. if the Provider fails to provide a plan or fails to agree any changes which are requested by the Council or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Council notifies).

Part F – Statutory Compliance

1. Bribery and Fraud
   1. The Provider represents and warrants that neither it, nor to the best of its knowledge any of its Staff, have at any time prior to the Commencement Date:
      * 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;
        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.
   2. The Provider shall not during the term of this Contract:
      * 1. commit a Prohibited Act; and/or
        2. do or suffer anything to be done which would cause the Council or any of the Council’s employees, consultants, Providers, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Provider shall during the term of this Contract:
      * 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 Relevant Requirements and prevent the occurrence of a Prohibited Act; and
        2. keep appropriate records of its compliance with its obligations under clause 28.1 and make such records available to the Council on request.
   4. The Provider shall immediately notify the Council in writing if it becomes aware of any breach of clause 28.1 and/or 28.2, or has reason to believe that it has or any of the Provider Personnel have:
      * 1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
        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
        3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
   5. If the Provider makes a notification to the Council pursuant to clause 28.4, the Provider shall respond promptly to the Council’s enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 27.
   6. If the Provider is in default under clauses 28.1 and/or 28.2, the Council may by notice:
      * 1. require the Provider to remove from performance of this Contract any Provider Staff whose acts or omissions have caused the default; or
        2. immediately terminate this Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract.
   7. Any notice served by the Council under clause 28.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).
2. Equality and Diversity
   1. The Provider shall, and shall procure that its Staff shall, perform all its obligations under the Contract in accordance with:
      * 1. all applicable equality Law, including protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
        2. the Council’s equality and diversity policy as updated from time to time; and
        3. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law.
   2. The Provider shall at all times comply with the provisions of the Equality Act 2010 (as amended or replaced) and take all necessary steps, and inform the Council of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
   3. The Provider shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.
3. Modern Slavery & Human Trafficking
   1. The Provider shall at all times comply with
      * 1. all applicable anti-slavery and human trafficking Law from time to time in force including, but not limited to, the Modern Slavery Act 2015, the Gangmasters Licensing Act 2004, the National Minimum Wage Act 1998, and the Immigration Act 2016;
        2. the Council’s Modern Slavery Statement as amended from time to time; and
        3. all policies and procedures the Provider has in place.
   2. The Provider shall provide any information required by the Council including all information and reports requested:
      * 1. to allow the Council to make reports under the Transparency in Supply Chains Provision (s54) of the Modern Slavery Act 2015; and
        2. in relation to the processes the Council has in place as a result of its implementation of the Co-Operative Party’s Charter Against Modern Slavery.
   3. The Provider shall:
      * 1. have and maintain in place throughout the term of the Contract its own policies and procedures to ensure its compliance with anti-slavery and human trafficking Law;
        2. adopt and maintain in place a whistle-blowing policy which enables its Staff to disclose any suspected examples of modern slavery;
        3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
        4. include in its contracts with its direct Sub-Contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause; and
        5. implement due diligence procedures for its direct Sub-Contractors and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
   4. The Provider shall notify the Council as soon as it becomes aware of:
      * 1. any breach, or potential breach, of this clause 30; or
        2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
   5. Where the Provider becomes aware that a person(s) is or is suspected of being a victim of slavery or human trafficking they shall without undue delay notify the relevant public authority and put in place safeguarding measures to protect that person(s) from further immediate harm, and shall notify the Council at the earliest practicable opportunity of the fact and the actions taken.
   6. Breach by the Provider of this clause 30 shall constitute a material breach incapable of remedy.
4. Health and Safety Legislation
   1. The Provider shall (and shall ensure that all Staff, Sub-Contractors and other related parties shall) at all times comply with all relevant health and safety procedures which shall include the requirements of the Health and Safety at Work etc. Act 1974, all other applicable Law, its own health and safety policies and safe working systems (to be produced to the Council on request), any relevant health and safety plans for the Council Premises and, in respect of the Council’s Staff and others who may be affected by the provision of the Services, the Council’s health and safety policies and procedures.
   2. Each Party shall promptly notify the other of any incidents on the Council Premises or otherwise related to the provision of the Services which are or may give rise to a health and safety or an environmental hazard. The Provider shall instruct its Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
   3. Breach by the Provider of this clause 31 shall be deemed a material breach incapable of remedy
5. Environmental Law
   1. When working on Council Premises the Provider must perform its obligations in accordance with the Council's current policies in relation to the environment and sustainable communities as may be amended from time to time, and which deal with the Council’s approach 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, and in accordance with all applicable environmental Law.

* 1. The Provider acknowledges and agrees to support the Council’s commitments in relation to the environment and shall:
     + 1. gather and provide any information requested by the Council to demonstrate the Provider’s compliance with this clause 32; and
       2. participate in the development of local or regional multi-agency climate change quality indicators and or carbon reduction plans where required by the Council.

1. Fairtrade

Any commitments made in relation to Fairtrade certified standards in the supply chain of the Provider which were made as a result of a risk assessment during the Tender process shall be adhered to and delivered as per the Tender. Any KPIs linked to Fairtrade shall be monitored by the Council in accordance with the procedures set out at clause 14. Unless prior written consent of the Council to vary such commitments has been obtained, failure to meet this clause 33 shall be considered a material breach of the Contract.

1. Social Value
   1. Any commitments that the Provider has made in its Tender in relation to Social Value shall be adhered to and delivered as set out, unless prior written consent of the Council to vary such commitments has been obtained. Failure to do so shall be considered a material breach of the Contract.
2. Income Tax and National Insurance
   1. The Provider must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Council cannot terminate the Contract where the Provider has not paid a minor tax or social security contribution.
   2. Where the Provider or any Provider Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Provider must both:
      * 1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
        2. indemnify the Council against any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Services by the Provider or any of the Provider Staff.
   3. If any of the Provider Staff are Workers who receive payment relating to the Services, then the Provider must ensure that its contract with the Worker contains the following requirements:
      * 1. the Council may, at any time during the term of the Contract, request that the Worker provides information which demonstrates either that they comply with clause 35.2, or why those requirements do not apply the Worker. The Council can specify the information the Worker must provide and the deadline for responding;
        2. the Worker's contract may be terminated at the Council's request if the Worker fails to provide the information requested by the Council within the time specified by the Council.
        3. the Worker's contract may be terminated at the Council's request if the Worker provides information which the Council considers isn’t good enough to demonstrate how it complies with clause 35.2 or confirms that the Worker is not complying with those requirements;
        4. the Council may supply any information they receive from the Worker to HM Revenue and Customs for revenue collection and management.
   4. Breach by the Provider of this clause 35 shall be deemed a material breach incapable of remedy.
3. Taxation
   1. The Provider shall:
      * 1. not engage in any activity, practice or conduct which would constitute either:
           1. a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
           2. a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
        2. have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Provider) and to ensure compliance with clause 35.1(a);
        3. promptly report to the Council any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
        4. within 1 month of the date of the Contract, and annually thereafter, certify to the Council in writing signed by an officer of the Provider, compliance with this clause 36 by the Provider and all persons associated with it under clause 36.2. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
   2. The Provider shall ensure that any person associated with the Provider who is performing services and/or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this clause 35 (Relevant Terms). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms. For the purposes of this clause 36.2 a person associated with the Provider includes but is not limited to any Sub-Contractor of the Provider.
   3. Breach by the Provider of this clause 36 shall be deemed a material breach incapable of remedy.
4. Living Wage
   1. For the duration of the Term, the Provider shall and shall procure that its Sub-Contractors shall, pay the Real Living Wage (with all increases in the Real Living Wage to be applied within 30 days of taking effect).
   2. For the purposes of this clause 37, Real Living Wage shall refer to the “real living wage” for areas outside of London as defined by the Living Wage Foundation from time to time on its website, https://www.livingwage.org.uk/.
   3. Breach of this clause 37 shall be deemed a material breach.
5. Zero Hours Contracts
   1. For the duration of the Term, the Provider shall and shall procure that its Sub-Contractors shall, not employ or engage any person on a Zero Hours Contract without the prior written approval of the Council to the use of Zero Hours Contracts in respect of the Services.
   2. For the purposes of clause 38.1, Zero Hours Contract shall refer to a contract under which a person (the employee) is engaged or employed by another person or organisation (the employer) to work for the employer, but under which the employee has no expectation of being given work and the employer is not obliged to provide any work. For the purposes of this clause 38, it is not material whether or not the Zero Hours Contract contains provision restricting the employee from taking up other employment or work.
   3. Breach by the Provider of this clause 38 shall be deemed a material breach.
6. Transfer of Undertakings
   1. The Provider shall comply with all requirements under the Transfer of Undertakings Protection of Employees) Regulations 2006 and any related legislation including pension legislation which may be applicable to it on commencing delivery of the Services.
   2. As part of the Provider’s Exit Management it shall provide all necessary assistance in preparing for the expiry or termination of the agreement by providing relevant information to facilitate a transfer of undertaking.
7. Safeguarding
   1. The Provider shall comply with its obligations in respect of safeguarding as set out in the Specification and shall adopt the Council’s Safeguarding Policies.
   2. If requested by the Council, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

* 1. Where the nature of the Services as defined in the Specification means that they are in full or in part classified as a Regulated Activity, the Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under the Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
  2. The Provider shall:
     + 1. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
       2. monitor the level and validity of the checks under this clause 40 for each member of Staff;
       3. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
  3. The Provider warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the Regulated Activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
  4. The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 40 have been met.
  5. The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults.
  6. The Provider shall not be required to obtain DBS disclosure for Staff who will only have contact with vulnerable persons on an ad hoc or irregular basis for short periods of time and who will be escorted at all times whilst delivering the Services.
  7. Breach by the Provider of this clause 40 shall be deemed a material breach.

Part G – Liabilities and Indemnities

1. Indemnities
   1. Subject to the provisions of clause 42, the Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on Council Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider 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 or any applicable Law.
2. Liability
   1. Neither Party shall be liable, as far as is permitted by Law, to the other for any indirect special or consequential loss or damage in connection with the Contract, including any loss of (whether direct or indirect):
      * 1. profits;
        2. business;
        3. revenue;
        4. or damage to goodwill; and/or
        5. savings (whether anticipated or otherwise);
   2. Each Party shall use all reasonable endeavours to minimise and mitigate any loss or damage which it suffers and for which it is entitled to bring a claim against the other Party under or in connection with the Contract, including any indemnities.
   3. Notwithstanding any other provision in the Contract, neither Party limits or excludes its liability for:
      * 1. death or personal injury caused by its negligence, or that of its Staff;
        2. bribery, fraud or fraudulent misrepresentation by the Party or its Staff;
        3. breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
        4. any other act or omission, liability for which may not be limited under any applicable law
   4. Notwithstanding any other provision in the Contract, the Provider does not limit or exclude its liability for any indemnity given under clauses 3.4, 8.9, 11.4, 25.7, or 35.2(ii).
3. Insurance
   1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider arising out of the Provider’s performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. The Provider shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
   2. All insurance policies shall be maintained for the duration of the term and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
   3. The Provider shall provide evidence of such insurance policies as may be requested by the Council.
   4. If for any reason the Provider fails to give effect to and maintain the insurances required by this clause 43 the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
   5. The Provider shall not take any action or fail to take any reasonable action, or permit anything to occur which is within its control, which would entitle any insurer to refuse to pay any claim under any insurance policies.

The provisions of any insurance or the amount of cover shall not relive the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable to Provider to satisfy any liability under this Contract.

Part H – Termination and Exit

1. Termination Rights for the Council
   1. Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect or on the expiry of the period specified in the notice of termination by giving written notice to the Provider if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

**Termination on Insolvency and Change of Control**

* 1. Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect or on the expiry of the period specified in the notice of termination by giving written notice to the Provider if one or more of the following circumstances occurs or exists:
     1. there is a change of control of the Provider (within the meaning of section 1124 of the Corporation Tax Act 2010) which is not approved in writing in advance by the Council;
     2. there is a Provider Insolvency Event.

**Termination of Provider Default**

* 1. Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect or on the expiry of the period specified in the notice of termination by giving written notice to the Provider if one or more of the following circumstances occurs or exists:
     1. the Provider commits a default that is a material breach of this agreement;
     2. the Provider commits a default which is irremediable or which the Provider fails to remedy within 15 Business Days of being notified in writing to remedy;
     3. the Provider repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract
     4. the parties fail to agree a Service Rectification Plan in accordance with the Service Rectification Plan Process;
     5. the Provider fails to implement or successfully complete a Service Rectification Plan in accordance with the Service Rectification Process;
     6. the circumstances referred to in Clause 15.9 arise.
     7. the Provider fails to pay any amount due under this Contract on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
  2. In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider 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 of the Provider.
  3. For the purposes of clause 44.3.1 a material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from a substantial portion of the Contract.
  4. In deciding whether a material breach has occurred, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

1. Suspension of Contract
   1. Where the Council has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Council suspends the Contract it can provide the Services itself or purchase them from a third party.
   2. The Council can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
   3. The Parties must agree any necessary variation required by clause 45.1, but the Provider may not either:
      * 1. reject the variation; or
        2. increase the Charges.
   4. The Council shall retain its other rights that may be available, or subsequently available to it, in the event it acts on its rights under clause 45.1.
2. Termination Rights for the Provider
   1. If the Council does not pay an undisputed invoice within 30 days as provided in clause 11.5 then the Provider may issue a reminder notice. If the Council fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice the Provider may terminate the Contract with immediate effect by issuing a termination notice in writing.
   2. If the Provider terminates the Contract under clause 46.1:
      * 1. the Council must promptly pay all outstanding charges incurred to the Provider;
        2. the Council must pay the Provider reasonable committed and unavoidable losses as long as the Provider provides a fully itemised and costed schedule with evidence. The maximum value of this payment is limited to the total sum payable to the Provider if the Contract had not been terminated;
        3. clauses 47.1(iv) to 47.1(vii) will apply.
3. Consequences of Termination
   1. Where the Council terminates the Contract under clause 44.2 or 44.3 the following apply:
      * 1. the Provider is responsible for the Council's reasonable costs of procuring replacement Services for the rest of the Term;
        2. the Council's payment obligations under the terminated Contract stop immediately other than payments in respect of unpaid undisputed Charges for Services received up until the date of termination;
        3. any of the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination are not affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
        4. the Provider must promptly delete or return the Council Data except where required to retain copies by law;
        5. the Provider must promptly return any of the Council's property provided under the Contract;
        6. the Provider must, at no cost to the Council, give all reasonable assistance to the Council and any incoming Provider and co-operate fully in the handover and re-procurement of the Contract;
        7. any clauses which are expressly or by implication intended to continue shall survive the termination of the Contract.
4. Exit Management
   1. The Provider shall within 6 months of the Commencement Date provide to the Council a draft Exit Management Plan, in accordance with the principles set out in Schedule 4. Where the Provider fails to provide an Exit Management Plan within this time-period, the provisions of Schedule 6 shall become the Exit Management Plan and shall not be replaced or amended without the written consent of the Council.
   2. The parties shall then co-operate in order to finalise the Exit Management Plan. Where the parties are unable to agree a final version of this initial Exit Management Plan, the Council shall be entitled to make the final decisions in respect of any matter which cannot be agreed.
   3. The Provider shall keep the Exit Management Plan under review throughout the duration of the Term (taking into account at all times the principles set out in Schedule 4) and shall within 3 months following the end of each year of the Contract report to the Council on any changes reasonably required to the Exit Management Plan in order to ensure the plan remains appropriate.
   4. Either party may, at any time during the Term, propose amendments to the Exit Management Plan. If the proposals are accepted, the Provider shall prepare an updated Exit Management Plan incorporating the agreed amendments.
5. Business Continuity
   1. The Provider shall within 6 months of the Commencement Date prepare in draft a plan (Business Continuity Plan) which shall be presented to the Council. The Business Continuity Plan must contain:
      * 1. Descriptions and definitions of Business Continuity Incidents covered by the Business Continuity Plan;
        2. The procedures to be adopted by the Provider in the event of a Business Continuity Incident (including the procedures to be taken by the Provider in planning and providing for any such event);
        3. What protections will be put in place for the Council to secure continuity of provision of the Services;
        4. How impact on service users will be minimised or eliminated;
        5. Time-scales for recovery to full Service provision;
        6. Interim KPIs where the KPIs cannot be attained by reason of a Business Continuity Incident;
        7. Regular reviews of the Business Continuity Plan and detail of how frequently the Business Continuity Plan will be updated;
        8. Such other matters as the Council may reasonably require.
   2. Once the Council has approved a Business Continuity Plan, the Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.
   3. Any updates to the Business Continuity Plan shall be notified to the Council who may make representations prior to implementation of the update(s). The Council shall be provided with no less than 15 Business Days in which to make such representations.
   4. The Council shall be entitled to receive copies of the Business Continuity Plan on demand.
   5. Following the declaration of a Business Continuity Incident in respect of any of the Services, the Provider shall:
      * 1. implement the Business Continuity Plan;
        2. continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
        3. restore the affected Services to normal within the period laid out in the Business Continuity Plan.
   6. To the extent that the Provider complies fully with the provisions of this clause 49 (and the reason for the declaration of a Business Continuity Incident was not breach of any of the other terms of the Contract on the part of the Provider), the KPIs to which the affected Services are to be provided during the continuation of the Business Continuity Incident shall not be the KPIs as referred to in the Specification but shall be the interim KPIs set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.
6. Force Majeure
   1. Subject to the remaining provisions of this clause, any Party affected by a Force Majeure Event shall be excused from liability for non-performance of or delay in fulfilling its obligations under the Contract while the Force Majeure Event continues.
   2. In the event that a Party is affected by a Force Majeure Event that will result in non-performance or delay, it shall
      * 1. immediately notify the other Party in writing, providing details of the Force Majeure Event, its commencement date, the extent of such non-performance or delay prevention, and its estimated duration;
        2. provide as soon as reasonably possible details of any action the Party proposes to take to mitigate the effect of the Force Majeure event;
        3. use all reasonable measures practical and in accordance with Good Industry Practice to mitigate the impact of the Force Majeure Event; and
        4. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract.
   4. A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Provider cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
   5. Any non-performance or delay by the Provider 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 Provider.
   6. Either Party can partially or fully terminate the Contract if the provision of the Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.

Part I – Miscellaneous

1. Waiver
   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 prevent or restrict the further exercise of that or any other right or remedy.
   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 57.
2. Rights and Remedies
   1. 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.
   2. The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.
3. Severability
   1. If any provision or part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable for any reason, such provision or part shall be severed and the remainder of the Contract shall continue in full force and effect.
   2. If one Party gives notice to the other of the possibility that any provision or part-provision of the Contract is unlawful, void or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
4. Partnership & Agency
   1. Nothing in this Contract is intended to or shall be construed to establish create a partnership, joint venture or employment relationship between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

* 1. The Provider shall not be, or be considered as, an agent of the Council and the Provider shall not hold itself or its Staff out as being authorised to enter in any contract on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party.

1. Novation and Assignment and Sub-Contracting
   1. Subject to clause 55.4 neither Party shall assign, novate or otherwise dispose of any or all of its rights and obligations under the Contract without the prior written consent of the other Party, neither may the Provider sub-contract the whole or any part of its obligations under the Contract except with the express prior written consent of the Council, such consent not to be unreasonably withheld. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.
   2. In the event that the Provider enters into any Sub-Contract in connection with the Contract it shall:
      * 1. be responsible for the acts and omissions of its Sub-Contractors as though they are its own;
        2. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Contractor complies with such terms; and
        3. provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such from the Council.
   3. Provided that the prior written consent of the Council has been obtained, the Provider shall be entitled to novate the Contract in the following circumstances:
      * 1. where the change in Provider was provided for in the procurement process for the award of the contract; or
        2. where there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of the Contract.
   4. The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council, provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under the Contract
   5. If the rights and obligations of the Council under the Contract are assigned, novated or otherwise disposed of to body which is not public sector body the Provider shall have the rights of termination as set out in clause 44.2.2 available to it.
2. Third Party Rights
   1. No third parties may use the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract unless stated in the Contract. This does not affect third party rights and remedies that exist independently from the Contracts (Rights of Third Parties) Act.
   2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.
3. Notices
   1. All notices under the Contract must be in writing, marked for the attention of the other Party’s Representative and signed by or on behalf of the Party giving it.
   2. A notice shall be sent either:
      * 1. by letter, delivered by hand or by pre-paid first-class post or other next working day delivery service; or
        2. by email.
   3. Notices shall, unless returned undelivered, be deemed received:
      * 1. On the day of delivery if delivered by hand before 17:00 on a Business Day;
        2. After two Business Days if sent by post or other delivery service; or
        3. Upon transmission if sent by email, or 09:00 on the next Business Day if transmitted outside business hours

or sooner where the other Party acknowledges receipt of such notice.

* 1. The address of each Party shall be its address stated in the Award Letter and/or Tender.
  2. Either Party may change its address for service by serving a notice in accordance with this clause 57.
  3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

1. Entire Agreement
   1. The provisions incorporated into the Contract, the Schedules, and the documents annexed to it or otherwise referred to in it constitute the entire agreement between the Parties. The Contract supersedes, cancels and nullifies all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. Each Party acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.
   3. Nothing in this clause 58 shall operate to exclude fraud or fraudulent misrepresentation.
2. Conflict of Interest
   1. The Provider acknowledges and agrees that no Conflict of Interest exists between the Provider, its Staff or any Sub-Contractor and the Council at the date of the Contract and the Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual or a potential Conflict of Interest.
   2. The Provider must promptly notify and provide details to the Council if a conflict of interest happens or is expected to happen.
   3. The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest. 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.
3. Assistance in Legal and Other Proceedings

* 1. The Provider shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or anticipated legal proceedings in which the Council is or may be involved or any relevant internal disciplinary hearing at the Council.
  2. The Provider shall ensure that its servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.
  3. If required by the Council to do so, the Provider shall throughout the Term and for a period of six (6) years after expiry of the Contract give all reasonable assistance to the Council including attending the Council’s Scrutiny and/or Executive in order to answer questions pertaining to the Contract should the need arise.
  4. In the event that the Council requires the Provider’s assistance after the expiry of the Contract as referred to in clause 60.3 the Council shall pay the reasonable expenses of the Provider arising as a result of providing such assistance.

1. Counterparts
   1. This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.
   2. No single counterpart shall be effective until each Party has executed at least one counterpart.
2. Governing Law & Jurisdiction
   1. This Contract and any issues arising out of, or connected with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and interpreted in accordance with English Law.
   2. The Parties submit to the exclusive jurisdiction of the English courts to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

**[DN: Execution Page to be updated as required depending on whether a contract is to be signed as a deed or simple contract. Council CSOs contain guidance on when a contract should be a deed, as can Legal Services Commercial Team – contact Team Leader, PCD Team]**

[DN: For DEEDS]

**IN WITNESS WHEREOF** this Contract has been executed by the duly authorised representatives of the Parties on the date shown at the beginning of this Contract.

**EXECUTED AS A DEED**

by affixing the common seal

of **CITY OF BRADFORD**

**METROPOLITAN DISTRICT**

**COUNCIL** in the presence of:

Authorised by City Solicitor

**EXECUTED AS A DEED** by

[Insert name of Provider]

acting by [a director and its secretary] /

[two directors] (delete as appropriate)

Signature of Director:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of [Secretary][Director]:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[DN: For SIMPLE CONTRACTS]

**IN WITNESS WHEREOF** the Parties have signed this Contract on the date shown at the beginning of this Contract

SIGNED: ……………………………………………….….

for and on behalf of **City of Bradford Metropolitan District Council** by

(Full name of signatory in capitals) ……………………………………………….….

Title ……………………………………………….….

SIGNED: ……………………………………………….….

on behalf of [Insert name of Provider]

(Full name of signatory in capitals) ……………………………………………….….

Position (Director/Secretary) ……………………………………………….….

Schedule 1 Service Specification

[Published Specification to be inserted]

Schedule 2 Charges

[Provider’s Price Schedule to be inserted]

Schedule 3 Tender Return

[Provider’s Tender to be inserted]

Schedule 4 Exit Management

This Schedule sets out the minimum requirements and principles to be applied in relation to the preparation and review of the Exit Management Plan. Where an Exit Management Plan has not been prepared, the provisions of this Schedule shall be construed, for the purposes of the Contract, as the final Exit Management Plan.

**1. INTERPRETATION**

In addition to the definitions set out in clause 1, the following shall apply in respect of this Schedule:

**Assistance Period:** the period of 6 months from the Termination Date or such longer time period as the parties may agree.

**Council Data:** all Personal Data and other information belonging or originating with the Council or any of its subsidiaries and only held or processed by the Provider (or any of its subcontractors) for or on behalf of the Council in relation to the Services or the Contract.

**Emergency Exit**: shall refer to termination of the Contract pursuant to clause 44 or 46.

**Exit Manager**: the person appointed by each party pursuant to paragraph 2.3 of this Schedule to have responsibility over the implementation of the Exit Management Plan and managing any termination of the Contract.

**Ordinary Exit**: shall refer to the termination of the Contract by expiry of the Term.

**Service Assets:** the assets which are used in the provision of the Services (including Council Data held by the Provider which is not held on behalf of the Council), whether or not such assets are leased by, owned or licensed to or in the possession or control of the Provider or its Sub-Contractors or the Council.

**2. PRINCIPLES**

2.1 The principles to be applied and considered in respect of the drafting, review and

carrying out of the Exit Management Plan shall be:-

(a) Minimising any disruption to the continued operation of the Services;

(b) Any transition of the Services from the Provider to the Council or a replacement Provider must be smooth, orderly and efficient;

(c) There shall be minimal impact on service users (where the Services are supplied to third parties or individuals on behalf of the Council);

(d) The parties shall co-operate and act in good faith throughout any termination of the Contract.

2.2 The Provider is required to ensure the orderly transition of the Services from the Provider to the Council and/or any Replacement Provider in the event of termination (including partial termination) or expiry of the Contract. This Schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Management Plan. For the avoidance of doubt, the Provider shall be responsible for the overall management of the exit and service transfer arrangements.

2.3 Each party will appoint an Exit Manager and provide written notification of such appointment to the other party:

(a) In the case of expiry of the Contract, no less than 3 months prior to the expiry date; or

(b) In the case of early termination of the Contract in accordance with its terms, within 7 days of the Termination Date.

2.4 The Provider's Exit Manager will be responsible for ensuring that the Provider and the Provider’s Personnel, its agents and Sub-Contractors comply with this Schedule. The Provider will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Provider as are reasonably necessary to enable the Provider to comply with the requirements set out in this schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of the Contract and all matters connected with this Schedule and each party's compliance with it.

**3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

3.1 Subject to paragraph 3.2 of this Schedule, on reasonable notice, the Provider shall provide to the Council and/or (subject to the potential Replacement Provider entering into reasonable written confidentiality undertakings) to its potential Replacement Provider, the following material and information in order to facilitate the preparation by the Council of any invitation to tender and/or to facilitate any potential Replacement Provider undertaking due diligence:

(a) details of the Services and services provided as part of it;

(b) details of the Service Assets (including make, model and asset number) and details of their condition and physical location;

(c) details of and information relating to the use of the Service Assets (including technical specifications);

(d) an inventory of the Council Data in the Provider's possession or control;

(e) all information relating to potential transferring employees required to be provided by the Provider under Schedule 7.

3.2 The Provider shall not be required to comply with the provisions of paragraph 3.1 before service of a notice to terminate the Contract or in the period which is more than six months before the Expiry Date.

**4. MINIMUM REQUIREMENTS**

4.1 The Exit Management Plan will contain, as a minimum:

(a) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Provider of all such reasonable assistance as the Council shall require to enable the Council or its sub-contractors to provide the Services;

(b) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and

(c) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

4.2 In addition, the Exit Management Plan shall:

(a) document how the Services will transfer to the Council and/or the Replacement Provider, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Council's technology components from any technology components operated by the Provider or its Sub-Contractors (where applicable);

(b) document how it will deal with the removal of the Service Assets and, where required by the Council reinstatement of any Council Premises on cessation of the Services;

(c) specify the scope of the Termination Services that may be required for the benefit of the Council (including such of the services set out in paragraph 6.1 below as are applicable) and detail how such services would be provided (if required), during the Assistance Period;

(d) set out procedures to deal with requests made by the Council and/or Replacement Provider for staffing information;

(e) address each of the issues set out in this schedule to facilitate the transition of the Services from the Provider to the Replacement Provider and/or the Council with the aim of ensuring that there is no disruption to or degradation of the Services during the Assistance Period;

(f) provide a timetable and identify critical issues for providing the Termination Services; and

(g) set out the management structure to be put in place and employed during the Assistance Period.

**5. ASSISTANCE PERIOD**

5.1 During the Assistance Period or such shorter period as the Council may require, the Provider will continue to provide the Services (unless the Council determines it does not require the Provider to do so) and will, at the request of the Council pursuant to paragraph 5.5, provide the Termination Services.

5.2 During the Assistance Period, the Provider will, in addition to providing the Services and providing the Termination Services, provide to the Council any reasonable assistance requested by the Council to allow the Services to continue without interruption following the termination or expiry of the Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Council and/or any Replacement Provider.

5.3 The continued performance of the Services during the Assistance Period and provision of any Termination Services shall continue to adhere to the KPIs (insofar as these remain relevant).

5.4 The parties acknowledge that the migration of the Services from the Provider to the Council and/or its Replacement Provider may be phased, such that certain parts of the Services are handed over before others.

5.5 The Council shall be entitled to require the provision of Termination Services by notifying the Provider in writing as soon as reasonably practicable. The notice requiring Termination Services shall specify the:

(a) date from which Termination Services are required;

(b) the nature of the Termination Services required; and

(c) the period during which it is anticipated that Termination Services will be required which shall continue no longer than 24 months after the date that the Provider ceases to perform the Services.

**6. TERMINATION SERVICES - MEANING**

6.1 The Termination Services to be provided by the Provider (either directly or through any Sub-Contractors) shall include, without limitation, such of the following services as the Council may specify:

(a) notifying the Sub-Contractors (if any) of procedures to be followed during the Assistance Period and providing management to ensure these procedures are followed;

(b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Council and/or Replacement Provider after the end of the Assistance Period;

(c) providing details of work volumes and staffing requirements over the 12-month period immediately prior to the commencement of the Termination Services;

(d) with respect to work in progress as at the end of the Assistance Period, documenting the current status and stabilising for continuity during transition;

(e) providing the Council with any problem logs which have not previously been provided to the Council;

(f) providing assistance and expertise as necessary to examine all governance and reports in place for the performance of the Services and re-writing and implementing these during and for a period of 12 months after the Assistance Period;

(g) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the performance of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Assistance Period;

(h) reviewing all software packages and data-sets used in connection with the Services and providing details of these to the Council and/or Replacement Provider;

(i) making available to the Council and/or Replacement Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Council (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with the Council at the time of termination or expiry;

(j) the provision of an information pack listing and describing the Services for use by the Council in the procurement of the Replacement Services;

(k) answering all reasonable questions from the Council and/or Replacement Provider regarding the Services;

(l) agreeing with the Council and/or Replacement Provider a plan for the migration of the Council Data and all other information required for the performance of the Services to the Council and/or Replacement Provider. The Provider will fully co-operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;

(m) the provision of access to the Council and/or Replacement Provider during the Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to the Council and/or Replacement Provider:

(i) to information and documentation relating to the Services that is in the possession or control of the Provider or its Sub-Contractors (and the Provider agrees and shall procure that its Sub-Contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

(ii) following reasonable notice and during the Provider’s normal business hours, to members of the Provider’s Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Provider or its Sub-Contractors.

**7. KNOWLEDGE TRANSFER**

7.1 During the Assistance Period, the Provider will:

(a) transfer all training material and provide appropriate training to those Council and/or Replacement Provider staff responsible for internal training in connection with the performance of the Services;

(b) provide for transfer to the Council and/or Replacement Provider of all knowledge reasonably required for the performance of the Services which may, as appropriate, include information, records and documents; and

(c) provide the Council and/or Replacement Provider with access to such members of the Provider’s Personnel or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Provider or its Sub Contractors.

7.2 To facilitate the transfer of knowledge from the Provider to the Council and/or Replacement Provider, the Provider shall provide a detailed explanation of the procedures and operations used to perform the Services, the change management process and other standards and procedures to the operations personnel of the Council and/or Replacement Provider.

7.3 The information which the Provider shall provide to the Council and/or Replacement Provider pursuant to paragraph 7.1 above will include:

(a) copies of up-to-date procedures and operations manuals;

(b) product information;

(c) agreements with third party suppliers of goods and services which are to be transferred to the Council and/or Replacement Provider;

(d) key support contact details for third party suppliers’ personnel under contracts which are to be assigned or novated to the Council and/or Replacement Provider pursuant to this Schedule;

(e) information regarding any unresolved faults in progress or disputes at the commencement of the Assistance Period as well as those expected to be in progress at the end of the Assistance Period; and

(f) details of physical and logical security processes and tools which will be available to the Council and/or Replacement Provider,

7.4 During the Assistance Period the Provider shall grant any agent or personnel (including employees, consultants and suppliers) of the Council and/or Replacement Provider access, during business hours and upon reasonable prior written notice, to any of the Provider’s premises and/or sites for the purpose of effecting a prompt knowledge transfer provided that any such agent or personnel (including employees, consultants and suppliers) having access to any such premises and/or sites under this paragraph shall sign a confidentiality undertaking in favour of the Provider (in such form as the Provider shall reasonably require).

1. <https://www.ncsc.gov.uk/cyberessentials/overview> [↑](#footnote-ref-1)