

DATE [insert date of the last signature on the contract]:

(1)

Huntingdonshire District Council

and

(2)

[Contractor]

Contract for [insert title of Goods/Services contract]:

This Contract is dated the [insert date of the last signature on the contract]

Between

- 1) Huntingdonshire District Council (“Council”) whose address is Pathfinder House, Huntingdon, PE28 4RR and
- 2) [insert the name of the Contractor](Company No. [insert company number for limited companies]) whose address for all purposes of the Contract (including Services of documents and proceedings) is [insert the address of the Contractor] (“Contractor”)

together the “Parties”

The Contract

1. The Contract is the contract between the Parties for the provision of the Goods and Services by the Contractor to the Council and incorporates:
 - 1.1. the Terms and Conditions;
 - 1.2. the Specification; and,
 - 1.3. the Contractor’s Tender.
2. The Specification is the description of the Council’s requirements for the Goods and Services. The Specification is set out in Schedule 1.
3. The Contractor’s Tender is the Contractor’s offer to provide the Goods and Services in accordance with the Specification and is set out in Schedule 2.

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

<p>Signed for and on behalf of Huntingdonshire District Council by:</p> <p>Note: The Contract must be signed by the Head of Service or Director for the relevant department.</p>	<p>Signature:</p> <p>Name (IN CAPITALS):</p> <p>Post:</p>
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<p>Signed for and on behalf of [insert name of Contractor] by:</p> <p>Note: The Contract must be signed personally by someone authorised to commit the Contractor to the Contract. This will usually be a director (if the Contractor is a company), a partner (if the Contractor is a partnership) or the sole owner of a firm.</p>	<p>Signature:</p> <p>Name (IN CAPITALS):</p> <p>Designation:</p>
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Contract Information

Description of Goods/Service:

Contract Length

Start date:

End date:

The length of the Contract may be extended in accordance with clause 3.2 of the terms and conditions of contract by the following periods:

Maximum duration of any single extension:[insert number of months]

Maximum total duration of extension:[insert number of years]

Any extension must be made in writing in accordance with the terms of the Contract.

Contract Management Information

Council's Manager:

Name:

Phone:

Email:

Contractor's Manager:

Name:

Phone:

Email:

Contract Sum - Payable as follows (refer to separate sheet if necessary)

Accounting Period (e.g. calendar monthly/on invoice)*

*If blank refer to Specification or Contractor's Tender

Supplier's email address for:

- receipt of Purchase Orders
- receipt of remittance advice
- general correspondence

* The email addresses provided by the Supplier will be used for all relevant communication and it is the responsibility of the Supplier to ensure that email addresses are correct and inboxes monitored on a frequent basis.

Council's email address for receipt of invoices and credit notes sent to it by the Contractor - AP.Invoices@huntingdonshire.gov.uk

Terms and Conditions

1. Status of the Contract

1.1. By entering into this Contract:

1.1.1. the Contractor states that the Contractor's Tender is accurate and includes everything necessary for the Contractor to meet its obligations under the Contract; and,

1.1.2. the Council accepts the Contractor's Tender.

1.2. The Contract is the sole and entire agreement between the Parties for the provision of the Goods and Services and supersedes all negotiations, submissions, representations or undertakings in respect of the Goods and Services that took place before it was signed.

1.3. These terms and conditions of contract take precedence over the Specification and the Specification takes precedence over the Contractor's Tender.

2. Definitions

2.1. In this Contract the following words and phrases have the meanings given in this clause:

Contractor's Manager means the Contractor's Contract Manager appointed by the Contractor to manage the Goods and Services on its behalf as shown in the Contract Data;

Council means Huntingdonshire District Council;

Council's Manager means the Contract Manager authorised by the Council to manage the Contract on its behalf at a day-to-day operational level as shown in the Contract Data;

Confidential Information means any information however it is conveyed or on whatever media it is stored which:

- (i) has been designated as confidential by either Party in writing;
- (ii) would reasonably be considered confidential;
- (iii) information which if disclosed would, or would be likely to, prejudice the commercial interests, trade secrets, intellectual property rights or know-how of either Party;

Contract Data means the contract data sheet making up part of this contract laying out certain information as amended from time to time;

Date of Delivery means that date by which the Goods must be Delivered to the Council, as specified in the Contract;

Deliver means to hand over the Goods to the Council at the address and on the date specified in the Contract, which shall include fully unloading the Goods and any other specific arrangements agreed in accordance with clause 5. "Delivered" and "Delivery" shall be construed accordingly;

Disclosure and Barring Service means the body of that name or any organisation with the same function, whatever its name, by which it may be replaced;

DPA means Data Protection Act 2018;

DPL means the Data Protection Act 2018, the general Data Protection Regulation (EU2016/679), the Law Enforcement Directive (EU 2016/680);

EIR means the Environmental Information Regulations 2004;

End Date means the date on which the Contract will end as recorded in Contract Data as changed if the Contract is extended.

Extended Contract Period means any period after the expiry of the Initial Contract Period for which the term of the Contract is extended;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event means:

- (i) war, civil war, armed conflict or terrorism;
- (ii) nuclear, radioactive, sonic damage, chemical or biological explosion or contamination unless this is the result of an action by the Contractor; or,

(iii) fire, explosion, storm, riot and civil commotion, tempest, flood, volcanic eruption or earthquake

which directly causes a Party to be unable to meet all or a material part of its obligations under this Contract;

Goods and Services means the goods and/or the services to be provided by the Contractor to the Council under the Contract;

Initial Contract Period means the length of this Contract shown in Contract Data at the time the Contract was signed;

IPR means all patents, rights to inventions, utility models, copyright and related rights, trademarks, Services marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Law means any law, sub-ordinate legislation within the meaning of Section 21(1) Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or directives or requirements with which the Supplier is bound to comply;

Month means a calendar month;

Normal Working Hours means between 09:00 to 17:30 on all Working Days;

Performance Indicator means any measure of the Contractor's performance of the Goods and Services that may affect payment which are set out in the Specification or Contractor's Tender;

Personnel means the employees, agency personnel or sub-contractors of an organisation;

Prohibited Act means:

- (i) defrauding, attempting to defraud or conspiring to defraud the Council;
- (ii) directly or indirectly offering, promising or giving a an advantage of any kind to an elected member of the Council or Council Personnel to induce that person to improperly perform a function or activity or rewarding that person for improper performance of a function or activity;
- (iii) directly or indirectly requesting, agreeing to receive or accepting an advantage of any kind for improper performance of a function or activity in connection with the Contract;
- (iv) committing an offence under the Bribery Act 2010;

- (v) committing any offence under section 117(2) of the Local Government Act 1972; or,
- (vi) committing an offence of fraud;

Price means the sums payable by the Council to the Contractor for the Goods and Services as set out in the Contractor's Tender or as otherwise varied in accordance with the contract;

Purchase Order means any order for Goods and Services raised by the Council and placed with the Contractor pursuant to the Contract;

Regulatory Body means any of those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, are legally entitled to regulate the matters dealt with in the Contract or any other affairs of the Council;

Request for Information means a request for information made under the FOIA and/or the EIR;

Start Date means the date on which the Contract will start as recorded in the Contract Data;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014; **Working Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in England and Wales.

2.2. The interpretation and construction of these terms and conditions of contract will be subject to the following provisions:

2.2.1. words meaning the singular include where the context allows the plural and vice versa and masculine words include the feminine and the neuter;

2.2.2. reference to a clause is a reference to the whole of that clause unless stated otherwise;

2.2.3. reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted along with any subsidiary statutory provisions made from time to time together with any guidance or codes of practice issued by a regulatory body or relevant government department in relation to the regulations or legislation ;

2.2.4. reference to any person includes 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;

2.2.5. the words “include”, “includes” and “including” are to be read as if they were immediately followed by the words “without limitation”; and

2.2.6. headings are included for ease of reference only and will not affect the interpretation or construction of these terms and conditions of contract.

3. Term

3.1. The Contract begins on the Start Date and will terminate on the End Date unless it is terminated in accordance with this Contract or in another lawful way.

3.2. The Council may extend the Contract for the further periods shown in Contract Data if it gives the Contractor at least 1 month’s written notice from the End Date.

3.3. The Parties may extend the contract.

4. Provision of the Goods and Services

4.1. The Contractor will provide the Goods and Services:

4.1.1. to the standards laid out in the Specification and in accordance with the Contractor’s Tender;

4.1.2. to all applicable standards and codes of practice or conduct of any appropriate professional bodies, trade associations or regulators; and,

4.1.3. with all due skill, care and diligence to be expected of a competent contractor experienced in providing services of the type, size and scope of the Goods and Services.

4.2. The Contractor will supply the Goods and Services to the Council and comply with these terms and conditions of contract and with all the requirements and provisions of the Specification when providing the Goods and Services. In supplying the Goods and Services, the Supplier will co-operate with the Council in all matters relating to the supply of Goods and Services and comply with all the Council’s instructions.

4.3. This is not an exclusive contract and the Council is entitled to enter into other contracts and arrangements with other providers for the provision of any or all goods and services which are the same as or similar to the Goods and Services.

- 4.4. The Council does not promise or guarantee the total quantity or value of the Goods and Services and the Contractor agrees that it has not entered into the Contract on the basis of any such promise or guarantee.
- 4.5. The quantity or value of the Goods and Services or of the Contract in any year does not give any right to a particular quantity or value of the Goods and Services or of the Contract in any subsequent year.
- 4.6. The Contractor will provide all premises, facilities, equipment, materials, personnel and anything else required for the proper performance of the Contract at its own cost.
- 4.7. All Goods supplied to the Council by the Contractor under this agreement shall:
 - 4.7.1. conform to the Specification, the Contractor's Tender and the relevant Purchase Order;
 - 4.7.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Contractor;
 - 4.7.3. be free from defects in material and workmanship and remain so for 12 months after Delivery; and,
 - 4.7.4. be free from design defects;
 - 4.7.5. comply with all applicable statutory and regulatory requirements; and,
 - 4.7.6. The approval by the Council of any designs provided by the Contractor shall not relieve the Contractor of any of its obligations under this sub-clause;
- 4.8. The Contractor warrants that the intellectual property in the products of the Goods does not infringe the rights of any third party.
- 4.9. The Contractor will be responsible for the activities of its Personnel engaged in the provision of the Goods and Services.
- 4.10. The Contractor will engage sufficient competent, qualified and experienced Personnel to ensure that the Goods and Services are provided at all times and in all respects in accordance with this Contract.
- 4.11. Use its best endeavours to ensure that its Personnel engaged in the provision of the Goods and Services will comply with all applicable laws, statutes, regulations and codes from time to time in force whether or not they are detailed in this Contract.

5. Delivery

- 5.1. The Contractor shall Deliver the Goods to the Council by the relevant Date of Delivery.
- 5.2. Delivery shall be on the date and to the address specified in the Contract or the relevant Purchase Order.
- 5.3. Delivery of the Goods shall be complete on completion of unloading the Goods at the Delivery address and the Council has signed for the Delivery.
- 5.4. Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 5.5. Unless otherwise expressly stipulated by the Council in the Contract or relevant Purchase Order, Deliveries shall only be accepted by the Council on Working Days and during Normal Working Hours.
- 5.6. Where:
 - 5.6.1. the Contractor fails to Deliver the Goods or part of the Goods; or,
 - 5.6.2. the Goods or part of the Goods do not comply with the provisions of clauses 5.1-5.4then without limiting any of its other rights or remedies implied by statute or common law, the Council may:
 - 5.6.3. terminate the Contract or the Contract as it relates to the Goods in question;
 - 5.6.4. request the Contractor, free of charge, to deliver substitute Goods within the timescales specified by the Council;
 - 5.6.5. require the Contractor, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 5.6.6. reject the Goods (in whole or part) and return them to the Contractor at the Contractor's own risk and expense and the Council shall be entitled to a full refund on those Goods or part of Goods duly returned;
 - 5.6.7. buy the same or similar Goods from another contractor; or,
 - 5.6.8. recover any expenses incurred in respect of buying the goods from another contractor which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

6. Property and Guarantee of Title

- 6.1. Title and risk in the Goods shall pass to the Council when Delivery of the Goods is complete.
- 6.2. The Supplier warrants that it has full clear and unencumbered title to all the Goods.
- 6.3. On Delivery the Council shall acquire a valid and unencumbered title to the Goods.

7. Cancellation

- 7.1. The Council shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Council provided the cancellation is in writing.
- 7.2. If it cancels an order, the Council shall pay:
 - 7.2.1. the Price or that part of the Price for Goods which have been Delivered to the Client
 - 7.2.2. the deemed date of service of the cancellation notice, are already in transit; or,
 - 7.2.3. the costs of materials purchased to fulfil the order and which cannot be used for other orders or be returned to the materials' supplier.

For the avoidance of doubt the Council shall not be liable for any loss of anticipated profits or any consequential loss.

8. Contract Management

- 8.1. The Council will appoint a Council's Manager and the Contractor will appoint a competent, qualified and experienced person to act as a Contractor's Manager and the Parties will inform the other immediately of any change in appointment.
- 8.2. The Contractor's Manager will be authorised to act on behalf of the Contractor for all purposes connected with the Contract and any statement or direction given to the Contractor's Manager will be deemed to have been given to the Contractor.
- 8.3. If the Contractor requires an explanation or clarification of part of the Contract it will contact the Council's Manager, and will accept and comply with the Council's Manager's explanation or direction which will be given or confirmed in writing.

- 8.4. From time to time the Council's Manager may appoint one or more other persons to act as their deputy and will notify the Contractor of any appointments.
- 8.5. The Contractor's Manager must be available during Normal Working Hours; if the Contractor's Manager is unavailable because of holiday, sickness or statutory daily breaks, they must nominate a deputy to perform their duties.
- 8.6. The Council's Manager, acting reasonably, may because of the nature of the Goods and Services or the locations at which it is to be provided or by virtue of the behaviour of any of the Contractor's Personnel, require the Contractor to remove certain Personnel from the provision of the Goods and Services by giving the Contractor's Manager written notice to that effect, stating the reasons.
- 8.7. The Contractor will remove the Personnel referred to in 8.6 immediately and will as soon as practicable provide replacement Personnel of appropriate skills and experience.
- 8.8. For the avoidance of doubt, removal of any Contractor's Personnel from the provision of the Goods and Services does not mean dismissal from the employment of or cessation of Goods and Services to the Contractor and the Council will not be liable either to the Contractor or to any of its Personnel in respect of any liability, loss or damage as a result of that removal.
- 8.9. The Contractor's Manager and Council's Manager will meet as laid out in the Specification, or as otherwise agreed from time to time by the Parties, in order to monitor the Contractor's performance under the Contract.

9. Price

- 9.1. The Price will be calculated as laid out in the Contractor's Tender
- 9.2. The Price will remain unchanged during the Initial Contract Period unless it is varied under clause 27.
- 9.3. If the Contract is extended, the Price will be increased every year by the most recently published CPI rate.
- 9.4. If the Parties agree to alter the Goods and Services or Price as described in clause 24, the altered Goods and Services or Price will be subject to review in accordance with clause 9.3.

10. Payment

- 10.1. The Contractor will submit invoices to the Council using the process and timing laid out in the Specification.

- 10.2. All invoices must contain:
 - 10.2.1.all appropriate references including the Council Purchase Order number and
 - 10.2.2.a detailed breakdown of the Goods and Services supplied and that it is supported by
 - 10.2.3.any other documentation stipulated in the Specification
 - 10.2.4.any other documentation that is reasonably required by the Council to substantiate the invoice.
- 10.3. The Contractor will add VAT to the Price at the prevailing rate as applicable.
- 10.4. The Council will pay each agreed, correct and valid invoice together with a sum equal to the VAT chargeable on the amount payable within thirty (30) days of whichever is the later of receipt of the invoice or receipt of the goods and services.
- 10.5. The Council may reject as invalid any invoice that is not legibility annotated with the relevant Purchase Order number and/or require a replacement valid invoice to be submitted by the Contractor.
- 10.6. If the Parties have a dispute about an invoice:
 - 10.6.1.the Council will pay any undisputed part of the invoice;
 - 10.6.2.the Contractor will continue to supply the service; a dispute about an invoice does not allow it to suspend or terminate the supply of the Goods and Services; and,
 - 10.6.3.the Parties will resolve the dispute using the dispute resolution procedure laid out in clause 25.
- 10.7. The Contractor will indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs, which the Council is required to pay at any time in respect of the Contractor's failure to account for or to pay any VAT connected with to payments made to the Contractor under the Contract; the Contractor will pay any amounts due under this clause to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.
- 10.8. If the Contractor owes money to the Council for any reason connected with this contract then the Council may deduct that money from any sum owed by the Council to the Contractor, whether connected with this contract or not, without the Contractor needing to agree. The Contractor cannot make any claim against the Council in order to withhold payment of any such amount in whole or in part.

11. Intellectual Property

- 11.1. The Contractor assigns to the Council all existing and future IPR in any products of the Goods and Services and all materials embodying these rights to the fullest extent permitted by law. If for any reason they do not transfer the Contractor will hold legal title in these rights on trust for the Client and will transfer them to the Council promptly and at their own expense.
- 11.2. The Contractor warrants that the IPR in the products of the Goods and Services does not infringe the rights of any third party.

12. Bribery and Corruption

- 12.1. The Contractor:
 - 12.1.1. will not ask for or accept any gratuity, tip or any other form of money-taking or reward in connection with the Contract other than the Price;
 - 12.1.2. will not commit a Prohibited Act; and
 - 12.1.3. warrants that it is not aware of any financial or other advantage being given to or any agreement reached with any elected member of the Council or the Council's Personnel in connection with the execution of the Contract.
- 12.2. The Contractor will
 - 12.2.1. ensure that neither the Contractor nor its Personnel are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual or potential conflict between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract; and,
 - 12.2.2. disclose to the Council full particulars of any such conflict of interest which arises.
- 12.3. If the Contractor breaches Clause 12.2 the Council may:
 - 12.3.1. take such steps it considers necessary to prevent, stop or remedy any breach; and,
 - 12.3.2. may terminate the Contract immediately in accordance with Clause 23.

the actions of the Council under this clause will not prejudice or affect any rights of action or remedy which the Council may have.

13. Compliance with Laws and Policies

- 13.1. The Contractor will at all times comply:

- 13.1.1.with all applicable laws, statutes, regulations and codes from time to time in force; and,
- 13.1.2.the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 as amended and all other statutory provisions relating to health and safety.
- 13.2. The Contractor will ensure it complies with the requirements of the Equality Act 2010 and in particular will:
 - 13.2.1.use its best endeavours to eliminate all conduct prohibited by the Act and will seek to promote equality among its Personnel and generally;
 - 13.2.2.set out its equal opportunities policy in instructions to those concerned with recruitment, training or promotion, in documents available to its Personnel and recognised trade unions or other representative groups of its Personnel and in its advertisements and literature.
- 13.3. The Contractor will comply with all applicable anti-slavery and human trafficking laws, statutes and regulations including the Modern Slavery Act 2015.

14. Data Protection and Freedom of Information

- 14.1. Both Parties will fulfil their obligations under the DPA connected with the Contract and will comply with the terms contained in Appendix 1.
- 14.2. The Contractor will assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations under the FOIA and the EIR and in particular will comply with the terms contained in Appendix 2.
- 14.3. This clause 14 will continue to apply indefinitely after the Contract ends.

15. Safeguarding

- 15.1. The Contractor will ensure that where its Personnel work directly with or have access to children or vulnerable adults that they will comply with the conditions laid out in Appendix 3.

16. Access

- 16.1. The Contractor will allow the Council and its auditors access at all reasonable times and on reasonable notice to all premises of the Contractor to:
 - 16.1.1. inspect work being done as part of the Contract,

- 16.1.2. to all records and information relating to the Contract,
 - 16.1.3. to any of the Contractor's personnel; and,
 - 16.1.4. to all resources and systems used by the Contractor in connection with the Contract.
- 16.2. For a period of six (6) years, or such other period as the Parties may agree, following the expiry or termination of the Contract, the Contractor will allow the Council and its auditors reasonable access from time to time as may be reasonably required for the purposes of examining records and information relating to the Contract.
- 16.3. The Council will allow the Contractor to have such access as is reasonable in the circumstances to the Council's premises, officers, members or information for the purpose of providing the Goods and Services only to the extent it is necessary to deliver the Goods and Services
- 16.4. Any access to the Council's premises and any labour and equipment that may be provided by the Council in connection with the Goods and Services and Delivery of the Goods shall be provided without acceptance by the Council of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Council or its servant or agent.
- 16.5. The Contractor shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of his sub-Contractors.

17. Management Information and Audit

- 17.1. The Contractor will provide the Council with
- 17.1.1. the reports and information as set out in the Specification; and,
 - 17.1.2. such other information as the Council may reasonably require from time to time or as a consequence of the Contract ending, and agrees that the costs of so doing are included in the Price.
- 17.2. The Contractor will co-operate fully with any enquiry or investigation made by the Council's internal or external auditors or any other quality

or performance inspectors that in any way concerns the Contract or the Goods and Services.

- 17.3. The Council may use information given by the Contractor under the Contract to prevent and detect fraud and money-laundering and may share such information with other organisations that handle public funds for the same purpose.

18. Insurance

- 18.1. The Contractor shall maintain adequate insurance levels, as outlined in the Specification, throughout the Contract Term.
- 18.2. On each policy renewal date, the Contractor will provide the Council with written evidence that it has complied with this condition.

19. Confidentiality

- 19.1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party will:
- 19.1.1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 19.1.2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 19.2. Clause 19.1 will not apply to the extent that:
- 19.2.1. such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations under clause 14 (Freedom of Information);
 - 19.2.2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 19.2.3. such information was obtained from a third party without obligation of confidentiality;
 - 19.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 19.2.5. it is independently developed without access to the other party's Confidential Information.
- 19.3. The Contractor may only disclose the Council's Confidential Information to the Personnel who are directly involved in the provision of the Goods and Services and who need to know the information, and will ensure that such Personnel are aware of and will comply with these obligations as to confidentiality.

- 19.4. The Contractor will not, and will procure that the Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of the Contract.
- 19.5. In discharging its obligations under this clause 19, the Contractor will observe all further or particularised requirements in respect of confidentiality as may be set out in the Specification.

20. Liability

- 20.1. The Contractor will be liable for and will indemnify and keep indemnified the Council against all liabilities, actions, damages, costs, losses, claims, expenses, demands and proceedings whatsoever either arising directly from the breach by the Contractor of any of its obligations under the Contract 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 20.2. Such liability (clause 20.1) is capped at £5 million provided always that the Contractor continuously maintains adequate and valid insurance to cover all risks.
- 20.3. The Contractor will 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.

21. Status and Publicity

- 21.1. At all times during the term of the Contract, the Contractor will be an independent contractor and nothing in the Contract will create a contract of employment, a relationship of agency, a partnership or a joint venture between the Parties.
- 21.2. A Party is not authorised to act in the name of, or on behalf of, or otherwise bind the other Party unless it is authorised to do so under the terms of the Contract.
- 21.3. The Contractor will not communicate by any means with the press or broadcasting media about any matters connected with the Contract, except with the prior consent in writing of the Council's Contract Manager.
- 21.4. The Contractor will not advertise its provision of the Goods and Services to the Council or use the Council's corporate logo, coat of arms or name without the prior consent in writing of the Council's Contract Manager.

22. Business Continuity

- 22.1. The Contractor will have business continuity arrangements in place so that in the event of a failure of or disruption of the Goods and Services they will:
 - 22.1.1. ensure that the Council can continue to provide its functions;
 - 22.1.2. prevent loss of data;
 - 22.1.3. prevent or as far as possible minimise any impact on the Service levels set out in the Contract; and
 - 22.1.4. ensure that normal provision of the Goods and Services begins as soon as possible.
- 22.2. The Contractor must continue to meet its obligations under the Contract and the Price will not be increased where any failure or disruption of the Goods and Services occur because of any breach of Contract by the Contractor.

23. Ending the Contract

- 23.1. The Council may without liability end the Contract for any reason by giving the Contractor not less than one Month's notice in writing.
- 23.2. If the Contractor materially breaches any of the terms of the Contract, the Council may give the Contractor ten (10) Working Days' notice to remedy the breach. If the breach is not remedied within those 10 days or is not capable of remedy the Council may end the Contract by giving the Contractor ten (10) Working Days' notice in writing.
- 23.3. The Council may end this Contract immediately by giving the Contractor notice in writing if the Contractor:
 - 23.3.1. becomes bankrupt or insolvent, in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver, manager or administrative receiver, has a provisional liquidator appointed or has a winding-up order made;
 - 23.3.2. breaches Clause 13; or,
 - 23.3.3. repeatedly breaches the Contract which the Council, acting reasonably, considers sufficiently material to end of the Contract and includes if they are breaches of the same or different obligations, or if the breaches have been cured.

24. Force Majeure

- 24.1. No Party will be considered in breach of its obligations under this Contract, or be responsible for any delay in their performance if this is

prevented or delayed as a direct or indirect consequence of a Force Majeure Event.

- 24.2. If a Party reasonably considers that its obligations are delayed or affected by a Force Majeure Event, then that Party will promptly notify the other Party in writing providing full details of the Force Majeure Event and how long they estimate the delay will be.

25. Dispute Resolution

- 25.1. If there is a dispute connected with the Contract the Parties will attempt in good faith to negotiate a settlement to the dispute following the dispute resolution process laid out in this clause 25.
- 25.2. Firstly, the Council's Manager and the Contractor's Manager will endeavour to resolve any dispute between them.
- 25.3. If the Council's Manager and the Contractor's Manager are unable to reach agreement within five (5) Working Days, the dispute will be referred to a Director of the Council and a person of equivalent status with the Contractor.
- 25.4. if the Council's Manager and the Contractor's Manager are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure:
- 25.4.1. Unless otherwise agreed between the parties within 14 days of service of the Dispute Notice, the mediator shall be nominated by CEDR.
- 25.4.2. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation, a copy of the ADR notice should be sent to CEDR.
- 25.4.3. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR notice
- 25.5. No party may commence any court proceedings under clause 28 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 25.6. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the end of that 30 day period, or the mediation terminates before the end of that 30 day period, the Dispute shall be resolved by the courts of England and Wales in accordance with clause 28 of this agreement.

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

26. Assignment and Sub-contracting

26.1. The Council can assign the Contract to another public body.

26.2. The Contractor cannot transfer or assign the Contract, including to a purchaser of the Contractor's business without the written consent of the Council before doing so. Such consent will not be unreasonably withheld.

26.3. The Contractor cannot sub-contract any of its obligations under the Contract or use the Contract as security without obtaining the written consent of the Council before doing so. Such consent will not be unreasonably withheld.

26.4. The Contractor will be liable for any failure of a sub-contractor to perform the Goods and Services, or for its failure to meet any of the Contractor's obligations under the Contract.

26.5. If a Contractor sub-contracts its obligations under the Contract, it will ensure that the contract with the contractor shall:

26.5.1. require payment to be made of all sums due from the Contractor to the sub-contractor within 30 days from the receipt of a valid invoice; and,

26.5.2. require that the sub-contractor will have insurance at the same levels as the Contractor's insurance under this Contract.

27. Contract Changes

27.1. Either Party may propose a change to the Specification or these terms and conditions of contract which may include a change to the Price.

27.2. The Parties may need to negotiate the proposal and if they agree a change they will record the change in writing and this will be signed by an authorised representative of the Council and an authorised representative of the Contractor.

27.3. A contract change will not take effect if a proposal is not agreed by both Parties.

27.4. Any extension to the term of the Contract or another change to the information contained in the Contract Data will be recorded by the Council issuing a revised version of the Contract Data.

28. General

- 28.1. No third parties have the right to enforce any term of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 28.2. There shall be no transfer of staff under TUPE regulations between Contractor and Council in the provision of the Goods and Services.
- 28.3. If any provision of the Contract or if any Court of competent jurisdiction declares any provision of the Contract to be invalid or unenforceable in any way, this will not affect the other provisions of the Contract which will remain in full effect.
- 28.4. Where any of the rights and obligations of the parties in the Contract will or may be exercised after the end of the Contract, the Contract's Clauses conferring these rights and powers will survive and remain in full force and effect in spite of the Contract ending.
- 28.5. Any formal demand, notice or other communication required to be given under the Contract will be sufficiently served if sent by recorded delivery post (or equivalent), or electronic mail to the address of the party to be served recorded in this contract and, if so sent, will (subject to proof to the contrary) be deemed to have been received by the addressee (in the case of transmission by post) on the second working day after the date of posting or (in the case of electronic mail) on the first working day after confirmed transmission, as the case may be.
- 28.6. The Contract will be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales

Appendix 1 – Data Protection

In this Appendix the following definitions shall apply:

Data Protection Legislation: means (i) the GDPR, the LED, the DPA and any applicable national implementing Laws as amended from time to time, to the extent that it relates to the processing of personal data and privacy;

Data Protection Impact Assessment: means an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data;

Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Contractor and or any sub-contractor engaged in the performance of its obligations under this Contract;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the GDPR;

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

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

DPA: Data Protection Act 2018;

GDPR: the General Data protection Regulation (Regulation (EU) 2016/679);

Law: means any law, sub-ordinate legislation within the meaning of Section 21(1) Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or directives or requirements with which the Supplier is bound to comply;

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures: appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

1. Data Protection

- 1.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in schedule 1A below by the Council and may not be determined by the Contractor.
- 1.2. The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 1.3. The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance, at the discretion of the Council, include:
 - (a) systematic description of the envisage processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures, and mechanisms to ensure the protection of Personal Data.
- 1.4. The Contractor shall, in relation to Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with schedule 1A below unless the Contractor is to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:

- (i) the Contractor Personnel do not process Personal Data accept in accordance with this Contract (and in particular schedule 1A);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (e) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 47) as determined by the Council;
- (f) the Data Subject has enforceable rights and effective legal remedies;
- (g) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist) the Council in meeting its obligations); and
- (h) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (i) at the written direction of the Council, delete or return Personal Data and any copies of it to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

1.5. Subject to clause 1.6, the Contractor shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third party for disclosure of Personal data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6. The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Council in phases as details become available.
- 1.7. Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Parties obligations under the Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the information Commissioner's Office.
- 1.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This

requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;
- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of the Data Subjects.

- 1.9. The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 1.10. The Contractor shall designate a data protection officer if required by Data Protection Legislation.
- 1.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
 - (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 1.12. The Contractor shall remain fully liable for all such acts or omissions of any Sub-processor.
- 1.13. The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure it complies with any guidance issued by the Information Commissioner's Office.
- 1.15. The provisions of this Appendix I shall apply during the term of the Contract and indefinitely after its expiry.

Schedule 1A Processing Personal Data and Data Subjects

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

Description	Details
Subject matter of processing	(this should be a high level short description of what the processing is about i.e. its subject matter)
Duration of the processing	(clearly set out the duration of the processing including details)
Nature and purposes of the processing	(please be as specific as possible but make sure you cover all intended purposes, the nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc the purpose might include employment processing, statutory obligation, recruitment, assessment etc
Type of Personal Data	(examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc)
Categories of data Subject	(examples include: staff, (including volunteers, agents and temporary workers), customers, clients, suppliers, patients, students, pupils, members of the public, users of a particular website etc)
Plan for Return	(describe how long the data will be retained for, how it will be returned or destroyed)

Appendix 2 – Freedom of Information

1. The Contractor will, and will ensure that any sub-contractors will, transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 1.1. provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within 5 (five) Working Days (or such other period as the Council may specify) of the Council's request; and
 - 1.2. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
2. The Contractor will transfer to the Council any requests for information under the FOIA or the EIR that it receives as soon as practicable.
3. The Council will be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
4. In no event will the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
5. The Contractor acknowledges that the Council may be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Goods and Services in certain circumstances:
 - 5.1. without consulting the Contractor; or
 - 5.2. following consultation with the Contractor and having taken their views into account;
 - 5.3. provided always that where 5 applies the Council will take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
6. The Contractor will ensure that all information pertaining to the Contract is retained until six (6) years after the end of the term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods and Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council and will permit the Council or its auditors to inspect such records as requested from time to time.

Appendix 3 – Access to Children and Vulnerable Adults

1. The Contractor will:
 - 1.1. ensure that where its Personnel work directly with or have access to children or vulnerable adults that they have a valid enhanced disclosure check through the Disclosure and Barring Service against both the adults' barred list and the children's barred list;
 - 1.2. ensure that no Personnel are permitted to work directly with children or vulnerable adults until they have had a disclosure check and its results have been notified to and evaluated by the Contractor; and,
 - 1.3. monitor the level and validity of these checks for each of the Personnel concerned.
2. Where a disclosure check for Personnel is invalid or deficient the Contractor will immediately:
 - 2.1. remove that Personnel from provision of any parts of the Service requiring direct working with children and vulnerable adults; and,
 - 2.2. advise the Council's Manager in writing of any such removal.
 - 2.3. The Contractor will at all times comply with the obligations of a Regulated Activity Provider under the Safeguarding and Vulnerable Groups Act 2006 when it meets the criteria to do so.

Schedule 1

Council's Invitation to Tender and Specification

Schedule 2

Contractor's Tender