

Contracts Procedure Rules – guidance notes

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1. INTRODUCTION

- 1.1 This commissioning and commercial strategy is the definitive statement of how the council will manage its commissioning, decommissioning and commercial activity. The CPRs, together with this guidance, ensure that:
- a contract selection and award procedures are conducted in accordance with the relevant legal requirements under an equitable, transparent and regulated process
 - b ensure the council obtains value for money and minimizes the cost of procuring goods, works and services, utilizing strategic delivery partners wherever possible

- c strategic policies are taken into account, for example in promoting the economic development of Herefordshire and in relation to protecting the environment
- d procurement procedures are kept under review in order to ensure continuous improvements to services and provide best value to the community of Herefordshire

1.2 The CPRs form part of the council's constitution and are to be read in conjunction with other sections of the constitution in particular:

Part 3 – The Functions Scheme

Part 4 – Section 3 - The Budget and Policy Framework Rules

Part 4 – Section 7- Financial Procedure Rules

1.3 Failure to observe the CPRs could lead to disciplinary action.

2 APPLICATION AND INTERPRETATION

2.1 **Calculation of contract value.** There are specific provisions relating to the calculation of contract values, based on the contract's duration. If the contract is part of a series or is renewable, its value will be:

- a. The total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted where possible to take into account changes in quantity or value which would occur in the course of the 12 months following the initial contract; or
- b. The total estimated value over the next 12 months (or financial year where that is longer than) 12 months) from the date the goods, work or service is first provided.

In the case of contracts for services:

- c. If the contract is for a fixed term of less than 5 years, the value will be the total value of the contract.
- d. If the contract has no end date or is for a fixed term of more than 5 years, the value will be the monthly value of the contract multiplied by 48.
- e. Special provisions apply in the case of contracts involving leasing, hire, rental, hire purchase, insurance services, banking and financial services and design contests. When procuring such services advice should be sought from the commercial services team with regard to calculating value.

2.2 If more than one of the above applies, the method that gives the highest value must be used.

2.3 Once the value of each contract has been calculated, it must be added to the value of other contracts with similar characteristics. If the value of a contract or a group of contracts with similar characteristics is greater than the value limit, EU procurement rules must be followed. To ensure that the aggregation rules are properly applied contract managing representatives should liaise with the commercial services team for all contracts in excess of £75,000.

2.4 **Subdivision of contracts.** No contract shall be subdivided into smaller contracts or let via a series of short term agreements so as to avoid compliance with these rules or procurement legislation. Contracts may be divided into lots, particularly to encourage procurement opportunities for small and medium enterprises but the costs of the contract shall be aggregated accordingly. Where a regulated contract is not divided into lots then a written record of that decision, with reasons, shall be included in the contract notice and kept on the council's e-tendering portal. Commissioners must review the aggregate spend

on contracts for which they are responsible regularly (and at least every 6 months) to assess whether new contracts should be procured.

- 2.5 **Value Added Tax.** In calculating the value of a contract for the purposes of these CPRs, the sum shall be exclusive of VAT.
- 2.6 **Schools.** Maintained Schools, and the council where it acts on their behalf, must comply with these CPR when procuring contracts. This includes use of the council's e-tendering portal for such contracts. In addition the appropriate contract register entries must be made as set out in para 22.1.
- 2.7 **Other contracting authorities.** Wherever it is mutually advantageous to do so, the council may seek to conduct procurements in collaboration with partner organisations. It must be noted that each partner will need to comply with their own contract rules, which may have key differences to the council CPRs – for example, the EU Procurement Directive features different financial thresholds in respect to health authorities and local authorities. In the event that contracts are to be established which are applicable to two or more partners the contract rules of each partner must be adhered to, and it is possible that separate contractual documents will have to be established for each partner as they are separate legal entities. Officers must ensure the rules and governance procedures of each partner are followed throughout the procurement process. Where costs are to be shared between collaborating authorities it is advised that a formal agreement detailing such arrangements is drawn up between the partners.
- 2.8 **Conflicts of interest.** All members and officers¹ of the council must disclose any conflict of interest that they may have relating to a contract to which these rules relate and in which they are acting on behalf of the council. If any member or officer has such an interest they must not take any further part in the procurement process and must ensure that they comply with Part 5 (the codes and guidance) of the constitution.
- 2.9 **Declarations of interest, gifts and hospitality.** Any offer of gift, favour or hospitality made by any person or firm doing or seeking to do business with the council must be treated with extreme caution. No cash gifts should be accepted. No gifts should be accepted where it would conflict with your duties to the council. No member or officer may solicit or receive any gift or financial inducement in respect of any contract which is being awarded by the council or commit any corrupt act or any offence under the Bribery Act 2010 or any act in breach of Part 5 (the codes and guidance) of the council's constitution.
- 2.10 Any such offers must be noted on the appropriate employee declaration form and reported to the Solicitor to the Council who shall maintain and make available to the council's internal and external auditors a register of such matters.
- 2.11 **Professional services/consultants.** No ex-employee of the council or of any other public sector body covered by the Small Business Enterprise and Employment Act 2015 shall be engaged by the council without the express consent of the head of law and governance and the head of human resources and organisational development. Any ambiguity on whether a contract is an employment contract or a consultancy contract covered by these rules should be referred to HR, legal services and commercial services.
- 2.12 **Social value.** The Public Services (Social Value) Act 2012 requires the council to consider social value in its commissioning and procurement activity. In doing so, it is vital that in seeking social value outcomes the council will:

¹ Including those contracted to deliver services on the council's behalf.

- promote business opportunities as widely as is viable, to allow all types of providers, including social enterprises, voluntary organisations, SMEs, and micro-businesses (collectively termed “smaller providers”), to access the information they need to be able to tender in a timely way; hold “pre-tender” awareness events wherever possible; work to ensure smaller providers are not disadvantaged by the council’s commissioning and procurement processes.
- Look at a variety of contract models which offer opportunities to smaller providers, such as through lotting strategies which split tenders into smaller contracts. It is vital that there is a balance between minimising costs and acknowledging the importance of social value.

2.13 The council is fully committed to social value as a matter of good practice and it is integral to the council’s priorities of enabling residents and supporting the local economy. By recognising the social value in what suppliers can provide, the council can maximise the benefits achieved by the money it spends. It is important to note that social value does not mean preferring local suppliers just on the basis of locality. This would be in contravention of EU and UK procurement legislation plus EU Treaty principles regarding transparency, equal treatment, non-discrimination, proportionality and mutual recognition.

2.14 The council will be unambiguous in its intention to secure social value when it communicates with the marketplace, whether this is via service specifications for a particular contract or more informal communications. Potential outcomes and considerations can be sought from:

- **Sustainable communities team:** to provide guidance on how social value can be achieved in relation to community development and/or the third sector.
- **Energy and environmental management:** to provide guidance on how social value can be achieved in relation to environmental sustainability.
- **Economic development team:** to provide guidance on how social value can be achieved in relation to Herefordshire’s workforce, industries and economy.
- **Equality, records and information compliance team:** to provide guidance on how social value can be achieved in relation to Herefordshire’s social equality, diversity and integration.
- **Regeneration programmes team:** to provide guidance on how social value can be achieved in relation to community enterprise and employment.
- **Adult and community learning team:** to provide guidance on how social value can be achieved in relation to community education and skills

Core social value considerations are demonstrated in the example below:

EXAMPLE: Commissioning accommodation for ex-offenders		
Why are we doing this?	What else can we achieve for the stakeholders?	What about other potential outcomes?
<ul style="list-style-type: none"> • To provide good quality housing for ex-offenders? • To make sure they have somewhere to live? • To help reduce the risk of re-offending? • To meet requirements/legislation? • The current contract runs out soon? • We don’t know anymore? 	<ul style="list-style-type: none"> • Active participation in deciding what their service looks like and how it is delivered. • Support and information on learning/training/ employment. • Early intervention/ community health support (mental health, substance misuse etc.). • Social networks, events and activities to reduce social isolation and to support dealing with social barriers. • Reduce risk of fuel poverty by ensuring energy efficiency of housing. • Advice on finances/benefits. • Family learning/support. 	<ul style="list-style-type: none"> • Work placements in supported housing services. • Apprenticeships/ qualifications for young people in support work/administration etc. • Developing support service capacity in new sectors to deliver innovative approaches – eg: social enterprises, new consortia etc. • Improved outcomes for ex-offender’s children/family

3 OFFICER RESPONSIBILITIES

3.1 Directors' responsibilities. All directors are responsible for:

- a. monitoring compliance with the CPRs in relation to contracts funded by their directorate budget
- b. appointing staff to provide commissioning and contract management functions and ensuring they support them in their role and obtain regular briefings from them
- c. bringing the provisions of the CPRs to the attention of their staff
- d. ensuring that the contracts within their directorate are legal, comply with CPRs and financial procedure rules (part 4 section 7) and protect the council's interests fully.

3.2 The director for economy, communities and corporate (ECC) has overall responsibility for the preparation and review of the CPR but must do so in agreement with the monitoring officer/solicitor to the council and section 151 officer.

3.3 Solicitor to the council's responsibilities. The solicitor to the council is responsible for:

- a. providing legal advice and guidance to members and officers on the operation of the CPRs and all contracting and procurement activity
- b. working with the director for economy communities and corporate and head of law and governance on the preparation and review of the CPR.
- c. assisting the chief executive with the resolution of questions regarding the interpretation of the CPRs.
- d. advising on the preparation of contract documentation
- e. informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the council.

3.4 Contract managers' responsibilities. The contract managers:

- a. will be responsible for providing timely information regarding to the commercial services team to enter onto the central contracts register for contracts in excess of £5,000.
- b. must ensure that signed contract documents are available and retained in accordance with the council's retention schedule.
- c. must have read and understood the contract documents.
- d. must check that valid insurance documents are provided by contractors, proving that the annual premium has been paid, to cover the duration of the contract, and that copies are stored appropriately.
- e. must review the aggregate spend on contracts for which they are responsible every 6 months to assess whether new contracts should be procured
- f. are to meet with contractors to discuss performance at least every 12 months; every 6 months for high value and above £EU threshold contracts. KPIs must be used to assess performance at least every 12 months (every 6 months for high value and above £EU threshold contracts), and records of assessment must be kept up to date.
- g. will be responsible for maintaining and providing timely information regarding the contractors' performance including, but not limited to, delivery of KPIs, health and safety, business continuity, risk, contract terms and other events of default.
- h. must keep a record of each contract, including all the quotes and letters they have received and notes of telephone calls and meetings about selecting suppliers. These records must be made available to internal or external audit as required by them and retained in accordance with retention schedule requirements.
- i. must keep a record of any contract variations of duration and value or scope in

order to maintain a deal history of the contract.

3.5 Commissioners' responsibilities. The commissioner will be responsible for:

- a. liaising fully with the commercial services team and legal services on all matters relating to contracting and procurement.
- b. agreeing exemptions from the formal tendering procedures with the head of law and governance . All exemptions are to be approved in writing and reported in line with para 19.
- c. maintaining records during procurement of the:
 - contracts awarded including the nature and value of contracts and the names of successful tenderers
 - total value of contracts awarded to each successful tenderer during each financial year
 - names of unsuccessful tenderers and reasons why their tenders were not accepted
 - details of any failure by a tenderer to comply with instructions to tenderers
 - details of the reasons for any tenders being withdrawn
 - details of failures by contractors to submit tenders after having requested and been invited to do so
 - reasons for exceptions to tendering procedures.
 - reasons for opening late tenders.
- d. making arrangements for the retention of tender and all contract documentation in accordance with the council's record retention schedule for a minimum of 6 Years (12 Years if signed under seal) after completion of contract work.
- e. advising the contracts manager and commercial services team and recording the details of all contracts over £5,000 in the contracts register, providing all detail necessary under the transparency code.
- f. considering how they achieve and measure social value through service planning and delivery. Social value outcomes should be captured and identified in contract decision reports and embedded within contract management practices.
- g. communicating a commitment to social value through engagement with the market, and for ensuring that social value is effectively embedded in service planning and delivery. To work with commercial services, other council stakeholders listed below and/or partner organisations to achieve and demonstrate social value.

3.6 Head of law and governance's responsibilities. Working to the assistant director of communities the head of law and governance is responsible for:

- a. providing advice on all aspects of the CPRs.
- b. oversight to ensure that the council has an up-to-date commercial and commissioning strategy.
- c. monitoring compliance with the CPRs and reporting non-compliance to the director of ECC and the solicitor to the council for appropriate action
- d. preparing an annual report on the operation of and compliance with the CPRs as a basis for the director for economy, communities and corporate, in consultation with the solicitor to the council and the audit and governance committee
- e. continually reviewing the CPRs to ensure they keep pace with developing best practice and advising amendments as necessary.
- f. preparing an annual report on the exemptions recorded for the solicitor to the council
- g. providing training and support for employees involved in procurement activities.
- h. informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the council.

- i. guiding the council's strategic approach to developing social value through collaboration with partners and market development.

3.7 Commercial services team. The commercial services team are responsible for:

- a. maintaining a register of current contracts above £5,000, prescribing the information needed from contracts
- b. providing advice on all aspects of the CPRs.
- c. monitoring compliance with the CPRs and reporting non-compliance to the director for economy communities and corporate and the solicitor to the council for appropriate action
- d. providing training and support for employees involved in procurement activities.
- e. informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the council.
- f. guiding the council's strategic approach to developing social value through collaboration with partners and market development
- g. maintaining and reviewing a contract procedures exemption register.

3.8 Responsibilities of all council officers. All officers are responsible for:

- a following the CPR and any codes of practice, guidance or instructions provided by commercial services team and the solicitor to the council
- b following all relevant English and European procurement laws
- c following relevant council policy requirements
- d seeking advice from the commercial services team and legal services in the case of any uncertainty
- e ensuring that any departure from these CPRs is agreed with the head of law and governance **and** the solicitor to the council
- f reporting any suspected fraudulent, corrupt or other irregularity to the chief internal auditor
- g informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the council.

3.9 Non-council staff. Any person who is not an officer of the council, but is engaged by the council to advise, conduct, or supervise any stage of a tender, must:

- a. comply with the CPRs and financial rules
- b. produce on request, all records relating to the contract he/she are engaged on, to the service director; and
- c. pass all relevant records to the Authorising Officer at the end of his/her appointment/engagement
- d. sign a declaration of interest relating to any contract that they were involved with on behalf of the council and give it to the category manager.

3.10 The Authorised Officer must ensure that non-council staff comply with these rules and consult the category manager as appropriate.

4 PURCHASE OF GOODS, SERVICES, PROFESSIONAL SERVICES, WORKS, GRANTS AND CONCESSIONS

4.1 Pre-procurement market testing can be carried out to gauge market interest (and is positively encouraged when purchasing new services), including approaching suppliers directly, but pre-selection of suppliers for potential contract award must not commence until the market testing process has been completed and the actual formal procurement process begun. In the case of procurements above the EU thresholds, highly-prescribed processes

apply. In any event, information gathering and market testing exercises should not have the effect of distorting competition or violating EU mandated principles of non-discrimination and transparency. In particular, such exercises should not provide any potential supplier(s) participating in them with an advantage over those who do not. Further advice can be obtained from the commercial services team.

- 4.2 For the latest information regarding the EU thresholds for procurement, please visit the EU Procurement website via the following link: <http://simap.ted.europa.eu/european-public-procurement>

5 THREE QUOTES PROCEDURE FOR CONTRACTS UNDER £75K

- 5.1 Officers must produce a description of the goods or specification of the services required before seeking quotations. Formal quotations should contain the following information:
- a date and reference number
 - b supplier company details
 - c council officer/department name
 - d item/part number
 - e description specification
 - f quantity required
 - g unit/service cost
 - h total cost
 - i delivery information
 - j payment details
 - k any special requirements
 - l details of any discounts or rebates
 - m terms and conditions
- 5.2 Every person or firm who makes a quotation must be treated fairly and equally.
- 5.3 Any departures from the formal quotation procedures must be discussed with the commercial services team who will agree or otherwise any exception in consultation with the head of law and governance (para 19 refers).
- 5.4 It is important to respect confidentiality during all stages of the formal tendering process. Officers must not disclose any information they have about potential suppliers to others persons/suppliers potentially competing for the same contract.
- 5.5 Advice and guidance on how to describe the works, goods or services required for formal procurement purposes can be obtained from the commercial services team.
- 5.6 In accordance with regulation 111 of the Public Contract Regulations 2015, a pre-qualification questionnaire (PQQ) should not be issued for any quotation.

6 INVITING TENDERERS

- 6.1 Subject to advice from commercial services team, officers may consider conducting a 2 stage selection process to provide a short list of suppliers who will be invited to tender. When short listing, officers must consider the following when selecting suppliers to be invited to tender for a particular contract:
- a past performance on similar contracts (quality and costs)
 - b technical capacity
 - c specialist experience in the type of products and services being procured
 - d financial situation

- e insurance arrangements
- f health and safety arrangements
- g equalities policy
- h written references on the contractor's reputation
- i environmental policies
- j past experience of social value
- k business continuity plans (see para 21.5)

6.2 The method for selecting tenderers must:

- a treat all tenderers in the same way
- b keep the process clear and simple
- c record all the selection and award decisions.

6.3 Advertisements for potential suppliers may be placed at the officer's discretion in relevant trade or professional journals, local and national newspapers or national websites administered by responsible bodies, and **must** be placed in the EU Journal (OJEU) if the contract is likely to exceed the relevant EU threshold. Advertisements must appear on the OJEU procurement website at least 48 hours in advance of any further publication/advertisement.

6.4 For each open tender, officers are to liaise with commercial services, legal and commissioning teams to develop, for publication on the e-portal, the following procurement documents:

- instructions to tenderers
- form of Tender
- specification
- schedule of rates/pricing documentation
- terms and conditions of the contract. Where appropriate standard council contract terms or industry standard contracts can be used on the advice of legal services – appendix 1.
- quality requirements/method statement questions
- tender evaluation criteria
- any relevant supporting information

6.5 Officers should ensure that all tenderers are aware that this information will or may be published when they are invited to tender and that the council will need to meet its obligations under the Freedom of Information Act.

6.6 Tenderers must be instructed to return their tendering documentation via the e-tendering portal, rather than by any other method. In addition, tenderers must be informed that tenders which are received by other means of communication, or received after the relevant submission deadline, will not be accepted. Tenderers should be advised that all tender responses will be opened at the same time

6.7 The invitation to tender guidance must detail how the procurement will be conducted and evaluated, including but not limited to the following issues:

- a. explain how the council will deal with any mistakes it identifies in the tender documentation submitted;
- b. confirm the evaluation criteria that will be used to select the preferred supplier. The assessment criteria must not distort and impair fair competition or discriminate between tenderers in any way and must also be compliant with relevant legislation; and,
- c. state that the council does not bind itself to accepting the lowest bid or any tender.

- 6.8 The tender should be assessed according to the most economically advantageous tender (MEAT) criteria which typically will be a price-quality assessment reflecting the qualitative, technical, sustainable and social aspects of the tender submission as well as price and such assessment criteria may include the following factors:
- a. how the skills and experience of staff will contribute to the delivery of the contract.
 - b. financial proposals
 - c. contract management arrangements
 - d. quality including technical merit and functional characteristics
 - e. delivery proposals
 - f. social value
 - g. environmental factors
 - h. innovation
- 6.9 During the live tender period (the period between first advertisement and the deadline for tender submission), all communications with tenderers must be recorded in a clarification log on the e-tendering portal. The clarification log will record all enquiries which are raised during the respective period and the relevant responses. The identity of the tenderer who has raised the query **must not** be disclosed.

7 PROVISION OF PRE BID SUBMISSION CLARIFICATION

- 7.1 All requests for clarification from tenderers must be dealt with as a matter of urgency in order to mitigate any delays to tenderers in preparing their submissions and in line with the procurement timetable as set out in the 'invitation to tender' document. Similarly where the Authorised Officer identifies a requirement for further information or clarification or correction of previously distributed documentation this must be addressed and issued as a matter of urgency.
- 7.2 All responses to requests for clarification must be issued to all bidders. Where the Authorised Officer wishes just to respond to the requesting bidder for reasons of commercial confidence the approval and advice of the relevant category manager must be sought.
- 7.3 All requests for clarifications and responses must be filed and fully auditable using the e-tendering portal (where utilised). The clarifications and responses must be recorded via a clarification log in accordance with the procurement guidance and standard template documentation.

8 RECEIVING TENDERS

- 8.1 The original tender return date should be fixed and unchanged except in appropriate and necessary circumstances as advised by the commercial services team. Any extension should not provide either advantage or disadvantage to any of the tenderers. Should it be necessary to extend the time limit for the submission of tenders, all potential tenderers should be informed of the new date in good time before the original submission date.
- 8.2 The council's e-tendering portal will automatically record the time, date and name of the tenders as they are received.
- 8.3 Tenders cannot be opened until the final deadline for receiving them. All tenders will be stored in the secure e-tendering portal until the requisite deadline for opening them.

9 LATE TENDERS

- 9.1 In exceptional circumstances, officers, in consultation with and the approval of the head of law and governance, can accept a late tender. The core principle is that tenders should not be rejected if the delay is due to the actions of the council, a third party, or force majeure. If

if it is decided to accept a late tender, it must be treated in the same way as all other tenders. The full details of the decision to accept the late tender must be recorded.

- 9.2 If the late tender is rejected, a record should be kept on file for two years with the other documents from the tender opening. The tender should be opened, under the same conditions as the other tenders, merely to ascertain the return name and address. The tenderer should be informed in writing of the reasons for rejecting the tender, i.e. that it was received late and is therefore deemed to be non-compliant under the council's CPR.

10 EVALUATION PRINCIPLES

- 10.1 Before assessing the tenders, the Authorised Officer needs to check that each part of the tender meets the requirements of the specification. The Authorised Officer also needs to make sure that there are no mistakes and that nothing is missing.
- 10.2 Low and medium value contracts shall be evaluated and agreed by the Authorised Officer or evaluation panel where appropriate.
- 10.3 High value and very high value contracts (as determined in the CPRs) shall be evaluated and agreed involving the commercial services team, assistant director and any other officers relevant to the decision making process.
- 10.4 The assessment of bids must be conducted in accordance with the evaluation methodology which was communicated to tenderers within the procurement documentation during the procurement process.
- 10.5 In the assessment of bids where it becomes apparent that a bidder has made a genuine mistake in their pricing they must be given the opportunity to correct their bid. If the tenderer has omitted ancillary documents, made an obvious error in calculating figures, or has otherwise made an error in their tender they may be allowed to correct any minor non-compliance or mistakes or to provide any necessary clarification. However, where a tenderer fails to allow sufficient time for the punctual submission of his tender, then the tender submission will be rejected. In all instances the Authorised Officer must obtain the approval and advice of the commercial services team before seeking corrections from the relevant tenderers via the council's e-tendering portal.
- 10.6 Where further information is to be sought from bidders following submission of bids, which extends further than clarifying what has already been submitted and constitutes the submission of new information, the Authorised Officer must obtain the approval and advice of the commercial services team before seeking further information from the relevant bidders.
- 10.7 Should the Authorised Officer have a case to reject a bid as non-compliant they must gain the approval and advice of the commercial services team before proceeding.
- 10.8 Should the Authorised Officer consider a bid to be abnormally low they must investigate this with the relevant bidder/s, and in accordance with Procurement Legislation. Before proceeding with investigation the Authorised Officer must gain the approval and advice of the category manager. Following this investigation should the Authorised Officer consider that the reasoning and any corrections put forward by the bidder does not satisfy their concerns and wishes to reject the bid, they must seek the approval and advice of the head of law and governance.
- 10.9 Should the Authorised Officer consider that a bidder does not meet minimum requirements and wishes to set aside the bid - which may relate to previous experience, legal standing, health and safety record, financial standing, etc. as appropriate to the contract in question - approval and advice must be sought from the commercial services team.

- 10.10 Should the Authorised Officer wish to take previous or current contractual performance into account in the assessment of a bid - whether the contract/s in question relates to council or other contracting authorities - approval and advice must be sought from the commercial services team.
- 10.11 If there are substantial omissions of data or documentation that make it impossible to assess the tender, this should be fully recorded and the tender rejected.
- 10.12 A record of all mistakes must be kept and attached to the tender documents together with any corrections agreed with the tenderer.
- 10.13 The assessment criteria used for the tender evaluation must be the same in all respects as the criteria advised to prospective suppliers at the beginning of the process.
- 10.14 Assessment details are strictly confidential and must not be passed on to anyone else. During the course of the assessment, tender documentation must be kept secure and confidentiality preserved. If, in a major tendering exercise, the documentation is going to be copied or divided to aid the assessment process, a record should be maintained to identify those to whom such documents have been issued and the date returned.
- 10.15 During the assessment process, the commissioning officer shall retain a complete set of documents in a secure place in case any parts of the documentation go missing.

11 **NEGOTIATING**

- 11.1 The commissioning officer must consult with the commercial services and legal teams and obtain their permission when considering and prior to negotiating any aspect of a tender.

12 **POST-TENDER GOVERNANCE**

- 12.1 Once the assessment has been completed the commissioning officer should produce a report showing:
- a the result of the assessment of each tender
 - b a comparison of assessment results
 - c the recommendation on which tenderer should be offered the contract.
- 12.2 The Authorised Officer should accept the tender that is the most economically advantageous tender.
- 12.3 In addition, for procurements in excess of the OJEU threshold, a report should be produced in accordance with regulation 84 of the Public Contract Regulations 2015. The Authorised Officer should seek further advice from the commercial services team with regard to preparing such reports.
- 12.4 The Authorised Officer should always consider whether their recommendation for award the contract should be put before a cabinet member, the cabinet or council for formal approval. The Functions Scheme (Part 3) sets out the council's procedures for making decisions. If in doubt, seek advice and approval from the governance team and the head of law and governance. Tenderers should be told at the outset if cabinet or Council approval will be needed.
- 12.5 The officer should write to inform the successful tenderers of the decision as soon as possible **after all necessary approvals have been received.**
- 12.6 'Intention to award' letters, informing the tenderer that they are the council's preferred

supplier, subject to contract and governance decisions, are to be reviewed by either legal or commercial services to ensure that the letter does not bind the council contractually before the formal documentation has been completed and signed by the appropriate authorised signatories. In the case of an EU-compliant process the contract cannot be formally awarded until the losing bidders have been informed and the mandatory standstill period has elapsed without any challenges arising from the bidders.

12.7 Unsuccessful tenderers should be informed of the outcome of the tendering process at the same time that the successful tenderer is notified. All bidders should be provided with a comprehensive briefing on the results of the tender with the increasing tendency for losing bidders or third parties to ask for such information under the Freedom of Information Act, it is essential that full details are recorded and can be supplied easily for all tender exercises, both above and below the EU thresholds.

12.8 **Insurance, health and safety.** The Authorised Officer shall ensure all contractors have sufficient levels of insurance in place prior to entering and throughout the duration of a contract and are able to demonstrate compliance with all relevant health and safety legislation. Insurance amounts may only be varied on the advice of the Hoople insurance officer whose advice shall be sought on any other insurances required.

13 **AWARDING A CONTRACT (SIGNATURE AND SEALING)**

13.1 Signatories to the contract will be in accordance with spend authority as outlined in the financial procedure rules.

13.2 **Contracting by electronic means.** Under English law contracts may be made informally, this means that no writing or other form is necessary for the contract to be legally binding. However, there are a number of situations where a written contract signed by the parties is required by statute, or in order to meet a registration requirement, such as:

- a. A contract for the sale of land, an equitable charge or a mortgage of a legal estate in land;
- b. Guarantees. In order to be enforceable, a guarantee (or some memorandum or note of the guarantee) must be in writing and signed by the guarantor, or a person authorised by the guarantor.
- c. An assignment of certain of intellectual property rights, and
- d. A transfer of certificated shares.

13.3 In the absence of a statutory requirement concerning the form of a particular contract, officers should be aware that a contract can be created with no structural formality for example by email correspondence or by means of other electronic communications.

13.4 In the absence of any statutory requirement, a simple contract may be concluded using an electronic signature. Electronic signatures can take a number of forms:

- a. An officer typing his or her name into a contract or into an email containing the terms of contract;
- b. An officer electronically pasting his or her signature into an electronic version of the contract; or
- c. An officer accessing a contract through a web based e-signature platform and clicking to have his or her name in a typed or handwriting font automatically inserted into a contract.

- 13.5 **Sealing.** All contracts for building, engineering, property repairs and property maintenance works excluded from the council contract with Integral, with an estimated value in excess of the European procurement limit for supplies and services shall be sent to Legal Services for execution under the council's seal. All other contracts in excess of the key decision threshold are also to be executed under the council's seal.

14 PUBLICATION OF CONTRACT DETAILS

- 14.1 Contract management representatives must ensure that all contracts comply with Herefordshire Council's Information Governance Policy.
- 14.2 Officers must not give tenderers or suppliers any information about the bids or affairs of any other tenderer or contractor unless the law requires it. All information relating to tendering and contracting procedures is confidential.
- 14.3 The only information officers should make public is the name of the successful tenderer. However, this information must not be released until the contract has been awarded and signed.
- 14.4 If information is published on the amounts of the other bids received, the names of the unsuccessful tenderers must not be disclosed.

15 FRAMEWORK AGREEMENTS

- 15.1 Framework contracting involves selecting a contractor from a list of contractors on a pre-existing "framework" for given works, goods or services. The contractors are included on the Framework following a tendering exercise to establish capability, quality and value. The tendering procedures will have had to comply with any relevant English or EU law.
- 15.2 Purchasers can enter into subsequent 'call-off' contracts from a framework. Framework contracting is becoming increasingly prevalent in an attempt to avoid bureaucracy and achieve best values via economies of scale.
- 15.3 Frameworks can be externally formed (for example by Government) or internally formed (for example by the council). The number of approved contractors on a framework can vary.
- 15.4 When an external framework is formed general terms and conditions are agreed between the framework contractors and the central purchasing body or contracting authority which established the framework. These pre-agreed terms and conditions will form a major part of any purchaser's 'call-off' contract and contractors are not obliged to agree to any amendments to them.
- 15.5 Framework agreements can be established for a maximum of 4 years (unless special justification can be made for a longer period) and this is reiterated in the present UK enactment of the EU procurement rules. Any subsequent call-offs under the framework may be for a duration longer than four years provided this is justified by the nature of the call off contract e.g. such factors as the time needed for contract performance, where maintenance of equipment with an expected useful life of more than four years is necessary or where extensive training of staff to perform the contract is needed.
- 15.6 Officers must take the following steps to ensure compliance with the EU procurement rules when using a framework contract;
- a All the contractors on a framework that are capable of meeting the purchaser's specification must be allowed to submit a bid against that specification.
 - b The reasons for selecting a smaller number of contractors on a framework must be clearly evidenced and should indicate why the excluded contractors were not

- c. capable of meeting the council's requirements.
- c. Award of contract must be on the basis of the criteria for the Framework as set out in the framework agreement itself, that is, within the original tender documentation setting up the framework.

15.7 The commercial services team must be consulted if a pre-existing framework contract is to be used to procure goods, services or works.

15.8 **Other procurement agreements.** There are a number of other procurement procedures that may be available in particular circumstances:

- a. design contests, particularly in the fields of planning, architecture, civil engineering and information technology.
- b. public housing schemes where the size and complexity of schemes necessitate the close collaboration between the council and contractors.
- c. concession contracts where contractors derive income from the completed work, for example cafe in council offices.
- d. dynamic purchasing system is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time. However, it has its own specific set of requirements. It is to be run as a completely electronic process, and should be set up using the restricted procedure and some other conditions (as set out in Regulation 34 of the Public Contracts Regulations 2015).

15.9 The commercial services team must be consulted regarding any proposals to follow any such procedures.

16 **CONTRACT VARIATIONS (CHANGES TO DURATION, VALUE, SCOPE AND CONTRACTOR)**

16.1 Contracts usually have conditions permitting variation relating mainly to the duration or the costs. Where a variation is permitted by the contract then it must be recorded in accordance with those terms and executed according to the form of the original contract. Thus a contract executed under seal may only be varied by deed.

16.2 Where the variation amends the conditions of the contract, including the specification an assessment of the effect of the variation on the value of the contract must be carried out.

16.3 If the increase in value of the contract is less than 10% for service and supply contracts and less than 15% for works contracts then no new procurement needs to take place.

16.4 If additional supplies, services or works are needed and the use of a new contractor would:

- a. be economically or technically difficult, e.g. because of difficulties relating to interchangeability or integration with existing equipment; or
- b. Cause significant additional or duplication of costs.

Then the original contract may be varied without a further procurement process subject to the increase in cost being less than 50% of the original value. Any variation must be in accordance with procurement legislation and approved by commercial services, legal services and the budget holder for the contract.

16.5 Where the variation involves any change to the provider then legal services must be consulted.

17 **CONTRACT EXTENSIONS**

- 17.1 Where a contract provides for an extension, the service director shall be consulted prior to the extension of a contract with an aggregate total value of less than £100,000. If the value of the existing contract, together with the extension, exceeds £100,000, the approval of the commercial services team, service director, budget holder and legal services shall be sought.
- 17.2 In all cases where the extension of a contract will bring the total of the original value and the value of the extension over £500,000 then approval must be sought from the cabinet member as a key decision.
- 17.3 In cases where the proposed extension is not allowed within the terms of the contract and the extension is thus a direct award then approval shall be sought as per the 'contract variations' section above.

18 CONCESSIONS AND UTILITIES

- 18.1 All concession contracts, whether for works or services shall be let according to the provisions of these CPRs as if they were non-concession contracts unless the relevant opportunity is one covered by procurement legislation. The estimated value of the concession shall determine the procurement route to be used. The value of the concession shall be determined in an objective manner set out in the document offering the concession and shall be an estimate of the total turnover (excluding VAT) from the concession over the period for which it is to be let, including for any extension/variations in scope and/or duration.
- 18.2 Concessions exceeding the EU threshold shall be procured in accordance with procurement legislation.
- 18.3 All contracts for the sale of utilities must also comply with the provisions of these rules together with any applicable procurement legislation when brought into force.

19 CONTRACTOR SUBSIDIES AND STATE AID

- 19.1 Where it is proposed to provide financial support to a contractor, or where a contractor proposal entails financial support or benefit from the council or another public body necessary to ensure the continuance of contracting activity (state aid), the advice of legal services must be sought prior to advertising the opportunity or concluding the contract.
- 19.2 State aid is when taxpayer funded resources are used to provide assistance to one or more organizations in a way that gives an advantage over others. The legislative framework that applies to state aid is very technical and legal advice should be obtained well in advance in the event that the rules on State Aid may apply. The service director shall consult with legal services when State Aid issues are applicable. State aid is likely to become applicable if the following applies:
- The assistance is provided with or through state, including council, resources.
 - The assistance gives one or more economic entities an advantage over others (includes not-for-profit organisations and charities as well as businesses and an advantage is anything that they could not get themselves on the open market).
 - The assistance distorts or has the potential to distort competition (even small distortions count).
 - The assistance affects trade between member states of the EU (this is defined broadly, if something is tradable, it is covered).
- 19.3 Assistance may be through payments to the contractor, subsidised payments, the provision of equipment or support or low cost loans.

- 19.4 In certain circumstances financial assistance may be given where the amounts involved may be covered by de minimis provisions. Legal advice should still be obtained to ensure that de minimis applies before any financial assistance is given to another organisation.

20 CONTRACT MANAGEMENT

- 20.1 **Contracts register.** The contracts register is hosted on [SharePoint](#), and must detail all Herefordshire Council contracts above £5k in order to comply with the Transparency Information/Code. Contracts and commissioning officers are to update and add additional contracts to the register, as they are let, using the register to inform work planning in order to avoid unnecessary contract extensions.
- 20.2 Contract management standards apply to all contracts. All contracts shall be managed in accordance with the Contract Management Toolkit provided by the commercial services team and available on the intranet.
- 20.3 **Equality.** All contractors are required to demonstrate compliance with all relevant legislation relating to its employees and must operate in line with the council's equality policy, ensuring that its own Equal Opportunities Policy (if it has one) complies with the duties of the Equality Act 2010 and the Human Rights Act 1998.
- 20.4 **Health and safety.** We are committed to ensuring the health, safety and welfare of our employees, contractors' staff, the public and all others affected by our undertakings. All contractors will therefore be expected to demonstrate compliance with all relevant health and safety legislation and to submit their health and safety policies and procedures, along with confirmation of their level of public and employee liability insurance cover.
- 20.5 **Business continuity.** Although the council does not routinely request a Business Continuity Plan at the tendering stage as it is not a mandatory document, once a decision has been taken to award the contract, the selected provider's business continuity plan is an area that the council would wish to influence. Where contracts are being awarded to providers that will be providing critical services (as deemed by the council's business continuity management policy) on behalf of the council, and where there is not an immediate alternative to service provision, a business continuity plan is required. A failure of one of these providers would leave the council unable to perform its functions and be in breach of the Civil Contingencies Act. Risks should be identified and recorded should business continuity plans not be available. These risks must be mitigated to avoid a detrimental financial impact on council services and budgets, as well as a loss of public confidence.
- 20.6 **Payment.** In accordance with the Public Contract Regulations 2015 and the Late Payment of Commercial Debts Regulations 2013 and to maximise performance under the contract; the council will process all undisputed invoices within 30 days of receipt. The same shall apply to contractors in respect of any subcontractor arrangements applied under the applicable council contract(s). All council contracts shall contain provisions to this effect.

21 SUB-CONTRACTING

- 21.1 For contracts that are above the EU threshold, the advice of legal services shall be sought as to the contract and obligation to sub-contract.
- 21.2 Where a sub-contractor is to be engaged then the council is under an obligation to ensure that the contractor is under the same timescale obligations as to payment of the sub-contractor as the council is to the contractor.

22 PUBLIC TO PUBLIC COOPERATION OR IN-HOUSE BIDDING

- 22.1 Advice should be sought from the commercial services team and, if appropriate, legal services on proposals involving the provision of a service through a subsidiary company, jointly owned, or jointly provided.
- 22.2 Where an in-house provider wishes to compete for an above threshold tendered contract, the tender documents must comply with the following:
- a. that those involved with the in-house tender will maintain appropriate divisions with those managing the tender process for the council to ensure that the in-house bid team has no advantage over non-council bidders. In house tender bid teams must sign declarations that they have maintained independence of the tender review team,
 - b. the fact that there will be an in house tender must be noted on the relevant OJEU notice and the council's proposed arrangements should the in house bid be successful must be described, and
 - c. no information other than that provided to all bidders will be supplied to the in-house bidder.

23 SECURITY FOR PERFORMANCE

- 23.1 When drafting the invitation to tender the Authorised Officer shall seek the advice of commercial services, legal services and finance on whether a contract performance bond or some other form of security for performance is required prior to entering into a contract. The amount of, and form of security shall be determined by legal services in consultation with the S151 Officer having carried out an appropriate financial risk assessment. Such security must be effected with a reputable body authorised to effect such security and approved by the S151 officer or by way of a parent company guarantee if appropriate. Where appropriate a sum for liquidated damages to be included in the contract prior to any award to a contractor shall be set in consultation with the relevant technical officer and finance manager.

24 TRADING

- 24.1 Any proposals to sell or trade in services, supplies, or assets must be referred to legal services. Any proposal to dispose of council property other than land must be referred to the head of law and governance. Proposals to dispose of land must be referred to the corporate asset manager. For assets whose value is of negligible value (e.g. old office furniture/old IT equipment) officers must utilise the quotation procedure to seek offers to purchase the affected items.

25 GLOSSARY OF TERMS

"Anti-Bribery Legislation"	Means the Bribery Act 2010 any provision relating to the prevention of corruption in any legislation relating to Local Government and any statute amending or replacing them and any statutory instrument made thereunder.
"Authorised Officer"	means the officer with delegated authority from the relevant director for the receipt of quotations and tenders and for signing contracts
"Best Value"	means the council's duty under Section 3 Local Government Act 1999 to promote economies, efficiencies, and effectiveness
"Category Manager"	means the person responsible for overseeing all procurement and contract management activity for the category within the council that they are responsible for.

"Commissioner"	means the person responsible for planning and scoping the requirements which form the object of the contract.
"Concession Contract"	means an agreement whereby the council grants another person, whether legal or natural, the right to provide a service or function, or carry out works, at that person's risk, to the public, as more fully described in procurement legislation and with appropriate and measurable levels of service (KPIs)
"Contract Manager"	means the person responsible for the management of the contract, its scope and maintaining day-to-day relationships with the supplier.
"Contract"	means a contract (whether in writing or otherwise) for supplies, services, or for the execution of any works and also includes framework agreements, dynamic purchasing systems, and concession contracts. It excludes exempt contracts.
"Contracting Authorities"	means Central Government, local government bodies, bodies governed by public law or associations formed by any one or more of these.
"Contract Toolkit"	summarises the key procedures and actions to be undertaken in the management of the Contract,
"Contract Operations Manual"	means a document based on a standard template which provides, in a summary form, information on key stakeholders, relationships, contractual and financial arrangements concerning the contract.
"Contractor"	means any person or company seeking to enter into a contract with the council.
"Council"	means Herefordshire Council.
"Dynamic Purchasing System"	means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the Contracting Authority and open throughout its validity to any Contractor which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
"Equalities"	Any duty or requirement placed on the council or any other body by the Equality Act 2011 or any legislation amending or replacing it and any statutory instrument made thereunder.
"e-tendering portal"	means the on-line system maintained by the council for notifying potential suppliers and Contractors of Contract opportunities, issuing tender documentation, administration of clarifications, receiving and receipting bids, awarding and managing Contracts and maintaining compliance with the Transparency Code through the publication of Contract spend.
"Estimated Total Cost"	means the aggregate total whole life cost of the supplies or services to be provided or works to be performed under a Contract estimated prior to its procurement, calculated in accordance with Procurement Legislation, as described in the Procurement Guidance.
"European Directive"	means a Directive made in accordance with the Treaty on the Functioning of the European Union by the Commission of the European Union.
"European (EU) Threshold"	means the threshold applying to local authorities at

"Exempt Contract"	which supplies, services and works are subject to the European Directives. means Contracts for the acquisition or disposal of an interest in land, the grant of a licence (unless a licence involves the letting of a Concession Contract), the raising of finance, Contracts of employment or a Contract for the provision of legal services in connection with litigation or dispute resolution.
"Framework Agreement"	means an agreement which establishes the terms under which a contractor will enter into contracts with the contracting authority in the period during which the Framework Agreement applies. A contractor may be awarded a contract under a framework for a period which extends beyond the termination date of the framework providing that the contract is entered into before that date and is proportionate to the duration of the framework.
"Grant Agreement"	means an agreement whereby the council provides or receives monies to/from another person, whether legal or natural to provide a function or service without the expectation of any monetary benefit to the council except the repayment of the monies if the services are not performed or not performed to a specified standard.
"Joint Procurement Agreement"	means combining the procurement actions of two or more Contracting Authorities. The key defining characteristic is that there should be only one tender published on behalf of all participating authorities.
"Category Manager"	means the procurement officer responsible for advising the relevant Authorised Officer.
"Procurement Document"	means any document produced or referred to by the council to describe or determine elements of the procurement or the procedure, including the Contract notice, the prior information notice where it is used as a means of calling for a competition, the technical specifications, the descriptive document, the invitation to tender, proposed conditions of contract, formats for the presentation of documents by Contractors, information on generally applicable obligations and any additional documents
"Procurement Legislation"	means the procurement directives of the European Union and any regulations that implement them within the United Kingdom
"Professional Services"	an 'experienced professional' (often referred to as a consultant) who will provide expert knowledge in an advisory capacity only and are usually not accountable for the outcome of a consulting exercise or specific project. They will be procured to meet the requirements of a specific project with defined outcomes and a project completions date. In general, consultants will help define strategy. The process for the procurement of consultants will be in accordance with CPR.
"Quotation"	a written estimate of the cost to execute works or supply goods, materials or services.
"Service Director"	means the senior officer under the council's constitution of the council service responsible for the contract
"Social Value Duty"	Means the duty imposed upon the council by the Public Services Social Value Act 2011 and is the important

additional benefits that go beyond the direct function of any services, works or goods that are purchased by the council. These can be:

Social benefits that deliver positive outcomes for individuals and/or communities

Economic benefits that strengthen a workforce, industry, sector and/or the economy

Environmental benefits that result in environmentally sustainable business practices and/or an improvement of the environment.

"Regulated Contract"

means a Contract to be entered into which is subject to the provisions of the Procurement Legislation (in particular the Public Contracts Regulations 2015 and Concession Contracts Regulations 2016 as amended or replaced from time to time). The most up to date version of the Regulations may be obtained from Legal Services.

"Transparency Information/Code"

means the information that the Council is required to publish under the Local Authority Transparency Code 2015 to be found at

<https://www.gov.uk/government/publications/local-government-transparency-code-2015>

as amended or replaced from time to time.

"Umbrella Agreement"

means one of the following agreement types: Framework Agreements, Dynamic Purchasing System, corporate Contracts, shared service arrangements, purchase of services from another Contracting Authority, etc.

DISTRICT OF HEREFORDSHIRE COUNTY COUNCIL - STANDARD TERMS AND CONDITIONS FOR SERVICES (Non-Framework)

PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

A1.1 The terms and expressions used in these Terms and Conditions shall have the meanings set out below:-

“Authorised Officer” the person duly appointed by the council in accordance with clause B6.3 and notified in writing to the Provider to act as the representative of the council for the purpose of this contract or as amended from time to time and in default of such notification of the council’s solicitor to the council or similar responsible officer;

“Business Continuity Plan” means the plan setting out the Provider’s proposed methodology to ensure continuance of the Contract in the event of an emergency;

“Business Day” any day other than a Saturday or Sunday or a public or bank holiday in England;

“Change in Law” the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract;

“Commencement Date” the commencement date stated in the Contract Particulars;

“Commercially Sensitive Information” means any Confidential Information comprised of information:
a. which is provided by the Provider and designated as commercially sensitive information by the Council for the period set out in the Contract and/or
b. that constitutes a trade secret

"Confidential Information" means:
a. any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and
b. the Commercially Sensitive Information and does not include any information:
(1) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 6.3 (Confidential Information));
(2) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
(3) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
(4) is independently developed without access to the Confidential Information

“Contract”	means the written agreement between the council and the provider
"Contracting Authority"	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Council
“Contract Particulars”	means the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to, the Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period and Monitoring Requirements
“Contract Manager”	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B6.1;
“Contract Period”	the period of the contract as set out in the Contract Particulars;
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Contract Particulars, for the full and proper performance by the Provider of its obligations under the Contract
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988;
“Convictions”	means, other than in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order;
“Council”	means the District of Herefordshire County Council of Plough Lane, Hereford, and where the context so admits any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists);
“Crown”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
“Data Controller”	shall have the same meaning as set out in the Data Protection Act 1998;
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 1998;
“Data Protection Legislation”	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
"Delivery Instructions"	the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
"Employee"	any person employed by the Provider to perform the Contract which will also include the Provider's servants, agents, voluntary and unpaid workers and Sub-Contractors and representatives, employed by the Provider in the performance of the Services;
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Council
"Good Industry Practice"	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Provider engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to this Contract;
"Goods"	Any goods to be supplied as specified in the Contract
"Guidance"	any applicable guidance or directions with which the Provider is bound to comply;
"Information"	has the meaning given under Section 84 of the FOIA;
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Key Personnel"	those persons named in the Contract Particulars as being key personnel in respect of this Contract and any replacement from time to time under clause B5.3;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply
"Liabilities"	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities

"Monitoring Requirements"	(including reasonable legal and other professional fees and expenses) whenever arising or brought; any requirements of the Council in relation to monitoring ongoing performance and delivery of the Services detailed in the Contract Particulars;
"Month"	means calendar month
"Parent Company"	means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Provider or the Council
"Personal Data"	Shall have the same meaning as set out in the Data Protection Act 1998;
"Premises"	means the delivery address where the Services are to be supplied, as set out in the Contract Particulars
"Price"	the price of the Services as set out in the Tender. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for;
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing;
"Provider"	the provider of the Services and where applicable this shall include the Provider's Employees, Sub-Contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Specification) and any other quality standards set out in the Specification;
"Regulatory Body / Bodies"	means any government department, regulatory, statutory and other entity, committee, ombudsman or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council;
"Replacement Provider"	means any third party provider of Services appointed by the Council to supply any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)
"Services"	the Services described in the Specification together with all equipment required and any associated Goods provided by the Provider in relation to those Services;

“Staff”	means all persons employed by the Provider to perform its obligations under the agreement together with the Provider’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the agreement;
“Sub-Contract”	any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;
“Sub-Contractor”	any other person engaged by the Provider from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them). References to sub-contractors means sub-contractors (of any tier) of the Provider;
"Tender"	means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to providers for offers to supply it with Services
“Terms and Conditions”	the terms and conditions set out in this document;
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006;
“VAT”	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

A1.2 The interpretation and construction of the Contract including any schedules and appendices shall be subject to the following provisions:

- a. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b. words importing the masculine include the feminine and the neuter;
- c. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- d. 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;
- e. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- f. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- g. reference to a clause is a reference to the whole of that clause unless stated otherwise.

A1.3 **Provider’s Status.** At all times during the Contract the Provider shall be an independent Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A1.4 **Council’s Obligations.** Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any

other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

A1.5 **Entire Agreement.**

- a. This contract constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the parties in relation to such matters.
- b. Each of the parties acknowledges and agrees that in entering into the 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 the contract. The only remedy available to either party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- c. Nothing in clauses 1.5(a) and 1.5(b) shall operate to exclude fraud or fraudulent misrepresentation.
- d. In the event of and only to the extent of any conflict between the schedules, the clauses of the contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
 - (1) The contract particulars
 - (2) The pricing schedule
 - (3) The specification
 - (4) The clauses of the contract
 - (5) The remaining schedules (if any); and
 - (6) Any other document referred to in the clauses of the contract.
- e. The contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

A1.6 **Notices**

- a. Except as otherwise expressly provided within the contract, no notice or other communication from one party to the other shall have any validity under the contract unless made in writing by or on behalf of the party sending the communication.
- b. Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other party in the manner referred to in clause 1.6(c). provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- c. For the purposes of clause 1.6(b) the address of each party shall be:
 - (1) for the council: the address set out in contract particulars;
 - (2) for the provider: the address set out in in contract particulars.
- d. Either party may change its address for service by serving a notice in accordance with this clause.

A1.7 **Mistakes in Information.** The provider shall be responsible for the accuracy of all

drawings, documentation and information supplied to the council by the provider in connection with the supply of the services and shall pay the council any extra costs occasioned by any discrepancies, errors or omissions therein.

A1.8 Conflicts of Interest

- a. 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 conflict, or a potential conflict, between the pecuniary or personal interests of the provider or staff and the duties owed to the council under the provisions of the contract.
- b. The provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause A1.8(a) above arises or is reasonably foreseeable.
- c. The council reserves the right to terminate the contract immediately by giving notice in writing to the provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the provider and the duties owed to the council under the provisions of the contract. The actions of the council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the council.

A1.9 Prevention of Fraud

- a. The provider shall take all reasonable steps to prevent any fraud by staff and the provider (including its shareholders, members and directors) in connection with the receipt of monies from the council.
- b. The provider shall notify the council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- c. If the provider or its staff commits any fraud in relation to this or any other contract with a contracting authority or the council the council may:
 - (1) terminate the contract with immediate effect by giving the provider notice in writing 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 period; and/or
 - (2) recover in full from the provider any other loss sustained by the council in consequence of any breach of this clause 1.9.
- d. This clause shall apply for the duration of the contract and for a period of two (2) years after expiry of the contract.

PART B - PROVISION OF SERVICES

B1. Contract period

- B1.1 This contract shall commence on the commencement date and shall continue for the contract period, unless it is otherwise terminated in accordance with the provisions of this contract, or otherwise lawfully terminated or extended under clause b1.2.
- b1.2 If the contract period includes an option to extend and the council intends to take up the option, the provider shall be notified in writing within the period stated in writing prior to the commencement of the extension. The provisions of this contract will apply throughout any such extended period. If no such notification is issued this contract shall

automatically expire after the initial contract period.

B2. Goods

B2.1 Where Goods are supplied as part of the carrying out by the Provider of the Services:

- a. The Provider shall supply the Goods in accordance with the Council's requirements and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- b. If requested by the Council the Provider shall provide the Council with samples of Goods for evaluation and approval, at the Provider's cost and expense and such requests shall be acted upon immediately.
- c. The Provider shall ensure that the Goods are fully compatible with any of the Council's equipment.
- d. The Provider acknowledges that the Council relies on the skill and judgment of the Provider in the supply of the Goods and the performance of its obligations under the Contract.
- e. The Provider shall deliver the Goods at the time(s) and date(s) specified.
- f. Delivery lead times from point of order to receipt of goods should not exceed 4 working days.
- g. Where the Goods are delivered by the Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.
- h. Except where otherwise provided in the Agreement, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Provider's suppliers or carriers at such place as the Council or duly authorised person shall reasonably direct.
- i. Time of delivery shall be of the essence and if the Provider fails to deliver the Goods within the time specified the Council may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Council.
- j. The council shall be under no obligation to accept or pay for any goods delivered in excess of the quantity ordered. If the council elects not to accept such over-delivered goods it shall give notice in writing to the provider to remove them within five (5) working days and to refund to the council any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the goods), failing which the council may dispose of such goods and charge the provider for the costs of such disposal. The risk in any over-delivered goods shall remain with the provider unless they are accepted by the council. The council shall be under no obligation to accept or pay for any goods supplied earlier than the date for delivery.
- k. Unless expressly agreed to the contrary, the council shall not be obliged to accept delivery by instalments. If, however, the council does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the council, entitle the council to terminate the whole of any unfulfilled part of the contract without further liability to the council.
- l. The provider shall deliver the goods in accordance with the requirements of any supply chain agreement relevant to the appropriate delivery point.
- m. Ownership and risk in the goods shall, without prejudice to any other rights or remedies of the council, pass to the council at the time of acceptance of delivery.
- n. where specified by the council on dispatch of any consignment of the goods the provider shall send the council an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. where the goods, having been placed in transit, fail to be delivered to the council on the due date for delivery, the council shall, (provided that the council has been advised in writing of the dispatch of the goods), within ten (10) working

days of the notified date of delivery, give notice to the provider that the goods have not been delivered and may request the provider free of charge to deliver substitute goods within the timescales specified by the council or terminate the contract.

- o. The council or its authorised representatives may inspect or test the goods either complete or in the process of manufacture during normal business hours on reasonable notice at the provider's premises and the provider shall provide all reasonable assistance in relation to any such inspection or test free of charge. no failure to make complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the council of any rights or remedies in respect of the goods and the council reserves the right to reject the goods in accordance with clause 2.1(p)
- p. The council may by written notice to the provider reject any of the goods which fail to conform to the approved sample or fail to meet the contract requirements. Such notice shall be given within a reasonable time after delivery to the council of such goods. if the council rejects any of the goods pursuant to this clause the council may (without prejudice to other rights and remedies) either:
 - (1) Have such goods promptly, and in any event within 3 working days, either repaired by the provider or replaced by the provider with goods which conform in all respects with the approved sample and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - (2) Treat the contract as discharged by the provider's breach and obtain a refund from the provider in respect of the goods concerned together with payment of any additional expenditure reasonably incurred by the council in obtaining other goods in replacement provided that the council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- q. The issue by the council of a receipt note for the goods shall not constitute any acknowledgement of the condition, quantity or nature of those goods.
- r. Any goods rejected or returned by the council as described in clause 2.1(p) shall be returned to the provider at the provider's risk and expense.
- s. The goods shall be packed and marked in a proper manner and in accordance with the council's instructions and any statutory requirements and any requirements of the carriers. in particular the goods shall be marked with the batch number, order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

B3. The services

- B3.1 In consideration of the payment of the price, the provider shall supply the services during the contract period in relation to this contract in a proper, skilful and workmanlike manner; and in accordance with the council's requirements
- B3.2 The council may inspect and examine the manner in which the provider provides the services on reasonable notice.
- B3.3 Timely supply of the services shall be of the essence of this contract, including in relation to commencing the supply of the services within the time agreed or on a specified date.

B4. Manner of carrying out the services

- B4.1 The Provider shall at all times comply with the Quality Standards, and where applicable

shall maintain accreditation with the relevant quality standards authorisation body. To the extent that the standard of services has not been specified in this contract, the provider shall agree the relevant standard of the services with the council prior to the supply of the services and, in any event, the provider shall perform its obligations under this contract in accordance with the law and good industry practice.

B4.2 The provider shall ensure that a sufficient number of employees are in place to supply the services and that all employees supplying the services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the services.

B4.3 The council shall have the right to require the provider to attend such ad hoc performance review meetings as the council (acting reasonably) shall request.

B4.4 If the provider at any time becomes aware of any material matter that could affect the performance of the services in accordance with this contract, the provider shall inform the council immediately.

B5. KEY PERSONNEL

B5.1 The provider acknowledges that the key personnel are essential to the proper provision of the services to the council under this contract.

B5.2 The key personnel shall not be released from supplying the services without the agreement of the council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B5.3 Any replacements to the key personnel shall be subject to the agreement of the council. Such replacements shall be of at least equal status or of equivalent experience and skills to the key personnel being replaced and be suitable for the responsibilities of that person in relation to the services.

B5.4 The council shall not unreasonably withhold its agreement under clauses b5.2 or b5.3. Such agreement shall be conditional on appropriate arrangements being made by the provider to minimise any adverse impact on this contract which could be caused by a change in key personnel.

B6. Contract manager and authorised officer

B6.1 The provider shall employ a competent and authorised contract manager empowered to act on behalf of the provider for all purposes connected with this contract.

B6.2 If the contract manager's details are not specified in the contract particulars, the provider shall within seven (7) days of the date of this contract give notice in writing to the council of the identity of the contract manager. The provider shall within seven (7) days give notice in writing to the council of any change in the identity, postal address, email address and telephone numbers of the person appointed as contract manager. The provider shall give maximum possible notice to the council before changing its contract manager.

B6.3 The council shall appoint an authorised officer who shall be empowered to act on behalf of the provider for all purposes connected with this contract.

B6.4 If the authorised officer's details are not specified in the contract particulars, the council shall within seven (7) days of the date of this contract give notice in writing to the provider of the identity of the authorised officer. The council shall within seven (7) days give notice in writing to the provider of any change in the identity, postal address, email

address and telephone number of the person appointed authorised officer.

B7. DISCLOSURE AND BARRING SERVICE (DBS) CHECKS

- B7.1 The provider shall ensure that where relevant all employees who are engaged on this service have been subject to an enhanced DBS check prior to their employment and that they are not employed to work on this contract where they are found to have any conviction, caution, reprimand or warning which is relevant to the service.
- B7.2 The provider shall have policies and procedures which acknowledge and provide for ongoing monitoring of employees including undertaking further dbS disclosures every three years.
- B7.3 Any fee incurred in meeting the requirements of this clause b7 shall be at the provider's own cost.
- B7.4 The provider shall have policies and procedures in place which ensure that where an employee is to be engaged in a regulated activity as defined by the safeguarding of vulnerable groups act 2006 (as from time to time amended) permission is obtained to provide the council with the following information:
- a. Name;
 - b. Date of birth;
 - c. DBS disclosure number; and
 - d. The date of their most recent DBS disclosure.

B8. EMPLOYEES

- B8.1 The council (acting reasonably) may:-
- a. Instruct the provider that disciplinary action is taken against any employee (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
 - b. Where the council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the services is undesirable (including circumstances where the council reasonably considers that the employee may not be authorised to work in the uk) require the exclusion of the relevant employee from the relevant location(s).
- B8.2 The Provider shall comply with any notice issued by the Council pursuant to clause (b) from time to time requiring the exclusion from any relevant location of any Employee who in the opinion of the Council (which it shall not be required to explain or disclose to the Provider) is not acceptable on the grounds that the presence or conduct of the Employee is undesirable. The Provider shall not employ such persons again in the provision of the Services without the written consent of the Council.
- B8.3 Where the council exercises its rights under clause B8 and it can be shown that:-
- a. the provider has acted in accordance with the relevant provisions of this clause B8; and
 - b. the Council did not act reasonably in instructing the provider not to employ and/or in requiring any exclusion;

then the Council shall indemnify the Provider and keep the provider indemnified from and against any injury, claims, costs and expenses (including legal expenses) and or damage

suffered or incurred by the Provider, provided that the Provider has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

PART C - PRICE AND PAYMENT

C1. Contract Price

- C1.1 In consideration of the Provider's performance of its obligations under the Contract, the council shall pay the contract price in accordance with Clause C2 (Payment and VAT).
- C1.2 The council shall, in addition to the contract price and following evidence of a valid vat invoice, pay the provider a sum equal to the vat chargeable on the value of the services supplied in accordance with the contract.

C2. Payment and VAT

- C2.1 In consideration of the provider performing its obligations under the contract, the council shall pay all sums due to the provider in cleared funds within thirty (30) days of the date of invoice, submitted in accordance with the payment profile set out in the contract.
- C2.2 The provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the services supplied and that it is supported by any other documentation reasonably required by the council to substantiate the invoice.
- C2.3 If the Council agrees to delivery by instalments in accordance with Clause B2(k) payments may also be made in corresponding instalments at the discretion of the Council.
- C2.4 Where the provider enters into a sub-contract with a supplier or provider for the purpose of performing its obligations under the contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the provider to the sub-provider within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- C2.5 The provider shall add VAT to the contract price at the prevailing rate as applicable.
- C2.6 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 c2.6 shall be paid by the provider 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.
- C2.7 The provider shall not suspend the supply of the services unless the provider is entitled to terminate the contract under Clause D2 (Termination on Default) for failure to pay undisputed sums of money.
- C2.8 Interest shall be payable by the council on the late payment of any undisputed sums of money properly invoiced under the provisions of this Clause C2 in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

C3. Recovery of sums due

- C3.1 Wherever under the contract any sum of money is recoverable from or payable by the provider (including any sum which the provider is liable to pay to the council in respect of any breach of the contract), the council may unilaterally deduct that sum from any sum

then due, or which at any later time may become due to the provider under the contract or under any other agreement or contract with the council.

- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 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.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- C4. **Euros**
- C4.1 Any requirement of law to account for the services in Euros (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the provider free of charge to the council.
- C4.2 The Council shall provide all reasonable assistance to facilitate compliance with Clause C4.1 by the Provider.

DEFAULT, DISRUPTION AND TERMINATION

D1. Termination on insolvency and change of control, or disqualification

- D1.1 The Council may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:
- a. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - b. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - c. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - d. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - e. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - f. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - g. being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - h. any event similar to those listed in Clause D1.1(a) - (g) occurs under the law of any other jurisdiction.
- D1.2 The council may terminate the contract with immediate effect by notice in writing where

the provider is an individual and:

- a. an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- b. a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
- c. a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- d. the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- e. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
- f. being an individual, dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g. the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

D1.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control as defined by section 450, 451 and 707 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

- a. being notified that a Change of Control has occurred; or
- b. where no notification has been made, the date that the Council becomes aware of the Change of Control; but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

D1.4 In addition, the Council may terminate the Contract with immediate effect by notice in writing if at any time it becomes aware that:

- a. the Provider, at the time of contract award, should have been excluded from participation due to any of the offences listed in Regulation 57(1) or Regulation 57(2) of the Public Contracts Regulations 2015 (the "mandatory exclusions" stipulated by those Regulations).
- b. the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union (TFEU).

D2. **Termination on default**

D2.1 The council may terminate the contract by giving written notice to the provider with immediate effect if the provider commits a default and if:

- a. the provider has not remedied the default to the satisfaction of the council within three (3) working days, or such other period as may be specified by the council, after issue of a written notice specifying the default and requesting it to be remedied; or
- b. the Default is not, in the opinion of the Council, capable of remedy; or
- c. the Default is a material breach of the Contract.

D2.2 If the council fails to pay the provider undisputed sums of money when due, the provider shall notify the council in writing of such failure to pay. If the council fails to pay such undisputed sums within ninety (90) working days of the date of such written notice, the provider may terminate the contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the council exercising its rights under clause 4.3.1 (recovery of sums due).

D3. **Break**

D3.1 The council shall have the right to terminate the contract at any time by giving ninety (90) days written notice to the provider.

D4. **Framework agreement**

D4.1 Not used

D5. **Consequences of expiry or termination**

D5.1 Where the council terminates the contract under clause D2 (termination on default) and then makes other arrangements for the supply of services, the council may recover from the provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the council throughout the remainder of the contract period. The council shall take all reasonable steps to mitigate such additional expenditure. Where the contract is terminated under clause D2 (termination on default), no further payments shall be payable by the council to the provider until the council has established the final cost of making those other arrangements.

D5.2 Subject to clause E1 where the council terminates the contract under clause D3 (break), the council shall indemnify the provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the provider by reason of the termination of the contract, provided that the provider takes all reasonable steps to mitigate such loss. Where the provider holds insurance, the provider shall reduce its unavoidable costs by any insurance sums available. The provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the provider as a result of termination under clause 9.3 (break).

D5.3 The council shall not be liable under clause D5.2 to pay any sum which:

- a. was claimable under insurance held by the provider, and the provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b. when added to any sums paid or due to the provider under the contract, exceeds the total sum that would have been payable to the provider if the contract had not been terminated prior to the expiry of the contract period.

D5.4 Save as otherwise expressly provided in the Contract:

- a. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), H8 (Prevention of Corruption), F2 (Confidential Information), F4 (Freedom of Information), F7 (Records and Audit Access), H2.6 (Cumulative Remedies), 8.1 (Liability, Indemnity and Insurance),

D5 (Consequences of Expiry or Termination), and H13.1 (Governing Law and Jurisdiction).

D6. Disruption

- D6.1 The provider shall take reasonable care to ensure that in the performance of its obligations under the contract it does not disrupt the operations of the council, its employees or any other provider employed by the council.
- D6.2 The provider shall immediately inform the council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the contract.
- D6.3 In the event of industrial action by the staff, the provider shall seek the council's approval to its proposals for the continuance of the supply of the services in accordance with its obligations under the contract.
- D6.4 if the provider's proposals referred to in clause D6.3 are considered insufficient or unacceptable by the council acting reasonably then the contract may be terminated with immediate effect by the council by notice in writing.
- D6.5 If the provider is temporarily unable to fulfil the requirements of the contract owing to disruption of normal business by direction of the council, an appropriate allowance by way of extension of time will be approved by the council. In addition, the council will reimburse any additional expense reasonably incurred by the provider as a direct result of such disruption.

D7. Recovery upon Termination

- D7.1 On the termination of the Contract for any reason, the Provider shall:
- a. Immediately return to the Council all Confidential Information and any IPRs belonging to the Council, in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - b. Immediately deliver to the Council all property (including materials, documents, information and access keys) that may have been provided to the Provider by the Council. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - c. Assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress.
 - d. Promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- D7.2 If the Provider fails to comply with Clause D7.1 (a) and (b), the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.
- D7.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause D7.1 (c) and (d) free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

PART E - INSURANCE AND LIABILITIES

E1. Liability, Indemnity and Insurance

E1.1 nothing in the contract shall be construed to limit or exclude either party's liability for:

- a. death or personal injury caused by its negligence or that of its Staff;
- b. Fraud or fraudulent misrepresentation by it or its Staff; or
- c. any 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;

E1.2 Subject to Clause E1.3 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 the 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.

E1.3 Subject to Clause E1.1, in no event shall either Party be liable to the other for any:

- a. loss of profits;
- b. loss of business;
- c. loss of revenue;
- d. loss of or damage to goodwill;
- e. loss of savings (whether anticipated or otherwise); and/or
- f. any indirect or consequential loss or damage.

E1.4 The Council may, amongst other things, recover as a direct loss:

- a. any additional operational and/or administrative expenses arising from the Provider's Default;
- b. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and
- c. the additional cost of procuring replacement Services following termination of the Contract as a result of a Default by the Provider.

E1.5 Nothing in the contract shall impose any liability on the council in respect of any liability incurred by the provider to any other person, but this shall not be taken to exclude or limit any liability of the council to the provider that may arise by virtue of either a breach of the contract or by negligence on the part of the council, or the council's employees, servants or agents.

E1.6 The provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (which as a minimum shall comply with the level of cover set out in the tender) 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. Such insurance shall be maintained during the period over which the contract is performed and for a minimum of 6 (six) years following the expiration or earlier termination of the contract.

- E1.7 The provider shall hold employer's liability insurance in respect of staff in accordance with any legal requirement from time to time in force.
- E1.8 The provider shall give the council, on request, copies of all insurance policies referred to in this clause E1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- E1.9 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- E1.10 The provisions of any insurance or the amount of cover shall not relieve 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 the Provider to satisfy any liability referred to in Clause E1.2.

E2. **Warranties and Representations**

- E2.1 The provider warrants and represents that:
- a. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the contract;
 - b. the contract is executed by a duly authorised representative of the provider;
 - c. in entering the contract it has not committed any fraud;
 - d. as at the commencement date, all information, statements and representations contained in the tender are 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;
 - e. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the contract;
 - f. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the contract;
 - g. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the provider's assets or revenue;
 - h. it owns, has obtained or is able to obtain valid licences for all intellectual property rights that are necessary for the performance of its obligations under the contract;
 - i. the obligations undertaken by the provider shall be discharged and carried out by appropriately experienced, qualified and trained staff with all due skill, care and diligence:
 - (1) In the three (3) years prior to the date of the contract:
 - (2) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and

- (3) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (4) It has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

PART F - PROTECTION OF INFORMATION

F1. Intellectual Property

- F1.1 All intellectual property rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- a. Provided to the provider by the council shall remain the property of the council; or
 - b. Prepared by or for the provider specifically for the use, or intended use, in relation to the performance of this contract shall belong to the council subject to any exceptions set out in the contract particulars.
- F1.2 The provider shall obtain any necessary approval before using any material, in relation to the performance of this contract which is or may be subject to any third party intellectual property rights. The provider shall procure that the owner of the intellectual property rights grants to the council a non-exclusive licence, or if the provider is itself a licensee of those rights, the provider shall grant to the council an authorised sub-licence, to use, reproduce, and maintain the intellectual property rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other councils, the replacement provider or to any other third party providing services to the council, and shall be granted at no cost to the council.
- F1.3 It is a condition of this contract that the services will not infringe any intellectual property rights of any third party and the provider shall during and after the contract period on written demand indemnify and keep indemnified without limitation the council against all liabilities which the council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the council.
- F1.4 At the termination of this contract the provider shall at the request of the council immediately return to the council all materials, work or records held in relation to the services, including any back-up media.

F2. Confidential information

- F2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:
- a. Treat the other party's confidential information as confidential and safeguard it accordingly; and
 - b. not disclose the other party's confidential information to any other person without the owner's prior written consent.
- F2.2 Clause F2.1 shall not apply to the extent that:
- a. Such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause F4 (Freedom of Information);
 - b. Such information was in the possession of the party making the disclosure

without obligation of confidentiality prior to its disclosure by the information owner;

- c. Such information was obtained from a third party without obligation of confidentiality;
- d. Such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- e. It is independently developed without access to the other party's confidential information.

F2.3 The provider may only disclose the council's confidential information to its staff who are directly involved in the provision of the services and who need to know the information, and shall ensure that such staff are aware of and shall comply with these obligations as to confidentiality.

F2.4 The provider shall not, and shall procure that its staff do not, use any of the council's confidential information received otherwise than for the purposes of this contract.

F2.5 At the written request of the council, the provider shall procure that those members of the staff identified in the council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

F2.6 Nothing in this agreement shall prevent the council from disclosing the provider's confidential information:

- a. To any crown body or any other contracting authority. [all crown bodies or contracting authorities receiving such confidential information shall be entitled to further disclose the confidential information to other crown bodies [or other contracting authorities] on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any crown body or any contracting authority];
- b. To any consultant, provider or other person engaged by the council or any person conducting an office of government commerce gateway review;
- c. For the purpose of the examination and certification of the council's accounts;
- d. For any examination pursuant to section 6(1) of the national audit act 1983 of the economy, efficiency and effectiveness with which the council has used its resources.

F2.7 The council shall use all reasonable endeavours to ensure that any government department, contracting authority, employee, third party or sub-provider to whom the provider's confidential information is disclosed pursuant to clause f2.6 is made aware of the council's obligations of confidentiality.

F2.8 Nothing in this clause F2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's confidential information or an infringement of intellectual property rights.

F3. **Data protection**

F3.1 With respect to the parties' rights and obligations under this agreement, the parties agree that the authority is the data controller and that the provider is the data processor.

F3.2 The Provider shall:

- a. Process the personal data only in accordance with instructions from the authority (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by the authority to the

- provider during the term of this agreement;
- b. Process the personal data only to the extent, and in such manner, as is necessary for the provision of the services or as is required by law or any regulatory body;
 - c. Implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. these measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data and having regard to the nature of the personal data which is to be protected;
 - d. take reasonable steps to ensure the reliability of any staff who have access to the personal data;
 - e. obtain prior written consent from the authority in order to transfer the personal data to any sub-contractors or affiliates for the provision of the services;
 - f. ensure that all staff required to access the personal data are informed of the confidential nature of the personal data and comply with the obligations set out in this clause F3;
 - g. Ensure that none of the staff publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by the authority;
 - h. Notify the authority (within [five] working days), if it receives:
 - (1) A request from a data subject to have access to that person's personal data; or
 - (2) A complaint or request relating to the authority's obligations under the data protection legislation;
 - i. Provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
 - (1) Providing the Authority with full details of the complaint or request;
 - (2) Complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (3) Providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (4) Providing the Authority with any information requested by the Authority.
 - j. Permit the authority or the authority's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the provider's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the authority to enable the authority to verify and/or procure that the provider is in full compliance with its obligations under this agreement.
 - k. Provide a written description of the technical and organisational methods employed by the provider for processing personal data (within the timescales required by the authority); and
 - l. Not process personal data outside the European economic area without the prior written consent of the authority and, where the authority consents to a transfer, to comply with:
 - (1) The obligations of a data controller under the eighth data protection principle set out in schedule 1 of the data protection act 1998 by providing an adequate level of protection to any personal data that is transferred; and
 - (2) Any reasonable instructions notified to it by the authority.

F3.3 The provider shall comply at all times with the data protection legislation and shall not

perform its obligations under this agreement in such a way as to cause the authority to breach any of its applicable obligations under the data protection legislation.

F4. Freedom of information

F4.1 The provider acknowledges that the council is subject to the requirements of the foia and the environmental information regulations and shall assist and cooperate with the council to enable the council to comply with its information disclosure obligations.

F4.2 The provider shall and shall procure that its sub-contractors shall:

- a. Transfer to the council all requests for information that it receives as soon as practicable and in any event within [two] working days of receiving a request for information;
- b. Provide the council with a copy of all information in its possession, or power in the form that the council requires within [five] working days (or such other period as the council may specify) of the council's request; and
- c. Provide all necessary assistance as reasonably requested by the council to enable the council to respond to the request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the environmental information regulations.

F4.3 The council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this agreement or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the foia or the environmental information regulations.

F4.5 In no event shall the provider respond directly to a request for information unless expressly authorised to do so by the council.

F4.6 The provider acknowledges that (notwithstanding the provisions of clause f4.2) the council may, acting in accordance with the secretary of state for constitutional affairs code of practice on the discharge of the functions of public authorities under part 1 of the freedom of information act 2000 ("the code"), be obliged under the FOIA, or the environmental information regulations to disclose information concerning the provider or the services:

- a. in certain circumstances without consulting the Provider; or
- b. following consultation with the Provider and having taken their views into account;
- c. provided always that where clause F4.2 applies the council shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the provider advanced notice, or failing that, to draw the disclosure to the provider's attention after any such disclosure.

F4.7 The provider shall ensure that all information is retained for disclosure and shall permit the council to inspect such records as requested from time to time.

F5. Publicity, media and official enquiries

F5.1 The provider shall not make any press announcements or publicise the contract in any way without the council's prior approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this clause.

F5.2 The council shall be entitled to publicise the contract in accordance with any legal

obligation upon the council, including any examination of the contract by the auditor.

F5.3 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.

F6. Security

F6.1 The provider shall comply with all reasonable security requirements of the council while on the premises and shall ensure that all staff complies with such requirements.

F6.2 The council shall provide the provider upon request copies of its written security procedures and shall afford the provider upon request an opportunity to inspect its physical security arrangements.

F7. Records and Audit Access

F7.1 The provider shall keep and maintain until one (1) year after the date of termination or expiry (whichever is the earlier) of the contract (or as long a period as may be agreed between the parties), full and accurate records and accounts of the operation of the contract including the services provided under it, the contracts entered into with the contracting authority and the amounts paid by each contracting authority.

F7.2 The Provider shall keep the records and accounts referred to in Clause F7.1 above in accordance with good accountancy practice.

F7.3 The provider shall on request afford the council, the council's representatives and/or the auditor such access to such records and accounts as may be required from time to time.

F7.4 The provider shall provide such records and accounts (together with copies of the provider's published accounts) during the contract period and for a period of one (1) year after the expiry of the contract period to the council and the auditor.

F7.5 The council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the provider or delay the supply of the services save insofar as the provider accepts and acknowledges that control over the conduct of audits carried out by the auditor is outside of the control of the council.

F7.6 Subject to the Council's rights of Confidential Information, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

- a. All information requested by the Council within the scope of the audit;
- b. Reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and
- c. Access to Staff.

F7.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 6.6, unless the audit reveals a material default by the provider in which case the provider shall reimburse the council for the council's reasonable costs incurred in relation to the audit.

F8. Record keeping and monitoring

F8.1 In order to assist the council in its record keeping and monitoring requirements including auditing and national audit office requirements, the provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after this contract has been completed, full and accurate records of this

contract including the services supplied under it, all expenditure reimbursed by the council, and all payments made by the council. The provider shall on request allow the council or the council's representatives such access to (and copies of) those records as may be required by the council in connection with this contract.

- F8.2 Where monitoring requirements are set out in the contract particulars, the provider shall comply with monitoring requirements at its own cost. The council reserve the right to request from the provider all necessary supporting information in relation to the monitoring requirements.

PART G - STATUTORY OBLIGATIONS

G1. Health and safety

- G1.1 The provider shall comply with the requirements of the health and safety at work etc. act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working in the performance of its obligations under this contract.
- G1.2 The provider shall ensure that its health and safety policy statement (as required by the health and safety at work etc act 1974) is made available to the council on request. the provider acknowledges that its health and safety policy statement is subject to approval by the council.

G2. Corporate requirements

- G2.1 The provider shall comply with all obligations under the Human Rights Act 1998.
- G2.2 The provider will have in place appropriate policies and rules, including, but not limited to:
- a. Equality and diversity policies;
 - b. Child protection and safeguarding policies;
 - c. Sustainability;
 - d. Information security rules;
 - e. Whistleblowing and/or confidential reporting policies; and
 - f. All site rules relevant to the fulfilment of the provider's obligations in the performance of the services.
- G2.3 The Provider shall produce them upon request of the Council.
- G2.4 The provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) and shall take all reasonable steps to secure the observance of this clause g2 by all servants, employees or agents of the provider and all suppliers and sub-contractors employed in the execution of the contract
- G2.5 The provider shall comply with all relevant legislation relating to its employees however employed including (but not limited to) the compliance in law of the ability of the employees to work in the United Kingdom.
- G2.6 If the provider has a finding against it relating to its obligations under clause 0 it will provide the council with:
- a. details of the finding; and
 - b. the steps the provider has taken to remedy the situation.

G3 Law and change in law

- G3.1 The provider shall comply at all times with the law in its performance of this contract.
- G3.2 On the occurrence of a change in law which has a direct effect upon the price the parties shall meet within fourteen (14) days of the provider notifying the council of the change in law to consult and seek to agree the effect of the change in law and any change in the price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the provider. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the change in law, either party may refer the matter to dispute resolution in accordance with clause H1.
- G3.3 Any agreed additional sums payable as a result of the operation of clause 0 shall be included in the price. for the avoidance of doubt nothing in this contract is intended to allow the provider double recovery of any increase in costs.

G4 TUPE indemnity

For the purposes of this clause only the following definitions shall take effect:-

“Current employer”	the employer of the transferring employees immediately before the commencement date.
“Employment costs”	remuneration, benefits, entitlements and outgoings in respect of the transferring employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions.
“Prohibited act”	include any of the following (1) termination of employment of any employees; or (2) the alteration or change of terms or conditions of any employees; or (3) the recruitment of any employees; or (4) relocation or assignment to new duties of any employees.
“Transferring employees”	those employees employed wholly or mainly by the current employer in providing the services described in the specification prior to the commencement date.

- G4.1 The council and the provider acknowledge that where as a result of tupe the contracts of employment between the current employer and the transferring employees (except in so far as such contracts relate to any occupational pension scheme as defined in regulation 10 of TUPE) transfer, they will have effect after the commencement date as if originally made between the provider and the transferring employees.
- G4.2 All employment costs in respect of the period:
- Up to and including the commencement date in relation to the transferring employees (whether or not due for payment at that date) will be borne by the current employer;
 - After the commencement date will be borne by the provider; and,
 - If necessary be apportioned on a time basis between the provider and the current employer.
- G4.3 The provider will keep the council and any replacement provider indemnified in full against all liabilities arising directly or indirectly and whether incurred by the council pursuant to an indemnity provided to the replacement provider in connection with:
- the employment or termination of employment of any of the employees (whether

- b. or not terminated by notice and, if so terminated, whenever that notice expires);
- b. any act, omission or default of the provider in respect of the employment of the transferring employees;
- c. The provider's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the council or the replacement provider to give the provider the information required from the council or the replacement provider to enable the provider to comply with its obligations under TUPE; and
- d. The Provider's failure to provide the employee liability information under Regulation 11 of TUPE.
- b. Any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the replacement Provider is not then participating, or pursuant to the Transferring Employee's terms and conditions of employment;

G4.4 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Provider will (if the Council has reasonable grounds to believe that TUPE will apply to any employees of the Provider or its Sub-Contractors on expiry or termination in connection with a service provision change) provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Provider) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

G4.5 The provider authorises the council to pass any information supplied to any replacement provider or potential replacement provider and the provider will secure all necessary consents from relevant employees in order to do this.

G4.6 The provider will keep the council and any replacement provider indemnified in full against all liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

G4.7 The parties acknowledge that they consider the application of TUPE to be unlikely on termination or expiry of this contract. accordingly, except with the prior consent of the council to do otherwise (such consent not to be unreasonably withheld) the provider is to use best endeavours to provide the services in a manner such that no organised grouping of employees of the provider and/or its sub-contractors is formed where such individuals have rights under TUPE against the council or its subsequent service provider. the provider shall indemnify the council and/or where relevant the council's subsequent service providers in full for all losses, liabilities, actions, claims demands, compensation, damages, costs and expenses and increased costs and expenses relating to or arising from or connected with claims made against them respectively by such employees on the grounds of TUPE arising under or in connection with this Contract.

G5 **Business continuity plan**

G5.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform its important ordinary functions in the event of an emergency, as defined by the Act. Organisations providing services or goods which underpin the Council's critical service provision must be able to continue to provide in the event of an emergency. The Provider shall use its reasonable endeavours:

- a. To prepare a robust Business Continuity Plan that ensures the continuation of

- this Contract;
- b. On request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time);
 - c. to allow the Council at its discretion from time to time to monitor the Provider's business continuity arrangements;
 - d. To notify the Council if an incident occurs which activates the Provider's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
 - e. To provide the Council with details of how the Provider managed any incident which resulted in the activation of the Provider's Business Continuity Plan and any consequential amendments made to the Provider's processes and/or procedures thereafter.

G6 Community safety

- G6.1 The council has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the crime and disorder act 1998. the provider is requested to assist the council in the provision of the services, in order to enable the council to comply with this obligation at no additional expense to the council.

G7 Environmental requirements

- G7.1 The provider shall perform its obligations under the contract in accordance with the council's environmental policies, which are 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.

PART H - GENERAL PROVISIONS

H1. Dispute resolution procedure

- H1.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause H1.
- H1.2 The provider and the council shall endeavour to notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.
- H1.3 Both parties shall endeavour to resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of both parties.
- H1.4 If the parties fail to resolve the dispute through such consultation either party may refer the matter to an adjudicator ("the adjudicator"). The adjudicator shall be selected by agreement between the parties, or where the parties are unable to agree on the identity of the adjudicator within fourteen (14) days, the president for the time being of the chartered institute of arbitrators shall appoint the adjudicator within thirty (30) business days of any application for such appointment by either party.
- H1.5 Within five (5) business days of nomination in relation to a particular dispute, the adjudicator shall require the parties to submit in writing their respective arguments. the adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- H1.6 In any event, the adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) business days of the adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or

thirty (30) business days from the date of reference if the party which referred the dispute agrees. The adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

- H1.7 The adjudicator's costs of any reference shall be borne as the adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- H1.8 The adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the arbitration act 1996 and the law relating to arbitration shall not apply to the adjudicator or his determination or the procedure by which he reached his determination.
- H1.9 The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this agreement.
- H1.10 All information, data or documentation disclosed or delivered by a party to the adjudicator in consequence of or in connection with his appointment as adjudicator shall be treated as confidential. the adjudicator shall not, save as permitted by clause F2 (confidentiality and publicity) and clause F2 (freedom of information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the adjudicator's work.
- H1.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- H1.12 If:
- a. either party is dissatisfied with or otherwise wishes to challenge the adjudicator's decision made in accordance with clause h1.6 (adjudicator's decision); or
 - b. both parties agree,

then either party may (within twenty (20) business days of receipt of the adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to the courts.

- H1.13 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause H1 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause H1.

H2. **Control of the contract**

H2.1 **Transfer and Sub-Contracting**

- a. The provider shall not assign, novate, sub-contract or in any other way dispose of the contract or any part of it without the prior approval of the council. Sub-contracting any part of the contract shall not relieve the provider of any obligation or duty attributable to the provider under the contract.
- b. The provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- c. Where the council has consented to the placing of sub-contracts, copies of each

sub-contract shall, at the request of the council, be sent by the provider to the council as soon as reasonably practicable.

d. Subject to clause H2.1(f), the council may assign, novate or otherwise dispose of its rights and obligations under the contract or any part thereof to:

- (1) any contracting authority; or
- (2) any other body established by the crown or under statute in order substantially to perform any of the functions that had previously been performed by the council; or
- (3) any private sector body which substantially performs the functions of the council;

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

e. Any change in the legal status of the council such that it ceases to be a contracting authority shall not, subject to clause H2.1(f), affect the validity of the contract. In such circumstances, the contract shall bind and inure to the benefit of any successor body to the council.

f. If the rights and obligations under the contract are assigned, novated or otherwise disposed of pursuant to clause H2.1(d) to a body which is not a contracting authority or if there is a change in the legal status of the council such that it ceases to be a contracting authority (in the remainder of this clause both such bodies being referred to as "the transferee"):

- (1) the rights of termination of the Council in Clauses D1 (Termination on insolvency and change of control) and D2 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (2) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.

g. The council may disclose to any transferee any confidential information of the provider which relates to the performance of the provider's obligations under the contract. In such circumstances the council shall authorise the transferee to use such confidential information only for purposes relating to the performance of the provider's obligations under the contract and for no other purposes and shall take all reasonable steps to ensure that the transferee gives a confidential information undertaking in relation to such confidential information.

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

H2.2 **Waiver**

- a. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- b. 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 1.6 (Notices).
- c. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

H2.3 Variation

- a. Subject to the provisions of this Clause H2.3, the Council may request a variation to Services ordered provided that such variation does not amount to a material change to the Contract. Such a change is hereinafter called a "Variation".
- b. The Council may request a Variation in writing to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the services.
- c. In the event that the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:
 - (1) agree to continue to perform their obligations under the Contract without the Variation; or
 - (2) terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Services, or where the Provider can show evidence of substantial work being carried out to fulfil the Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause H1.
- d. If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

H2.4 Severability

- a. If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- b. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

H2.5 Remedies in the event of inadequate performance

- a. Where a complaint is received about the standard of provision of the Services or about the manner in which any Services have been supplied 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 Clause D2 (Termination on Default) of the Contract.
- b. 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, without prejudice to its rights under Clause D2 (Termination on Default), 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 contract price 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 D2 (Termination on 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 payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- c. If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Working Days of the Council's instructions or such other period of time as the Council may direct.
- d. In the event that the Provider:
- (1) Fails to comply with Clause H2.5 (c) above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - (2) Persistently fails to comply with Clause H2.5 (c) above
- the Council may terminate the Contract with immediate effect by giving the Provider notice in writing.
- e. Without prejudice to any other right or remedy which the Council may have, if any Services are not supplied in accordance with, or the Provider fails to comply with any of the terms of, the Contract the Council shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Services have been accepted by the Council:
- (1) Not used;
 - (2) To reject any goods (in whole or in part) and return them to the provider at the risk and cost of the provider on the basis that a full refund for the goods so returned shall be paid forthwith by the provider;
 - (3) At the council's option to give the provider the opportunity at the provider's expense to either remedy any defect in the goods and/or services or to supply replacement goods and/or services and carry out any other necessary work to ensure that the terms of the contract are fulfilled;
 - (4) To refuse to accept any further deliveries of the goods but without any liability to the council;
 - (5) To carry out at the provider's expense any work necessary to make the goods and/or services comply with the contract; and
 - (6) To claim such damages as may have been sustained in consequence of the provider's breach or breaches of the contract.

H2.6 Cumulative remedies. 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.

H2.7 **Monitoring of contract performance.** The provider shall comply with the monitoring arrangements set out in the contract particulars including, but not limited to, providing such data and information as the provider may be required to produce.

H3. **Third party rights**

H3.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

H4. **No waiver**

H4.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of this Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H4.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause Error! Reference source not found. (Notices).

H5. **Severance**

H5.1 If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H6. **Assignment, sub-contracting and responsibility**

H6.1 Subject to any express provision of this Contract, the Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H6.2 The Council shall be entitled to:

- a. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or
- b. transfer, assign or novate its rights and obligations where required by Law.

H6.3 The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Sub-Contractors, servants, agents and Employees as though they were its own.

H7. **Force majeure**

H7.1 Neither party shall be liable for failure to perform its obligations under this Contract if such failure results from Force Majeure.

H7.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Council nor entitle the

Provider to terminate this Contract.

H7.3 Industrial action by, or illness or shortage of the Provider's Employees, agents or Sub-Contractors, or failure or delay by any of the Provider's suppliers to supply goods, components, services or materials shall not be regarded as an event of Force Majeure.

H7.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate this Contract immediately or on a set termination date.

H7.5 If this Contract is terminated in accordance with clause H7.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

H8. **Prevention of corruption**

H8.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council or any other public body or person employed by or on behalf of the Council any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Contract or any other contract with the Council or any other public body or person employed by or on behalf of the Council, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

H8.2 If the Provider, its Staff or any person acting on the Provider's behalf, engages in conduct prohibited by Clause H8.1, the Council may:

- a. Terminate the contract with immediate effect by giving notice in writing to the provider and recover from the provider the amount of any loss suffered by the council resulting from the termination; and/or
- b. Recover in full from the provider any other loss sustained by the council in consequence of any breach of those clauses.

H9. **Costs and expenses**

H9.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

H10. **No agency or partnership**

H10.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H11. **Non solicitation and offers of employment**

H11.1 The Provider agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of twelve (12) months following termination of this Contract:

- a. Solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a

managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

- b. Attempt, or knowingly assist or procure any other person to do the above.

H12. Inspection of provider's premises

- H12.1 The provider shall permit the council to make any inspections or tests which may reasonably be required in respect of the provider's premises in relation to this contract.

H13. Law and jurisdiction

- H13.1 This contract shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.