



STANDARD TENDER DOCUMENTATION

DRAFT CONTRACT FOR SERVICE CONTRACTS VALUED BETWEEN £50K AND BELOW EU THRESHOLD

Medium Value Contracts under the Council's CSOs

Note: please ensure that you mark any changes made to this Draft Contract using tracked changes throughout the document. It is important that when legal review the document they know what the base document is and what changes have been made. This will speed up review considerably.

Further only change the sections which are relevant and specific to your procurement. Much of the drafting is included for very specific reasons.

Please use the version control box below to set out version number, name of reviewer and date.

Warning: all drafting notes to be deleted once addressed for each individual procurement

Version Control

Version	Date	Revision Author
Base Document	July 2020	Sharpe Pritchard



**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

TENDER FOR []¹

**VOLUME 3
DRAFT CONTRACT**

¹ Insert name of the project – this should be the same on all the documents

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DRAFT

THIS CONTRACT is made the [] day of [] 20[]

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM** of Town Hall, King Street, Hammersmith, London W6 9JU (**the “Council”**) and
- (2) [] a company registered in England and Wales (**Company Number []**) with its registered office located at [](**the “Contractor”**), each a **“Party”** and together the **“Parties”**.

WHEREAS

- (1) The Council wishes to procure the provision of []² services within the London Borough of Hammersmith and Fulham as more particularly set out in the Specification and the Contractor has offered to provide such services and the Council has accepted this offer; and
- (2) The Parties have agreed to enter into this Contract incorporating the terms and conditions set out herein which are agreed between them.

It is hereby agreed as follows:

1 DEFINITIONS

- 1.1 In this Contract, save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them:

Word/Phrase	Meaning
Administration Rate	the fee deductible by the Council for its additional officer time incurred as a result of a Performance Default to be charged at £30.00 per hour;
Annual Sum	means the annual sum (subject to the Services having been properly provided) payable by the Council to the Contractor as set out in Schedule 2;
Change	an amendment to the terms of the Contract, or an amendment, omission, change or modification to the Services or part of the Services, or a change in the way in which the Services are to be carried out, effected in accordance with Clause 7;
Commencement Date	the [] day of [], 20[] ³ , which is to be the date the Contractor commences the provisions of the Services;
Conditions	means the terms and conditions set out in this document;

² Insert title of the services.

³ Insert the commencement date of the Contract.

Word/Phrase	Meaning
Confidential Information	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including trade secrets, Intellectual Property Rights and know-how of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all personal data and sensitive personal data within the meaning of Data Protection Legislation;
Contract Documents	means these Conditions and all the Schedules attached to these Conditions;
Contract Period	means, subject to clause 2.2, the period from and including the Commencement Date to the Expiry Date or if earlier, the Termination Date;
Contract Price	means the sums as set out in Schedule 2 comprising the Annual Sum and/or the Unit Rates;
Contract Standard	the standard set out in clause 3.1;
Contractor IPRs	all Intellectual Property Rights owned by the Contractor necessary or desirable to enable the Council to receive and use the Services;
Contractor's Representative	the person (together with any duly authorised deputies) appointed by the Contractor to act as its representative in respect of this Contract or any replacement notified by the Contractor to the Council;
Control	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;
Council Data	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"> (i) supplied to the Contractor by or on behalf of the Council; and/or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or <p>(b) any Personal Data for which the Council is the Data Controller;</p>

Word/Phrase	Meaning
Council Materials	all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Contractor;
Council's Representative	the person or persons (together with any duly appointed deputies) appointed by the Council as its representative in respect of this Contract, or any replacement notified by the Council to the Contractor;
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
Default Sum	is as calculated in accordance with clause 10.6;
Dispute Resolution Procedure	the procedure described in clause 22;
DPA 2018	the Data Protection Act 2018;
EIRs	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;
Equalities Legislation	means all Legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and/or any preceding, successor or amending Legislation concerning the same;
Expiry Date	[] ⁴
FOIA	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

⁴ Insert the expiry date of the Contract.

Word/Phrase	Meaning
GDPR	the General Data Protection Regulation (Regulation (EU) 2016/679);
Group	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company, and in relation to the Council, any person, company, partnership, firm, association and/or other body with whom the Council is associated or has a relationship, financial or otherwise;
Index	the Consumer Price Index (however such index might be termed) issued by the Office for National Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such index such other index as the Council may reasonably specify;
Insolvency Event	<p>where:</p> <p>(a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;</p> <p>(b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;</p> <p>(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership);</p> <p>(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company or limited liability partnership or partnership);</p> <p>(e) the holder of a qualifying floating charge over the assets of the Contractor (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to</p>

Word/Phrase	Meaning
	<p>appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;</p> <p>(f) the Contractor (being an individual) is the subject of a bankruptcy petition or order;</p> <p>(g) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;</p> <p>any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);</p>
Intellectual Property Rights	<p>any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;</p>
Key Personnel	<p>means any persons notified as such by the Contractor to the Council in writing;</p>
Legislation	<p>means all relevant Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, by-laws and directives, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply and all applicable European Community legislation, which may be in force during the period of the Contract, as enacted, amended or interpreted from time to time;</p>
Management Information	<p>means all or any of the following information as the Council may specify from time to time during the Contract Period:</p> <ul style="list-style-type: none"> • Invoice Date • Contract Date • VAT Rate • Monthly Invoice Amount <p>The above list is not exhaustive and the Council may from time to time change the items in the list provided that it has given the Contractor notice of such changes in accordance with clause 6.7;</p>
Method Statements	<p>the statements prepared by the Contractor and included at Schedule 3 which detail the Contractor's proposals for the performance of the Services;</p>

Word/Phrase	Meaning
Modern Slavery Legislation	means all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including (but not limited to) the Modern Slavery Act 2015 (as amended from time to time);
MSA Offence	means any activity, conduct, or practice constituting an offence under Modern Slavery Legislation, including without limitation under sections 1, 2, and 4 of the Modern Slavery Act 2015 (as amended);
Payment Period	means each calendar month or, in the case of the first and final Payment Period, part thereof during the Contract Period;
Performance Default	a breach by the Contractor of its obligations under this Contract including, for the avoidance of doubt, a defect or omission in the provision of the Services;
Prescribed Rate	means two per cent (2%) above the base rate from time to time of NatWest Bank Plc;
Request for Information	a request for information or an apparent request relating to this Contract under the Code of Practice on Access to Government Information, FOIA or the EIRs;
Review Date	the date three months prior to each anniversary of the Commencement Date;
Services	the services to be provided by the Contractor pursuant to the Contract, as described in the Specification at Schedule 1;
Social Value Measures⁵	The proposals of the Contractor on how the Services might improve the economic, social and environmental well-being of the area in which the services are to be provided as set out in their method statements set out in Schedule 3;
Social Value Provider⁶	means the provider who provides the Council with social value services including monitoring and reporting to the Social Value Measures.
Staff	all persons employed by the Contractor to perform its obligations under this Contract together with the Contractor's servants, agents, Contractors and Sub-Contractors used in the performance of its obligations under this Contract;

⁵ Delete if the contract value is less than £100k

⁶ Delete if the contract value is less than £100k

Word/Phrase	Meaning
Staff Vetting Procedures	means vetting procedures that accord with good industry practice or, where requested by the Council, the Council's procedures for the vetting of personnel as provided to the Contractor from time to time;
Sub-Contractor	Any third party whom the Contractor enters into a sub-contract with to provide all or part of the Services;
Termination Date	the date of early termination of this Contract in accordance with its terms;
Unit Rates	means the rates (subject to the Services having been provided) payable by the Council to the Contractor as set out in Schedule 2, as calculated in accordance with the provisions of the Contract;
Working Day	any day of the week from Monday to Friday inclusive but excluding all public holidays in England and such other days if any as the Council's Representative may notify to the Contractor in writing as days during which Council offices are closed to the public; and
Year	means a period of twelve (12) consecutive calendar months commencing on the Commencement Date falling within the Contract Period.

1.2 In this Contract except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to any Clause, clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such Clause, Condition, sub-clause, paragraph, schedule, recital or annex of and to this Contract;
- 1.2.4 save where stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5 any reference to any legislation, enactment, order, regulation or other similar instrument shall be construed as a reference to that legislation, enactment, order, regulation or instrument as may be amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 words and phrases with a first capital letter or any derivation thereof shall (as the context so requires) have the meanings set out in clause 1.1;
- 1.2.8 headings are for convenience of reference only;

- 1.2.9 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.10 times specified in the Contract, and any variation in those times, or any other times reasonably laid down by the Council's Representative in respect of the Contractor's obligations, shall be of the essence of the Contract and any failure by the Contractor to adhere to such times shall (notwithstanding anything elsewhere contained in the Contract) be a breach of this Contract.

1.3 The Parties acknowledge and agree that this Contract is intended to benefit all of the Parties equally and have had the opportunity to take legal advice. Accordingly, the rule of construction known as "contra proferentem" shall not apply.

1.4 The Schedules form part of this Contract and have effect as if set out in full in the body of this Contract.

Order of precedence

1.5 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Council's Representative who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions.

1.6 If there is any conflict or ambiguity between the terms of this Contract then a term contained in a document higher in the following list shall have priority over one contained in a document lower in the list:

- 1.6.1 the Conditions;
- 1.6.2 the Schedules other than the Contractor's Tender and the Council Policies;
- 1.6.3 the Council Policies; and
- 1.6.4 the Contractor's Tender.

For the avoidance of doubt, the Specification shall at all times have priority over the Method Statements and the Contractor shall be obliged to comply with the Specification and provide the Services in accordance with the Specification.

1.7 Any changes to the Method Statements may only be made in accordance with clause 7 (Changes).

2 COMMENCEMENT AND CONTRACT PERIOD

2.1 The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms or extended in accordance with clause 2.2, until the Expiry Date, when it shall terminate automatically without notice.

2.2 [The Council shall be entitled at its absolute discretion to extend the Contract Period by any number of periods up to an aggregate of []. In the event (and on each occasion) that the Council decides to so extend the Contract Period it shall service written notice to the Contractor not less than three (3) months prior to the expiry of the Contract Period (or if applicable the Contract Period as extended). In such circumstances, the definition of the Contract Period shall be deemed amended accordingly and the Contractor shall continue to provide the Services at the Annual Sum/Detailed Rates prevailing on the date of the extension.]⁷

⁷ Include this paragraph and fill in the required information if the extension provision is relevant. If not, ensure references to clause 2.2 are removed throughout the Contract.

3 PERFORMANCE OF THE SERVICES

3.1 The Contractor shall provide the Services throughout the Contract Period in accordance with this Contract. In performing the Services, the Contractor shall:

- 3.1.1 meet any performance dates specified in the Specification;
- 3.1.2 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
- 3.1.3 apply all reasonable professional standards and techniques;
- 3.1.4 comply with the Council's Policies;
- 3.1.5 comply with all instructions issued to the Contractor by the Council pursuant to or in connection with this Contract;
- 3.1.6 ensure that the Services conform in all material respects with the description set out in the Specification;
- 3.1.7 provide all equipment, tools, vehicles and other items required to provide the Services;
- 3.1.8 act in accordance with all Laws relevant to the provision of the Services;
- 3.1.9 act in a manner which does not prejudice the reputation and interests of the Council;
- 3.1.10 co-operate and liaise with any of the Council's other suppliers as required to provide the Services;
- 3.1.11 act in a manner consistent with the Council discharging its statutory duties to the extent that these may have an effect on the Services;
- 3.1.12 ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
- 3.1.13 observe and comply with all health and safety and environmental rules and guidance and any other reasonable security requirements that apply at any of the Council's premises from time to time and are notified to the Contractor;
- 3.1.14 hold all Council Materials in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- 3.1.15 not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- 3.1.16 not engage in any conduct or activity that would constitute an offence under the Bribery Act 2010 nor receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this Contract, or any other contract with the Council;
- 3.1.17 notify the Council in writing immediately upon the occurrence of a change of Control of the Contractor; and

- 3.1.18 ensure that its employees, agents and representatives associated with the provision of the Services comply in all respects with this clause 3.13.1.
- 3.2 Without prejudice to clause 3.1, the Contractor shall notify the Council to the risk or the existence of any reason which may prevent the Contractor from providing the Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.
- 3.3 Social Value⁸
- 3.3.1 The Contractor shall provide the Social Value Measures in accordance with the proposals set out in its method statement for Social Value as set out in Schedule []. The Contractor shall enter into a contract with the Social Value Provider, as instructed by the Council, and shall report on the measures provided to the Social Value Provider.
- 3.3.2 The Contractor shall pay the Social Value Provider in accordance with the terms of their agreement for the monitoring services.
- 3.3.3 At the end of each year of the Contract, or part thereof in the final year, the Social Value Measures delivered by the Contractor will be assessed alongside the proposals set out by the Contractor in the social value method statement. In the event of failure to provide the Social Value Measures in line with the Method Statement and to the proxy value of the Social Value Measures proposed then:
- (a) the Council will notify the Contractor of such failure; and
 - (b) the Contractor shall rectify the failure within 8 weeks (rectification period); and
 - (c) If the Contractor does not rectify the failure then the Contractor shall within 14 days of the end of the rectification period pay the value of the failed Social Value Measures to the Council.

4 CHARGES AND PAYMENT

4.1 Contract Price

- 4.1.1 Subject to the Contractor fulfilling its obligations under the Contract and in consideration of the Contractor properly performing the Services to the Contract Standard, the Council shall pay to the Contractor the Contract Price, which shall be exhaustive of any amounts as are due to the Contractor in respect of its performance of the Services under this Contract.
- 4.1.2 To the extent that the Contract Price:
- (a) is an Annual Sum, it shall accrue on a daily basis and shall be payable to the Contractor monthly in arrears;
 - (b) is payable by reference to:
 - (i) Unit Rates; and/or
 - (ii) the quantity of Services provided during a given period,it shall be paid on receipt of a correct invoice which specifies the relevant Unit Rates and the quantity of Services provided during the period or periods to which the invoice relates.

⁸ Delete if the contract value is less than £100k

4.2 **Submission of Invoices**

Within [ten (10)]⁹ Working Days following the end of each Payment Period from the Commencement Date the Contractor shall submit to the Council's Representative an invoice together with a supporting statement in such form as approved from time to time by the Council's Representative.

4.3 **Verifying the Invoices**

Within [seven]¹⁰ days of receipt of the invoice and supporting statement referred to in clause 4.2 the Council's Representative shall assess the amount properly due to the Contractor in accordance with this Contract and notify the Contractor whether the invoice and any supporting documents are approved or rejected having regard to any adjustments including:

- 4.3.1 the valuation of any Change made pursuant to clause 7;
- 4.3.2 where the Contractor has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or fellow Contractor;
- 4.3.3 any deductions for defaults issued under clause 10; and
- 4.3.4 any other additions or deductions under this Contract.

4.4 **Payment**

- 4.4.1 Within thirty (30) days of the Council's approval of an invoice in accordance with clause 4.3, the Council shall pay the amount correctly invoiced.
- 4.4.2 Payments due to the Contractor after the Termination Date shall be paid by the Council but such payments shall be dependent on the satisfactory completion of the arrangements for handover required under clause 16.
- 4.4.3 In addition to the Contract Price, the Council shall, subject to receipt of a properly drawn tax invoice, pay to the Contractor such value added tax (if any) as may be properly chargeable by the Contractor in connection with the provision of the Services under Legislation from time to time in force.

4.5 **Disputed Amounts**

- 4.5.1 In the event that the Council is not satisfied that a sum or sums in the invoice submitted in accordance with clause 4.2 is accurate or complete, the Council shall:
 - (a) pay any undisputed amount within thirty (30) days; and
 - (b) withhold any disputed amount and submit a notice to the Contractor within fifteen (15) days stating the sum which is in dispute and the reason for the dispute (a "Disputed Amount Notice").
- 4.5.2 Within 15 days of the Contractor having received the Disputed Amount Notice, the Contractor shall respond setting out how the disputed amount was calculated.
- 4.5.3 The Parties shall meet as soon as practicable following receipt of the Contractor's response to the Disputed Amount Notice and shall attempt to resolve the dispute amicably between them. If the Parties are unable to reach agreement the Council shall be entitled to continue withholding the disputed amount and the matter shall be referred to the Dispute Resolution Procedure.

⁹ Amend as appropriate.

¹⁰ Amend as appropriate.

- 4.5.4 In the event that the outcome of the Dispute Resolution Procedure is that:
- (a) the Contractor was properly due any part of the withheld sum, the Council shall pay such part within seven Working Days together with interest thereon at the Prescribed Rate from the date on which such payment was due;
 - (b) the Council is not due to pay the Contractor (and the Contractor is not due to receive) any part of the withheld sum, such part shall be deemed deducted from the Contract Price and the Contractor shall, for the record, re-submit the invoice in the correct amount or issue a credit note.

4.6 **Sub-Contractors**

- 4.6.1 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- (a) provisions having the same effect as those set out in clause 4.1 to 4.5;
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 4.1 to 4.5.

For the purposes of this clause 4.6 a “Sub-Contract” means any contract between two or more suppliers at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Services under this Contract.

4.7 **Indexation**

- 4.7.1 The Contract Price shall be revised on each anniversary of the Commencement Date (the “Review Date”) in accordance with the following provisions:
- (a) on the first anniversary of the Commencement Date, the Contract Price shall be adjusted by the percentage increase or decrease in the Index calculated from the Commencement Date to the next Review Date;
 - (b) from the second anniversary onwards, the Contract Price shall be adjusted by the percentage increase or decrease in the Index calculated from the Review Date in the previous Year to the Review Date in the Year just ended;
 - (c) the adjustment shall apply to the Contract Price for the twelve month period commencing on the relevant anniversary of the Commencement Date.
- 4.7.2 If the bases of computation of the Index changes, any official reconciliation between the two bases of computation published by the body charged with the compilation and maintenance of the Index (currently the Office of National Statistics) shall be binding upon the Council and the Contractor and shall be applied in adjusting the application of the Index provided that in the absence of such official reconciliation such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments such dispute may be referred by either Party

to an expert agreed upon by the Parties or in default of Contract appointed on the application of either Party by the president for the time being of the Law Society of England and Wales.

4.8 Right of Set Off

4.8.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter may become due to the Contractor under the Contract or under any other contract between the Contractor and the Council.

4.8.2 The Council shall be entitled to interest at a rate of 4% above the base rate published by the Bank of England on any sum properly due from the Contractor to the Council and which remains unpaid for a period of thirty (30) days from the issuing by the Council of an invoice. The Parties agree that this Clause 4.8 constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998 (as amended).

5 COMPLAINTS

5.1 At the Commencement Date the Contractor shall set up a clearly defined complaints procedure (subject to approval by the Council's Representative) with agreed performance measures and recording systems, including a complaints register, to enable the number and types of complaints to be checked and monitored. For each complaint the records should identify the complainant, the nature and category of the complaint, the action taken in response to the complaint, preventative action taken to stop similar occurrences and the relevant dates.

5.2 The Contractor shall deal with all complaints received from whatever source in a prompt courteous and efficient manner.

5.3 The Contractor shall notify the Council's Representative forthwith in writing of all complaints received and the steps taken in response thereto and shall provide a copy of each written complaint (or register entry for verbal complaints) and the response thereto. A copy of the complaints register and statistics shall be incorporated within the Contractor's monitoring reports submitted to the Council's Representative in accordance with the Specification.

6 MONITORING AND REVIEW

6.1 Throughout the Contract Period, the Parties shall work together to ensure that the Contract and the Contractor's performance of the Services represent value for money and continuous improvement for the benefit of the Council.

6.2 The Contractor's performance of the Services shall be measured against the obligations, targets, benchmarks and standards set out in the Contract Documents.

6.3 Contractor Monitoring

6.3.1 Without prejudice to each and every remedy of the Council in the event of a failure of the Contractor to perform any of its obligations in accordance with the terms of this Contract, the Contractor shall at the Commencement Date initiate, and throughout the Contract Period maintain, systems designed to ensure that the Services are carried out in accordance with the provisions of the Contract. Such systems shall be operated by the Contractor's Representative for and on behalf of the Contractor and shall not be unreasonably withheld before the Contractor commences provision of the Services.

- 6.3.2 In the event of the Contractor being unable to perform the Services or any part thereof, the Contractor shall immediately inform the Council's Representative giving details of the circumstances, reasons and likely duration. Nothing in this clause 6.3.2 shall in any way alter, modify, relieve or in any other way vary the Contractor's obligation to provide the Services or the Council's powers under other clauses.
- 6.3.3 The Contractor shall, as soon as reasonably practicable, provide the Council's Representative with any information relating to the performance of the Services which the Council's Representative may reasonably request.
- 6.3.4 The Contractor shall forthwith inform the Council's Representative if any anticipated changes to legislation, professional standards or otherwise may give rise to changes to the Services whether such changes are likely to give rise to any substantial opportunities or benefit to the Council or any substantial difficulties.
- 6.3.5 The Contractor shall comply with the monitoring arrangements set out in the Contract including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.
- 6.3.6 In the event of the Council's Representative requesting information from the Contractor in connection with any Council report, including without limitation the Council's own business continuity plans, the Council's Representative shall notify the Contractor of the dates by which it is required. Provided such notice is reasonable the Contractor shall provide the information requested by the dates stipulated.

6.4 Council Monitoring

- 6.4.1 The Council's Representative may introduce random sampling to determine the performance of the Services. The Council's Representative reserves the right to employ his own representatives or agents to undertake such random sampling, and the Contractor shall afford all reasonable access and co-operation for the Council's Representative, his representatives or agents in this respect.
- 6.4.2 The Contractor shall at all times during the provision of the Services allow the Council's Representative and such persons as may from time to time be nominated by the Council's Representative access upon reasonable notice (except where it is deemed reasonably appropriate by the Council's Representative to gain immediate access):
- (a) to all sites or locations of the Contractor for the purpose of inspecting work being performed pursuant to the provision of the Services;
 - (b) to all sites or locations of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Services;
 - (c) to all equipment, materials, stores and spare parts (whether such items are provided by the Council, the Contractor or otherwise) used or proposed to be used in connection with the performance of the Services for the purpose of ensuring that such equipment, machinery, tools, equipment, materials, stores and spare parts meet the requirements of the Specification and all relevant statutory requirements; and
 - (d) to attend any Business Continuity Plan test undertaken by the Contractor.

6.4.3 The Council's Representative may each Year submit to the Contractor completed questionnaires relating to the Contractor's performance under this Contract and the responses contained in the completed questionnaires shall be retained by the Contractor for management information purposes so as to enable improvements to be made in service delivery and for use in performance review meetings as referred to in clause 6.5.

6.5 Quarterly Review Meetings¹¹

6.5.1 The Parties shall meet at the quarterly intervals at the Council's offices at no additional cost to the Council.

6.5.2 The Contractor shall ensure that the Contractor's Representative is available to meet the Council's Representative, as and when required, for a sufficient amount of time as is reasonably decided by the Council's Representative (at no additional cost) to enable the Council to monitor and review the Contractor's performance under this Contract. Additional meetings (also at no additional cost) may reasonably be required by the Council's Representative including without limitation if, in the Council's Representative's opinion, the Contract is not running satisfactorily. The Contractor's Representative shall bring to these meetings such files and reports as may be requested by the Council's Representative together with such Management Information as the Contractor is obliged to retain for the information of the Council under this Contract.

6.6 Continuous Improvements

6.6.1 The Contractor shall have a policy of continuous improvement in relation to the performance of the Services and shall be able to show at any time during the Contract Period evidence of the practices designed to achieve such improvement.

6.6.2 If during the Contract Period the Council's Representative and/or the Contractor (subject to the prior written consent of the Council's Representative) modifies the methods employed by the Contractor to carry out the Services such that in the opinion of the Council's Representative savings are made by the Contractor in the cost of providing the Services then the amount of such savings as shall be notified by the Contractor to the Council's Representative and approved by the Council's Representative shall be divided equally between the Council and the Contractor. In the event of a dispute, this matter shall be determined in accordance with clause 22.

6.7 Management Information

6.7.1 Where requested by the Council, the Contractor shall supply the Management Information to the Council monthly during the Contract Period.

6.7.2 Upon receipt of the Management Information supplied by the Contractor, the Contractor hereby permits the Council:

- (a) to publish on their website or in any alternative media the Management Information;
- (b) to store and analyse the Management Information and produce statistics; and

¹¹ Consider what is applicable for the project

(c) to share the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.

6.7.3 The Council may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) month's written notice of any changes.

6.8 **Audit and Information**

6.8.1 The Contractor shall keep full and proper records in relation to the performance of its obligations under this Contract and provide the Council with any information regarding such records as may be reasonably requested in writing by the Council and/or its internal or external auditors having regard to the Council's duties and responsibilities as a public authority.

6.8.2 Any information requested in writing under clause 6.8.1 shall be provided by the Contractor within a reasonable time being no longer than three Working Days from the date of such written request and shall be provided in hard copy and, where available, also electronically. The Council shall be entitled to have the originals of any document so requested.

6.8.3 Without prejudice to the Contractor's obligations under clauses 6.8.1 and 6.8.2, the Council shall be entitled to request, and the Contractor shall provide within a reasonable time, employment and relevant personal information in relation to the Contractor's personnel engaged upon or in connection with the provision of the Services for the purposes of anti-fraud measures such as data matching. The Contractor shall ensure that it takes any measures necessary pursuant to the Data Protection Legislation and any other relevant legislation to facilitate such disclosure lawfully and fairly.

7 **CHANGES**

7.1 The Council's Representative shall be entitled at any time to issue to the Contractor instructions in writing in relation to a Change (a "Change Notice") and the Contractor shall confirm in writing to the Council whether it agrees or does not agree to the Change within ten (10) Working Days of receipt of the Change Notice.

7.2 The Change Notice shall specify:

7.2.1 the detail of the Change; and

7.2.2 the date on which such Change is to have effect; and

7.2.3 the time period during which the Change shall have effect if it is of a temporary nature.

7.3 The Parties acknowledge that the Change may or may not result in an increase or decrease in the Annual Sum. The amount of any decrease or increase shall be ascertained by the Council's Representative in accordance with the following provisions:

7.3.1 where part of the Services is omitted from, or ceases to be provided or is varied under the Contract, the rates and prices contained in Schedule 2 shall (where reasonable) determine the valuation of the part of the Services omitted, varied or no longer provided. The valuation shall not include, and the Council shall not be liable to the Contractor in respect of any loss or reduced contribution to overheads or profit, whether in respect of this Contract or any lost opportunity to earn overhead contribution or profit elsewhere; and

7.3.2 where the Change is of a similar character to and is executed under the same conditions to the Services, the rates and prices in the [Unit Rates]¹² at Schedule 2 shall (where reasonable) determine the valuation.

8 CONTRACT MANAGEMENT AND STAFF

Council's Representative

8.1 Without limiting the Council's obligations or rights in respect of such matters the Council shall appoint a representative who may subject to clause 8.2 exercise the rights and powers conferred by this Contract upon the Council.

8.2 Except pursuant to clause 7 (Changes), or unless specifically authorised for that purpose, the Council's Representative does not have authority to amend the Contract or to relieve the Contractor of any express obligations under the Contract.

The Contractor's Representative

8.3 The Contractor shall appoint and keep appointed throughout the Contract Period an individual to act as the Contractor's Representative. The Contractor shall notify the Council in writing of the name, telephone number, e-mail address and postal address of the person appointed as the Contractor's Representative.

8.4 In the event that the Contractor wishes to change the identity of the Contractor's Representative, it shall give to the Council not less than 5 Working Days' notice in writing of such change which notice shall inform the Council of the name, telephone number, e-mail address and postal address of the new Contractor's Representative.

9 STAFFING AND TUPE

9.1 Without prejudice to any other provision of this Clause 9, the Contractor shall at all times during the Contract Period employ sufficient Staff to ensure that the Services are provided to the Contract Standard, including (without limitation) during periods of absence of its Staff due to sickness, maternity leave, holidays, training or otherwise.

9.2 The Contractor shall throughout the Contract Period:

9.2.1 employ or engage in and about the provision of the Services only persons who are careful, honest, skilled, competent, qualified and experienced in the work they are to perform;

9.2.2 ensure that every Staff member engaged by the Contractor in and about the provision of the Services is and at all times remains properly and sufficiently trained, skilled and instructed with regard to the rules, procedures and statutory and regulatory requirements concerning health and safety at work and all other rules and procedures relevant to the duties which that person has to perform;

9.2.3 ensure that its Staff comply with all relevant rules, codes, policies, procedures and standards of the Council including the Council Policies set out in Schedule 5 which are current or which may be notified to the Contractor by the Council from time to time and with all relevant statutes, statutory orders and regulations; and

9.2.4 implement such Staff training schemes as are necessary to ensure the performance of the Services to the Contract Standard.

Disclosure and Barring Service

¹² Include this provision where Unit Rates are applicable.

- 9.3 No member of staff shall commence their duties in connection with the Services until the Contractor, if required to do so in any document forming part of this Contract, has provided evidence to the Council that a satisfactory [standard/enhanced]¹³ level (or other level approved in advance by the Council's Representative) Disclosure and Barring Service certificate has been issued by the Disclosure and Barring Service.

TUPE

- 9.4 The provisions of Schedule [] shall apply¹⁴.

10 DEFAULTS IN PERFORMANCE AND REMEDIES

Remedies Available to the Contractor

- 10.1 In the event that any undisputed amount correctly rendered by invoice by the Contractor remains unpaid by the Council after [30 (thirty)]¹⁵ days the Contractor shall notify the Council in writing giving the Council [15 (fifteen)] further days to pay such an invoice. If the amount remains unpaid, the Contractor shall be entitled to charge interest from the date on which the [15-day period] expired to the Working Day before payment is made at the Prescribed Rate. It is agreed between the Parties that the interest rate provided for under this clause 10.1 provides the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

Remedies Available to the Council¹⁶

- 10.2 The Contractor shall be responsible for correcting any failures to provide the Services in accordance with this Contract including, but not limited to, any Performance Default drawn to its attention in a written notice from the Council.
- 10.3 Without prejudice to the generality of clause 10.2, if at any time, in the opinion of the Council's Representative, the Contractor shall have committed a Performance Default the Council's Representative shall be entitled to serve on the Contractor a notice setting out the details of the Performance Default (the "Remedy Notice") and where relevant requiring the Contractor to take steps to remedy the Performance Default and to take steps (which may be specified) to prevent any recurrence of the Performance Default, or similar Performance Defaults.
- 10.4 At no cost to the Council the Contractor shall commence the taking of all such specified steps forthwith and any failure to do so and/or failure to comply with the Remedy Notice in full will also constitute a Performance Default.
- 10.5 Where Default Sums are set out in a Remedy Notice the Remedy Notice shall constitute a certificate of deduction and the Council shall be entitled to deduct the Default Sums in accordance with any certificate from any invoice issued by the Contractor or from any other payment due by the Council to the Contractor or to recover the same as a debt due to the Council as from the date of any certificate.
- 10.6 The Default Sums are acknowledged and agreed to be genuine pre-estimates of the Council's loss and damage in respect of the following:

¹³ Delete as appropriate.

¹⁴ If TUPE applies then seek legal advice as the drafting will depend on the details of the transfer.

¹⁵ Consider the number of days in this clause and amend as applicable.

¹⁶ Consider if the Council as set KPIs and default sums. If so then the drafting here will require review to ensure it ties in with the KPI drafting

- 10.6.1 additional administration which shall be charged at the Administration Rate and shall cover the Council's reasonable additional time spent on:
- (a) serving Default Notices;
 - (b) additional supervision;
 - (c) additional monitoring and inspection, including if necessary the procurement by the Council of additional staff in dealing with complaints and letters; and
 - (d) the production of reports;
- 10.6.2 if the Remedy Notice relates to any Performance Default which is capable of remedy and has not been remedied or which has re-occurred within a period of 3 months, the costs the Council incurs to engage a third party to remedy the Performance Default; and
- 10.6.3 any other activities arising from the Performance Default and which are suffered or which may be suffered in relation to any default.
- 10.7 Default Sums shall not include and are not in respect of any other head of loss or damage which are recoverable as unliquidated damages at common law.
- 10.8 Any dispute over the amount of the Default Sums in a Remedy Notice shall be referred for determination by the Dispute Resolution Procedure within 10 Working Days. In the event that the dispute is not referred to the Expert within this timeframe, the Default Sum shall be deemed to be accepted by the Contractor as a valid Default Sum.
- 10.9 In the event that one or more of the following occurs:
- 10.9.1 the Performance Default is in relation to a fundamental breach of this Contract; or
 - 10.9.2 the Contractor is issued with more than 4 Remedy Notices (whether or not relating to the same or similar breaches) in any continuous 6-month period and irrespective of whether any or all Performance Defaults specified in any Remedy Notices have been remedied or specified steps have been undertaken in accordance with such Remedy Notices;
- the Council may give notice to the Contractor that the Council, in its absolute discretion, is exercising one of the following options:
- 10.9.3 without determining this Contract in whole or in part, provide or cause to be provided other than by the Contractor, such part of the Services as the Council's Representative may nominate until such time as the Contractor shall have proved to the reasonable satisfaction of the Council's Representative that such part of the Services will be carried out by the Contractor to the standard required by this Contract; or at the Council's Representative's option, until such later date as the Council's Representative may specify as being in his opinion a reasonable date upon which the Contractor will be able to provide such part of the Services; or
 - 10.9.4 without determining the whole of this Contract, determine part of this Contract in respect of such part of the Services as the Council's Representative may nominate and thereafter the Council's Representative may provide, or cause to be provided other than by the Contractor, such part of the Services; or
 - 10.9.5 terminate this Contract in accordance with the provisions of Clause 14.
- 10.10 If the Contract is determined in part the Annual Sum shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment the matter

shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Contractor shall not be entitled to recover through the adjusted Annual Sum any profit that but for the termination would have accrued to the Contractor in respect of the terminated services.

11 INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property Rights created by the Contractor or its personnel in the course of performing the Services or exclusively for the purpose of performing the Services shall vest in the Council on creation.
- 11.2 The Contractor and its licensors shall retain ownership of all Contractor IPRs. The Council and its licensors shall retain ownership of all Intellectual Property Rights in the Council Materials.
- 11.3 The Contractor grants the Council, or shall procure the direct grant to the Council of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual licence to copy and modify the Contractor IPRs for the purpose of receiving and using the Services.
- 11.4 The Council may sub-licence the licence granted under clause 11.3.
- 11.5 The Council grants the Contractor a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Council Materials for the term of the Contract for the purpose of providing the Services to the Council in accordance with the Contract.
- 11.6 The provisions of this clause 11 shall apply indefinitely after its expiry or termination.

12 INDEMNITY

- 12.1 Subject to Clause 12.2 the Contractor shall indemnify the Council, and keep it indemnified, from and against any and all losses, costs, expenses, damages, claims demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract tort including negligence under statute in common law or otherwise out of the act default negligence breach of contract breach of statute or statutory duty by the Contractor or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents.
- 12.2 The Contractor's liability under Clause 12.1 shall be limited as follows:
 - 12.2.1 in accordance with Clause 12.4 it shall be unlimited;
 - 12.2.2 in respect of any matters for which the Contractor is required to hold insurance to the value of the relevant insurance; and
 - 12.2.3 in respect of any matters for which the Contractor is not required to hold insurance the sum of [five hundred thousand pounds (£500,000)]¹⁷.
- 12.3 Notwithstanding anything to the contrary contained in this Contract, the Council's liability whether arising from breach of contract tort including negligence breach of statutory duty or otherwise shall be limited as follows:
 - 12.3.1 in accordance with Clause 12.4 it shall be unlimited; and
 - 12.3.2 in respect of all other liability falling outside of Clause 12.4 arising out of or in connection with its obligations (other than its obligation to pay the Contract Price)

¹⁷ Insert relevant limit of liability for the Contractor. This requires careful consideration and the Council's insurance department may be able to provide assistance.

under this Contract and all actions claims demands proceedings costs and expenses arising in respect of it to [£500,000 (five hundred thousand pounds)]¹⁸.

- 12.4 Neither Party limits its liability for death or personal injury caused by the negligence of the itself or any of its employees or agents acting in the course of their employment or in respect of a misrepresentation made fraudulently or in respect of any breach of an implied terms in respect of title to goods.

13 INSURANCE

- 13.1 During the Contract Period and for a period of six years thereafter, the Contractor shall maintain in force, with a reputable insurance company, the types of insurance as may be necessary to insure and indemnify the Contractor against all manner of risks which might arise in connection with the Contractor's performance of its obligations under the Contract including (without limitation) in respect of the following risks:

13.1.1 employers' liability including (without limitation) personal injury or death of any person arising under a contract of service with the Contractor and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969: such insurance cover shall be not less than [£10,000,000 (ten million pounds) in respect of any one incident]¹⁹;

13.1.2 public and products liability: such insurance cover shall be not less than [£10,000,000 (ten million pounds) in respect of any one incident]²⁰;

13.1.3 [professional indemnity: such insurance shall be not less than £5,000,000 (five million pounds) in respect of any one incident; and]²¹

13.1.4 such other risks as may from time to time be reasonably required by the Council, and such insurance shall have the interest of the Council endorsed (or an Indemnity to Principal clause) on the policy and the Contractor shall duly pay all premiums therefor and produce to the Council on request receipts therefor and shall not do or suffer or permit anything to be done which might prejudice the policy.

- 13.2 The Contractor shall upon request by the Council's Representative disclose all such policies of insurance, cover notes, premium receipts or other documents as the Council's Representative may require from time to time and shall, if so requested, furnish copies of any such documents.

14 TERMINATION

- 14.1 Without affecting any other right or remedy available to it, the Council may terminate the Contract with immediate effect without liability to the Contractor by giving written notice to the Contractor if:

14.1.1 the Contractor is in material breach of any of its obligations under this Contract which is not capable of remedy; or

¹⁸ Insert relevant limit of liability for the Council.

¹⁹ Insert relevant insurance level. This requires careful consideration and consultation with the Council's insurance department.

²⁰ Consider whether both public and product liability is relevant and insert relevant insurance level.

²¹ Consider whether this is relevant and if so, insert relevant insurance level.

- 14.1.2 the Contractor being in material breach, which is not remedied within a reasonable time or repeatedly failing to meet the Contract Standard as determined by the Council in its absolute discretion; or
 - 14.1.3 if there is an Insolvency Event; or
 - 14.1.4 the Contractor ceases, or threatens to cease, to carry on business; or
 - 14.1.5 the Council reasonably apprehends that any of the events in Clauses 14.1.3 and 14.1.4 inclusive is about to occur in relation to the Contractor and notifies the Contractor accordingly; or
 - 14.1.6 the Council has served notice in accordance with clause 10.9.5; or
 - 14.1.7 the Contractor or any of its employees or agents acting or purporting to act on the Contractor's behalf commits an act which is an offence under the Enterprise Act 2000; or
 - 14.1.8 the Contractor or any of its Staff shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Contract or to any other contract with the Council; or
 - 14.1.9 the Contractor or any of its employees shall have committed any offence under the Bribery Act 2010; or
 - 14.1.10 the Contractor or any of its Employees have given any reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
 - 14.1.11 the Contractor or any of its Employees have committed an act of fraud; or
 - 14.1.12 the discovery of a misrepresentation by the Contractor during the tendering process which induced the Council to enter into the Contract; or
 - 14.1.13 any other breach by the Contractor of any of its obligations under this Contract which, in the reasonable opinion of the Council: (1) constitutes a fundamental breach of the Contract by the Contractor; or (2) is a serious breach that has been repeated or persisted in by the Contractor after receipt by the Contractor of a written warning that the Council may invoke this Clause in respect of the said breach, and after the Contractor has had a reasonable opportunity to prevent such repetition or persistence.
 - 14.1.14 the Contractor is in material breach of any of the provisions of Clause 18 (Freedom of Information) and Clause 20 (Data Protection);
 - 14.1.15 any statement, representation or warranty made by the Contractor to which Clause 23.3 relates was misleading or untrue when it was first made or when deemed restated in accordance with the said Clause 23.3;
 - 14.1.16 the Contractor or any of its employees, agents, or Subcontractors shall have committed an MSA Offence.
- 14.2 In the event that any of the grounds listed in Regulation 73(1)(a) and (c) of the Public Contracts Regulations 2015 apply to this Contract, or in the case of 73(1)(b) to the Contractor, the Council may terminate this Contract by giving 7 (seven) days' prior written notice to the Contractor of such termination.
- 14.3 **Procurement Challenge**
- 14.3.1 In the event that this Contract or any modification of the same is subject to a credible and substantive legal or procurement challenge of any nature and/or is

deemed by a regulatory Council to be ineffective or to be in breach of any Law or regulation (the "Procurement Challenge"), then the Parties shall co-operate in good faith to determine how they should manage the best way to mitigate the impact of the Procurement Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.

14.3.2 In the event that:

- (a) there is a credible and substantive legal or procurement challenge of any nature and the Council considers that it is likely that a Court would declare that the Contract is ineffective, the Contract shall terminate forthwith; or
- (b) this Contract is declared ineffective by a court of competent jurisdiction, bringing this Contract to an end,

the Council shall, without prejudice to any other right or remedy that it may have, pay to the Contractor all sums lawfully due to the Contractor in consideration of its proper provision of the Services up until the date and time of the declaration of ineffectiveness or date of termination. The Council shall pay such sums within thirty (30) days of its receipt of a valid and properly payable invoice for the same from the Contractor.

14.3.3 Save as set out in Clause 14.3.2, the Council shall have no further liability to the Contractor, including without limitation, in relation to any loss of future profit by the Contractor accruing after the declaration, claims for restitution and/or compensation howsoever arising.

14.3.4 Upon the making of a declaration of ineffectiveness the Contract shall terminate and the provisions of Clause 15 (Consequences of Expiry and Termination) and this Clause shall apply.

14.3.5 For the purposes of Regulation 101(5) of the Public Contracts Regulations 2015, the Parties have agreed the inclusion of Clause 14.3 in order to regulate their mutual rights and obligations in the event of a procurement challenge and/or declaration of ineffectiveness being made. The Parties also agree that the operation of those Conditions shall provide the Contractor with sufficient restitution and compensation.

14.4 The Council shall be entitled to terminate this Contract in whole or in part by giving to the Contractor not less than []²² months' notice in writing.

14.5 If the Contract is determined in part, the Contract Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Contractor shall not be entitled to recover through the adjusted Contract Price any profit that, but for the Termination, would have accrued to the Contractor in respect of the terminated Services.

14.6 The Council's rights under this Clause are in addition and without prejudice to any right that the Council may have against the Contractor for prior breach and to any right the Council may have against the Contractor for the breach, default, negligence or event leading to the termination.

²² This is an absolute right to terminate – only include if necessary as this is likely to effect the commercial deal offered

14.7 The remedies of the Council under this Clause may be exercised successively in respect of any one or more defaults by the Contractor.

15 CONSEQUENCES OF EXPIRY OR TERMINATION

15.1 Termination shall be without prejudice to the rights and remedies of the Contractor and the Council accrued before Termination and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding as at the date of Termination.

15.2 Upon the expiry or termination (for whatever reason) the Contractor shall:

15.2.1 forthwith cease to provide the Services;

15.2.2 cease to make use of the Intellectual Property Rights in any way whatsoever;

15.2.3 be liable immediately to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of this Contract by the Contractor;

15.2.4 where the Contract terminated, fully and promptly indemnify and compensate the Council against all loss and damage suffered by the Council by reason of such termination and without prejudice to the generality of this Clause shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be provided such Services as would have been performed by the Contractor during the remainder of the Contract Period to the extent that such cost exceeds sums as would have been lawfully payable to the Contractor for provided such Services (such costs to include but not be limited to all costs of closing out this Contract and entering into new contracts with replacement contractors). The Council shall be at liberty to have such Services provided by any persons (whether or not servants of the Council) as the Council in its entire discretion thinks fit and shall act reasonably but shall be under no obligation to employ the least expensive method of having such Services provided;

15.2.5 not be entitled to any further payment under the Contract and the Council shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under this or any other Contract or to deduct therefrom any sum due from the Contractor to the Council under this or any other Contract;

15.2.6 without prejudice to the Council's other rights under these Clauses within ten (10) days of Termination at the Contractor's own cost return to the Council or otherwise dispose of in accordance with the Council's instructions all and any:

(a) documents and other information and materials relating to the Services;

(b) Council Data (which data shall if necessary upon the Council's request be transferred in compatible form on to such computer system as the Council may request) (including back-ups) and any other media; and

(c) other Council property and belonging to the Council which may be in the possession or under the control of the Contractor and/or sub-contractor;

15.2.7 make good to the Council any accounting discrepancy and/or loss or damage attributable to a Performance Default by the Contractor, its Staff, Sub-contractors and agents; and

15.2.8 vacate the Council Premises and leave in good condition.

- 15.3 In the event that the Contractor fails to comply with its obligations in Clause 15.2.6 the Council shall be entitled to:-
- 15.3.1 recover possession of the items referred to in each of the said Clause and for this purpose the Contractor hereby grants to the Council and its appointed agents a licence to enter onto any land or premises belonging to or under the control of the Contractor; and
 - 15.3.2 recover its reasonable costs incurred in connection with exercising its rights pursuant to Clause 15.3.1, such sum to be recoverable by the Council from the Contractor as a debt.
- 15.4 Clause 15.3 together with all other provisions of this Contract which are expressed to survive Termination shall continue in force and effect in accordance with their terms.
- 15.5 Subject as otherwise provided in the Contract neither Party shall have any further obligation to the other under the Contract.

16 EXIT ARRANGEMENTS

- 16.1 Prior to and at the end of the Contract Period the Contractor shall co-operate with the Council and any replacement contractor nominated by the Council ("New Contractor") in ensuring the smooth hand-over and continued running of the Services during such hand-over and in particular, but without limitation, the Contractor shall, to the extent required by the Council:
- 16.1.1 allow the Council and any New Contractor reasonable right of access to the Contractor's and sub-contractor's premises, systems, procedures and Employees, where appropriate; and
 - 16.1.2 deliver to the Council upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Sub-contractors and in default of compliance with this provision the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Contractor or its permitted sub-contractors where any such documents, information or materials may be held.
- 16.2 Without prejudice to Clause 14, where the Contract is terminated for a reason set out in Clause 14.1, the Council shall immediately cease to be under any obligation to make further payment to the Contractor until the costs, loss and/or damage to the Council resulting from or arising out of the Termination shall have been calculated, including the application of Clause 15.2.7.
- 16.3 When the total costs, loss and/or damage resulting from or arising out of such Termination as is referred to in Clause 16.2 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 16.2 have been due to the Contractor, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Contractor any balance shown as due to the Contractor.
- 16.4 Upon the Termination for whatever reason of this Contract the Council shall have the option to purchase at book value any of the assets or equipment used by the Contractor solely in performance of its obligations under this Contract. Where the Council wishes to exercise this option it shall notify the Contractor in writing accordingly not less than 28 days following the date on which this Contract expires or is terminated.

17 FORCE MAJEURE

17.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control including an act of god, war, protest, fire, flood, storm, tempest, epidemic, explosion, terrorism, national emergency, or industrial dispute (other than such a dispute affecting the workforce of the party seeking to rely on this Clause 17). In the event that the Council requires the Services urgently and if, in the reasonable opinion of the Council, the event in question affecting the Contractor would cause unacceptable delay, the Council may terminate the Contract immediately. In any event, if the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving five (5) days' written notice to the affected party.

18 FREEDOM OF INFORMATION

18.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Contractor shall:

18.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs; and

18.1.2 in respect of any Requests for Information received, not respond to these and transfer these to the Council as soon as practicable and in any event within two Working Days of receipt.

18.2 The Contractor acknowledges that the Council may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Contractor.

18.3 Notwithstanding any other term of this Contract, the Contractor consents to the publication of this Contract in its entirety, subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

18.4 The Council is responsible for determining in its absolute discretion whether any information is exempt from disclosure under the FOIA and EIRs.

18.5 The Contractor shall indemnify the Council against all claims, demands, actions, costs, proceedings and liabilities that the Council incurs due to the Contractor's or any Sub-Contractor's breach of this Clause 16.1.

19 CONFIDENTIALITY

19.1 Subject to clauses 18 and 19.2, each Party shall keep the other Party's Confidential Information confidential and the Confidential Information of any members of that Party's Group confidential and shall not:

19.1.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Contract; or

19.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 19.

19.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential Information:

19.2.1 which the other Party confirms in writing is not required to be treated as Confidential Information;

- 19.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 19.2.3 which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law;
 - 19.2.4 which is in or enters the public domain other than through any disclosure prohibited by this Contract;
 - 19.2.5 which a Party can demonstrate was lawfully in its possession prior to receipt from the other Party; or
 - 19.2.6 which is disclosed by the Council on a confidential basis to any central government or regulatory body.
- 19.3 A Party may disclose the other Party's Confidential Information to those of its representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this Contract, provided that:
- 19.3.1 it informs such representatives of the confidential nature of the Confidential Information before disclosure;
 - 19.3.2 it procures that its representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a party to this Contract; and
 - 19.3.3 at all times, it is liable for the failure of any representatives to comply with the obligations set out in this clause 19.3.
- 19.4 The provisions of this clause 19 shall survive for a period of three years from the expiry of this Contract.

20 DATA PROTECTION

- 20.1 The provisions of Schedule 4 apply.

21 COUNTER-TERRORISM AND THE PREVENT DUTY

- 21.1 The Contractor is aware of the Council's obligations under the Counter-Terrorism and Security Act 2015 including any guidance, amendments and all subsequent regulations pursuant to this Act and in particular its obligation under section 26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty").
- 21.2 The Contractor shall:
 - 21.2.1 co-operate with the Council in ensuring the Council's compliance with its requirements under the Counter-Terrorism and Security Act 2015 and the Prevent duty;
 - 21.2.2 comply with any Counter-Terrorism and Security Act 2015 policy produced by the Council;
 - 21.2.3 demonstrate an awareness and understanding of the risk of radicalisation within through effective leadership, working in partnership with the Council and the utilisation of appropriate capabilities in relation to the delivery of the Services;
 - 21.2.4 ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware

of available programmes to deal with this issue and will make appropriate referrals to the programme "Channel";

21.2.5 ensure that any Council-owned venues and resources involved in the provision of the Services do not provide a platform for extremists and are not used to disseminate extremist views; and

21.2.6 use filtering solutions on any IT equipment made available to the general public under this Contract to limit access to terrorist and extremist material.

22 DISPUTE RESOLUTION PROCEDURE

22.1 If there is a dispute between the Contractor and the Council concerning the interpretation or operation of this Contract it shall be referred to a senior officer of the Council and a senior representative of the Contractor for resolution.

22.2 If any dispute is not resolved within 20 Working Days of the referral under clause 22.1 (or such longer period as the Council and the Contractor may agree), then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure 2001 (the "Model Procedure") or such later edition as may be in force from time to time.

22.3 To initiate a mediation a Party must give notice in writing (the "ADR notice") to the other Party requesting a mediation in accordance with this clause 22. The mediation is to take place not later than 20 Working Days after the date of the ADR notice. If there is any issue concerning the conduct of the mediation upon which the Parties cannot agree within 10 Working Days after the date of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties having consulted with them.

22.4 If the dispute is not resolved within 10 Working Days of the mediation then the Parties may litigate the matter.

23 SUBCONTRACTING AND ASSIGNMENT

23.1 Provided always that any proposed assignment does not constitute a substantial modification within the meaning of the Regulation 72 of the Public Contract Regulations 2015, the Council may, in its absolute discretion, novate or assign this Contract or any part thereof to any other body which has or will perform any of the functions that are being performed by the Council under this Contract and will give written notice of any such novation or assignment to the Contractor. This clause shall stand as the Contractor's consent to any such novation or assignment of the benefit, burden or whole contract by the Council.

23.2 The Contractor shall not:

23.2.1 assign, transfer or novate the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof; or

23.2.2 sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Council, which consent shall be in the discretion of the Council and, if given, may be subject to conditions and shall not in any event relieve the Contractor of any liability or obligation under the Contract and the Contractor shall in any event be responsible for the acts, defaults or neglect of any sub-contractor or its employees, in all respects as if they were the acts, defaults or neglect of the Contractor and, without prejudice to the generality of the foregoing, provided that the Council shall be entitled to require as a condition of giving a consent to sub-contract, a direct deed of warranty and undertaking at the expense of the Contractor from the authorised sub-contractor to provide and carry out the part of the Services comprised in the authorised sub-contract.

23.3 No authorised sub-contractor shall assign transfer, novate or sub-contract the whole or any part of its sub-contract or the benefit or the advantage of the whole or any part of its sub-contract. The Contractor shall ensure that the terms of any authorised sub-contracting arrangement strictly prohibit any such activity by the sub-contractor.

24 EQUALITY OF OPPORTUNITY AND HUMAN RIGHTS

24.1 The Contractor shall comply with all applicable Equalities Legislation in its performance of the Contract and shall take all reasonable steps to ensure that all servants, employees, agents and Sub-contractors of the Contractor engaged in the provision of the Services does not unlawfully discriminate, harass or victimise within the meaning and scope of the Equalities Legislation. This clause 24.1 shall be without prejudice to the Contractor's general obligation to comply with Legislation.

24.2 The Contractor shall (and shall procure that its Employees shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

25 ENTIRE AGREEMENT

25.1 This Contract constitutes the entire agreement between the Parties and each Party acknowledges that it has not relied on any previous agreements, statements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.2 Any terms purported to apply explicitly or implicitly by the Contractor by any means (including without limitation by way of a quote, invoice or tender) are expressly excluded from this Contract.

26 NOTICES

26.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be: delivered by hand or by pre-paid first-class post or other next Working Day delivery service at its registered office (if a company) or its principal place of business (in any other case).

26.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt; if sent by pre-paid first class post or other next Working Day delivery service, at 9:00 am on the second Working Day after posting or at the time recorded by the delivery service.

26.3 This clause 26 does not apply to the service of any proceedings or other documents in any legal action.

27 WAIVER

27.1 A waiver of any right or remedy under the Contract or by Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

27.2 A failure or delay by a Party to exercise any right or remedy provided under the Contract or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

28 THIRD PARTY RIGHTS

- 28.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this shall not affect any other right or remedy that exists apart from that act.
- 28.2 The rights of the Parties to rescind or vary the Contract are not subject to the consent of any other person.

29 MODERN SLAVERY

- 29.1 The Contractor shall at all times comply (and shall require that each of its Sub-contractors shall comply) with all Modern Slavery Legislation, including without limitation section 54 of the Modern Slavery Act 2015. The Contractor acknowledges, understands, and accepts that the Authority is subject to the requirements of section 52 of the Modern Slavery Act 2015 (the “**Duty to Notify**”) and, where so requested by the Authority, shall assist and co-operate with the Authority at its own expense in order to enable the Authority may comply with its Duty to Notify. The Contractor hereby warrants that, so far as it is aware, no MSA Offence is occurring within its business or that of its Sub-contractors or in its supply chain.

30 GENERAL

- 30.1 **Local authority powers.** Nothing contained or implied in this Contract or any consent or approval granted pursuant to it shall prejudice or affect the rights, powers, duties and obligations of the Council whether before or after execution when acting in the exercise of its functions as the local authority, local planning authority, highway authority, water authority and/or any other statutory authority (rather than as a party to this Contract) and such rights, powers, duties, and obligations under all public and private Laws may be as fully and effectually exercised as if it were not party to this Contract and any approval, consent, direction or authority given by the Council as a local or other statutory authority shall not be or be deemed to be an approval, consent, direction, or authority given under this Contract and vice versa.
- 30.2 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 30.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the Parties will negotiate an alternative provision in good faith in order to validly reflect the intention behind the deleted provision. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.
- 30.4 **Non-solicitation.** Neither Party shall (except with the prior written consent of the other) during the term of this Contract solicit the services of any employee of the other Party who has been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such employee of the other Party.
- 30.5 **Publicity.** The Contractor shall not make any press announcements or publicise this Contract or its contents in any way or use the Council’s name or brand in any promotion or marketing or announcement of orders without the prior written consent of the Council.
- 30.6 **Partnership or agency.** Nothing in this Contract shall be construed as constituting a partnership or agency as between the Parties for any purpose whatsoever except as specified by the terms of this Contract.

31 GOVERNING LAW AND JURISDICTION

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

31.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

32 SPECIAL CONDITIONS

32.1 The Special Conditions set out in Schedule 6 shall apply.

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This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.²³

Executed as a deed by)	
affixing the common seal of)	
THE MAYOR AND BURGESSES OF THE)	
LONDON BOROUGH OF)	
HAMMERSMITH AND FULHAM)	
in the presence of:)	
	
		Signature of authorised officer
	
		Print name (ALL CAPITALS)

Executed as a deed by)	
[)	
acting by:)	
two directors, or)
a director and its secretary, or)	Signature of director
a director in the presence of a witness)	
	
		Print name (ALL CAPITALS)
If signed by a director in the presence		
of a witness, please ensure the		
witness completes the following:		
.....	
		Signature of director / secretary / witness
		(delete as appropriate)
Witness address (ALL CAPITALS)		
.....		
Witness occupation (ALL CAPITALS)	
		Print name (ALL CAPITALS)

²³ Use this signature page if the contract value is over £100k. Delete the signature block on the next page.

This contract has been entered into on the date stated at the beginning of it.²⁴

Signed by an authorised officer)	
for and on behalf of)	
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF)	Signature of authorised officer
HAMMERSMITH AND FULHAM)	
	
		Print name (ALL CAPITALS)

Signed for and on behalf of)	
[])	
	
		Signature of director
	
		Print name (ALL CAPITALS)

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²⁴ Use this signature page if the contract value is below £100k. Delete the signature block on the previous page.

**SCHEDULE 1
SPECIFICATION**

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**SCHEDULE 2
UNIT RATES AND ANNUAL SUM**

Charges for the services

[DETAILS OF THE CHARGES].

Invoicing arrangements

[DETAILS OF WHEN INVOICES ARE TO BE RAISED FOR THE SERVICES].

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**SCHEDULE 3
CONTRACTOR'S TENDER**

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SCHEDULE 4 DATA PROTECTION²⁵

1 DEFINITIONS

1.1 In this Schedule the following phrases have the following meanings:

Word or Phrase	meaning
Law:	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
Processor Personnel:	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
Data Protection Impact Assessment:	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	take the meaning given in the GDPR;
Data Loss Event:	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
Data Subject Request:	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Joint Controllers:	where two or more Controllers jointly determine the purposes and means of processing;
LED:	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it);
Sub-processor:	any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.

²⁵ This schedule assumes that the Council is the Data Controller and the Contractor the Data Processor. If this is not the case or you are unsure, please seek legal advice.

- 1.2 For the avoidance of doubt, and notwithstanding anything to the contrary contained in this Agreement, the provisions of Schedule 4 (Data Protection) shall survive the expiry or earlier termination of this Agreement and continue in full force and with full effect without limit in point of time.
- 1.3 Each Party shall be solely responsible and liable for its own compliance with the Data Protection Legislation and, notwithstanding any provisions to the contrary in this Agreement, each Party (the “**Indemnifying Party**”) shall on first demand fully indemnify the other Party (the “**Indemnified Party**”) and keep the Indemnified Party fully indemnified against all Data Losses incurred, suffered, or brought against the Indemnified Party arising out of, due to, and in connection with a failure by the Indemnifying Party to comply with its obligations as a Controller under the Data Protection Legislation or a breach by the Indemnifying Party of any of its obligations under this Schedule 4 (*Data Protection*). For the avoidance of doubt, notwithstanding any provision to the contrary in this Agreement, the Indemnifying Party’s liability under the indemnity contained in this paragraph 1.3 shall not be limited.
- 1.4 Each Party warrants that in carrying out its obligations under this Agreement it will not do or omit to do anything that might cause the other Party to be in breach of the Data Protection Legislation.

2 DATA PROTECTION

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor unless otherwise specified in Annex 1. The only processing that the Processor is authorised to do is listed in Annex 1 by the Controller and may not be determined by the Processor.
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 2.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 2.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 2.4.1 process that Personal Data only in accordance with Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 2.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;

- (c) state of technological development; and
 - (d) cost of implementing any measures;
- 2.4.3 ensure that:
- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 2.4.4 not transfer Personal Data outside of the UK or EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 2.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 2.5 Subject to clause 2.6, the Processor shall notify the Controller immediately if it:
- 2.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 2.5.2 receives a request to rectify, block or erase any Personal Data;
 - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 2.5.6 becomes aware of a Data Loss Event.

- 2.6 The Processor's obligation to notify under clause 2.5 shall include the provision of further information to the Controller in phases, as details become available.
- 2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 2.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 2.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 2.8.1 the Controller determines that the processing is not occasional;
 - 2.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 2.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
 - 2.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 2.11.2 obtain the written consent of the Controller;
 - 2.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 2.11 such that they apply to the Sub-processor; and
 - 2.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 2.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.15 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 2.16 The Contractor shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Schedule 4 by the Contractor and/or any act or omission of any sub-contractor.

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ANNEX 1 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are: Edward.Crow@lbhf.gov.uk
2. The contact details of the Processor’s Data Protection Officer are: [Insert Contact details]²⁶
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details ²⁷
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor in accordance with clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Council and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p><i>“Notwithstanding clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead.”</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p>

²⁶ Insert contact details of the Contractor’s DPO following award of the contract.

²⁷ Table to be completed with the assistance of the guidance in italics. All italics in square brackets should be deleted before the draft contract is released for tender. If you are uncertain about the data relationship, please seek legal advice.

	<p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

SCHEDULE 5 COUNCIL POLICIES²⁸

The Council Policies are:

- Modern Slavery and Human Trafficking Policy
- Corporate and Social Responsibility Policy
- Anti-Fraud and Corruption Strategy
- Ethics Policy
- Data and Privacy Policy
- Equality Strategy
- Corporate Identity Guidance
- Safeguarding Policy

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²⁸ Add any further policies that are relevant to the Contract.

SCHEDULE 6²⁹
SPECIAL CONDITIONS

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²⁹ Set out here any special terms. These should be agreed with legal.