



## CONDITIONS OF CONTRACT

These are the Council's Standard Conditions of Contract. In the event of any conflict between these conditions and any Special Conditions within the Tender Documents, the Special Conditions shall prevail.

### 1 INTERPRETATION

#### 1.1 Definitions:

#### 1.2 Agreement

**Business Day:** a day other than a Saturday, Sunday or public holiday, in England when banks in London are open for business.

**Charges:** the charges payable by the Council for the supply of the Goods and/or Services by the Contractor which were notified by the Council to the Contractor and particularised within the Tender Documents.

**Conditions:** these terms set out in clause 1 (Interpretation) to clause 23 (General) (inclusive).

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.

**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.

**Contractor IPRs:** all Intellectual Property Rights owned by the Contractor necessary or desirable to enable the Council to receive and use the Goods and/or Services.

**Council Materials:** all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Contractor.

**Council Policies:** the Council's mandatory policies and/or guidance for contracts set out in the Tender Documentation as amended by notification to the Contractor from time to time.

**Data Processing Schedule:** means the schedule which particularises the Contractor's data processing, personal data and data subjects obligations which were notified by the Council to the Contractor and particularised within the Tender Documents.

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

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**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.

**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.

**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.

**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.

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679).

**Goods and/or Services:** the goods and services to be provided by the Contractor pursuant to the Contract which were notified by the Council to the Contractor and particularised within the Tender Documents.

**Goods and/or Services Expiry Date:** the day on which the Contractor is to cease the provision of the Goods and/or Services respectively which were notified by the Council to the Contractor and particularised within the Tender Documents.

**Goods and/or Services Start Date:** the day on which the Contractor is to deliver and/or start provision of the Goods and/or Services respectively which were notified by the Council to the Contractor and particularised within the Tender Documents.

**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.

**Insolvency Event:** where:

- (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;
- (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;
- (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

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partnership or partnership);

- (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);
- (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 appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (f) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (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;

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).

**Invitation to Tender:** means the Council's published invitation to tender and or request for quotation documents.

**Intellectual Property Rights:** 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.

**Joint Controllers:** where two or more Controllers jointly determine the purposes and means of processing.

**Key Personnel:** means any persons notified as such by the Contractor to the Council in writing.

**Legislation:** 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.

**LED:** the Law Enforcement Directive (Directive (EU) 2016/680).

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

**Relevant Transfer:** means a relevant transfer for the purposes of TUPE.

**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.

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**Special Terms:** means any special terms or obligations on the Contractor which were notified by the Council to the Contractor and particularised within the Tender Documents.

**Specification:** means the services specification which was notified by the Council to the Contractor and agreed by the parties as particularised in the Tender Documents.

**Staff:** means 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.

**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.

**Submission** means the Contractor's completed response to the Invitation to Tender which forms the basis of the Contractor's tender under the Tender Exercise.

**Sub-Contractor:** Any third party whom the Contractor enters into a sub-contract with to provide all or part of the Goods and/or Services.

**Sub-processor:** any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.

**Tender Documentation:** means the Invitation to Tender, the Contractors Submission and such other relevant documentation which has been provided to the Contractor by the Council during the Tender Exercise.

**Tender Exercise** means the Tender Exercise under which the Contractor tendered to provide Goods or Services to the Council under this Agreement.

**Term:** means the period from the Goods and/or Services Start Date until the Goods and/or Services Expiry Date which was notified by the Council to the Contractor and particularised within the Tender Documents.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to **writing** or **written** includes email but does not include fax.
- 1.6 The parties acknowledge and agree that this agreement 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.

## **2 COMMENCEMENT AND TERM**

- 2.1 The Council appoints the Contractor to provide the Goods and/or Services in return for the Charges from the Goods and/or Services Start Date for the Term unless it is otherwise extended in accordance with Clause 2.2 or terminated in accordance with the terms of this Contract.

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- 2.2 The Council may extend the Contract for such period as specified in the Tender Documents on such notice in writing to the Contractor prior to the Goods and/or Services Expiry Date as specified in the Tender Documents. The terms and conditions of the Contract shall apply throughout any such extended period.
- 2.3 The Conditions shall apply to the appointment of the Contractor to the exclusion of any other terms and conditions on which any quotation or offer has been given to the Council or subject to which any Contract has been accepted or purported to be accepted by the Contractor.
- 2.4 The Contractor shall be deemed to have satisfied itself before entering into this Contract as to the accuracy and sufficiency of the Charges which shall, except where expressly provided to the contrary in this Contract, cover all the Contractor's obligations under this Contract and the Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Charges.

### **3 SUPPLY OF GOODS AND/OR SERVICES**

- 3.1 The Contractor shall supply the Goods and/or Services to the Council from the Goods and/or Services Start Date in accordance with the Contract, in particular the Specification.
- 3.2 In performing the Goods and/or Services the Contractor shall meet, and time is of the essence as to, any performance dates specified in the Specification which is set out in the Tender Documents.
- 3.3 In supplying the Goods and/or Services, the Contractor shall:
  - 3.3.1 perform the Goods and/or Services with the highest level of care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
  - 3.3.2 co-operate with the Council in all matters relating to the Goods and/or Services, and comply with all instructions of the Council;
  - 3.3.3 appoint or, at the request of the Council, replace without delay a manager, who shall have authority to contractually bind the Contractor on all matters relating to the Goods and/or Services. The initial manager shall be the Contractor's representative;
  - 3.3.4 only use personnel who are suitably qualified, skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled;
  - 3.3.5 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract;
  - 3.3.6 ensure that the Goods and/or Services conform in all respects with the description set out in the Specification and are of satisfactory quality, free from defect in design, material and workmanship and will remain so for a period of 12 months from the Goods and/or Services Start Date and are fit for any purpose that the Council expressly or impliedly makes known to the Contractor;
  - 3.3.7 provide all equipment, tools, vehicles and other items reasonably required or necessary to provide the Goods and/or Services;
  - 3.3.8 ensure that all goods, materials, standards and techniques used in providing the Goods and/or Services are of the best quality and are free from defects in workmanship, installation and design;

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- 3.3.9 ensure that its employees, agents and representatives associated with the supply of the Goods and/or Services comply in all respects with this clause 3;
- 3.3.10 comply with:
  - (a) all applicable Legislation from time to time in force; and
  - (b) the Council Policies;
- 3.3.11 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;
- 3.3.12 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;
- 3.3.13 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;
- 3.3.14 not deliver or provide the Goods and/or Services in instalments or stages unless otherwise agreed in writing with the Council;
- 3.3.15 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;
- 3.3.16 notify the Council in writing immediately upon the occurrence of a change of Control of the Contractor; and
- 3.3.17 comply with any and all Special Terms.

#### **4 COUNCIL'S OBLIGATIONS**

- 4.1 The Council shall:
  - 4.1.1 provide such access to the Council's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Contractor and agreed with the Council in writing in advance, strictly as may be necessary for the purposes of providing the Goods and/or Services; and
  - 4.1.2 provide such necessary information for the provision of the Goods and/or Services as the Contractor may reasonably request.
- 4.2 A failure by the Council to comply with the terms of the Contract can only relieve the Contractor from complying with its obligations under the Contract with effect from the date on which the Contractor notifies the Council in writing and in reasonable detail of the Council's failure and its effect or anticipated effect on the Goods and/or Services.

#### **5 DELIVERY**

- 5.1 The Contractor shall ensure that:

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- 5.1.1 the Goods and/or Services are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 5.1.2 each delivery of Goods and/or Services is accompanied by a delivery note which shows the order number, the type and quantity of Goods and/or Services (including the code number of the Goods and/or Services, where applicable), special storage instructions (if any) and, if the relevant order is being delivered by instalments, the outstanding balance of Goods and/or Services remaining to be delivered; and
- 5.1.3 if the Contractor requires the Council to return any packaging material to the Contractor, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Contractor at the cost of the Contractor.

## **6 ACCEPTANCE AND DEFECTIVE GOODS AND/OR SERVICES**

- 6.1 The Council shall not be deemed to have accepted any Goods and/or Services until it has had five Business Days following Delivery to inspect them, or, in the case of a latent defect in the Goods and/or Services, following the latent defect becoming apparent.
- 6.2 If any Goods and/or Services delivered to the Council do not comply with clause 3.3.6, or are otherwise not in conformity with the terms of this Contract, then, without limiting any other right or remedy that the Council may have, the Council may reject those Goods and/or Services and:
  - 6.2.1 require the Contractor to repair or replace the rejected Goods and/or Services at the Contractor's risk and expense within five Business Days of being requested to do so; or
  - 6.2.2 require the Contractor to repay the price of the rejected Goods and/or Services in full (whether or not the Council has previously required the Contractor to repair or replace the rejected Products); and
  - 6.2.3 claim damages for any other costs, expenses or losses resulting from the Contractor's delivery of Products that do not conform with the terms of this Contract.
- 6.3 The Council's rights and remedies under this clause 6 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.
- 6.4 The terms of this Contract shall apply to any repaired or replacement Goods and/or Services supplied by the Contractor.
- 6.5 If the Contractor fails to promptly repair or replace rejected Goods and/or Services in accordance with clause 6.2.1, the Council may, without affecting its rights under clause 6.2.3, obtain substitute goods from a third party supplier, or have the rejected Goods repaired and/or the rejected Services provided by a third party, and the Contractor shall reimburse the Council for the costs it incurs in doing so.
- 6.6 If the parties dispute whether any Goods and/or Services comply with clause 3.3.6 either party may refer the matter to an expert for determination.

## **7 TITLE TO GOODS, SERVICES OUTPUTS AND COUNCIL MATERIALS**

- 7.1 Title to any Goods and/or Services and any outputs thereof shall pass to the Council on the earlier of their delivery to the Council or payment of the Charges for them.

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- 7.2 The Contractor transfers the Goods and/or Services and any outputs thereof to the Council free from all liens, charges and encumbrances.
- 7.3 Risk in any Goods and/or Services and any outputs thereof shall pass to the Council on completion of their delivery.
- 7.4 All Council Materials are the exclusive property of the Council.

**8 INTELLECTUAL PROPERTY**

- 8.1 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.
- 8.2 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.
- 8.3 The Contractor grants the Council, or shall procure the direct grant to the Council of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Contractor IPRs for the purpose of receiving and using the Goods and/or Services.
- 8.4 The Council will be entitled to sub-licence the licence granted under clause 8.3.
- 8.5 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 Goods and/or Services to the Council in accordance with the Contract.
- 8.6 The Contractor shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (including the cost of defending a claim and calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with any claim brought against the Council for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Goods and/or Services by the Council and its licensees and sub-licensees. This clause 8.6 shall survive termination of the Contract.
- 8.7 The provisions of this clause 8 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

**9 CHARGES AND PAYMENT**

- 9.1 In consideration for the provision of the Goods and/or Services, the Council shall pay the Contractor the Charges in accordance with this clause 9.
- 9.2 All amounts payable by the Council exclude amounts in respect of value added tax (**VAT**) which the Council shall additionally be liable to pay to the Contractor at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 9.3 The Contractor shall submit invoices for the Charges plus VAT if applicable to the Council monthly in arrears. Each invoice shall include all supporting information reasonably required by the Council.
- 9.4 The Council shall pay each invoice which is properly due and submitted to it by the Contractor, within 30 days of receipt, to a bank account nominated in writing by the Contractor.



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- 9.5 If the Council fails to make any payment due to the Contractor under the Contract by the due date for payment, then, without limiting the Contractor remedies under clause 12 (Termination), the Council shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time.
- 9.6 The Council may at any time, without notice to the Contractor, set off any liability of the Contractor to the Council against any liability of the Council to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Council may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **10 LIMITATION OF LIABILITY**

### **10.1 Nothing in the Contract:**

10.1.1 shall limit or exclude the Contractor's or the Council's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) any other liability which cannot be limited or excluded by applicable law; or

10.1.2 shall limit or exclude the Contractor's liability under clause 8.6 of these Conditions.

### **10.2 Subject to clause 10.1 of these Conditions:**

10.2.1 neither party to the Contract shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract;

10.2.2 Subject to clause 10.2.3, the Contractor's total liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of £1,000,000 or 200% of the total Charges paid by the Council under the Contract;

10.2.3 If different liability amounts were advised to the Contractor in the Tender Documentation those amounts shall supersede the amounts in clause 10.2.2; and

10.2.4 the Council's total liability to the Contractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of £1,000,000 and 100% of the total Charges paid by the Council under the Contract.

10.3 No amounts awarded or agreed to be paid under clause 8.6 shall count towards the cap on the Contractor's liability under clause 10.2.2.

10.4 Notwithstanding the provisions of clause 10.2.1, the losses for which the Contractor assumes responsibility and which shall (subject to clause 10.2.2 and clause 10.2.4) be recoverable by the Council include:

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- 10.4.1 sums paid by the Council to the Contractor pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the terms of the Contract;
  - 10.4.2 wasted expenditure;
  - 10.4.3 additional costs of procuring and implementing replacements for, or alternatives to, the Goods and/or Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
  - 10.4.4 losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Contractor personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Contractor; and
  - 10.4.5 anticipated savings.
- 10.5 The rights of the Council under the Contract are in addition to, and not exclusive of, any rights or remedies provided by common law.

## **11 INSURANCE**

- 11.1 During the term of the Contract and for a period of six years thereafter, the Contractor shall maintain in force, with a reputable insurance company, the types of insurance specified in the Clause 11.2 at the levels set out therein to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the Council on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 11.2 The Contractor should have as a minimum the types of insurance at the levels as set below:
- 11.2.1 Professional indemnity insurance with a limit of cover of no less than £1 million in relation to any claim or connected series of claims;
  - 11.2.2 Public liability insurance with a limit of cover of no less than £10 million in relation to any claim or connected series of claims;
  - 11.2.3 Employers liability insurance with a limit of indemnity of not less than £5 million in relation to any claim or connected series of claims; and
  - 11.2.4 If required, Product liability insurance as set out in the Tender Documents.
- If different insurance types and amounts were advised to the Contractor in the Tender Documentation those amounts shall supersede the amounts in clause 11.2.

10.2.2

## **12 TERMINATION**

- 12.1 Without affecting any other right or remedy available to it, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor if:
- 12.1.1 (without prejudice to Clause 12.1.2) the Contractor is in material breach of any of its obligations under this Contract which is not capable of remedy;
  - 12.1.2 the Contractor is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
  - 12.1.3 the Contractor repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent

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with it having the intention or ability to give effect to the terms and conditions of the Contract;

- 12.1.4 the Contractor's financial position (or that of any person that Controls the Contractor) deteriorates to such an extent that in the Council's opinion the Contractor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - 12.1.5 the Contractor commits a breach of clause 3.3.10, 3.3.11, or 3.3.15;
  - 12.1.6 the Contractor gives any fee the receipt of which is an offence under section 117(2) of the Local Government Act 1972 or any other statutory provision;
  - 12.1.7 the Contractor is subject to a change of Control;
  - 12.1.8 if there is an Insolvency Event;
  - 12.1.9 the Contractor ceases, or threatens to cease, to carry on business;
  - 12.1.10 the Council reasonably apprehends that any of the events in Clauses 12.1.8 and 12.1.9 inclusive is about to occur in relation to the Contractor and notifies the Contractor accordingly;
  - 12.1.11 the Contractor or any of its Employees 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
  - 12.1.12 the Contractor or any of its Employees shall have committed any offence under the Bribery Act 2010.
- 12.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 12.3 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

### **13 FREEDOM OF INFORMATION**

- 13.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
- 13.1.1 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;
  - 13.1.2 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 Business Days of receipt.
- 13.2 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. The Council will be responsible for determining in its absolute discretion whether any such information is exempt from disclosure.
- 13.3 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. The Council will be

responsible for determining in its absolute discretion whether any such information is exempt from disclosure.

## **14 CONFIDENTIALITY**

14.1 Subject to clauses 12, 13 and 14.1.1, 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:

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

14.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 14.

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

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

14.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

14.2.3 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;

14.2.4 which is in or enters the public domain other than through any disclosure prohibited by this Contract;

14.2.5 which a party can demonstrate was lawfully in its prior to receipt from the other party; or

14.2.6 which is disclosed by the Council on a confidential basis to any central government or regulatory body.

14.3 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:

14.3.1 it informs such representatives of the confidential nature of the Confidential Information before disclosure;

14.3.2 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

14.3.3 at all times, it is liable for the failure of any representatives to comply with the obligations set out in this clause 14.3.

14.4 The provisions of this clause 14 shall survive for a period of three years from the expiry of this Contract.

## **15 DATA PROTECTION**

15.1 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 the Data

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Processing Schedule. The only processing that the Processor is authorised to do is listed in the Data Processing Schedule by the Controller and may not be determined by the Processor.

- 15.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 15.3 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:
  - 15.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 15.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 15.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 15.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - 15.4.1 process that Personal Data only in accordance with the Data Processing Schedule 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;
  - 15.4.2 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;
  - 15.4.3 ensure that:
    - (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Schedule);
    - (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:
      - (c) are aware of and comply with the Processor's duties under this clause;
      - (d) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (e) 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

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- (f) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 15.4.4 not transfer Personal Data outside of the EU 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;
- 15.4.5 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 Legislation to retain the Personal Data.
- 15.5 Subject to clause 15.6, the Processor shall notify the Controller immediately if it:
- 15.5.1 receives a Data Subject Request (or purported Data Subject Request);
  - 15.5.2 receives a request to rectify, block or erase any Personal Data;
  - 15.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 15.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 15.5.5 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
  - 15.5.6 becomes aware of a Data Loss Event.
- 15.6 The Processor's obligation to notify under clause 15.5 shall include the provision of further information to the Controller in phases, as details become available.
- 15.7 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 15.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 15.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 15.7.2 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;
  - 15.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 15.7.4 assistance as requested by the Controller following any Data Loss Event;

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- 15.7.5 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.
- 15.8 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:
- 15.8.1 the Controller determines that the processing is not occasional;
- 15.8.2 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
- 15.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 15.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 15.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 15.11.1 notify the Controller in writing of the intended Sub-processor and processing;
- 15.11.2 obtain the written consent of the Controller;
- 15.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 15 such that they apply to the Sub-processor; and
- 15.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 15.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 15.13 The Controller may, at any time on not less than 30 Business 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).
- 15.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.15 The provisions of this clause 15 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

## **16 HUMAN RIGHTS**

- 16.1 The Contractor shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.
- 16.2 The Contractor shall 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.

## **17 COUNTER-TERRORISM AND THE PREVENT DUTY**

- 17.1 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 s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty")
- 17.2 The Contractor will:
- 17.2.1 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;
  - 17.2.2 comply with any Counter-Terrorism and Security Act policy produced by the Council;
  - 17.2.3 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 Goods and Services;
  - 17.2.4 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 Channel;
  - 17.2.5 ensure that any Council -owned venues and resources involved in the provision of the Goods and Services do not provide a platform for extremists and are not used to disseminate extremist views;
  - 17.2.6 use filtering solutions on any IT equipment made available to the general public under this Contract which limit access to terrorist and extremist material.

## **18 STAFF AND KEY PERSONNEL**

- 18.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Contractor:
- 18.1.1 refuse admission to the relevant person(s) to the Council's premises;
  - 18.1.2 direct the Contractor to end the involvement in the provision of the Goods and Services of the relevant person(s); and/or
  - 18.1.3 require that the Contractor replace any person removed under this Clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,
- and the Contractor shall comply with any such notice. The Council shall give reasons to the Contractor for its request. The Council shall not be obliged to compensate the Contractor for any losses or additional costs which the Contractor suffers as a result of complying with the Council's request save where the Council has acted unreasonably in making the request.
- 18.2 The Contractor shall:
- 18.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 18.2.2 if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council's premises in connection with the Contract; and



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- 18.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.
- 18.3 Any Key Personnel shall not be released from providing the Goods and Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, and termination of employment or other extenuating circumstances.
- 18.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Goods and Services.

**Labour**

- 18.5 The Contractor shall comply with its obligations under the Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992 including but not limited to:
  - 18.5.1 complying in full with the terms of any collective agreement entered into between one or more trade unions and any association of employers of which the Contractor is a member;
  - 18.5.2 not itself, or through a servant or agent, performing any act intended to discourage employees or prospective employees from becoming or continuing as members of a trade union;
  - 18.5.3 not itself, or through a servant or agent, penalising employees or prospective employees in any way by reason of their membership of a trade union.

**19 TUPE**

- 19.1 The Parties recognise that TUPE may apply to this Agreement if Services are being provided to the Council.
- 19.2 In the event that TUPE applies in relation to the provision of Services under this Agreement, the Contractor shall comply with its obligations under TUPE and in relation to pensions which are particularised in Schedule 1. For the avoidance of doubt if TUPE does not apply to this Agreement, Schedule 1 will not apply.
- 19.3 The Contractor shall take its own independent legal advice on TUPE and pensions and the Council makes no warranty as to the position in respect of TUPE.

**20 EXIT ARRANGEMENTS**

- 20.1 On expiry or termination of the Contract for whatever reason:
  - 20.1.1 the Contractor shall immediately deliver to the Council all Goods and/or Services and any outputs thereof whether or not then complete, and return all Council Materials. If the Contractor fails to do so, then the Council may enter the Contractor premises and take possession of them. Until they have been delivered or returned, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
  - 20.1.2 the Contractor shall, if so requested by the Council, provide all assistance reasonably required by the Council to facilitate the smooth transition of the Goods and/or

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Services to the Council or any replacement supplier appointed by it including any assistance set out in the Specification.

## 21 AUDIT AND INFORMATION

- 21.1 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.
- 21.2 Any information requested in writing under Clause 21.1 shall be provided by the Contractor within a reasonable time being no longer than three Business 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.
- 21.3 Without prejudice to the Contractor's obligations under Clauses 21.1 and 21.1, 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 Act 1998 and any other relevant legislation to facilitate such disclosure lawfully and fairly.

## 22 PREVENTION OF FRAUD

- 22.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 22.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 22.3 If the Contractor or the Staff engages in conduct prohibited by Clause 22.1 or commits fraud in relation to the Contract or any other contract with the Council the Council may:
- 22.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract; or
  - 22.3.2 recover in full, from the Contractor any other loss sustained by the Council in consequence of any breach of this Clause.

## 23 GENERAL

- 23.1 **Force majeure.** 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,

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national emergency, or industrial dispute (other than such a dispute affecting the workforce of the party seeking to rely on this clause 23.1). In the event that the Council requires the Goods and/or 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 days' written notice to the affected party.

- 23.2 **Subcontracting and assignment.** The Contractor may not assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under the Contract without the prior written consent of the Council. If the Council consents to any subcontracting by the Contractor, the Contractor shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 23.3 **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 Legislation 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.
- 23.4 **Entire agreement.**
- 23.4.1 Subject to clause 23.4.2, these terms and conditions, the schedules, any Special Terms, the Specification and the Submission constitute 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.
- 23.4.2 To the extent that specific clause(s) in this Agreement make an explicit reference to the Tender Documents, the Tender Documents will comprise part of this Agreement and will form part of the terms which shall be binding on the Contractor for the purposes of interpreting that clause only.
- 23.4.3 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.
- 23.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or in the case of the Contractor, its authorised representatives).
- 23.6 **Waiver.**
- 23.6.1 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.
- 23.6.2 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.

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- 23.7 **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.
- 23.8 **Notices.**
- 23.8.1 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 Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 23.8.2 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 Business Day delivery service, at 9:00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 23.8.3 This clause shall not apply to the service of any proceedings or other documents in any legal action.
- 23.9 **Third party rights.**
- 23.9.1 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.
- 23.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 23.10 **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 Goods and/or 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.
- 23.11 **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.
- 23.12 **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.
- 23.13 **Governing law.** 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.
- 23.14 **Jurisdiction.** 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.
- 23.15 **Agreement.** The parties acknowledge that these terms and conditions formed part of the Tender Documents and the parties agree that they will be bound by these terms and conditions in relation to the Contractor providing the Goods or Services to the Council.

**Schedule 1 TUPE and Pensions**

**To be added**