



This Contract is dated []

BETWEEN

- (1) **SEFTON METROPOLITAN BOROUGH COUNCIL** of Magdalen House, 30 Trinity Road, Bootle L20 3NJ; and
- (2) **[INSERT FULL COMPANY NAME] [LTD OR PLC]** incorporated and registered in England and Wales under company number **[INSERT COMPANY NUMBER]** whose registered office is at **[INSERT REGISTERED OFFICE ADDRESS]** ("the Contractor")

referred to as "Parties" hereunder.

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: Charges: the charges payable by the Council for the supply of the Goods and/or Services by the Contractor is particularised within the Tender Documentation, specifically the Contractors Submission.

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

Connected Persons: has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act 2023

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.

Terms and Conditions

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 1 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.

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.

Debarment List: the list of suppliers referred to in section 62 of the Procurement Act 2023.

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.

Terms and Conditions

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 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.

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 as enclosed at Schedule 3

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.
- 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;

Terms and Conditions

- 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;
- 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.

3.4 The Contractor shall promptly notify the Council in writing if, during the Contract Period:

- 3.4.1 the Contractor, the Contractor's Connected Persons or any Sub-Contractor is placed on the Debarment List;
- 3.4.2 a mandatory exclusion ground or discretionary exclusion ground applies to the Contractor, Contractor's Connected Persons or any Sub-Contractor; and
- 3.4.3 there is any changes to the Contractor's Connected Persons together with information regarding the identity of the new Connected Persons.

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:

- 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

Terms and Conditions

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 For the avoidance of doubt, title to any Goods and/or Services and any outputs shall remain with the Contractor at all times. .
- 7.2 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,

Terms and Conditions

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.
- 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.

Sub-Contracts

- 9.7 Where the Contractor enters into a new sub-contract with a Sub-Contractor for the purposes of performing any of its obligations under this Contract, it shall ensure that each such sub-contract contains the following provisions:
- 9.7.1 the Contractor to pay any sums which are due from it to a Sub-contractor within 30 days from the date of a valid and undisputed invoice;
- 9.7.2 the Contractor to consider and verify any invoices for payment submitted by a Sub-contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;

Terms and Conditions

- 9.7.3 the Sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the Parties to that sub-contract, requirements to the same effect as those required in this Clause 9.7.
- 9.8 Without prejudice to any other rights or remedies of the Council whether in contract, tort, or under statute, or otherwise, the Council shall be entitled to withhold or reduce, or make deductions from the Contract Price:
- 9.8.1 pursuant to Clause 12 (Termination);
- 9.8.2 where the Contractor has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or;
- 9.8.3 where the Council has suffered financial loss by virtue of the Contractor overpaying a third party including, without limitation, where the Contractor in the course of carrying out its obligations under the Contract makes an overpayment of salary of makes duplicate credit payments.

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.

Terms and Conditions

- 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:
- 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.

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;

Terms and Conditions

- 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 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.
 - 12.1.13 The Contractor is in breach of Clause 24 (Compliance with Anti-Slavery and Human Trafficking laws)
- 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.
- 12.4 The Council may give the Contractor written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of intention to terminate under this clause must:
- 12.4.1 set out which termination ground the Council considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Council's reasons for deciding to terminate on this basis;
 - 12.4.2 invite the Contractor to make representations to the Council about the existence of the termination ground and the Council's decision to terminate;

Terms and Conditions

12.4.3 specify the means by which, and the time by which, such representations must be made and

12.4.4 insofar as it states the Council's intention to terminate by reference to the status of a Sub-contractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Contractor may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.

On expiry of the time for the Contractor to make representations under clause 12.2.3, if, after considering any representations, the Council is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Contractor.

12.5 Termination For convenience

12.5.1 The Council shall be entitled to terminate this Contract in whole or in part by giving to the Contractor not less than the greater of: 6 (six) months' notice in writing; or any notice requirement particularised in the Special Conditions.

12.5.2 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 and if necessary to an Expert. 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.

12.5.3 The Council, in its discretion but acting reasonably and taking into account the representations of the Contractor, shall be entitled to suspend by notice in writing to the Contractor part of the Services which it would otherwise be entitled to terminate pursuant to this Clause until such time as the Contractor is able to demonstrate that it is able to perform the Services to the Contract Standard without default.

12.5.4 During the period of suspension in accordance with Clause 12.4.3 the Council shall be entitled to abate the Contract Price by such amount as is necessary for the Council to perform the Services itself or to engage a third party to do so.

12.5.5 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.

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

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.

Terms and Conditions

- 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.

Terms and Conditions

- 14.4 The Contractor acknowledges that the Council's obligations under the Procurement Act 2023 and the Government's transparency agenda principles that the Council will publish on its website or in other alternative media this Contract and all of the Schedules.
- 14.5 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 Processing Schedule. The only processing that the Processor is authorised to do is listed in the Data Processing Schedule 1 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);

Terms and Conditions

- (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
 - (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

Terms and Conditions

- 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;
 - 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,

Terms and Conditions

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
- 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 2. For the avoidance of doubt if TUPE does not apply to this Agreement, Schedule 2 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 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

Terms and Conditions

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, 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.

Terms and Conditions

- 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.
- 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.

Terms and Conditions

- 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.

24. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

24.1 In performing its obligations under this agreement, the Contractor shall:

- a. comply with 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;
- b. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- c. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause 24;
- d. notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement;
- e. maintain a complete set of records to trace the supply chain of all goods and services provided to the Council in connection with this agreement; and permit the Council and its third-party representatives to inspect the Contractor's premises, records, and to meet the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause 24;
- f. adopt and maintain a whistle-blowing policy enabling staff to cite suspected examples of modern slavery and human trafficking;

Terms and Conditions

- g. not interfere with the right of contracted workers to join a trade union and shall not treat any worker unfairly for belonging to a trade union.

24. 2 The Contractor shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred whatsoever and howsoever arising as a result of any breach of this clause 24.

24.3 The Contractor warrants and represents that:

- a. neither it nor any of its officers, employees or other persons associated with it: has been convicted of any offence involving slavery and human trafficking; and / or has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
- b. it has implemented due diligence procedures to ensure that there is no slavery or human trafficking in its supply chains;
- c. it conducts its business in a manner that is consistent with clause 24.

Terms and Conditions

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

Signed by [] for and on behalf of Sefton Metropolitan Borough Council

.....

Authorised Signatory

.....

Print name

Signed by [] for and on behalf of []

.....

Authorised Signatory

.....

Print name

Schedule 1 Data Protection

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1 DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor unless otherwise specified in the Data Processing clause 2. The only processing that the Processor is authorised to do is listed in Clause 2 (the Data Processing) by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 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:
 - 1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 1.4.1 process that Personal Data only in accordance with the Clause 2 (Data Processing) 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;
 - 1.4.2 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;
 - 1.4.3 ensure that:
 - a) the Processor Personnel do not process Personal Data except in accordance with this Contract and in particular Clause 2 (the Data Processing);

Terms and Conditions

- 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
 - f) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 1.4.4 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;
- 1.4.5 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.
- 1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
 - 1.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 1.5.5 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
 - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 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

Terms and Conditions

complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- 1.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 1.7.2 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;
 - 1.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 1.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 1.7.5 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.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
 - 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
 - 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
 - 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
 - 1.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 1.11.2 obtain the written consent of the Controller;
 - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
 - 1.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
 - 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
 - 1.13 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).
 - 1.14 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.
 - 1.15 The provisions of this clause 1 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

2 DATA PROCESSING

Recitals

- The Parties acknowledge and agree that they are bound by certain obligations which are imposed by the UK General Data Protection Regulation as defined in section 3(10) of the DPA 2018. ("GDPR").
- The Parties acknowledge and agree that this Schedule and its Annexure with regards to data protection reflect the obligations imposed on the Parties by the GDPR.
- The Contractor acknowledges and agrees that, in relation to data protection, it is bound by the provisions of this Schedule and its Annexure in providing works, goods and / or services to the Council.

Definitions:

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

Council: means Sefton MBC.

Contract: means the contract between the Contractor and the Council under which the Contractor provides works, goods or services to the Council which is to be varied in accordance with this Schedule and its Annexure.

Contractor: means the contractor and/or service provider that provides works, goods or services to the Council under the Contract.

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

Data Processing Schedule means the schedule annexed to this 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 in the annexure to this Schedule.

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

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the contract to which this Schedule is henceforth to form part, and/or actual or potential loss and/or destruction of Personal Data in breach of the 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.

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

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

Terms and Conditions

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.

Request for Information: a request for information or an apparent request relating to the contract, to which this Schedule is appended, under the Code of Practice on Access to Government Information, FOIA or the EIRs.

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 to the Council.

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Schedule or the contract of which it forms part.

- 1.1 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.
- 1.2 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.
- 1.3 A reference to **writing** or **written** includes email but does not include fax.
- 1.4 A reference to a clause is a reference to a clause in this Schedule.
- 1.5 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 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 the Data 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.
- 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:

Terms and Conditions

- 2.4.1 process that Personal Data only in accordance with the Data Processing Schedule (at Annex 1 to this 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;
- 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:
 - 2.4.2.1 nature of the data to be protected;
 - 2.4.2.2 harm that might result from a Data Loss Event;
 - 2.4.2.3 state of technological development; and
 - 2.4.2.4 cost of implementing any measures;
- 2.4.3 ensure that:
 - 2.4.3.1 the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Schedule at Annex 1 to this Schedule);
 - 2.4.3.2 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:
 - 2.4.3.3 are aware of and comply with the Processor's duties under this clause;
 - 2.4.3.4 are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - 2.4.3.5 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
 - 2.4.3.6 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 EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 2.4.4.1 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;
 - 2.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 2.4.4.3 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
 - 2.4.4.4 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 Legislation 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;

Terms and Conditions

- 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 Schedule. 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 Schedule such that they apply to the Sub-processor; and

Terms and Conditions

- 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 Business Days' notice, revise this Schedule 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 Business 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 provisions of this Schedule shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

3 Indemnity

- 3.1 The Contractor shall indemnify, defend and hold harmless the Council and its respective employees, officers, agents, successors and assigns from any and all losses, liabilities (including provision for contingent liabilities), fines, compensation, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties arising from or in connection with any Personal Data Breach and/or any breach by the Contractor, its subcontractors and or/its employees, officers, agents of the obligations set out in this Schedule and/or the GDPR.
- 3.2 The Contractor shall indemnify and keep indemnified the Council in full, from and against all regulatory penalties issues under the GDPR which may arise out of, or as a consequence of, any Personal Data Breach by the Contractor.
- 3.3 This clause 2.15 shall survive the termination of the Contract.

ANNEX TO CLAUSE 2 (THE DATA PROCESSING)**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

This Annexure shall be completed by the Controller, who may take account of the view of the Processor, 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:
Catherine.Larkin@sefton.gov.uk
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**
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
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor.
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	Data will include but is not limited to: •
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under domestic law to preserve that type of data	Records must be kept and accessible for the Council (Controller) to access for 6 years after

Schedule 2 TUPE and Pensions**TUPE AND PENSIONS**

***The following clauses only become operative
in the event that TUPE applies***

PART A – TUPE AND EMPLOYEES

In this Schedule, in addition to the definitions in the Agreement of which this Schedule forms part, the following definitions shall apply:

Word or Phrase	Meaning
“Admission Agreement”	an admission agreement entered into in accordance with Part 3 of Schedule 2 of the LGPS Regulations by the Administering Authority, the Council and the Contractor (and/or any Sub-contractor as appropriate);
“Administering Authority”	means Wirral Borough Council acting in its capacity as the administering authority of the Merseyside Pension Fund for the purpose of the LGPS Regulations.
“Admission Body”	means a body for the purposes of Part 3 of Schedule 2 of the LGPS Regulations.
“Assigned Employees”	has the meaning given to it in Clause 7 of Part A of this Schedule (Retendering);
“Cessation Date”	means any date on which the Supplier ceases to be an Admission Body as referred to in clause 2 (Pensions) other than as a result of the termination of this contract or because it ceases to employ any Eligible Employees;
“Commencement Date”	means the date that the Contractor begins the delivery of the Services;
“Direct Losses”	all damage, losses, indebtedness, liabilities, claims, actions, cash, costs, expenses (including the cost of legal or professional services and the cost of defending a claim, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract

Terms and Conditions

	or at common law (including negligence) but, to avoid doubt, excluding Indirect Losses;
"Employee Liability Information"	means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(1) of TUPE regarding any person employed by him who are the subject of a Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;
Eligible Employees:	means the Transferring Employee(s) who are active members of or eligible to join the LGPS on a Relevant Transfer Date for so long as they remain employed in connection with the Services;
"Employee List"	has the meaning given to it in clause 4.1 of Part A of this Schedule (Employment Costs);
"First Contractor"	any person with whom the Council initially contracted for the provision of services which are similar to the Services;
"Future Contractor"	shall have the meaning given in Clause 5.1 of Part A of this (Indemnities);
"Indirect Losses"	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature;
"LGPS"	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972;
"LGPS Regulations"	means the Local Government Pension Scheme Regulations 2013 (as amended from time to time;
"Relevant Employees"	the employees who are the subject of a Relevant Transfer;
"Relevant Transfer Date"	the date on which an Eligible Employee transfers to the Contractor and/or one or more Sub-contractor whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
"Relevant Transfer"	a relevant transfer for the purposes of TUPE;

Terms and Conditions

"Retendering Information"	has the meaning given to it in Clause 7 (Retendering);
"Sub-contractor"	means any authorised Sub-contractor of the Contractor engaged in the delivery of the Services;
"Transferring Employee"	means an employee of the First Contractor (excluding, to avoid doubt (without limitation), any person engaged by the First Contractor as an independent contractor or persons employed by any Sub-contractor engaged by the First Contractor) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Council and the Contractor, a contract of employment with the Contractor or a Sub-contractor as applicable;
"TUPE"	the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246) as amended;

1. The following provisions apply only in circumstances where TUPE applies. The Contractor should seek independent legal advice on the application of the following provisions. The Council provides no guarantee to any Contractor in relation to the application of the following provisions.

2. RELEVANT TRANSFERS

- 1.1 The Council and the Contractor agree that the following events:

- 1.1.1 the Commencement Date; and

- 1.1.2 where the identity of a provider (including the Council) of any service which constitutes or which will constitute the Services in whole or in part is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity or survivors' benefits.

3. EMOLUMENTS AND OUTGOINGS

- 3.1. The Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-contractor in connection with the provision of any of the Services,

Terms and Conditions

including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date.

4. EMPLOYMENT COSTS

- 4.1. The Council has supplied to the Contractor a list of Relevant Employees and relevant information as to terms and conditions (the "Employee List").
- 4.2. The Council shall use all reasonable endeavours to supply the Contractor with an updated Employee List not less than 28 Days before the Commencement Date.
- 4.3. Without prejudice to Clauses 4.1 and 4.2 the Council shall use reasonable endeavours to provide the Employee Liability Information to the Contractor at such time or times as are required by TUPE; and update the Employee Liability Information to take account of any changes as required by TUPE.
- 4.4. The Council gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the First Contractor or any subcontractor.

5. INDEMNITIES

- 5.1. The Contractor shall indemnify and keep indemnified in full the Council, and at the Council's request each and every Contractor who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Contract ("Future Contractor") against:
 - 5.1.1. all Direct Losses incurred by the Council and/or any Future Contractor in connection with or as a result of any and all claim (s) or demand (s) against the Council or any Future Contractor by any person who is or has been employed or engaged by the Contractor or any Sub-contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor on or after the Commencement Date;
 - 5.1.2. all Direct Losses incurred by the Council and/or any Future Contractor in connection with or as a result of a breach by the Contractor of its obligations under Clause 3 above; and
 - 5.1.3. all Direct Losses incurred by the Council and or any Future Contractor in connection with or as a result of any and all claim (s) by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor and/or any Sub-contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Commencement Date.

Terms and Conditions

5.2. The Contractor shall indemnify and keep indemnified in full the Council and/or any Future Contractor, against all Direct Losses incurred by the Council and/or any Future Contractor in connection with or as a result of:

- 5.2.1. the change of identity of employer occurring by virtue of TUPE to the Contractor or the relevant Sub-contractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of the change in employer and whether such claim arises before or after the Commencement Date;
- 5.2.2. any proposed or actual change by the Contractor or any Sub-contractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Contractor or the relevant Sub-contractor which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of any such proposed changes or measures and whether such claim arises before or after the Commencement Date; and
- 5.2.3. Any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or Sub-contractor to the Relevant Employees or their representatives whether before on or after the Commencement Date and whether liability for any such claim arises before on or after the Commencement Date.

6. PROVISION OF DETAILS AND INDEMNITY

6.1. The Contractor shall as soon as reasonably practicable and in any event within ten (10) working days following a written request by the Authorised Officer provide to the Authorised Officer details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Council against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

7. RE-TENDERING

7.1. The Contractor shall (and shall procure that any Sub-contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Contract or following the service of a notice however so arising:

- 7.1.1. on receiving a request from the Council provide in respect of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services ("the Assigned Employees") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-contractor as the case may be until immediately before the

Terms and Conditions

Termination Date, would be Returning Employees as further defined in clause 7.2 below (the "Retendering Information");

- 7.1.2. provide the Retendering Information promptly and at no cost to the Council;
 - 7.1.3. notify the Authorised Officer forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 7.1.4. be precluded from making any material increase or decrease in the numbers of Assigned Employees save with the prior written consent of the Council, which will not be unreasonably withheld;
 - 7.1.5. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent; and
 - 7.1.6. be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent.
- 7.2. Without prejudice to Clause 7.1 the Contractor shall provide and shall procure that any Sub-contractor shall provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE.
- 7.3. The Contractor shall indemnify and shall keep indemnified in full the Council and at the Council's request any Future Contractor against all Direct Losses arising from any claim by any party as a result of the Contractor or Sub-contractor failing to provide or promptly to provide the Council and/or any Future Contractor where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.
- 7.4. The Contractor shall permit the Council to use the Retendering Information for the purposes of complying with TUPE and for re-tendering this Contract. The Contractor shall co-operate with the Council in relation to the re-tendering process by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 7.5. If the Contractor is in breach of any of its obligations in clause 6 the Council shall be entitled to require the Contractor to withdraw the relevant employee(s) from the provision of the Services, and if such employee(s) transfer under TUPE to a Future Contractor the Contractor shall pay to the Council on such transfer an amount equal to: the notice pay of such employee(s) and or the statutory redundancy entitlement of such employee(s) calculated according to the earliest practicable date on which the transferee employer could terminate the employment of such employee(s) by reason of redundancy.

8. TERMINATION OF CONTRACT

- 8.1. On the expiry or earlier termination of this Contract, the Council and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Services but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.
- 8.2. For the purposes of this Clause 8 "Returning Employees" shall mean those employees whose employment transfers to the Council or a Future Contractor pursuant to TUPE. Upon expiry or termination of this Contract for whatever reason (such date being termed the "Return Date"), the provisions of this Clause 8 shall apply:
 - 8.2.1. The Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or Sub-Contractors up to the Return Date are satisfied;
 - 8.2.2. Without prejudice to Clause 8.2.1, the Contractor shall:
 - 8.2.2.1. remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's or Sub-Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Contractor against all Direct Losses incurred by the Council or any Future Contractor resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Returning Employees;
 - 8.2.2.2. in respect of those employees who constitute Returning Employees indemnify the Council and any Future Contractor against all Direct Losses incurred by the Council or any Future Contractor resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any Sub-Contractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Contractor.

9. SUB-CONTRACTORS

- 9.1. In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractors in the same terms as those

Terms and Conditions

imposed on it pursuant to this Schedule 1 shall procure that the Sub-contractor complies with such terms. The Contractor shall indemnify and keep the Council indemnified in full against all Direct Losses, incurred by the Council or any Future Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Sub-contractor's failure to comply with such terms.

10. ASSIGNING INDEMNITIES

- 10.1 Notwithstanding the forgoing provisions. The Council may elect to assign the benefit of any of the indemnities set out in clauses 5.1, 5.2, 6.1, 7.3 and 8.2.2 to a Future Contractor.

Part B

PENSIONS

The following clauses only become operative in the event that TUPE applies AND amongst the transferring staff there are employees who are entitled to membership or have membership of the LGPS

- 1 The following provisions apply only in circumstances staff are being transferred by way of TUPE and those staff are entitled to membership and/or have membership of LGPS. The Contractor should seek independent legal advice on the application of the following provisions. The Council provides no guarantee to any Contractor in relation to the application of the following provisions.
- 2 **PENSIONS**
 - 2.1 Where the Contractor employs any Eligible Employees from a Relevant Transfer Date the Contractor shall procure that it shall become an Admission Body so that those Eligible Employees will be offered membership of the LGPS. The Contractor shall before the Relevant Transfer Date execute an Admission Agreement in the form provided to the Contractor by the Council which will have effect from and including the Relevant Transfer Date.
 - 2.2 The Council shall before the Relevant Transfer Date execute the Admission Agreement referred to in clause 2.1 and shall use reasonable endeavours to ensure that the Administering Authority executes such Admission Agreement before the Relevant Transfer Date.
 - 2.3 Without prejudice to the generality of this clause 2 (Pensions), the Contractor hereby indemnifies the Council and/or any Future Contractor and, in each case, their sub-contractors on demand from and against all Losses suffered or incurred by it or them which arises from any breach by the Contractor or any Sub-contractor of the terms of any Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this contract (howsoever caused).
 - 2.4 Without prejudice to the generality of the requirements of this clause 2 (Pensions), the Contractor shall procure that it shall as soon as reasonably practicable obtain any indemnity, bond or guarantee required in accordance with the Admission Agreement.
 - 2.5 The Council shall have a right to set off against any payments due to the Contractor under this contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor under the Admission Agreement.

Terms and Conditions

- 2.6 If the Contractor employs any Eligible Employees from a Relevant Transfer Date and:
- 2.6.1 the Council and the Contractor are both of the opinion that it is not possible to operate the provisions of clauses 2.1 to 2.5 (inclusive); or
 - 2.6.2 if for any reason after the Relevant Transfer Date the Contractor ceases to be an Admission Body (other than on the date of termination or expiry of this contract or because it ceases to employ any Eligible Employees);
- then the provisions of clauses 2.1 to 2.5 (inclusive) shall not apply and the provisions of clause 2.7 below shall apply.
- 2.7 Where this clause 2.7 applies pursuant to clause 2.6, the following shall apply. The Contractor shall no later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be the "Contractor Scheme" for the purposes of this clause 2.7. Such pension scheme or schemes must be:
- 2.7.1 established within three (3) months or as soon as reasonably practicable of the Relevant Transfer Date or Cessation Date (as the case may be);
 - 2.7.2 reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
 - 2.7.3 registered under section 153 of the Finance Act 2004; and
 - 2.7.4 certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS.
- 2.8 The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall procure that:
- 2.8.1 the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) or, alternatively, by such date as is agreed between the parties acting reasonably, be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
 - 2.8.2 the Contractor Scheme shall provide benefits in respect of the Eligible Employees' periods of service on or after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;
 - 2.8.3 if the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still

Terms and Conditions

employed by the Contractor. The replacement scheme must comply with clause 2.6 to 2.8 (inclusive) as if it were the Contractor Scheme;

- 2.8.4 before the Relevant Transfer Date or Cessation Date (as the case maybe) the Contractor shall use its best endeavours to ensure that the trustees of the Contractor Scheme shall comply with the provisions of clauses 2.6 to 2.8.3 (inclusive), clause 2.9 and clauses 2.10.1, 2.10.3 and 2.10.4; and
- 2.8.5 where the Contractor Scheme has not been established at the Relevant Transfer Date or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the LGPS immediately before the Relevant Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Contractor Scheme.
- 2.9 Where clauses 2.6 to 2.8 (inclusive) apply, as soon as reasonably practicable and in any event no later than 20 working days after the establishment of the Contractor Scheme or the commencement of membership of the Eligible Employees in the Contractor Scheme, the Contractor must provide the Eligible Employees with the option to transfer their accrued LGPS benefits to the Contractor Scheme on terms to be provided by the Council. Such terms will also apply to any subsequent bulk transfers on termination or expiry of this contract.
- 2.10 The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:
 - 2.10.1 all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Contractor for the administration of the LGPS or concerning any other matters raised in clauses 2.6 to 2.9 (inclusive) or this clause 2.10 shall be supplied to them as expeditiously as possible;
 - 2.10.2 it shall not without the consent in writing of the Council (which shall only be given subject to the payment by the Contractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
 - 2.10.3 until the Relevant Transfer Date, it shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in clauses 2.1 to 2.5 (inclusive) without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed); and
 - 2.10.4 it shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

Terms and Conditions

- 2.11 Where the Contractor is an Admission Body, the Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 2.12 Where the award of benefits in clause 2.11 is not permitted under the LGPS or the Contractor is not an Admission Body, the Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 2.13 Under clauses 2.11 and 2.12, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide on request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.
- 2.14 The Contractor hereby indemnifies the Council and/or Future Contractor and, in each case, their sub-contractors from and against any Losses suffered or incurred by it or them which arises from claims by Eligible Employees of the Contractor and any Sub-contractors or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
 - 2.14.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the termination or expiry of this contract; or
 - 2.14.2 arise out of the failure of the Contractor to comply with the provisions of this clause 2 (Pensions) before the date of termination or expiry of this contract.
- 2.15 Save on expiry or termination of this contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE or otherwise) the Contractor shall:
 - 2.15.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
 - 2.15.2 procure that the employer to which the Eligible Employees are transferred (the "New Employer") complies with the provisions of this clause 2 (Pensions) provided that references to the "Contractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Eligible Employees" will become reference to the Eligible Employees so transferred to the New Employer.
- 2.16 Where a Sub-contractor employs any Transferring Employees, the Contractor shall procure that the Sub-contractor shall deal with the provision of pension benefits in accordance with this clause 2 (Pensions) as though references in this clause 2 to the Contractor were references to the Sub-contractor and references to the "Relevant Transfer Date" were references to the date of transfer to the Sub-contractor. The Contractor shall indemnify and keep indemnified the Council against breach by the Contractor or Sub-contractor of this clause 2.16.
- 2.17 The Contractor shall:

Terms and Conditions

- 2.17.1 maintain such documents and information as will be reasonably required to manage the pension aspects relating to the Admission Agreement and the Contractor Scheme during the term of the contract and the onward transfer of any person engaged or employed by the Contractor in the provision of the Services on the expiry or termination of this contract (including without limitation identification of the Eligible Employees);
 - 2.17.2 promptly (not exceeding one calendar month) provide the Council with such documents and information mentioned in clause 2.17.1 which the Council may reasonably request during the term of and in advance of the expiry or termination of this contract; and
 - 2.17.3 fully co-operate (and procure that the trustees of the Contractor's Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor in the provision of the Services on the expiry or termination of this contract.
 - 2.17.4 in the event that an exit credit is paid to the Supplier or their Sub-contractor under the Admission Agreement or under Regulation 64 of the LGPS Regulations (Exit Credit) to the Pension Fund arising on the termination of the Admission Agreement on the expiry or termination of the Contract (however so arising), the Contractor or Sub-contractor shall pay the amount of the Exit Credit to the Council within thirty (30) working days of the payment of the Exit Credit to the Contractor or their Sub-contractor.
- 2.18 The provisions of this clause 2 (Pensions) may be directly enforced by an Eligible Employee against the Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to him or her by the Contractor under this clause 2 in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.19 Further, the Contractor must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Sub-Contract to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

SCHEDULE 3 - SPECIFICATION