



**PART I - STANDARD TERMS AND CONDITIONS FOR  
THE PURCHASE OF SERVICES**

**PART II – SPECIAL TERMS AND CONDITIONS**

WYRE BOROUGH COUNCIL

STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE PURCHASE OF SERVICES

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This agreement is dated [DATE]

### **PARTIES**

(1) WYRE BOROUGH of the Civic Centre, Breck Road, Poulton-Le-Fylde, FY6 7PU (**Council**).

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**).

### **BACKGROUND**

The Council has, through a competitive process, selected the Contractor to provide these Services and the Contractor is willing and able to provide the Services in accordance with the terms and conditions of this agreement.

## **PART A - OPERATIVE PROVISIONS**

### **A1. DEFINITIONS**

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	The person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Assigned Employees”	In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services.
Business Continuity Plan	The plan setting out the Contractor’s proposed methodology to ensure continuance of the Contract in the event of an emergency.
“Business Day”	Any day other than a Saturday or Sunday or a public or bank holiday in England.

Bribery Act	The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
“Change in Law”	The coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	The commencement date stated in the Contract Particulars.
“Confidential Information”	Any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercially sensitive information.
“Contract”	<p>The agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none"> <li>1. the Contract Particulars;</li> <li>2. the Special Terms and Conditions;</li> <li>3. the Standard Terms and Conditions;</li> <li>4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.</li> </ol>

“Contractor”	The Contractor and where applicable this shall include the Contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members.
“Contract Manager”	The person named in the Contract Particulars as the <b>C</b> ontract Manager and any replacement from time to time in accordance with clause B3.2.
“Contract Particulars”	The document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document.
“Contract Period”	The period of the Contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
“Control”	Control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”	Take the meaning given in the GDPR.
“Council”	The Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).

“Data Loss Event”	Any event that results, or may result in, unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Protection Impact Assessment”	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	(i) the UK 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.
“Data Subject Access Request”	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“DPA 2018”	Data Protection Act 2018
“Delivery Instructions”	The instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.
“Employee”	Any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	Any cause materially affecting the performance

by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies but excluding any industrial dispute relating to the Contractor, the Contractor's Personnel or any other failure in the Contractor's supply chain.

"GDPR"

The UK General Data Protection Regulation

Good Industry Practice

The standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

"HRA"

The Human Rights Act 1998.

"Intellectual Property Rights"

Patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, know-how and other intellectual property rights and other similar rights or obligations which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"Invitation to Tender"

The Council's invitation to tender for the Contract.

"Key Personnel"

Those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.

"Law"

Any applicable Act of Parliament, sub-ordinate



legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

“LED”	Law Enforcement Directive
“Liabilities”	All costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
Necessary Consents:	All approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.
“Order”	An order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
“Premises”	Any land or premises (including temporary buildings) made available to the Contractor by the Council in connection with the Contract.
“Price”	The price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	The schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
Prohibited Act	<p>The following shall constitute Prohibited Acts:</p> <ul style="list-style-type: none"><li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>(b) to directly or indirectly request, agree to</li></ul>

receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Authority

“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.

“Replacement Contractor”

Any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract

“Services”

The services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.

“Special Terms and Conditions”

The additional terms and conditions attached which were set out in the Invitation to Tender.

“Specification”

The specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Services.

“Standard Terms and Conditions”

The terms and conditions set out in this document.

“Sub-processor”

Any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

“Tender”

The Contractor's tender for the Services in response to the Council's Invitation to Tender.

“TUPE”

The Transfer of Undertakings (Protection of Employment) Regulations 2006.

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

## A2. **HEADINGS**

A2.1 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

## A3. **NOTICES**

A3.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

A3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

## A4. **ENTIRE AGREEMENT**

A4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

## **PART B - PROVISION OF SERVICES**

### **B1. CONTRACT PERIOD**

- B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

### **B2. PERFORMANCE**

- B2.1 The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- B2.2 The time of the delivery of the Services is of essence to the Contract.
- B2.3 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.
- B2.4 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- B2.5 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- B2.6 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.7 The Council retains the Contractor for the performance of the Services on a non-exclusive basis.

### **B3. CONTRACT MANAGER**

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person

appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

**B4. ORDERING PROCESS**

- B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
- B4.2 Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
- B4.3 The Orders shall state the type of or part of the Services required including the Council's requirements with regard to timescale for delivery of those Services.

**B5. RISK IN AND TITLE TO GOODS**

- B5.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.
- B5.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

**B6. SUB-CONTRACTING**

- B6.1 Subject to clause B6.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Contractor sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority such consent not to be unreasonably withheld].

- B6.2 In the
  - (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

(c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

B6.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## **B7. WARRANTY**

B7.1 The Contractor warrants to the Council that the Services will be provided:

B7.1.1 in a proper, skilful and workmanlike manner;

B7.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

B7.1.3 in accordance with the Contract and any descriptions provided by the Contractor;

B7.1.4 to the reasonable satisfaction of the Authorised Officer;

B7.1.5. by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and

B7.1.6 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.

B7.1.7 As at the Commencement Date, the Contractor warrants and represents that all information contained in the Contractor's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and

B7.1.8 shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in

any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels

B7.2 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:

B7.2.1 be free from defects in design, material and workmanship; and

B7.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

B7.3 Without prejudice to the Council's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:

B7.3.1 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or

B7.3.2 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

B7.3.3 The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Contractor shall identify and report to the Contractor's Representative [quarterly] in the first Contract Year and once every [six] months for the remainder of the Term on

(a) the emergence of new and evolving relevant technologies which could improve the Services;

(b) new or potential improvements to the Services including the [quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services [

(c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and

(d) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.

B7.4. The Contractor shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

The Contractor acknowledges and confirms that:

(a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement

(b) it has received all information requested by it from the Council pursuant to B7.4a to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement

(c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to B7.4b.

(d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and

(e) it has entered into this agreement in reliance on its own due diligence

B7.5 Nothing in this clause shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation

## **B.8 CONTRACTOR'S EMPLOYEES**

B8.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

B8.1.1 any member of the Contractor's Employees; and/or

B8.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

B8.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

B8.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in



force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

- B8.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
- B8.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- B8.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

- C1.1 The Council shall pay the Price for the Services to the Contractor.
- C1.2 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
- C1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.
- C1.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- C1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
- C1.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without

prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:

D1.1.1 the Contractor becomes subject to an administration order, becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or

D1.1.2 the Contractor is convicted of a criminal offence; or

D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or

D1.1.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or

D1.1.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or

D1.1.6 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or

D1.1.8 the Contractor commits persistent minor breaches of this Contract whether remedied or not.

D1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.

D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.

D1.4 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

## **D2. CONSEQUENCES OF TERMINATION**

D2.1 If this Contract is terminated in whole or in part the Council shall:

D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

D2.1.2 except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

D2.1.3 where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E 2.4; and/or

D2.1.4 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.1.5 And the Contractor indemnifies the Council against such losses or costs which the Council may suffer as a result of such termination.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

## **D3. DISPUTE RESOLUTION PROCEDURE**

D3.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

- D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.
- D3.5 The parties shall bear their own legal costs of this Dispute Resolution Procedure but the costs and expenses of mediation shall be borne by the parties equally.

#### **D4. SURVIVAL**

- D4.1 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

### **PART E - INSURANCE AND LIABILITIES**

#### **E1. INSURANCE**

- E1.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy of insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
- E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- E1.3 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

#### **E2. INDEMNITY AND LIABILITY**

- E2.1 Neither party seeks to exclude or limit its liability for:

- E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
  - E2.1.2 fraudulent misrepresentation; or
  - E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
- E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
- E2.3 Subject to clauses E2.1, E2.2 and E2.5, the Contractor's liability to the Council under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to (to be agreed between both parties) of the proportion of the Price which is paid and payable at the time that the liability arises
- E2.4 Subject to clauses E2.1 and E2.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to (to be agreed between both parties) of the proportion of the Price which is paid and payable at the time that the liability arises
- E2.5 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.
- E2.6 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement

## **PART F - PROTECTION OF INFORMATION**

### **F1. INTELLECTUAL PROPERTY**

- F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
  - F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall

belong to the Council subject to any exceptions set out in the Contract Particulars.

- F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.
- F1.5 The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

## **F2. CONFIDENTIALITY AND PUBLICITY**

- F2.1 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
- F2.2 All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.
- F2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

F2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

### F3. **DATA PROTECTION**

F3.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Schedule and may not be determined by the Contractor.

F3.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

F3.3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

F3.4 The Contractor shall, in relation to any personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the Schedule unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Events;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Schedule );
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause;

- (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
  - (C) are informed of the confidential of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by provided an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal data.

F3.5 Subject to clause F3.6, the Contractor shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

F3.6 The Contractor's obligation to notify under clause F3.5 shall include the provision of further information to the Council in phases, as details become available.

F3.7 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request



made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

F3.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

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

F3.9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

F3.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

F3.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

F3.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

F3.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification

scheme (which shall apply when incorporated by attachment to this Agreement).

- F3.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- F3.15 Neither Party excludes or limits its liability in respect of the terms of this Data Processing Addendum
- F3.16 Where applicable, the Parties agree that if, upon review following GDPR coming into force, the provisions of this Data Processing clause( F 3 )do not comply with GDPR then both Parties agree to co-operate in good faith to re-negotiate the terms of this Data Processing Addendum to ensure compliance with GDPR.

#### **F4. FREEDOM OF INFORMATION**

- F4.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- F4.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
- F4.3 The Council shall be responsible for determining at its absolute discretion whether Information, (Commercially Sensitive Information and/or any other Information):
  - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
  - (b) is to be disclosed in response to a Request for Information.
- F4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

#### **F5. RECORD KEEPING AND MONITORING**

- F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the

Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.

- F5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

## **PART G - STATUTORY OBLIGATIONS**

### **G1. HEALTH AND SAFETY**

- G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.
- G1.2 The Contractor shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the agreement. The Council shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Council's Premises and that may affect the Contractor in the performance of the agreement.
- G1.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the agreement on the Contractor's or Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- G1.4 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

### **G2. CORPORATE REQUIREMENTS**

- G2.1 The Contractor shall comply with all obligations under the HRA.
- G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:
- G2.2.1 equality and diversity policies;
  - G2.2.2 sustainability;
  - G2.2.3 information security rules;
  - G2.2.4 whistleblowing and/or confidential reporting policies; and
  - G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

- G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
- G2.5.1 details of the finding; and
  - G2.5.2 the steps the Contractor has taken to remedy the situation.

### **G3. LAW AND CHANGE IN LAW**

- G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.
- G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.
- G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

### **G4. TUPE AND RE-TENDERING**

- G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.
- G4.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the

Contractor will secure all necessary consents from relevant Employees in order to do this.

- G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

## **PART H - GENERAL PROVISIONS**

### **H1. CONTRACT VARIATION**

- H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.
- H1.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

### **H2. THIRD PARTY RIGHTS**

- H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

### **H3. NO WAIVER**

- H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

### **H4. SEVERANCE**

- H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H5.2 The Council shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

H6. **FORCE MAJEURE**

H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.

H6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.

H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

H6.6 The Contractor cannot claim that a Force Majeure Event has occurred if it is one where a reasonable Contractor should have foreseen and provided for the cause in question.

## **H7 PREVENTION OF BRIBERY**

### **H7.1 The Contractor:**

(a) shall not, and shall procure that any of its agents, employees, consultants, contractors and subcontractors shall not, in connection with this Contract commit a Prohibited Act;

### **H7.2 The Contractor shall:**

(a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause H7.1 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Council. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

**H7.3** The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.

**H7.4** If any breach of clause H7.1 suspected or known, the Contractor must notify the Council immediately.

**H7.5** If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause H7.1 the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

**H7.6** The Council may terminate this Contract by written notice with immediate effect if the Contractor, agents, employees, consultants, contractors and subcontractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause H7.1 In determining whether to exercise the right of termination under this clause H7.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Council unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

(a) with the authority; or,

(b) with the actual knowledge;

of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or

(c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge

**H7.7** Any notice of termination under clause H7.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Council will terminate.

H7.8 Any dispute relating to:

- (a) the interpretation of clause H7.1; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.

H7.9 Any termination under clause H7.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council and the Council can:

- a) 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 provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated and any termination shall be without prejudice to any right or remedy that has already accrued, or subsequently accrued to the Council

## H8. **COSTS AND EXPENSES**

H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

## H9. **NO AGENCY OR PARTNERSHIP**

H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

## H10. **NON SOLICITATION AND OFFERS OF EMPLOYMENT**

H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

- H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a



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

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

#### **H11. INSPECTION OF CONTRACTOR'S PREMISES**

H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

#### **H12. LAW AND JURISDICTION**

H12.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

#### **H13. TRANSPARENCY**

H13.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act.

H13.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Council to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Council decides.

## **PART II - SPECIAL TERMS AND CONDITIONS – GENERAL**

### **1.0 BEST VALUE**

1.1 The Contractor will be required to:

Participate in Best Value reviews as determined by the Council. The Council has absolute discretion on the timing of these reviews and may choose to treat the services under this Contract as one or several packages for the purpose of this exercise.

1.2 Make available a suitably qualified and experienced senior manager to be a member of a steering Group for each relevant Best Value review; provide access to and/or produce information and data that is reasonable for the purposes of carrying out a Best Value Review, having regard to guidance published by the Government pursuant to the Local Government Act 1999.

1.3 The Contractor will, on request by the Council:

Be actively involved in consultation exercises with the community. Contractors are required to describe how they propose to engage stakeholders and ensure that their views are reflected in the service that is provided; participate in the implementation of agreed action plans to improve service delivery as a result of a Best Value review, and specifically to use its best endeavours to help achieve within five years cost and performance measures that are at least equivalent to the best 25% of authorities at the time the service was reviewed as part of the Best Value review programme; the Contractor shall, where requested, contribute to the development of local performance indicators and critical success factors in line with corporate objectives and policies.

1.4 The Contractor will assist the Council more generally in its duty to obtain Best Value pursuant to the Local Government Act 1999. In particular, the Contractor will be required to:

1.4.1 provide access to data as necessary for the compilation of performance indicators and/or to calibrate performance indicators as prescribed by the Government (BVPIs) or the Council (local PIs);

1.4.2 make available a suitably qualified and experienced senior manager to attend (at the Council's discretion) any properly designated Committee of the Council for any agenda items related to Best Value for the services covered by this contract.

1.5 The Contractor will, as determined by the Council, participate in any Best Value Inspection carried out on behalf of the Secretary of State for Communities and Local Government or other government body.

## **2 TERMINATION (ADDITIONAL PROVISIONS)**

**2.1** The Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:

2.1.1 a County Court Judgment is recorded against the Contractor;

2.1.2 the Contractor uses personnel other than the Key Personnel as set out to perform the Services;

## **3 DISCLOSURE AND BARRING SERVICE**

3.1 The Contractor shall upon reasonable request by the Authorised Officer at the Contractor's cost provide in good faith, details including full name, address, date of birth and place of birth of any employee or operative whether directly employed by the Contractor or otherwise engaged by them to provide the Services and shall do so within 14 days of any such request for the purpose of enabling the Council to carry out a Disclosure and Barring Service check at the Contractor's cost.

3.2 Where, following a check under clause 3.1 above, a criminal conviction certificate is obtained by the Council following the check and the nature of the listed previous convictions leads the Council to the reasonable conclusion that the person who was checked is unsuitable to provide the Services, then upon the Council giving notice to the Contractor, they shall immediately upon receipt of that notice remove the person considered as unsuitable from the contract or where the person has not at that time started to provide the Services the Contractor shall act so as to stop that person from providing the Services. The Council is not under any obligation to disclose the results of any Disclosure and Barring Service check.

## **4 BUSINESS CONTINUITY PLAN**

4.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or goods which underpin the Council's service provision must be able to continue to provide in the event of an emergency. The Contractor shall use its reasonable endeavours:

4.1.1 to prepare a robust Business Continuity Plan that ensures the continuation of this Contract; and

4.1.2 upon request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time); and

4.1.3 to allow the Council at its discretion from time to time to monitor the Contractor's business continuity arrangements; and

- 4.1.4 to notify the Council if an incident occurs which activates the Contractor's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
- 4.1.5 to provide the Council with details of how the Contractor managed any incident which resulted in the activation of the Contractor's Business Continuity Plan and any consequential amendments made to the Contractor's processes and/or procedures thereafter.

## **5 POST-CONTRACT MONITORING**

- 5.1 The Contractor is required to collaborate with the Council over the Contract Period to achieve continuous improvement in the quality and delivery of the Services in accordance with the Council's obligations under Part I of the Local Government Act 1999.

## **6. COMMUNITY SAFETY**

- 6.1 The Council has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Contractor is requested to assist the Council in the provision of the Services, in order to enable the Council to comply with this obligation at no additional expense to the Council.

## **7. SPARE PARTS**

- 7.1 The Contractor shall ensure that all spare and/or replacement parts, components and materials for goods provided as part of the Services shall be available from the Contractor for 12 years from date of first use by the Council of the services in question, unless the Contractor provides the Council with all drawings, plans specifications and other technical data as the Council reasonably believes are necessary to enable the Council to arrange for the manufacture of such parts or the goods.
- 7.2 The Contractor acknowledges that the provision of technical data referred to in Clause 7.1 shall be accompanied by an irrevocable, non-exclusive and royalty-free licence for the Council, its agents, subcontractors or assignees to use such technical data to manufacture spare parts.

## **8. INDEPENDENT CONTRACTOR**

- 8.1 The Parties agree that the Contractor is an independent contractor and not an agent, employee or partner of the Council and therefore not eligible to participate in any benefit programmes of the Council. The Consultant will be responsible for payment of his/her own Income Tax and National Insurance Payments or similar contributions in respect of his/her fees and the Contractor hereby indemnifies the Council against any claims that may be made against the Council for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Contractor. The Contractor shall in addition be responsible for any loss of benefits paid under his previous

contract of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which commences immediately after the termination of his employment with the Council and the Contractor shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may thereby occasion.

## **9. LICENCE TO OCCUPY COUNCIL'S PREMISES**

9.1 Any Premises made available to the Contractor shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the non-exclusive use of such Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

9.1 The Contractor shall not use the Premises for any purpose or activity other than the provision of the Contract.

9.2 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior approval and shall be carried out by the Council at the Contractor's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

9.3 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council and shall comply with any terms stipulated by the Council in connection with such usage, and the Contractor shall pay the cost of making good any damage caused by the Contractor, his Employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

9.4 The parties agree that there is no intention on the part of the Council to create a tenancy in respect of the Premises of whatsoever nature in favour of the Contractor or its Employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use in any manner the Council sees fit any premises owned or occupied by it.

## **10. MEETINGS AND PROGRESS REPORTS**

10.1 The Contract Manager shall attend any meetings, including site meetings, as may reasonably be requested by the Council. The Contractor shall make all arrangements for sub-contractors and suppliers to be present as required by the Council.

10.2 The Contractor shall submit written reports to the Council in connection with any material changes to the Tender submitted by the Contractor.

## **11. ASSIGNMENT AND SUB-CONTRACTING (ADDITIONAL PROVISIONS)**

- 11.1 The Contractor shall identify each part of the Services that it intends to sub-contract and the proposed sub-contractor for each item identified prior to seeking the Council's consent to such sub-contracting.
- 11.2 The Council shall be entitled to impose conditions in relation to any consent to sub-contracting given including a requirement that a guarantee or other security be provided.
- 11.3 The Council requires as a condition precedent of consent that the Contractor obtain collateral warranties from any sub-contractor in a form prescribed by the Council and duly executed in the presence of the Council.

## **12 SAFEGUARDING**

- 12.1 Any Contractor or sub-contractor, engaged by the Council in areas where workers are likely to come into contact with children or young people should have their own child protection policy or failing this, must comply with the terms of Wyre Borough Council's Child and Young Person Protection Policy. Contractors will be responsible for ensuring that workers with substantial access to children or young people are subject to the necessary Criminal Records Bureau disclosure. This includes sub-contracted workers employed through agencies. Should the Council not be satisfied with the Contractor's Child or young person protection policy, the Contractor shall adopt the Council's policy and be required to sign a self -declaration.

## **13 PROMPT PAYMENT**

- 13.1 Where the Contractor submits an invoice to the Council the Council will consider and verify that invoice in a timely fashion.
- 13.2 The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
- 13.3. Where the Council fails to comply with paragraph 13.1 and there is an undue delay in considering and. verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph 13.2 after a reasonable time has passed.
- 13.4. Where Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
  - a) Provisions having the same effect as clauses 13.1-13.3 of this Agreement; and

- b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 13.1-13.3 of this Agreement.
- c) In clause 13.4, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

## Schedule

### Processing, Personal Data and Data Subjects

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

<b>Description</b>	<b>Details</b>
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purpose of the processing	<p><i>[please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents and temporary workers), Councils/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it will be returned or destroyed]</i>



