

## Standard Terms and Conditions of Contract for the Supply of Goods and/or Services excluding ICT procurements.

### 1. Definitions

1.1 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

<p><b>“Affiliates”</b></p>	<p>in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and “<b>Controlled</b>” shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;</p>
<p><b>“Audit”</b></p>	<p>the Council’s right to:</p> <p>verify the accuracy of the Charges and any other amounts payable by the Council under the Contract (including proposed or actual variations to them in accordance with the Contract);</p> <p>(a) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables;</p> <p>(b) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;</p> <p>(c) identify or investigate actual or suspected breach of clauses <b>Error! Reference source not found.</b> to <b>Error! Reference source not found.</b> (inclusive), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Council shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</p> <p>(d) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables;</p> <p>(e) obtain such information as is necessary to fulfil the Council’s obligations to supply information for parliamentary, ministerial, judicial or administrative</p>

	<p>purposes including the supply of information to the Comptroller and Auditor General;</p> <p>(f) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</p> <p>(g) carry out the Council's internal and statutory audits and to prepare, examine and/or certify the Council's annual and interim reports and accounts;</p> <p>(h) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;</p>
<b>“Authorised Representative”</b>	<p>(a) for the Council: means the Council's named contact notified by the Council to the Supplier in writing;</p> <p>(b) for the Supplier; means the Supplier's named contact notified by the Supplier to the Council in writing;</p>
<b>“Charges”</b>	the charges for the Deliverables as set out in the Order Form or similar proposal or as otherwise agreed in writing by the Council;
<b>“Claim”</b>	any claim which it appears that the Council is, or may become, entitled to indemnification under this Contract;
<b>“Commencement Date”</b>	means the date specified in the Order Form or other similar proposal for carrying out the Deliverables, or where there is no date specified in the Order Form the date on which the Supplier commences the performance of the Deliverables (whether in whole or part);
<b>“Conditions”</b>	means these terms and conditions of contract;
<b>“Confidential Information”</b>	<p>all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which</p> <p>(a) is known by the receiving Party to be confidential;</p> <p>(b) is marked as or stated to be confidential; or</p> <p>(c) ought reasonably to be considered by the receiving Party to be confidential;</p>

<b>“Conflict of Interest”</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Council under the Contract, in the reasonable opinion of the Council;
<b>“Contract”</b>	the contract between the Council and the Supplier which includes these Conditions, the related Order Form (if any or other similar document), the Letter of Acceptance (if any), the Service Specification, the Charges, the Supplier Tender Response and the Annexes/schedules/documents attached to or referred to in these Conditions (as applicable) but excluding the Supplier terms and conditions of sale or supply;
<b>“Controller”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Council”</b>	Leicestershire County Council, County Hall, Glenfield, Leicestershire, LE3 8RA
<b>“Council Data”</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Council's confidential information, and which:</p> <p>(b) are supplied to the Supplier by or on behalf of the Council; or</p> <p>(i) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(c) any Personal Data for which the Council is the Controller;</p>
<b>“Crown Body”</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Data Loss Event”</b>	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;

<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	(a) the UK GDPR, (b) the DPA 2018; (c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);
<b>“Data Protection Officer”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Data Subject Access Request”</b>	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;
<b>“Data Subject”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Deliver”</b>	hand over of the Deliverables to the Council at the address and on the date specified by the Council, which shall include unloading and stacking and any other specific arrangements agreed in accordance with clause <b>Error! Reference source not found..</b> “Delivered” and “Delivery” shall be construed accordingly;
<b>“Deliverables”</b>	means the Goods, and/or Services, and/or software to be supplied under the Contract as set out in the Service Specification and Order Form (if used) or similar proposal, or as otherwise specified by the Council;
<b>“DPA 2018”</b>	the Data Protection Act 2018;
<b>“Early Payment Partnership”</b>	means the early payment programme which the Council has introduced to improve the Council’s purchase-to-pay processes;
<b>“EU GDPR”</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free

	movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>“Existing IPR”</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>“Expiry Date”</b>	the date specified in the Order Form or other similar proposal;
<b>“FOIA”</b>	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;
<b>“Force Majeure Event”</b>	<p>any event, circumstance, matter or cause affecting the performance by either the Council or the Supplier of its obligations arising from:</p> <p>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the <b>“Affected Party”</b>) which prevent or materially delay the Affected Party from performing its obligations under the Contract;</p> <p>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>(c) acts of a Crown Body, local government or regulatory bodies;</p> <p>(d) fire, flood or any disaster; or</p> <p>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available</p> <p>but excluding:</p> <p>(a) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</p> <p>(b) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>(c) any failure of delay caused by a lack of funds,</p> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>

<p><b>“Good Industry Practice”</b></p>	<p>standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;</p>
<p><b>“Goods”</b></p>	<p>the goods to be supplied by the Supplier to the Council under the Contract;</p>
<p><b>“Independent Controller”</b></p>	<p>a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;</p>
<p><b>“Information Commissioner”</b></p>	<p>the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;</p>
<p><b>“Insolvency Event”</b></p>	<p>in respect of a person:</p> <ul style="list-style-type: none"> <li>(a) if that person is insolvent;</li> <li>(b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</li> <li>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person’s and/or company, LLP or partnership, assets or business;</li> <li>(d) if the person and/or company, LLP or partnership, makes any composition with its creditors; or</li> <li>(e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;</li> </ul>
<p><b>“IP Completion Day”</b></p>	<p>has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;</p>
<p><b>“Joint Controller Agreement”</b></p>	<p>the provisions set out in <b>Error! Reference source not found. Error! Reference source not found.</b> of <b>Error! Reference source not found.</b>;</p>
<p><b>“Joint Controllers”</b></p>	<p>Where two or more Controllers jointly determine the purposes and means of processing;</p>
<p><b>“Key Staff”</b></p>	<p>any persons notified as such by the Supplier to the Council in writing, following agreement to the same by the Council;</p>

<b>“Law”</b>	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Letter of Acceptance”</b>	means the letter issued by the Council accepting the Supplier’s offer as set out in the Supplier Tender Response;
<b>“Material Breach”</b>	a single serious breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied)
<b>“National Insurance”</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>“New IPR”</b>	all and any intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>“Order Form”</b>	an official order for the Services or any part or parts thereof, issued by the Council to the Supplier (if any);
<b>“Party”</b>	the Supplier or the Council (as appropriate) and “Parties” shall mean both of them;
<b>“Personal Data Breach”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract;
<b>“Personal Data”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Prescribed Person”</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-">https://www.gov.uk/government/publications/blowing-the-</a>

	<a href="#">whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> as updated from time to time;
<b>“Processor Personnel”</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>“Processor”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Protective Measures”</b>	<p>technical and organisational measures which must take account of:</p> <p>the nature of the data to be protected;</p> <p>(a) harm that might result from Data Loss Event;</p> <p>(b) state of technological development;</p> <p>(c) the cost of implementing any measures;</p> <p>including 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;</p>
<b>“Purchase Order Number” or “PO Number”</b>	the Council’s unique number relating to the order for Deliverables;
<b>“Rectification Plan”</b>	<p>the Supplier’s plan (or revised plan) to rectify its Material Breach which shall include:</p> <p>full details of the Material Breach that has occurred, including a root cause analysis;</p> <p>(a) the actual or anticipated effect of the Material Breach; and</p> <p>(b) the steps which the Supplier proposes to take to rectify the Material Breach (if applicable) and to prevent such Material Breach from recurring, including timescales for such steps and for the rectification of the Material Breach (where applicable);</p>
<b>“Regulations”</b>	the Public Contracts Regulations 2015 as amended, updated or replaced from time to time;



<b>“Request For Information”</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term <b>“request”</b> shall apply);
<b>“Services”</b>	the services to be supplied by the Supplier to the Council under and in accordance with the Contract and as detailed in the Service Specification (if any) or the Order Form or other similar proposal;
<b>“Service Specification”</b>	the Council’s specification for the Deliverables to be supplied by the Supplier to the Council (including as to quantity, description and quality);
<b>“Staff Vetting Procedures”</b>	<p>vetting procedures that accord with Good Industry Practice and the Council’s procedures or policies for the vetting of personnel provided to the Supplier from time to time, and as a minimum will include:</p> <ol style="list-style-type: none"> <li>1. Verification of ID;</li> <li>2. Right to work check;</li> <li>3. Work Permit (if applicable);</li> <li>4. Certificates of training;</li> <li>5. References x 2 (one from the current or last employer);</li> <li>6. Confirmation of qualifications;</li> <li>7. Drivers Licence (if applicable)</li> <li>8. Disclosure and Barring Service (“DBS”)) checks at the appropriate level/category to the Services provided (including (where appropriate) checks on the Sex Offenders Register).</li> <li>9. Children’s Barred List and Adults Barred List checks as provided under the Safeguarding of Vulnerable Groups Act 2006 where any Supplier Staff will have unsupervised access to children and vulnerable adults.</li> </ol>
<b>“Sub-Contract”</b>	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <ol style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ol>

<b>“Subcontractor”</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>“Subprocessor”</b>	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
<b>“Supplier Staff”</b>	all directors, officers, employees, agents, consultants, volunteers and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Contract;
<b>“Supplier”</b>	means the party supplying the Council with the Deliverables.
<b>“Supplier Tender Response”</b>	the Supplier’s quote or similar proposal for carrying out the Deliverables;
<b>“Third Party IPR”</b>	intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>“Transparency Information”</b>	<p>In relation to Contracts with a value above the relevant threshold set out in Part 2 of the Regulations only, the content of the Contract, including any changes to this Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract required to be published by the Council to comply with its transparency obligations, including those set out in Public Procurement Policy Note 09/21 (update to legal and policy requirements to publish procurement information on Contracts Finder)</p> <p><a href="https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder">https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder</a>) as updated from time to time except for:</p> <p>(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Council; and</p> <p>(b) Confidential Information.</p>
<b>“UK GDPR”</b>	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4);
<b>“VAT”</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>“Worker”</b>	any one of the Supplier Staff which the Council, in its reasonable opinion, considers is an individual to which Procurement Policy

	Note 08/15 ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">Tax Arrangements of Public Appointees</a> ) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) as updated from time to time applies in respect of the Deliverables; and
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2. Understanding the Contract

2.1 In the Contract, unless the context otherwise requires:

- 2.1.1 references to numbered clauses are references to the relevant clause in these Conditions;
- 2.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.1.3 references to “writing” include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.1.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act) and to any legislation or byelaw made under that Law;
- 2.1.5 the word “including”, “for example” and similar words shall be understood as if they were immediately followed by the words “without limitation”;
- 2.1.6 any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.

2.2 The following documents are incorporated into the Contract. If there is any conflict the following order of precedence applies:

- (a) the Letter of Acceptance (if any);
- (b) the Order Form;
- (c) the Conditions;
- (d) the following Annexes and documents in equal order of precedence:
  - (i) Annex 1 – Processing Personal Data;

- (ii) Annex 2 – TUPE and Pensions;
- (iii) the Charges;
- (iv) Annex 5 – the Service Specification;
- (e) the Invitation to Tender documentation (if and as applicable);
- (f) Annex 4 - the Supplier Tender Response, unless any part of the Supplier Tender Response offers a better commercial position for the Council (as decided by the Council, in its absolute discretion), in which case that part of the Supplier Tender Response will take precedence.

2.3 The Parties understand and agree that where the Supplier is part of the Early Payment Partnership, the terms governing such arrangement will affect this Contract and apply accordingly to the extent appropriate as set out therein.

### **3. The Contract**

3.1 The Supplier agrees to supply the Deliverables, in accordance with these Conditions and at the time or times and in the quantities and manner specified in the Contract, and for the duration of the Contract.

3.2 The Council agrees to pay the Charges for the Deliverables in the manner and time set out in the Contract.

3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3.4 The Supplier 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, cover all the Supplier's obligations under this Contract and the Supplier 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.

3.5 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3.6 All of these Conditions shall apply to the supply of Goods or Services or both Goods and Services.

### **4. The Contract Term**

4.1 The Contract shall take effect on the Commencement Date and shall end on the earlier of the Expiry Date or termination of the Contract, or earlier if required by Law.

### **5. Deliverables**

5.1 All Deliverables

5.1.1 The Supplier must provide Deliverables:

- (i) in accordance with the Order Form, Service Specification, and the Contract;

- (ii) using all reasonable and proper skill, care and diligence;
- (iii) in accordance with Good Industry Practice;
- (iv) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
- (v) on the dates agreed;
- (vi) that comply with all Law and regulatory requirements;
- (vii) in a manner free from dishonesty and corruption;
- (viii) within a culture and working environment in which health and safety is paramount to everybody involved with the Services;
- (ix) within a culture and working environment which has regard at all times to the welfare of children and vulnerable members of society;
- (x) using technology that is compatible with and interfaces with the Council's IT System to the extent reasonably required by the Council;
- (xi) in co-operation with the Council and its other suppliers;
- (xii) in accordance with the Council's requirements; and
- (xiii) in accordance with any reasonable instructions given by the Council at any time during the Contract Term (as stated in clause 4).

5.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its buyers) from Delivery against all obvious defects.

## **5.2 Goods Clauses**

- 5.2.1 All Goods Delivered must be new, or as new if recycled, unused and of recent origin.
- 5.2.2 All Goods must correspond with their description and in any Service Specification.
- 5.2.3 All Goods must be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council, expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement.
- 5.2.4 All Goods must be free from defects in design, materials and workmanship and remain so for at least 12 months after Delivery.
- 5.2.5 All Goods must comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods.
- 5.2.6 The Supplier transfers ownership of the Goods on completion of Delivery or payment for those Goods, whichever is earlier.

- 5.2.7 Risk in the Goods transfers to the Council on Delivery, but remains with the Supplier if the Council notices damage following Delivery and lets the Supplier know within 5 Working Days of Delivery.
- 5.2.8 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 5.2.9 The Supplier must Deliver the Goods on the date and to the location notified by the Council, and during the Council's working hours (unless agreed otherwise in writing by the Council).
- 5.2.10 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged
- 5.2.11 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 5.2.12 The Supplier must provide all tools, information and instructions the Council needs to make use of the Goods.
- 5.2.13 The Supplier will notify the Council of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Council against the costs arising as a result of any such request.
- 5.2.14 The Council can cancel any order or part order of Goods which has not been Delivered.
- 5.2.15 The Supplier must at its own cost repair, replace, refund or substitute (at the Council's option and request) any Goods that the Council rejects because they don't conform with clause 5.2. **Error! Reference source not found.** If the Supplier doesn't do this it will pay the Council's costs including repair or re-supply by a third party.
- 5.2.16 The Council will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Council or its servant or agent. If the Council suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Council from any losses, charges, costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

### **5.3 Services Clauses**

- 5.3.1 Late delivery of the Services will be a default of the Contract.
- 5.3.2 The Supplier must co-operate with the Council and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including the premises and date where/when the Services are to be performed, and the security requirements (where any such requirements have been provided).
- 5.3.3 The Supplier must ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the

Deliverables shall be fit for any purpose that the Council expressly or impliedly makes known to the Supplier.

- 5.3.4 The Supplier must obtain and at all times maintain all licences and consents which may be required for the provision of the Services.
- 5.3.5 The Supplier must observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises.
- 5.3.6 The Supplier must not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services.
- 5.3.7 The Council must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services.
- 5.3.8 The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Council to the Supplier for supplying the Services remains the property of the Council and is to be returned to the Council on expiry or termination of the Contract.
- 5.3.9 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 5.3.10 The Supplier must take all reasonable care to ensure performance does not disrupt the Council's operations, employees or other contractors.
- 5.3.11 On completion of the Services, the Supplier is responsible for leaving the Council's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Council's premises or property, other than fair wear and tear.
- 5.3.12 The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- 5.3.13 The Supplier must comply with any additional obligations as set out in the Service Specification or otherwise required by the Council.
- 5.3.14 The Council is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **6. Pricing and Payments**

- 6.1 In exchange for the Deliverables, the Supplier must invoice the Council for the Charges following Delivery of the Goods or completion of the supply of Services or where both Goods and Services are being supplied under this Contract whichever date is later.
- 6.2 All Charges:
  - 6.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 6.2.2 include all costs and expenses connected with the supply of Deliverables.

- 6.3 The Council shall pay the Supplier the Charges within 30 days of receipt of a valid, undisputed invoice (the date of receipt being the date the valid, undisputed invoice is received by the Council and recorded in the Council's accounts payable system as the registration date).
- 6.4 A Supplier invoice is only valid if it:
- 6.4.1 includes, all appropriate references including:
- (i) the Purchase Order Number;
  - (ii) details (name, email, and telephone number) of the Council Authorised Representative;
  - (iii) Supplier's bank details;
  - (iv) Supplier address to which the remittance advice should be sent; and
  - (v) any other details reasonably requested by the Council; and
- 6.4.2 includes a detailed breakdown of Deliverables which have been delivered; and
- 6.4.3 includes any additional information required under the Early Payment Partnership scheme, where the Supplier participates in such scheme; and
- 6.4.4 is sent to [leicsinvoices@emss.org.uk](mailto:leicsinvoices@emss.org.uk) or as otherwise advised in writing by the Council.
- 6.5 The Supplier understands and accepts to avoid a delay in payment it is important that the invoice is compliant and that it includes a valid Purchase Order Number and that non-compliant invoices will be sent back to the Supplier which may lead to a delay in payment.
- 6.5 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 13.1 Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 40.
- 6.6 The Council may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Council if notice and reasons are provided.
- 6.7 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Council can publish the details of the late payment or non-payment.

## **7. Record Keeping and Reporting**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Council and provide progress reports as and when specified and/or required by the Council.



- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 7.3 The Supplier must allow any auditor appointed by the Council access to its premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the Audit.
- 7.4 The Council or an auditor can Audit the Supplier.
- 7.5 During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.6 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Breach by the Supplier, in which case the Supplier will repay the Council's reasonable costs in connection with the Audit.
- 7.7 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - 7.7.1 tell the Council and give reasons,
  - 7.7.2 propose corrective action; and
  - 7.7.3 provide a deadline for completing the corrective action.
- 7.8 If the Council, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Council may:
  - 7.8.1 require that the Supplier provide to the Council (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Council and once it is agreed then the Supplier shall act in accordance with such plan and report to the Council on demand; and
  - 7.8.2 if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Council or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for Material Breach (or on such date as the Council notifies) and the consequences of termination in clause 14 shall apply.
- 7.9 If there is a Material Breach, the Supplier must notify the Council within 3 Working Days of the Supplier becoming aware of the Material Breach. The Council may request that the Supplier provide a Rectification Plan within 10 Working Days of the Council's request alongside any additional documentation that the Council requires. Once such Rectification Plan is agreed between the Parties (without the Council limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.

## **8. Supplier Staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:

- 8.1.1 be appropriately trained and qualified;
  - 8.1.2 be vetted in accordance with the Staff Vetting Procedures; and
  - 8.1.3 comply with all conduct requirements when on the Council's premises.
- 8.2 Where the Council decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 The Supplier must provide a list of Supplier Staff needing to access the Council's premises and say why access is required.
- 8.4 The Supplier indemnifies the Council against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.5 The Supplier shall use those persons nominated (if any) as Key Staff notified as such by the Supplier to the Council in writing following agreement to the same by the Council, to provide the Deliverables and shall not remove or replace any of them unless:
- 8.5.1 requested to do so by the Council or the Council approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 8.5.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
  - 8.5.3 the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.
- 8.6 Where the provision of the Services requires any of the Supplier Staff to work in a regulated activity with children or adults, the Supplier will make checks and shall ensure any Subcontractor makes checks in respect of such Supplier Staff with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information, and that the appropriate check of the Children's Barred List relating to the protection of children and/or the Adults Barred List relating to the protection of adults are also undertaken, and the Supplier will ensure that no Supplier Staff who will have access to vulnerable adults and/or children in the provision of the Services commence their duties in connection with the Service until the Supplier has evidence that an acceptable Disclosure and Barring Service Certificate and Adult Barred List check and/or Children's Barred List check has been issued by the Disclosure and Barring Service.
- 8.7 The Supplier will ensure (and will ensure any Subcontractor will ensure) that all enhanced checks for a regulated activity including the appropriate barred list check or checks are renewed every three years.
- 8.8 The Supplier will ensure (and will ensure any Subcontractor will ensure) that no Supplier Staff who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a "**Relevant**

**Conviction**”), or is found by the Supplier or Council to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Services.

- 8.9 The Supplier will (and will ensure any Subcontractor will) comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of the Supplier Staff.

## 9. Rights and Protection

- 9.1 The Supplier warrants and represents that:
- 9.1.1 it has full capacity and authority to enter into and to perform the Contract;
  - 9.1.2 the Contract is entered into by its authorised representative;
  - 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
  - 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
  - 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and the Council to receive the Deliverables;
  - 9.1.6 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
  - 9.1.7 it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause **Error! Reference source not found.** and clause **Error! Reference source not found.** are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Council against each of the following:
- 9.3.1 wilful misconduct of the Supplier, any of its Subcontractors and/or Supplier Staff that impacts the Contract; and
  - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty made in relation to the Contract that becomes untrue or misleading, it must immediately notify the Council.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Council's benefit by the Supplier for free.

## 10. Intellectual Property Rights (“IPRs”)

10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Council a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable worldwide licence to use, copy and adapt the Supplier's Existing IPR to enable the Council and its sub-licensees to both:

10.1.1 receive and use the Deliverables; and

10.1.2 use the New IPR.

The termination or expiry of the Contract does not terminate any licence granted under this clause **Error! Reference source not found.**

10.2 Any New IPR created under the Contract is owned by the Council. The Council gives the Supplier a royalty-free, non-exclusive, non-transferable licence to use, any Existing IPRs (providing any such Existing IPR's licensed to the Council permits such sub-licensing to the Supplier) and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations under the Contract during the Term. This licence is sub-licensable to a Subcontractor for the purpose of enabling the Supplier to fulfil its obligations under the Contract, and in that case the Subcontractor must enter into a confidentiality undertaking with the Supplier on the same terms as set out in clause 19 (Confidential Information).

10.3 Unless otherwise agreed in writing, the Supplier and the Council will record any New IPR and keep this record updated throughout the Term.

10.4 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract, it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

10.5 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in this clause **Error! Reference source not found.** or otherwise agreed in writing.

10.6 If any claim is made against the Council for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "IPR Claim"), then the Supplier indemnifies the Council against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

10.7 If an IPR Claim is made or anticipated, the Supplier must at its own option and expense, either:

10.7.1 obtain for the Council the rights in clause **Error! Reference source not found.** without infringing any third party intellectual property rights; and

10.7.2 replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

10.7.3 If the Supplier is not able to resolve the IPR Claim to the Council's reasonable satisfaction within a reasonable time, the Council may give

written notice that it terminates the Contract from the date set out in the notice, or where no date is given in the notice, the date of the notice. On termination, the consequences of termination in clause 14 shall apply.

10.8 The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless:

10.8.1 the Council gives its approval to do so; and

10.8.2 one of the following conditions apply:

- (i) the owner or an authorised licensor of the relevant Third Party IPR has granted the Council a direct licence that provides the Council with the rights in clause **Error! Reference source not found.**; or
- (ii) if the Supplier cannot, after commercially reasonable endeavours, obtain for the Council a direct licence to the Third Party IPR as set out in clause **Error! Reference source not found.**:
  - (a) the Supplier provides the Council with details of the licence terms it can obtain and the identity of those licensors;
  - (b) the Council agrees to those licence terms; and
  - (c) the owner or authorised licensor of the Third Party IPR grants a direct licence to the Council on those terms.

## 11. Termination for Convenience

11.1 The Council has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 1 months' written notice, and if terminated in accordance herewith clause 14.2 shall apply.

## 12. Termination for Cause by Council

12.1 If any of the following events happen, the Council has the right to immediately terminate the Contract by issuing a termination notice in writing to the Supplier and the consequences of termination in clause 14 shall apply:

12.1.1 there is a Supplier Insolvency Event;

12.1.2 the Supplier is in Material Breach of the Contract;

12.1.3 there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Council in writing;

12.1.4 the Council discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;

12.1.5 the Supplier or its affiliates embarrass or bring the Council into disrepute or diminish the public trust in them; or

12.1.6 the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law and/or the Data Protection Legislation or clause 18 of these Conditions or Annex 1 (Processing Personal Data) of this Contract when providing the Deliverables.

12.2 If any of the events in 73(1) (a) or (b) of the Regulations happen, the Council has the right to immediately terminate the Contract and clauses 14.1.1 to 14.1.7 apply.

### **13. Supplier Termination**

13.1 The Supplier can issue a reminder notice if the Council does not pay a valid undisputed invoice on time. The Supplier can terminate the Contract if the Council fails to pay a valid undisputed invoice sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

13.2 The Supplier also has the right to terminate the Contract in accordance with clauses **Error! Reference source not found.** and **Error! Reference source not found.**

### **14 Consequences of Expiry or Termination**

14.1 Where the Council terminates the Contract under clause 7.8.2, 10.7.3, 12.2, , **Error! Reference source not found.**, or Paragraph 8 of **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** (if used), all of the following apply:

14.1.1 the Supplier is responsible for the Council's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;

14.1.2 the Council's payment obligations under the terminated Contract stop immediately;

14.1.3 accumulated rights of the Parties are not affected;

14.1.4 the Supplier must promptly delete or return the Council Data except where required to retain copies by Law;

14.1.5 the Supplier must promptly return any of the Council's property provided under the Contract;

14.1.6 the Supplier must, at no cost to the Council, give all reasonable assistance to the Council and any incoming supplier and co-operate fully in the handover and re-procurement; and

- 14.1.7 the Supplier must repay to the Council all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.
- 14.2 Where the Council terminates the Contract in accordance with clause **Error! Reference source not found.** or the Supplier terminates the Contract under clause 13.1 or **Error! Reference source not found.:**
- 14.2.1 the Council must promptly pay all outstanding charges incurred by the Supplier;
- 14.2.2 clauses 14.1.2 to 14.1.7 apply.
- 14.3 Where the Contract expires clauses 14.1.2 to 14.1.7 apply.
- 14.4 The following clauses survive the expiry or termination of the Contract: **Error! Reference source not found.**, 5.2.13, 6, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, 12, 13, 14, 16, 18, 19, 20, 22, 23, 36.2.2, 40, 41, 42, and any clauses or Annexes which are expressly or by implication intended to continue.
- 15. Partially terminating and suspending the Contract**
- 15.1 Where the Council has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Council suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- 15.2 The Council can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- 15.3 The Parties must agree (in accordance with clause **Error! Reference source not found.**) any necessary variation required by clause **Error! Reference source not found.**, but the Supplier may not either:
- 15.3.1 reject the variation; or
- 15.3.2 increase the Charges.
- 15.4 The Council can still use other rights available, or subsequently available to it if it acts on its rights under clause 15.
- 16. Liability**

- 16.1 Subject to clauses 16.2, and 16.3 the Supplier undertakes to hold harmless and fully indemnify and keep indemnified the Council from and against any and all actions, liabilities, costs (including professional costs), claims, demands, damages, losses and expenses (whether direct or indirect, present or future, actual or contingent) incurred by or arising against the Council, arising out of, or in the course of, or in connection with the Contract and/or the Deliverables, as a result of (whether directly or indirectly) any negligence, negligent act or omission by the Supplier, default or breach of duty on the part of the Supplier, or breach of any provision of this Contract by the Supplier.
- 16.2 No Party is liable to the other for:
- (i) any indirect losses; or
  - (ii) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 16.3 Neither Party limits or excludes any of the following:
- (i) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - (ii) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - (iii) any liability that cannot be excluded or limited by Law.
- 16.4 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 16.5 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## **17. Law**

- 17.1 The Supplier, in connection with provision of the Deliverables:
- 17.1.1 shall comply and have its Subcontractors comply with all applicable Law in connection with the Contract and the Deliverables.
- 17.1.2 is expected to meet and have its Subcontractors meet the standards set out in the Supplier Code of Conduct:  
<https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2018/11/27/supplier-code-of-conduct.pdf>) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Invitation to Tender documentation and/or Service Specification or as may be notified by the Council to the Supplier from time to time;



17.1.3 will comply with all statutory equality obligations and the Council's equalities policies and practices found at:

<https://www.leicestershire.gov.uk/about-the-council/equality-and-diversity/equalities-policy-statement>, and instructions related to equality Law, and must support the Council in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;

17.1.4 must comply with the model contract terms contained in (a) to (m) of Annex C of the guidance to [PPN 02/23 \(Tackling Modern Slavery in Government Supply Chains\)](#),<sup>1</sup> as such clauses may be amended or updated from time to time;

17.1.5 meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>, as updated from time to time.

17.2 The Supplier indemnifies the Council against any and all costs, claims, liabilities, losses, expenses or otherwise resulting from any default by the Supplier relating to any applicable Law to do with the Contract.

17.3 The Supplier must appoint a compliance officer who must be responsible for ensuring that the Supplier complies with Law, clause **Error! Reference source not found.** and clauses 31 to **Error! Reference source not found.**

## **18. Data Protection and Security**

**[The Data Protection will vary, and work will need to be completed with the necessary officers within the LCC Information Governance Team to establish the correct position e.g Controller/Processor, Joint Controllers, or Independent Controllers. Clause 18 will remain in all circumstances, Annex 1 will be completed/applied (Processing Personal Data) accordingly]**

18.1 The Supplier must not remove any ownership or security notices in or relating to the Council Data.

18.2 The Supplier must make accessible back-ups of all Council Data, stored in an agreed off-site location and send the Council copies via secure encrypted method upon reasonable request.

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<sup>1</sup> <https://www.gov.uk/government/publications/ppn-0223-tackling-modern-slavery-in-government-supply-chains>

- 18.3 The Supplier must ensure that any Supplier, Subcontractor, or Subprocessor system holding any Council Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Council (where any such requirements have been provided).
- 18.4 If at any time the Supplier suspects or has reason to believe that the Council Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Council and suggest remedial action.
- 18.5 If the Council Data is corrupted, lost or sufficiently degraded so as to be unusable the Council may either or both:
- (i) tell the Supplier to restore or get restored Council Data as soon as practical but no later than 5 Working Days from the date that the Council receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
  - (ii) restore the Council Data itself or using a third party.
- 18.6 The Supplier must pay each Party's reasonable costs of complying with clause **Error! Reference source not found.** unless the Council is at fault.
- 18.7 The Supplier:
- (i) must provide the Council with all Council Data in an agreed format (provided it is secure and readable) within 10 Working Days of a written request;
  - (ii) must have documented processes to guarantee prompt availability of Council Data if the Supplier stops trading;
  - (iii) must securely destroy all storage media that has held Council Data at the end of life of that media using Good Industry Practice, other than in relation to Council Data which is owned or licenced by the Supplier or in respect of which the Parties are Independent Controllers or Joint Controllers;
  - (iv) must securely erase all Council Data and any copies it holds when asked to do so by the Council unless required by Law to retain it, other than in relation to Council Data which is owned or licenced by the Supplier or in respect of which the Parties are Independent Controllers or Joint Controllers;
  - (v) indemnifies the Council against any and all costs, claims, liabilities, losses, expenses, penalties or otherwise incurred if the Supplier breaches clause **Error! Reference source not found.**, or Annex 1 (Processing Personal Data), or any Data Protection Legislation.
- 18.8 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the DPA 2018. A Party may act as:
- (i) "Controller" in respect of the other Party who is "Processor";

- (ii) “Processor” in respect of the other Party who is “Controller”;
- (iii) “Joint Controller” with the other Party;
- (iv) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under the Contract and shall specify in Part A Authorised Processing Template of Annex 1- Processing Personal Data which scenario they think shall apply in each situation.

#### 18.9 **Where one Party is Controller and the other Party its Processor**

18.9.1 Where a Party is a Processor, the only processing that the Processor is authorised to do is listed in Part A Authorised Processing Template of **Error! Reference source not found.** by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).

18.9.2 The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.

18.9.3 The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, which may include, at the discretion of the Controller:

- (i) a systematic description of the expected processing and its purpose;
- (ii) the necessity and proportionality of the processing operations;
- (iii) the risks to the rights and freedoms of Data Subjects; and
- (iv) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.

18.9.4 The Processor must, in in relation to any Personal Data processed under this Contract:

- (i) process that Personal Data only in accordance with Part A Authorised Processing Template of **Error! Reference source not found.** unless the Processor is required to do otherwise by Law. If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.
- (ii) put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.
- (iii) Ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Part A Authorised Processing Template of **Error! Reference source not found.**);
- (b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Processor's duties under this clause 18;
  - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
  - (iii) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (c) the Processor must not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or the transfer is in accordance with Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
    - (A) where the transfer is subject to the UK GDPR:

- (i) the International Data Transfer Agreement (the “**IDTA**”), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018 as well as any additional measures determined by the Controller,
- (ii) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (“**EU SCCs**”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “**Addendum**”) as published by the Information Commissioner's Office from time to time; and/or

(B) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;

- (d) the Data Subject has enforceable rights and effective legal remedies when transferred;
- (e) the Processor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (f) the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.

18.9.5 The Processor must at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

18.9.6 The Processor must notify the Controller immediately if it:

- (i) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (ii) receives a request to rectify, block or erase any Personal Data;
- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (v) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and
- (vi) becomes aware of a Data Loss Event.

18.9.7 Any requirement to notify under clause **Error! Reference source not found.** includes the provision of further information to the Controller in stages as details become available.

18.9.8 The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause **Error! Reference source not found.** This includes giving the Controller:

- (i) full details and copies of the complaint, communication or request;
- (ii) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
- (iii) any Personal Data it holds in relation to a Data Subject on request;
- (iv) assistance that it requests following any Data Loss Event; and
- (v) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.

18.9.9 The Processor must maintain full, accurate records and information to show it complies with this clause 18. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:

- (i) is not occasional;
- (ii) includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
- (iii) is likely to result in a risk to the rights and freedoms of Data Subjects.

18.9.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

18.9.11 Before allowing any Subprocessor to process any Personal Data, the Processor must:

- (i) notify the Controller in writing of the intended Subprocessor and processing;
- (ii) obtain the written consent of the Controller;
- (iii) enter into a written contract with the Subprocessor so that this clause **Error! Reference source not found.** applies to the Subprocessor; and
- (iv) provide the Controller with any information about the Subprocessor that the Controller reasonably requires.

18.9.12 The Processor remains fully liable for all acts or omissions of any Subprocessor.

18.9.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority.

#### **Joint Controllers of Personal Data**

18.10 In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** which shall apply to this Contract.

#### **Independent Controllers of Personal Data**

18.11 In the event that the Parties are Independent Controllers in respect of Personal Data under the Contract, the terms set out in **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** shall apply to this Contract.

### **19. Confidential Information**

19.1 Each Party must:

- (i) keep all Confidential Information it receives confidential and secure;
- (ii) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
- (iii) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

19.2 In spite of clause **Error! Reference source not found.**, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

- (i) where disclosure is required by applicable Law if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

- (ii) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- (iii) if the information was given to it by a third party without obligation of confidentiality;
- (iv) if the information was in the public domain at the time of the disclosure;
- (v) if the information was independently developed without access to the disclosing Party's Confidential Information;
- (vi) on a confidential basis, to its auditors or for the purposes of regulatory requirements;
- (vii) on a confidential basis, to its professional advisers on a need-to-know basis; and
- (viii) the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

19.4 The Council may disclose Confidential Information in any of the following cases:

- (i) on a confidential basis to the employees, agents, consultants and contractors of the Council;
- (ii) on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Council transfers or proposes to transfer all or any part of its business to;
- (iii) if the Council (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (iv) where requested by Parliament;
- (v) under clauses **Error! Reference source not found.** and **Error! Reference source not found.**; and
- (vi) to comply with its obligations under the Freedom of Information Act 1998 or the Environmental Information Regulations 2004.

19.5 For the purposes of clauses **Error! Reference source not found.** to **Error! Reference source not found.** references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause **Error! Reference source not found.**.



- 19.6 Transparency Information, and Information which is exempt from disclosure by clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Council and must take all reasonable endeavours to ensure that Supplier Staff do not either.

## **20. When you can Share Information**

- 20.1 The Supplier must tell the Council within 48 hours if it receives a Request For Information.
- 20.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Council, the Supplier must give the Council full co-operation and information needed so the Council can:
- 20.2.1 comply with any Request For Information; and
- 20.2.2 if the Contract has a value over the relevant threshold in Part 2 of the Regulations, comply with any of its obligations in relation to publishing Transparency Information.
- 20.3 To the extent that it is allowed and practical to do so, the Council will use reasonable endeavours to notify the Supplier of a Request For Information and may talk to the Supplier to help it decide whether to publish information under clause 20. However, the extent, content and format of the disclosure is the Council's decision in its absolute discretion.

## **21. Insurance**

- 21.1 The Supplier shall ensure that it has adequate insurance cover for this Contract and as a minimum shall have and maintain:
- 21.1.1 Employers liability insurance in accordance with the Employer's Liability (Compulsory Insurance Act) 1969 with a limit of indemnity of not less than **ten million pounds (£10,000,000)** per claim or series of claims arising out of any one incident;
- 21.1.2 Public and products liability with a limit of indemnity of not less than **ten million pounds (£10,000,000)** per claim or series of claims arising from one event; and
- 21.1.3 Where applicable, Professional Indemnity liability with a limit of indemnity of not less than **five million pounds (£5,000,000)** per claim or series of claims arising from one event.

## **22. Invalid Parts of this Contract**

22.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. The provisions incorporated into the Contract are the entire agreement between the Parties.

### **23. Third Party Rights**

23.1 Subject to Schedule 6 (TUPE and Pensions) paragraph 3.12 and paragraph 4.2 no third parties may use the Contracts (Rights of Third Parties) Act (“**CRTPA**”) to enforce any term of the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

### **24. Force Majeure**

24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

24.1.1 provides written notice to the other Party; and

24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

24.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

24.3 Either Party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously and the consequences of termination in clauses 14.1.2 to **Error! Reference source not found.** shall apply.

24.4 Where a Party terminates under clause **Error! Reference source not found.:**

24.4.1 each Party must cover its own losses; and

24.4.2 clauses **Error! Reference source not found.** to **Error! Reference source not found.** apply.

### **25. Relationships Created by the Contract**

25.1 The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

### **26.1 Giving Up Contract Rights**

26.1 A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

### **27. Assignment, Novation, Transfer of Contract**

- 27.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Council's written consent.
- 27.2 The Council can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Council.
- 27.3 When the Council uses its rights under clause **Error! Reference source not found.** the Supplier must enter into a novation agreement in the form that the Council specifies.
- 27.4 The Supplier can terminate the Contract novated under clause **Error! Reference source not found.** to a private sector body that is experiencing an Insolvency Event.
- 27.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

## **28. Supply Chain**

- 28.1 The Supplier cannot sub-contract the Contract or any part of it without the Council's prior written consent. The Supplier shall provide the Council with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Council to consent or not will not be unreasonably withheld or delayed.
- 28.2 If the Council asks the Supplier for details about Subcontractors, the Supplier must provide details of all such Subcontractors at all levels of the supply chain including:
- 28.2.1 their name;
  - 28.2.2 the scope of their appointment; and
  - 28.2.3 the duration of their appointment.
- 28.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.
- 28.4 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract the Supplier will ensure provisions are included that:
- 28.4.1 allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
  - 28.4.2 require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
  - 28.4.3 allow the Council to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

- 28.5 At the Council's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 28.5.1 there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Subcontractor which isn't pre-approved by the Council in writing;
  - 28.5.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under clause 12;
  - 28.5.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Council;
  - 28.5.4 the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
  - 28.5.5 the Council has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Regulations.
- 28.6 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

## **29. Varying the Contract**

- 29.1 Either Party can request a variation to the Contract (providing such variation is in compliance with the Regulations) which is only effective if agreed in writing and signed by both Parties. The Council is not required to accept a variation request made by the Supplier.

## **30. Notices**

- 30.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9am on the first Working Day after sending unless an error message is received.
- 30.2 Notices to the Council or Supplier must be sent to their address or email address as notified by each Party to the other in writing.
- 30.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **31. Dealing with Claims**

- 31.1 If the Council becomes aware of any Claim, then it must notify the Supplier as soon as reasonably practical.
- 31.2 At the Supplier's cost the Council may:
- 31.2.1 allow the Supplier to conduct all negotiations and proceedings to do with a Claim; and

- 31.2.2 give the Supplier reasonable assistance with the Claim if requested;  
and
- 31.2.3 not make admissions about the Claim without the prior written consent of the Supplier which cannot be unreasonably withheld or delayed.
- 31.3 Where the Supplier has been permitted to conduct negotiations and proceedings in accordance with clause 31.2 the Supplier must:
  - 31.3.1 consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Council's reputation;
  - 31.3.2 not settle or compromise any Claim without the Council's prior written consent which it must not unreasonably withhold or delay.

## **32. Preventing Fraud, Bribery and Corruption**

- 32.1 The Supplier shall not:
  - 32.1.1 commit any criminal offence referred to in 57(1) and 57(2) of the Regulations;  
or
  - 32.1.2 offer, give, or agree to give anything, to any person (whether working for or engaged by the Council or any other public body) 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 any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 32.2 The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause **Error! Reference source not found.** and any fraud by the Supplier Staff and the Supplier (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 such matters have occurred or is occurring or is likely to occur.
- 32.3 If the Supplier notifies the Council as required by clause **Error! Reference source not found.**, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 32.4 If the Supplier or the Supplier Staff engages in conduct prohibited by clause **Error! Reference source not found.** or commits fraud in relation to the Contract or any other contract with the Crown (including the Council) the Council may:
  - 32.4.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the default; and/or

32.4.2 immediately terminate the Contract and the consequences of termination in clause 14.1 shall apply.

### **33. Equality, Diversity and Human Rights**

33.1 The Supplier must follow all applicable employment and equality Law when they perform their obligations under the Contract, including:

33.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

33.1.2 any other requirements and instructions which the Council reasonably imposes related to equality Law.

33.2 The Supplier must use all reasonable endeavours, and inform the Council of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

### **34. Health and Safety**

34.1 The Supplier must perform its obligations meeting the requirements of:

34.1.1 all applicable Law regarding health and safety; and

34.1.2 the Council's current health and safety policy while at the Council's premises.

34.2 The Supplier and the Council must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Council premises that relate to the performance of the Contract.

### **35. Environment and Sustainability**

35.1 In performing its obligations under the Contract, the Supplier shall, to the reasonable satisfaction of the Council:

35.1.1 meet, in all material respects, the requirements of all applicable Laws regarding the environment; and

35.1.2 comply with any obligations under the Council's current environmental policy found at: <https://www.leicestershire.gov.uk/environment-and-planning/environmental-policies-and-reports>, and assist (and do nothing to prevent) the Council in achieving its vision, aims and objectives thereunder, and make Supplier Staff aware of such policy.

### **36. Tax**

- 36.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Council cannot terminate the Contract where the Supplier has not paid a minor (as determined by the Council) tax or social security contribution.
- 36.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
- 36.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - 36.2.2 indemnify the Council against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 36.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains requirements that:
- 36.3.1 the Council may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause **Error! Reference source not found.**, or why those requirements do not apply, the Council can specify the information the Worker must provide and the deadline for responding;
  - 36.3.2 the Worker's contract may be terminated at the Council's request if the Worker fails to provide the information requested by the Council within the time specified by the Council;
  - 36.3.3 the Worker's contract may be terminated at the Council's request if the Worker provides information which the Council considers isn't good enough to demonstrate how it complies with clause **Error! Reference source not found.** or confirms that the Worker is not complying with those requirements; and
  - 36.3.4 the Council may supply any information they receive from the Worker to HMRC for revenue collection and management.

### **37. Conflict of Interest**

- 37.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 37.2 The Supplier must promptly notify and provide details to the Council if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 37.3 The Council will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Council, such measures do not or will not resolve an actual or potential Conflict of Interest, the Council may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and clauses **Error! Reference source not found.** to **Error! Reference source not found.** shall apply.

### **38. Reporting a Breach of Contract**

- 38.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Council any actual or suspected breach of Law, clause **Error! Reference source not found.**, or clauses **Error! Reference source not found.** to 37.
- 38.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause **Error! Reference source not found.** to the Council or a Prescribed Person.

### **39. Further Assurances**

- 39.1 Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

### **40. Resolving Disputes**

- 40.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.
- 40.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses **Error! Reference source not found.** to **Error! Reference source not found.**.
- 40.3 Unless the Council refers the dispute to arbitration using clause **Error! Reference source not found.**, the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction.



- 40.4 The Supplier agrees that the Council has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 40.5 The Council has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause **Error! Reference source not found.**, unless the Council has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause **Error! Reference source not found.**
- 40.6 The Supplier cannot suspend the performance of the Contract during any dispute.

#### **41. TUPE and Pensions**

##### **TUPE at commencement**

- 41.1 The provisions of Annex 2 (TUPE and Pensions) of these Conditions (including the definitions therein) form part of this Contract. The Supplier agrees and shall ensure any Subcontractor agrees that the provisions of Annex 2 (TUPE and Pensions) shall apply to any Relevant Transfer under this Contract.

##### **TUPE on Exit**

- 41.2 If TUPE is applicable when the Services come to an end (whether by expiry or termination or otherwise) the Supplier shall, and shall ensure its Subcontractors shall, comply with the provisions of Annex 2 (TUPE and Pensions).

##### **Pensions**

- 41.3 The Council and the Supplier have, in addition to the matters referred to in clause 41.1 and clause 41.2 agreed the terms and conditions which shall apply in relation to the pensions of Eligible Employees in Annex 2 (TUPE and Pensions) and the Supplier shall, and shall ensure any Subcontractor shall, comply with the provisions of Annex 6.

#### **42. Applicable Law**

- 42.1 This Contract and any issues or disputes arising out of, or connected to it, are governed by English law.

## Annex 1 – Processing Personal Data

**[Guidance: Liaise with LCC Information Governance Team to establish correct position with Data Protection e.g. Controller/Processor, Joint Controllers, or Independent Controllers, and complete this Annex 1 (Processing Personal Data) accordingly]**

**[Guidance: Part A of this Annex is mandatory. The Council will be the Controller, and the Supplier the Processor in the vast majority of cases. If you believe another data processing scenario applies, such as the Parties being Joint or Independent Controllers, you must speak to LCC’s Information Governance Team.]**

### Part A     Authorized Processing Template

This Annex 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 Annex shall be with the Controller at its absolute discretion.

The contact details of the Controller’s Data Protection Officer are: **[Insert Contact details]**

The contact details of the Processor’s Data Protection Officer are: **[Insert Contact details]**

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Annex.

Description of authorised processing	Details
Identity of Controller and Processor / Independent Controllers / Joint Controllers for each category of Personal Data	<p><b>[Guidance: This is where you identify the roles of the Parties for processing personal data. If the Parties are Independent Controllers or Joint Controllers you will use Error! Reference source not found. or Error! Reference source not found. of this Annex as applicable]</b></p> <p><b>[The Council is Controller and the Supplier is Processor]</b></p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• <b>[Insert the scope of Personal Data which the purposes and means of the Processing by the Supplier is determined by the Council]</b></li> <li>• </li> </ul> <p><b>[The Supplier is Controller and the Council is Processor]</b></p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Council is the Processor of the following Personal Data:</p>

	<ul style="list-style-type: none"> <li>• <b>[Insert the scope of Personal Data which the purposes and means of the Processing by the Council is determined by the Supplier]</b></li> </ul> <p><b>[The Parties are Joint Controllers]</b></p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>• <b>[Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</b></li> </ul> <p><b>[The Parties are Independent Controllers of Personal Data]</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>• Personally identifiable information of Supplier Personnel for which the Supplier is the Controller,</li> <li>• Personally identifiable information of any directors, officers, employees, agents, consultants and contractors of Council (excluding the Supplier Personnel) engaged in the performance of the Council’s duties under this Contract) for which the Council is the Controller,</li> <li>• <b>[Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Council cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Council]</b></li> </ul>
Subject matter of the processing	<p><b>[Insert This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</b></p> <p><b>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide [insert description of relevant service]. ]</b></p>
Duration of the processing	<p><b>[Insert Clearly set out the duration of the Processing including dates]</b></p>

<p>Nature and purposes of the processing</p>	<p><b>[Insert Please be as specific as possible, but make sure that you cover all intended purposes.]</b></p> <p>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.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
<p>Type of Personal Data being processed</p>	<p><b>[Insert Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</b></p>
<p>Categories of Data Subject</p>	<p><b>[Insert Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</b></p>
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data</p>	<p><b>[Insert Describe how long the data will be retained for, how it be returned or destroyed]</b></p>
<p>Locations at which the Supplier and/or its Subcontractors process Personal Data under this Contract and International transfers and legal gateway</p>	<p><b>[Clearly identify each location, explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract]</b></p>

## PART B JOINT CONTROLLER AGREEMENT

### 1 JOINT CONTROLLER STATUS AND ALLOCATION OF RESPONSIBILITIES

- 1.1 With respect to Personal Data for which the Parties are Joint Controllers, the Parties envisage that they shall each be a Controller in respect of that Personal Data in accordance with the terms of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** in replacement of clauses **Error! Reference source not found.** 1 to **Error! Reference source not found.** of the Conditions of this Contract. Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controllers.
- 1.2 The Parties agree that the **[Supplier/Council]**:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using best endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
  - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
  - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for processing in connection with the Deliverables where consent is the relevant legal basis for that processing; and
  - 1.2.5 shall make available to Data Subjects the essence of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[Supplier's/Council's]** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

- 1.3 Notwithstanding the terms of paragraph 1.2 of this **Error! Reference source not found. Error! Reference source not found.** of \_\_\_\_\_, the Parties acknowledge that a Data Subject \_\_\_\_\_ the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

## 2 UNDERTAKINGS OF BOTH PARTIES

- 2.1 The Supplier and the Council each undertake that they shall:

- 2.1.1 report to the other Party every [x] months on:

- 2.1.1.1 the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- 2.1.1.2 the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- 2.1.1.3 any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- 2.1.1.4 any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- 2.1.1.5 any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1.1 to 2.1.1.5 of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.**;
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 1.2 and 2.1.1.3 to 2.1.1.5 of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.**; to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;

- 2.1.4 not disclose or transfer the Personal Data to any third party unless  
for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this **Error! Reference source not found. Error! Reference source not found.** of
- ;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- 2.1.7 use best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that Processor Personnel:
- 2.1.7.1 are aware of and comply with their duties under this of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.**; and those in respect of Confidential Information;
- 2.1.7.2 are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so;
- 2.1.7.3 have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

- 2.1.9 ensure that it notifies the other Party as soon as it becomes aware of a
  
- 2.1.10 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
  - 2.1.10.1 the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - 2.1.10.2 the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or the transfer is in accordance with Article 46 of the EU GDPR (where applicable)) as agreed with the non-transferring Party which could include the relevant parties entering into:
    - (a) Where the transfer is subject to the UK GDPR:
      - (i) The UK International Data Transfer Agreement (the "IDTA"), as published by the Information Commissioner's office under section 119A(1) of the DPA 2018 from time to time; or
      - (ii) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time and/or;
    - (b) Where the transfer is subject to the EU GDPR, the EU SCCs,  
  
as well as any additional measures determined by the non-transferring Party being implemented by the importing Party;
  - 2.1.10.3 the Data Subject has enforceable rights and effective legal remedies;



- 2.1.10.4 the transferring Party 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 non-transferring Party in meeting its obligations); and
- 2.1.10.5 the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data;
- 2.1.11 Each Joint Controller shall use its best endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

### 3 DATA PROTECTION BREACH

- 3.1 Without prejudice to Paragraph 3.2 of this ***Error! Reference source not found.*** ***Error! Reference source not found.*** of ***Error! Reference source not found.***, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the other Party and its advisors with:
  - 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;
  - 3.1.2 all reasonable assistance, including:
    - 3.1.2.1 co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
    - 3.1.2.2 co-operation with the other Party including using such best endeavours as are directed by the Council to assist in the investigation, mitigation and remediation of a Data Loss Event;
    - 3.1.2.3 co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and/or

3.1.2.4 providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including the information set out in Paragraph 3.2 of this **Error! Reference source not found. Error! Reference source not found.** of

;

3.2 Each Party shall use best endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Data Loss Event which is the fault of that Party as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Data Loss Event, including providing the other Party, as soon as possible and within 48 hours of the Data Loss Event relating to the Data Loss Event, in particular:

3.2.1 the nature of the Data Loss Event;

3.2.2 the nature of Personal Data affected;

3.2.3 the categories and number of Data Subjects concerned;

3.2.4 the name and contact details of the Party's Data Protection Officer or other relevant contact from whom more information may be obtained;

3.2.5 measures taken or proposed to be taken to address the Data Loss Event; and

3.2.6 a description of the likely consequences of the Data Loss Event.

#### 4 AUDIT

4.1 The Supplier shall permit:

4.1.1 the Council, or a third-party auditor acting under the Council's direction, to conduct, at the Council's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.**; and the Data Protection Legislation; and/or

4.1.2 the Council, or a third-party auditor acting under the Council's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Deliverables.

4.2 The Council may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** in lieu of conducting such an audit, assessment or inspection.

## 5 IMPACT ASSESSMENTS

5.1 The Parties shall:

5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures); and

5.1.2 maintain full and complete records of all processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

## 6 ICO GUIDANCE

6.1 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner or any other regulatory authority. The Council may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Crown Body.

## 7 LIABILITIES FOR DATA PROTECTION BREACH

7.1 If financial penalties are imposed by the Information Commissioner on either the Council or the Supplier for a Data Loss Event ("**Financial Penalties**") then the following shall occur:

- 7.1.1 if in the view of the Information Commissioner, the Council is solely responsible for the Data Loss Event, in that it is caused as a result of the sole actions or inaction of the Council, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Council, then the Council shall be responsible for the payment of such Financial Penalties. In this case, the Council will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Data Loss Event. The Supplier shall provide to the Council and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Data Loss Event;
- 7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Data Loss Event, in that it is not a Data Loss Event that the Council is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Council and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Data Loss Event; or
- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Council and the Supplier shall work together to investigate the relevant Data Loss Event and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in clause 40 of the Conditions (Resolving disputes).
- 7.2 If either the Council or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Data Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Data Loss Event shall be liable for the losses arising from such Data Loss Event. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "**Claim Losses**"):
- 7.3.1 if the Council is responsible for the relevant Data Loss Event, then the Council shall be responsible for the Claim Losses;

- 7.3.2 if the Supplier is responsible for the relevant Data Loss Event, then the Supplier shall be responsible for the Claim Losses: and
- 7.3.3 if responsibility for the relevant Data Loss Event is unclear, then the Council and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either Paragraph 7.2 or Paragraph 7.3 of this **Error! Reference source not found. Error! Reference source not found. of Error! Reference source not found.** shall preclude the Council and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Data Loss Event, having regard to all the circumstances of the Data Loss Event and the legal and financial obligations of the Council.

## 8 TERMINATION

- 8.1 If the Supplier is in Material Breach under any of its obligations of this **Error! Reference source not found. Error! Reference source not found. of Error! Reference source not found.**, the Council shall be entitled to terminate the Contract by issuing a termination notice to the Supplier in accordance with clause 12 of the Conditions (Termination for Cause by Council).

## 9 SUB-PROCESSING

- 9.1 In respect of any processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- 9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## 10 DATA RETENTION

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## PART C INDEPENDENT CONTROLLERS

### 1. INDEPENDENT CONTROLLER PROVISIONS

- 1.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 1.2 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 1.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 0 of this **Error! Reference source not found. Error! Reference source not found.** of **Error! Reference source not found.** above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 1.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the processing of Personal Data for the purposes of the Contract.
- 1.5 The Parties shall only provide Personal Data to each other:
  - 1.5.1 to the extent necessary to perform their respective obligations under the Contract;
  - 1.5.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
  - 1.5.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
    - 1.5.3.1 the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or

1.5.3.2 the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the parties entering into:

- (a) where the transfer is subject to UK GDPR:
  - (i) the UK International Data Transfer Agreement (the “**IDTA**”), as published by the Information Commissioner’s Office or such updated version of such IDTA as is published by the Information Commissioner’s Office under section 119A(1) of the DPA 2018 from time to time; or
  - (ii) the European Commission’s Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the “**EU SCCs**”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “**Addendum**”) as published by the Information Commissioner’s Office from time to time; and/or
- (b) where the transfer is subject to EU GDPR, the EU SCCs;

as well as any additional measures determined by the non-transferring Party being implemented by the importing party;

1.5.3.3 the Data Subject has enforceable rights and effective legal remedies;

1.5.3.4 the transferring Party 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 non-transferring Party in meeting its obligations); and

1.5.3.5 the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

1.5.4 where it has recorded it in Part A Authorised Processing Template of **Error! Reference source not found.**

- 1.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 1.7 A Party processing Personal Data for the purposes of the Contract shall maintain a record of its processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 1.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract ("**Request Recipient**"):
  - 1.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence; or
  - 1.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's processing of the Personal Data, the Request Recipient will:
    - 1.8.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - 1.8.2.2 provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 1.9 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to the Contract and shall:
  - 1.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
  - 1.9.2 implement any measures necessary to restore the security of any compromised Personal Data;



- 1.9.3 work with the other Party to make any required notifications to the Information Commissioner's office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 1.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 1.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Part A Authorised Processing Template of **Error! Reference source not found.**
- 1.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Part A Authorised Processing Template of **Error! Reference source not found.**
- 1.12 Notwithstanding the general application of clauses **Error! Reference source not found.**1 to **Error! Reference source not found.** of the Conditions to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 0 to **Error! Reference source not found.** of this **Error! Reference source not found.** **Error! Reference source not found.** of **Error! Reference source not found.**).

## Annex 2 (TUPE and Pensions)

### 1. Interpretation

The definitions and rules of interpretation in this paragraph apply in this Contract:

**Admission Agreement:** the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by the Administering Authority, the Council and the Supplier or Subcontractor, as appropriate in the Administering Authority's standard form.

**Administering Authority:** Leicestershire County Council acting in its capacity as administering body of the LGPS.

**Appropriate Pension Provision:** in respect of Eligible Employees, either:

- (i) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
- (ii) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department ("GAD") as being broadly comparable to the terms of their Legacy Scheme.

**Bond:** the bond to be executed in the Administering Authority's standard form to the value that shall be determined by the Administering Authority.

**Effective Date:** the date(s) on which the Services (or any part of the Services), transfer from the Council or any Third-Party Employer to the Supplier or Subcontractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Subcontractor.

#### Eligible Employees

- (a) the Third-Party Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
- (b) the Third-Party Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

**Employee Liability Information:** all the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE including but not limited to:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;

(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;

(e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE;

(f) pension details/entitlements; and

(g) any other information requested by the Council.

**Employment Liabilities:** All claims, including claims without limitation for redundancy payments, pension contributions, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Fair Deal for Staff Pensions:** the guidance issued by HM Treasury entitled 'Fair Deal for staff pensions: staff transfer from central government', October 2013.

**Legacy Scheme:** the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

**LGPS:** Local Government Pension Scheme.

**LGPS Regulations:** the Local Government Pension Scheme Regulations 2013 (*S/2013/2356*).

**Pension Benefits:** any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Provider by virtue of the application of TUPE.

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

**Replacement Services:** any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Council internally or by any Replacement Provider.

**Replacement Provider:** any third-party provider of Replacement Services appointed by the Council from time to time.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Supplier or Subcontractor to the Council or any Replacement Provider.

**Staffing Information:** in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Supplier's Final Staff List:** the list of all the Supplier's and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Supplier's Provisional Staff List:** the list prepared and updated by the Supplier of all the Supplier's and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Third-Party Employees:** employees of Third-Party Employers whose contracts of employment transfer with effect from the Effective Date to the Supplier or Subcontractor by virtue of the application of TUPE.

**Third-Party Employers:** the current supplier engaged by the Council to provide the Services to the Council before the Effective Date and whose employees may transfer to the Supplier on the Effective Date if they are Relevant Employees.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended.

## **2. TRANSFER OF EMPLOYEES TO THE PROVIDER ON THE EFFECTIVE DATE**

2.1 The Council and the Supplier agree that TUPE may apply in respect of this Contract, and where it does, this shall constitute a Relevant Transfer and the contracts of employment of any Third-Party Employees shall transfer to the Supplier or Subcontractor. The Supplier shall comply and shall procure that each Subcontractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.

2.2 The Supplier shall be liable for and indemnify and keep indemnified the Council and any Third-Party Employer (and any Subcontractor of any Third-Party Employer) against any Employment Liabilities arising from or as a consequence of:

- (a) any failure by the Supplier to comply with its obligations under TUPE;

- (b) any claim by a Third-Party Employee that any proposed or actual substantial change by the Supplier or its Subcontractor to their working conditions or any proposed measures of the Supplier are to that person's detriment, whether that claim arises before, on or after the Effective Date;
- (c) any proposed changes to terms and conditions of employment the Supplier or its Subcontractor may consider making on or after the Effective Date;
- (d) any claim by a Third-Party Employee in relation to any breach of contract arising from any proposed measures of the Supplier, whether that claim arises before, on or after the Effective Date;
- (e) any of the employees informing the Council and any Third-Party Employer they object to being employed by the Supplier or Subcontractor; and
- (f) any change in identity of the Third-Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Supplier or its Subcontractor may consider taking on or after the Effective Date;

and any provision in the Contract limiting the Supplier's liability shall not apply.

2.3 The Supplier shall be liable for and indemnify and keep indemnified the Council and any Third-Party Employer (and any Subcontractor of any Third-Party Employer) against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third-Party Employees and any other person who is or will be employed or engaged by the Supplier or any Subcontractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date. Any provision in the Contract limiting the Supplier's liability shall not apply.

2.4 The Supplier shall immediately on request by the Council and/or the Third-Party Employer provide details of any measures that the Supplier or any Subcontractor envisages it will take in relation to any Third-Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier will give confirmation of that fact, and shall indemnify the Council and any Third-Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation, and any provision in the Contract limiting the Supplier's liability shall not apply.

### **3. EMPLOYMENT EXIT PROVISIONS**

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Provider will

inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

- 3.2 The Supplier shall and shall procure that any Subcontractor shall on receiving notice of termination of this Contract or otherwise on request from the Council, and at such times as required by the Council, provide in respect of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Supplier shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Subcontractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Subcontractor's personnel named are Relevant Employees.
- 3.4 The Council shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as the Services (or any part of the Services).
- 3.5 The Supplier warrants to the Council and the Replacement Provider that the Supplier's Provisional Staff List, the Provider's Final Staff List and the Staffing Information ("**TUPE Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 3.6 The Supplier shall and shall procure that any Subcontractor shall ensure at all times that it has the right to provide the TUPE Information under and in accordance with Data Protection Legislation.
- 3.7 The Council regards compliance with this paragraph 0 as fundamental to the Contract. In particular, failure to comply with paragraph 3.2 and paragraph 0 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 0 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Supplier's failure to comply with paragraph 0 or paragraph 0, as the case may be.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to expiry or termination of this Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Supplier shall and shall

procure that any Subcontractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

3.9 In the six months prior to expiry or termination of this Contract, the Supplier shall not and shall procure that any Subcontractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.

3.10 The Supplier shall indemnify and keep indemnified in full the Council and each and every Replacement Provider against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative, arising from or connected with any failure by the Supplier and/or any Subcontractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise;

whether any such Employment Liability arises or has its origin before, on, or after the Service Transfer Date and any provision in the Contract limiting the Supplier's liability shall not apply.

3.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 0 to paragraph 0, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Supplier, in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.13 Despite paragraph 0, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **4. PENSIONS**

4.1 The Supplier shall or shall procure that any relevant Subcontractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date.

4.2 The provisions of paragraphs 0 to 6 shall be directly enforceable by an affected employee against the Supplier or any relevant Subcontractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Supplier or Subcontractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

## **5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME**

5.1 Where the Supplier or Subcontractor wishes to offer the Eligible Employees membership of the LGPS, the Supplier shall or shall procure that it and/or each relevant Subcontractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer.

5.2 The Supplier shall indemnify and keep indemnified the Council and/or any Replacement Provider and, in each case, their Subcontractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Supplier or Subcontractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

5.3 The Supplier shall and shall procure that it and any Subcontractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement.

5.4 The Supplier shall and shall procure that any relevant Subcontractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The Supplier shall be responsible for meeting all costs associated with the award of such benefits.

## **6. SUPPLIER PENSION SCHEME**

6.1 Where the Supplier or Subcontractor does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, the Supplier shall or shall procure that any relevant Subcontractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than three months prior to the date of the Relevant Transfer; and



- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme, and the Supplier shall produce evidence of compliance with this paragraph 0 to the Council prior to the date of the Relevant Transfer.
- 6.2 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Supplier's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Contract.
- 6.3 The Supplier shall and shall procure that each relevant Subcontractor shall:
  - (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
  - (b) promptly provide to the Council such documents and information mentioned in paragraph 0 which the Council may reasonably request in advance of the expiry or termination of this Contract; and
  - (c) fully cooperate (and procure that the trustees of the Supplier's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on expiry or termination of the Contract.