



The City of Edinburgh Council

Terms and Conditions for Services [Long Form]

CONTENTS

CLAUSES

1.	Contractual documents	4
2.	Term	4
3.	Extending the initial term	4
4.	Consents, Service Provider's warranty and due diligence	5
5.	Supply of services and Deliverables	6
6.	Service levels	6
7.	Standards for Services and Deliverables	7
8.	Health and Safety	7
9.	Council's Premises and Assets	8
10.	Business Continuity	9
11.	Payment	10
12.	Service credits and community benefit credits	11
13.	Key personnel	12
14.	Personnel used to provide the Services	13
15.	Staff vetting	14
16.	TUPE	14
17.	Reporting and meetings	15
18.	Monitoring	15
19.	Change control, benchmarking and continuous improvement	15
20.	Dispute resolution	16
21.	Sub-Contracting, Step-In and Assignment	16
22.	Indemnities	17
23.	Limitation of liability	17
24.	Insurance	19
25.	Freedom of Information	19
26.	Records Management	20
27.	Data protection	21
28.	Confidentiality	22
29.	Audit	22
30.	Intellectual property	24
31.	Termination for breach	25
32.	Termination on notice	26
33.	Force majeure	26
34.	Prevention of corruption	27
35.	Consequences of termination	29
36.	Non-solicitation	29
37.	Equalities and Equal Opportunities	30
38.	Waiver	32
39.	Cumulation of remedies	32
40.	Severability	32
41.	Partnership or agency	32
42.	Publicity	32
43.	Notices	33
44.	Entire agreement	33
45.	Governing law and jurisdiction	33

SCHEDULES

SCHEDULE 1	DEFINITIONS AND INTERPRETATION	34
1.	Definitions and Interpretation	34
SCHEDULE 2	CONTRACT MANAGEMENT	41
1.	Authorised representatives	41
2.	Key personnel	41
3.	Meetings.....	41
4.	Reports.....	41
SCHEDULE 3	CHANGE CONTROL.....	42
1.	General principles	42
2.	Procedure.....	42
SCHEDULE 4	BENCHMARKING	45
1.	Interpretation	45
2.	Benchmark Review	45
3.	Purpose and scope of benchmark review	46
4.	Appointment of Benchmarker.....	46
5.	Benchmarking process.....	47
6.	Benchmark report.....	48
SCHEDULE 5	TUPE.....	49
1.	Definitions.....	49
2.	Transfer of employees to the Service Provider	51
3.	Employment exit provisions	52
4.	Pensions.....	55
5.	Admitted body status to the Local Government Pension Scheme.....	55
6.	Service Provider's pension scheme	56
7.	Pensions For New Joiners To The Workforce	57
8.	Indemnity.....	57
SCHEDULE 6	COUNCIL'S PREMISES AND ASSETS	58
SCHEDULE 7	INSURANCE	59
SCHEDULE 8	SUSTAINABILITY	60
1.	Sustainability	60
2.	Sustainable Timber	60
3.	Road Safety.....	61
SCHEDULE 9	STEP-IN.....	62
SCHEDULE 10	DATA PROTECTION CLAUSES.....	65
1.	DEFINITIONS.....	65
2.	DATA PROTECTION	66
SCHEDULE 11	SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS	70
SCHEDULE 12	SCHEDULE OF TERMS RELATING TO [JOINT CONTROLLER/DATA CONTROLLERS IN COMMON]	72

COMMENCEMENT AND DURATION

1. CONTRACTUAL DOCUMENTS

- 1.1 The Contract between the Council and the Service Provider consists of the ITT, the Contract Acceptance Letter, these terms and conditions and the Schedules to these terms and conditions, the Specification, the Pricing Schedule and the Service Provider's Tender (and any clarifications to the Service Provider's tender) and includes any document referred to in the Contract Acceptance Letter, these terms and conditions or the Schedules to these terms and conditions.
- 1.2 Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the Contract Acceptance Letter (including any special conditions); then
 - (b) the clauses of these terms and conditions; then
 - (c) Schedule 1 to these terms and conditions; then
 - (d) the Specification; then
 - (e) the Pricing Schedule; then
 - (f) the remaining schedules to these terms and conditions; then
 - (g) the ITT (excluding the documents referred to at (a) to (f) above; then
 - (h) any clarifications to the Service Provider's Tender; then
 - (i) the Service Provider's Tender.

COMMENCEMENT AND DURATION

2. TERM

This Contract shall commence on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Council may extend this Contract beyond the Initial Term by a further period or periods referred to in the Contract Acceptance Letter (each an Extension Period). If the Council wishes to extend this Contract, it shall give the Service Provider at least three (3) months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Council does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 35 shall apply.

4. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE

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

4.2 The Service Provider confirms to the best of its knowledge that there are no restrictions of any kind which in any way affects its capacity to contract. If any such restrictions exist or arise, the Council shall have the option to terminate the Contract. The Service Provider shall indemnify the Council in full for any resulting loss.

4.3 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

4.4 The Service Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract; and
- (b) it has entered into this Contract in reliance on its own due diligence.

4.5 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.6 The Service Provider:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
- (b) shall promptly notify the Council in writing if it becomes aware during the Term of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.

4.7 The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with clause 4.6(b) save where such additional costs or adverse effect on performance

have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 4.8 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES AND DELIVERABLES

- 5.1 The Service Provider shall provide the Services and Deliverables to the Council with effect from the Commencement Date and for the duration of this Contract in accordance with the Specification and the terms, conditions and provisions of this Contract.
- 5.2 In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).
- 5.3 Property and risk in the Deliverables shall pass to the Council on delivery.
- 5.4 The Service Provider shall, if required to do so by the Council, prepare and submit to the Council a draft of any Deliverable prior to delivering the Deliverable in final form. Where the Council reasonably requests any amendments to the draft Deliverable the Service Provider shall incorporate those amendments into the final Deliverable.

6. SERVICE LEVELS

- 6.1 Where any Service is stated in the Specification or otherwise as part of the documentation issued with the ITT to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 As existing Services are varied and new Services are added, Service Levels for the same will be determined and included via the Change Control Procedure.
- 6.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 17.

6.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Council may have, the provisions of clause 12 shall apply.

7. STANDARDS FOR SERVICES AND DELIVERABLES

7.1 Without prejudice to clause 5.3, the Service Provider shall provide the Services, or procure that they are provided and deliver the Deliverables and procure that they are delivered:

- (a) in accordance with the terms of this Contract, each Purchase Order and the reasonable directions of the Council from time to time;
- (b) with reasonable skill and care and in accordance with Good Industry Practice;
- (c) at the times agreed with the Council and in accordance with any project plan agreed with the Council;
- (d) in all respects in accordance with the Council's policies referred to in the Specification; and
- (e) in accordance with all Applicable Laws.

7.2 Without limiting the general obligation set out in clause 7.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract and the Service Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
- (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment;
- (c) comply with the Equality Act 2010 and the Council's equal opportunities and public sector equality duty in a manner which is proportionate and relevant to the nature of this Contract; including but not limited to clause 37 below, and
- (d) deliver the Services in accordance with the Council's sustainable development commitments and policies detailed in Schedule 8.

8. HEALTH AND SAFETY

8.1 The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract. The Council shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Council's Premises and that may affect the Service Provider in the performance of the Contract.

8.2 While on the Council's Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of staff and other persons

working on the Council's Premises and any directions made by the Council in respect of health and safety issues.

- 8.3 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council's Premises in the performance of the Contract.
- 8.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

9. COUNCIL'S PREMISES AND ASSETS

- 9.1 The Council and the Service Provider recognise that, in some cases, the Services may, if so specified in the ITT, be provided from the Council's Premises or with access to the Council's Assets. The Council shall, subject to clause 8 and clause 14 and the provisions of the lease or licence set out in Schedule 6, provide the Service Provider (and its Sub-Contractors) with access to such parts of the Council's Premises as the Council agrees that the Service Provider reasonably requires for the purposes only of properly providing the Services.
- 9.2 The Council shall provide the Service Provider with such accommodation and facilities in the Council's Premises as is specified in Schedule 6 or which is otherwise agreed by the parties in writing from time to time.
- 9.3 Subject to the requirements of clause 35 and the Exit Management Plan, in the event of the expiry or termination of the Contract, the Council shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Council's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly removed by the Service Provider.
- 9.4 The Service Provider shall ensure that:
- (a) where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Service Provider's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;

- (c) any Council Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Contract or by the Council's Authorised Representative.
- 9.5 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing or replacing the same shall be recoverable from the Service Provider as a debt.
- 9.6 The Service Provider shall notify the Council immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

10. BUSINESS CONTINUITY

- 10.1 The Service Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.
- 10.2 The Service Provider shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Council promptly in writing following each review.
- 10.3 Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:
 - (a) implement the Business Continuity Plan;
 - (b) continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
 - (c) restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Service Provider complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Service Provider), the Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in clause 6 but shall be the service levels set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

11. PAYMENT

- 11.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this Contract, the Council shall pay the Charges to the Service Provider in accordance with the Pricing Schedule following receipt of a Valid Invoice.
- 11.2 The Service Provider shall invoice the Council for payment of the Charges in accordance with the Pricing Schedule. All invoices shall be directed to the Council's Authorised Representative. Any such invoices shall take into account any Service Credits which have been accrued in accordance with clause 12.3 and the Pricing Schedule or otherwise as part of the documentation issued with the ITT.
- 11.3 The Council shall pay the Charges which have become payable within 30 days of receipt of an undisputed Valid Invoice from the Service Provider.
- 11.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.
- 11.5 Where any invoice submitted is not a Valid Invoice payment in accordance with the terms and conditions of this Contract may be delayed.
- 11.6 Subject to clauses 11.4 and 11.5, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract at 4% over the Bank of England base rate from time to time. The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 11.7 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for, or to pay, any VAT or income tax or national insurance relating to payments made to the Service Provider under this Contract.
- 11.8 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for six years from the end of the Contract Year to which the records relate.
- 11.9 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a

Sub-Contract which requires payment to be made to the Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that for the purpose of payment alone, where the Council has made payment to the Service Provider and the Sub-Contractor's invoice includes Services in relation to which payment has been made by the Council then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the Sub-Contractor without deduction.

- 11.10 The Council may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this Contract, including the Admission Agreement referred to in Schedule 5, or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Council.
- 11.11 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

12. SERVICE CREDITS AND COMMUNITY BENEFIT CREDITS

- 12.1 If the Service Provider fails to provide the Services in accordance with any individual Service Level measured on a monthly basis, the Service Provider shall pay to the Council the Service Credit set out in the Pricing Schedule or otherwise as part of the documentation issued with the ITT.
- 12.2 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Service Provider has taken the Service Credit into account in setting the level of the Charges.
- 12.3 Where applicable the Service Provider shall automatically credit the Council with Service Credits calculated in accordance with the Pricing Schedule or otherwise as part of the documentation issued with the ITT. Service Credits shall be shown as a deduction from the amount due from the Council to the Service Provider in the next invoice then due to be issued under this Contract. If no invoice is due to be issued then the Service Provider shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Service Provider as a debt within ten (10) Working Days of issue.
- 12.4 Where Service Credits are not provided as a remedy for a Service Failure and the Service Provider has failed to address such a Service Failure to the reasonable satisfaction of the Council, then the Council may, on written notice to the Service Provider, withhold a proportionate amount of the Charges for those Services until such time as the relevant Service Failure is remedied. Provided that the relevant Service Failure is remedied, the Council shall resume payment of the relevant part of the Charges, including payment of the amount retained.

12.5 If in the Council's reasonable opinion from time to time the Service Provider has not provided the community benefits in accordance with the Service Provider's Tender the Council shall inform the Service Provider and the Service Provider shall automatically credit the Council with an amount equivalent to the value of the community benefit which has not been provided, calculated in accordance with the Pricing Schedule or otherwise as part of the Council's evaluation of the Service Provider's Tender. Such credits shall be shown as a deduction from the amount due from the Council to the Service Provider in the next invoice then due to be issued under this Contract. If no invoice is due to be issued then the Service Provider shall issue a credit note against the previous invoice and the amount equivalent to the value of the community benefit which has not been provided shall be repayable by the Service Provider as a debt within ten (10) Working Days of the Council's request.

STAFF

13. KEY PERSONNEL

13.1 Each party shall appoint the persons named as such in Schedule 2 or identified in the ITT or the Service Provider's Tender as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Service Provider shall ensure that its Key Personnel are available to act on behalf of the Service Provider on the matters for which they are expressed to be responsible.

13.2 The Service Provider shall not remove or replace any of its Key Personnel unless:

- (a) requested to do so by the Council;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
- (d) the person resigns from their employment with the Service Provider; or
- (e) the Service Provider obtains the prior written consent of the Council.

13.3 The Service Provider shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

13.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than ten (10) Working Days. Any

replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Council becoming aware of the role becoming vacant.

- 13.5 The Council may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Service Provider.

14. PERSONNEL USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Service Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
- 14.2 The Council may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any of the policies referred to in Clause 14.1, or if they otherwise present a security threat.
- 14.3 The Service Provider shall replace any of the Service Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

14.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

15. STAFF VETTING

15.1 The Service Provider shall comply with the Staff Vetting Procedure.

15.2 The parties acknowledge that the Service Provider is the organisation with ultimate responsibility for the management and control of the Regulated Work provided under this Contract and for the purposes of the Protection of Vulnerable Groups (Scotland) Act 2007.

15.3 In addition to the requirements of Clause 15.1, the Service Provider shall ensure that all individuals engaged in the provision of the Services are:

- (a) subject to a valid protecting vulnerable groups ("PVG") check undertaken through Disclosure Scotland including a check against the adults' barred list or the children's barred list, as appropriate; and
- (b) the Service Provider shall monitor the level and validity of the checks under this clause 15.3 for each member of staff.

15.4 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 and any regulations made thereunder, as amended from time to time.

15.5 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.

15.6 The Service Provider shall refer information about any person carrying out the Services to Disclosure Scotland where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.

15.7 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Work or who may otherwise present a risk to service users.

16. TUPE

The parties agree that the provisions of Schedule 5 shall apply to any Relevant Transfer of staff under this Contract.

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

- 17.1 The Service Provider shall provide the management reports in the form and at the intervals set out in Schedule 2.
- 17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 2 and the Service Provider shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

18. MONITORING

- 18.1 The Council may monitor the performance of the Services by the Service Provider.
- 18.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Council.

19. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 19.2 The parties shall comply with the provisions of Schedule 4 (Benchmarking).
- 19.3 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Council's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 19.4 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 19.3 shall be addressed by the parties using the Change Control Procedure.

20. DISPUTE RESOLUTION

- 20.1 If any dispute arises in relation to this Contract the parties' Authorised Representatives shall endeavour to resolve it to the parties' mutual satisfaction.
- 20.2 If the parties' Authorised Representatives cannot resolve any dispute within ten (10) Working Days then the parties shall attempt in good faith to negotiate a settlement to any dispute and such efforts shall involve the escalation of the dispute to the Council's Director of Corporate Services/Head of Legal, Risk and Compliance or the Council's Head of the relevant services and to the finance director (or equivalent) of the Service Provider.
- 20.3 In the event that the parties are unable to negotiate a settlement, then they may, with the agreement of both parties, refer the dispute for mediation, arbitration or other alternative dispute resolution but neither party shall be obliged to agree to do so.
- 20.4 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

21. SUB-CONTRACTING, STEP-IN AND ASSIGNATION

- 21.1 Subject to clause 21.5, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Council.
- 21.2 In the event that the Service Provider enters into any Sub-Contract in connection with this Contract it shall:
- (a) remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative along with details of the name, contact details and legal representatives of the Sub-Contractor.
- 21.3 Where the Council considers whether there are grounds for the exclusion of a Sub-Contractor under Regulation 71 of the Public Contracts (Scotland) Regulations 2015, then:

- (a) if the Council finds there are compulsory grounds for exclusion, the Service Provider shall replace or shall not appoint the Sub-Contractor;
 - (b) if the Council finds there are non-compulsory grounds for exclusion, the Council may require the Service Provider to replace or not to appoint the Sub-Contractor and the Service Provider shall comply with such a requirement.
- 21.4 In the event that the name, contact details or legal representatives of any Sub-Contractor changes during the term of the Contract, the Service Provider shall provide to the Council details of the changes within five (5) Working Days of the date of change.
- 21.5 The parties shall comply with the provisions of Schedule 9 (Step-in).
- 21.6 Notwithstanding clause 21.1, the Council shall be entitled to assign or novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council. The Service Provider shall do or procure all such further acts and shall execute or shall procure the execution of such documents as may be required by the Council to enjoy the full benefit of this clause.

LIABILITY

22. INDEMNITIES

- 22.1 Subject to clause 23, the Service Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in delict (including negligence), default or breach of this Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or Applicable Law by the Council or its representatives (excluding any Service Provider's Personnel).

23. LIMITATION OF LIABILITY

- 23.1 Subject to clause 23.5 and clause 23.6, neither party shall be liable to the other party (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 23.3 Subject to clause 23.5, the Council's total aggregate liability:
- (a) in respect of the indemnities given by the Council in Schedule 5 is unlimited;
- and

- (b) in respect of all other claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall in no event exceed £250,000 in each Contract Year or, if lower, 50% of the aggregate Charges paid under or pursuant to this Contract in the Contract Year in respect of which the claim arises.

23.4 Subject to clause 23.5, the Service Provider's total aggregate liability:

- (a) in respect of clause 8 (Health and Safety), **clause 15 (Staff vetting)**, clause 25 (Freedom of Information), clause 27 (Data Protection), clause 28 (Confidentiality), clause 30 (Intellectual Property), clause 34 (Prevention of corruption), clause 37 (Equalities and Equal Opportunities) and the indemnities given by the Service Provider in Schedule 5 is unlimited;
- (b) in respect of Service Credits, is limited, in each Contract Year, to 50% of the Charges that are payable by the Council in the applicable Contract Year;
- (c) for all loss, destruction, corruption, degradation, inaccuracy or damage to data caused by the Service Provider's default or breach of this Contract shall be £1,000,000 in any Contract Year;
- (d) for all loss of or damage to the Council's Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Council's data or any other data) of the Council caused by the Service Provider's default or breach of this Contract shall in no event exceed £10,000,000 in any Contract Year; and
- (e) in respect of all other claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed £5,000,000 in each Contract Year or, if greater, 200% of the aggregate Charges paid under or pursuant to this Contract in the Contract Year in respect of which the claim arises.

23.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any Applicable Laws.

23.6 Subject to the financial limits of liability contained in clause 23.4, the Council may, amongst other things, recover as a direct loss:

- (a) any additional operational and/or administrative costs and expenses arising from the Service Provider's default or breach of this Contract;

- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider's default or breach of this Contract; and
- (c) the additional cost incurred by the Council of procuring Replacement Services for the remainder of the Term.

24. INSURANCE

- 24.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover set out in Schedule 7 (the **Required Insurances**) in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.
- 24.2 The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.
- 24.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of five years following the expiration or earlier termination of the Contract.

25. FREEDOM OF INFORMATION

- 25.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOISA and the Environmental Information (Scotland) Regulations and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 25.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other

period as the Council may specify) of the Council requesting that Information;
and

- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOISA or regulation 5 of the Environmental Information (Scotland) Regulations.

25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOISA or the Environmental Information (Scotland) Regulations; and/or
- (b) is to be disclosed in response to a Request for Information.

25.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

25.5 The Service Provider acknowledges that the Council may, acting in accordance with the Code, be obliged under the FOISA or the Environmental Information (Scotland) Regulations to disclose Information:

- (a) without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 25.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

25.6 The Service Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

25.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

26. RECORDS MANAGEMENT

26.1 The Service Provider shall (i) manage all Public Records in its possession in accordance with the 2011 Act, the CEC Records Management Plan and the Arrangements; (ii) notwithstanding the terms of clause 26.9, provide to the Council on request copies of the Arrangements from time to time in force; and (iii) make such alterations to the Arrangements as the Council may from time to time require.

- 26.2 The Service Provider shall ensure that none of its actions in the provision of the Services to the Council cause the Council to be in breach of its obligations under the 2011 Act.
- 26.3 The Service Provider shall, at no cost, provide the Council with all reasonable assistance required in order for the Council to comply with the requirements of the 2011 Act in relation to any Public Records created and/or managed by the Service Provider in its provision of the Services.
- 26.4 The Service Provider shall ensure that its management of any Public Records it manages and/or creates in its provision of the Services is not the sole or principal reason for the Council receiving an action notice in terms of section 7 of the 2011 Act.
- 26.5 The Service Provider shall comply with the terms of the CEC Records Management Plan in relation to the destruction and retention of the relevant classes of Public Records that the Service Provider manages and/or creates in its provision of the Services, such classes being set out in the Arrangements.
- 26.6 On termination of this Contract for whatever reason, the Public Records held by the Service Provider which are to be delivered to the Council in terms of the Arrangements shall be delivered to the Council forthwith, and shall be included with the data and other material belonging to the Council to be transferred in terms of clause 35.2 below.
- 26.7 The Service Provider acknowledges that all records created and/or managed by the Service Provider in its provision of the Services where such Services are required by statute shall be deemed to be Public Records.
- 26.8 Where the terms of the CEC Records Management Plan and the Arrangements conflict, the CEC Records Management Plan shall take precedence.
- 26.9 The Service Provider shall, on request, provide to the Council such documentation in relation to the Arrangements from time to time in force as are reasonably required by the Council in reference to its obligations under the 2011 Act.
- 26.10 The Council may require the transfer of Public Records from the Service Provider to the Council during the term of the Contract where such Public Records are no longer required for the provision of the Services under the Contract (whether such Public Records are so required shall be determined by the Council at its sole discretion, acting reasonably), and the Service Provider shall provide such Public Records forthwith at no cost to the Council.

27. DATA PROTECTION

- 27.1 Each party warrants to the other that it shall comply with all the requirements of the Data Protection Legislation.

27.2 The parties agree that the provisions of Schedule [10], Schedule [11] [and Schedule 12] shall apply in relation to the parties' data protection obligations under this Contract.

28. CONFIDENTIALITY

28.1 Subject to clause 28.2 and Clause 25, the parties shall keep confidential all Confidential Information of the other party and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any of the other party's Confidential Information.

28.2 Clause 28.1 shall not apply to any disclosure of information:

- (a) required by Regulatory Body or any Applicable Law, provided that clause 25.1 shall apply to any disclosures required under the FOISA or the Environment Information (Scotland) Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 28.1;
- (d) by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 20.3;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this Contract and in respect of which the Service Provider has given its prior written consent to disclosure.

28.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

29. AUDIT

29.1 During the Term and for a period of five years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all suppliers (including Sub-Contractors) of the Services including at the level of detail agreed in the Pricing Schedule;

- (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
 - (c) to review the Service Provider's compliance with Data Protection Legislation and the FOISA in accordance with clause 277 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Council's accounts;
 - (g) to carry out an examination of the economy, efficiency and effectiveness with which the Council has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Contract.
- 29.2 Except where an audit is imposed on the Council by a Regulatory Body, or where the Council, acting reasonably, believes that the Service Provider is in default or breach of this Contract, the Council may not conduct an audit under this clause 29 more than twice in any calendar year.
- 29.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 29.4 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council and any Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Service Provider's Personnel.
- 29.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a Regulatory Body's, intention to conduct an audit.
- 29.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Service Provider in which case the Service Provider shall

reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

29.7 If an audit identifies that:

- (a) the Service Provider has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Service Provider in relation to invoicing within 30 days.

30. INTELLECTUAL PROPERTY

30.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

- (a) in the Deliverables; or
- (b) in the course of performing the Services; or
- (c) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

30.2 The Service Provider hereby grants to the Council a perpetual, irrevocable, transferable, sub-licensable, royalty free licence to all Intellectual Property owned by or licensed to the Service Provider to the extent necessary or desirable for the use and exploitation of the Intellectual Property referred to in clause 30.1.

30.3 The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the use, supply or availability of the Services or Deliverables, or by the use of the Intellectual Property referred to in clauses 30.1 or 30.2, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

30.4 The Service Provider shall do all such acts as the Council requires to give the Council the benefit of this clause 30.

TERMINATION

31. TERMINATION FOR BREACH

31.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this Contract under this clause 31.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- (b) if the Service Provider is in breach of any of **clause 15 (Staff vetting)**, clause 25 (Freedom of Information), clause 277 (Data Protection), clause 288 (Confidentiality), clause 30 (Intellectual Property), clause 34 (Prevention of corruption) or clause 37 (Equalities and Equal Opportunities);
- (c) if a Consistent Failure has occurred;
- (d) if a Catastrophic Failure has occurred;
- (e) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of Control of the Service Provider to which the Council reasonably objects;
- (g) if any act or omission by the Service Provider or any Sub-contractor causes, or in the Council's reasonable opinion, is likely to cause adverse publicity or damage to the reputation of the Council;
- (h) where the Service Provider is an individual, if a petition is presented for the Service Provider's bankruptcy or the sequestration of the Service Provider's estate or a criminal bankruptcy order is made against the Service Provider, or the Service Provider is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Service Provider's affairs;
- (i) where the Service Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (h) or (j) of this clause occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company;
- (j) where the Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed

by an amalgamation or reconstruction) or the court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge;

- (k) the Service Provider commits any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commits any breach of the Data Protection Legislation by unlawfully processing personal data in connection with any blacklisting activities;
- (l) this Contract has been subject to a Substantial Modification;
- (m) the Service Provider was, on the date of commencement of this Contract, in one of the situations referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015; or
- (n) this Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the treaties (as defined in the Public Contracts (Scotland) Regulations 2015) and Directive 2014/24/EU that has been declared by the Court of Justice in a procedure under Article 258 of the treaty on the Functioning of the European Union.

31.2 The Council may also terminate this Contract in accordance with the provisions of clause 31, clause 32 or clause 34.

31.3 If this Contract is terminated by the Council for cause (including any insolvency or breach of this Contract by the Service Provider) such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

31.4 The Service Provider may terminate this Contract in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this Contract shall be deemed to have been withdrawn.

32. TERMINATION ON NOTICE

32.1 The Council may terminate this Contract at any time by giving [NUMBER] months' written notice to the Service Provider.

33. FORCE MAJEURE

33.1 Subject to the remaining provisions of this clause 33, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.

- 33.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 33.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 33.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 33.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
- 33.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 33.7 The Council may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.

34. PREVENTION OF CORRUPTION

- 34.1 The Service Provider:
- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this Contract commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the

Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

34.2 The Service Provider shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 34 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

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

34.4 If any breach of clause 34.1 is suspected or known, the Service Provider must notify the Council immediately.

34.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 34.1, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for five years following the expiry or termination of this Contract.

34.6 The Council may terminate this Contract by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 34.1. In determining whether to exercise the right of termination under this clause 34.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Council; or,
- (b) with the actual knowledge;

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

- (c) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

34.7 Any notice of termination under clause 34.6 must specify:

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

34.8 Despite clause 20 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 34.4; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

34.9 Any termination under clause 34.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

35. CONSEQUENCES OF TERMINATION

35.1 On the expiry of the Term or if this Contract is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Service Provider.

35.2 On termination of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Service Provider's Chief Executive Officer shall certify full compliance with this clause.

35.3 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 23 (Limitation of Liability), clause 24 (Insurance), clause 25.5 (Freedom of Information), clause 26 (Records Management), clause 27 (Data Protection), clause 29.9 (Audit), clause 30 (Intellectual Property), clause 31 (Termination for Breach) and this clause 35 (Consequences of termination) shall survive termination or expiry of this Contract.

GENERAL PROVISIONS

36. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

37. EQUALITIES AND EQUAL OPPORTUNITIES

37.1 In providing the Services, the Service Provider shall comply with all equal opportunities obligations and the public sector equality duty and shall ensure compliance with the Council's written policies on such matters and with all Applicable Laws from time to time applicable in such regard.

37.2 The Service Provider shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of:

- (a) assessing the Service Provider's compliance with its obligations under this clause 37;
- (b) enabling the Council to review diversity in employment data such as total staff in post, applications for posts, appointments to post, annual gender pay audits, promotions, performance reviews, training, disciplinary matters, grievances, tribunal matters and all other relevant information required for the Council to comply with its public sector equality duty; and
- (c) enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Service Provider's approach to equalities, diversity and human rights.

37.3 In delivering and reviewing the Services the Service Provider shall:

- (a) comply with the Council's public sector equality duty and shall have regard to any guidance provided by Scottish Ministers for local authorities on the public sector equality duty (including assisting in or preparing reports in order to secure the Council's compliance with the public sector equality duty); and
- (b) comply with reasonable requests for information or data in respect of the Council's public sector equality duty including where the Council undertakes an equalities impact assessment.

37.4 The Service Provider shall deliver the Services in a non-discriminatory manner that ensures fairness and equality to all users of the Services. The Service Provider recognises that the Council has a responsibility to monitor the extent to which the provision of the Services extends to groups who are at risk of social exclusion. The Service Provider agrees, where appropriate and practicable, to provide information to the Council in relation to employment and use of the Services by the following criteria:

- (a) age;

- (b) sex;
- (c) sexual orientation;
- (d) disability;
- (e) religion or belief;
- (f) race;
- (g) marriage and civil partnership;
- (h) pregnancy and maternity and
- (i) gender reassignment.

37.5 The Service Provider shall not discriminate, whether directly or indirectly and whether by way of victimisation or harassment, against any person on grounds of age, sex, sexual orientation, disability, religion or belief, race, marriage and civil partnership; pregnancy and maternity and gender reassignment contrary to the Equality Act 2010.

37.6 The Service Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under the legislation contained in the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of this Contract being in contravention of the Equality Act 2010, the Service Provider shall free of charge:

- (a) provide any information requested in the timescale allotted;
- (b) attend any meetings as required and permit the Service Provider's Personnel affected to attend;
- (c) promptly allow access to and investigation of any document or data deemed to be relevant;
- (d) allow itself and any Service Provider to appear as witness in any ensuing proceedings and
- (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Service Provider, its agents or sub-contractors, or the staff of the Service Provider, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment of the Council may have been ordered or required to pay to a third party.

37.7 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010, the

Service Provider may be subject to the requirement to complete a questionnaire and/or provide information to the Council's officers on the context and quality of the Service Provider's equalities and diversity policies and practice. Poor practice in regard may result in the Council issuing a mind to comply letter describing the nature of the improvement required and associated timescales.

- 37.8 In the event that the Service Provider enters into any subcontract in connection with this Contract, it shall impose obligations on its sub-contractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this Condition.

38. WAIVER

- 38.1 No failure or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Service Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this Contract.

39. CUMULATION OF REMEDIES

- 39.1 Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy provided for in this Contract or existing in law.

40. SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Council and the Service Provider shall immediately commence good faith negotiations to remedy that invalidity.

41. PARTNERSHIP OR AGENCY

Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

42. PUBLICITY

The Service Provider shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council.

43. NOTICES

43.1 Any notice, demand or communication in connection with this Contract shall be in writing, marked for the attention of the Director of Corporate Resources (in the case of the Council) or the Finance Director (in the case of the Service Provider) and delivered personally or sent by pre-paid first class post to the recipient's address as set out in the Contract Acceptance Letter or to any other address which the recipient has notified in writing to the sender prior to despatch.

43.2 The notice, demand or communication is deemed given:

- (a) if delivered personally, at the time of delivery to the address provided for in this Contract; or
- (b) if sent by pre-paid first class post, on the second Working Day after posting it;

provided that, if it is delivered personally on a day which is not a Working Day or after 4pm on any Working Day, it shall instead be deemed to have been given or made on the next Working Day.

44. ENTIRE AGREEMENT

The ITT, the Contract Acceptance Letter, these terms and conditions and the Schedules to these terms and conditions, the Specification, the Pricing Schedule and the Service Provider's Tender (and any clarifications to the Service Provider's tender) and any document referred to in the Contract Acceptance Letter, these terms and conditions or the Schedules to these terms and conditions contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

45. GOVERNING LAW AND JURISDICTION

45.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with Scots Law and subject to the exclusive jurisdiction of the Scottish Courts.

Schedule 1 Definitions and interpretation

This is the Schedule 1 referred to in the foregoing Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in Schedule 1 apply in this Contract.

2011 Act: the Public Records (Scotland) Act 2011.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in the Specification) or otherwise as part of the documentation issued with the ITT.

Applicable Laws: any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

Arrangements: the Service Provider's approach to the management of Public Records;

Associated Company: any entity which directly or indirectly Controls, is Controlled by or is under direct or indirect common Control with the Service Provider from time to time.

Authorised Representatives: the persons respectively designated as such by the Council and the Service Provider, the first such persons being set out in Schedule 2.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Plan: a plan which sets out the procedures to be adopted by the Service Provider in the event of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event), the Business Continuity Plan at the Commencement Date being set out in the Service Provider's Tender.

Catastrophic Failure:

- (a) a failure by the Service Provider for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Disaster; or
- (b) any action by the Service Provider, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council; or

- (c) Any other matter referred to in the Contract Acceptance Letter or the ITT as a catastrophic failure.

CEC Records Management Plan: the Council's records management plan in terms of the 2011 Act.

Change: any change to this Contract including to any of the Services.

Change Control Procedure: the procedure for changing this Contract, as set out in Schedule 3.

Charges: the charges which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of the Pricing Schedule.

Code: the Scottish Ministers' Code of Practice on the Discharge of the Functions of Public Authorities under the Freedom of Information (Scotland) Act 2002.

Commencement Date: the date set out in the Contract Acceptance Letter, notwithstanding the date or dates of execution of the Contract Acceptance Letter.

Commercially Sensitive Information: the information listed in the Service Provider's Tender comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss.

Confidential Information: all confidential information (however recorded, preserved or disclosed) disclosed by a party to the other including the business, affairs, customers, clients, suppliers, plans or trade secrets of the disclosing party.

Consistent Failure: shall have the meaning set out in the Specification or otherwise as part of the documentation issued with the ITT.

Contract: the agreement between the Council and the Service Provider consisting of the documents referred to in Clause 43.

Contract Acceptance Letter: the letter issued by the Council to the Service Provider in respect of the Services.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Control: means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly.

Council: means the City of Edinburgh Council, a local Council constituted under the Local Government etc. (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council for use in providing the Services as identified in Schedule 6.

Council's Premises: the premises identified in Schedule 6 and which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this Contract.

Data Protection Legislation: is as defined in Schedule [10]

Default Notice: is defined in clause 5.2.

Deliverable: any item, document, product, material and deliverable in any form (including computer programs, data, reports and specifications, in each case including drafts) arising from or associated with any of the Services.

Disaster: an event defined as a disaster in the Business Continuity Plan.

Dispute Resolution Procedure: the procedure set out in clause 20.

Environmental Information (Scotland) Regulations: the Environmental Information (Scotland) Regulations 2004 (SI 2004/520) together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan for exit provided in the Service Provider's Tender.

Extension Period: has the meaning in clause 3.1.

FOISA: the Freedom of Information (Scotland) Act 2002, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding, any consequences of the UK leaving the EU, any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Information: has the meaning given under section 73 of FOISA.

Initial Term: the period commencing on the Commencement Date and ending on the day set out in the Contract Acceptance Letter, both dates inclusive.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing

methods and procedures and advertising literature, including the "look and feel" of any websites.

ITT: the invitation to tender, request for quote, instructions to tenderers and other instructions and documentation issued by the Council in respect of the Services and referred to in the Contract Acceptance Letter or issued by the Council under the contract reference in the Contract Acceptance Letter and any clarifications and qualifications issued by the Council.

Key Personnel: those personnel identified in Schedule 2 or in the ITT or Service Provider's Tender for the roles attributed to such personnel, as modified pursuant to clause 13.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 17 and Schedule 2 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents referred to in the Specification or the Contract Acceptance Letter.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Pricing Schedule; the pricing schedule submitted as part of the Service Provider's Tender (as amended by any clarifications to the Service Provider's Tender referred to in the Contract Acceptance Letter).

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Council.

Public Records: shall have the meaning prescribed to it in section 3 of the 2011 Act.

Purchase Order; the order issued by the Council to the Service Provider for goods or services to be provided under this Contract.

Purchase Order Number: the unique number allocated to the order for goods or services to be provided under this Contract issued to the Service Provider by the Council.

Regulated Work: in relation to children shall have the same meaning as set out in Part 1 of Schedule 2 to the Protection of Vulnerable Groups (Scotland) Act 2007 and in relation to vulnerable adults shall have the same meaning as set out in Part 1 of Schedule 3 to the Protection of Vulnerable Groups (Scotland) Act 2007.

Regulatory Body: those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and "**Regulatory Body**" shall be construed accordingly.

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

Remediation Notice: a notice served by the Council in accordance with clause 31.1(a).

Replacement Services: any services that are identical or substantially similar to 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 Service Provider.

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Council from time to time.

Request for Information: a request for information under the FOISA or the Environmental Information (Scotland) Regulations.

Service Credits: the sums attributable to a Service Failure as specified in the Pricing Schedule or otherwise as part of the documentation issued with the ITT.

Service Failure: a failure by the Service Provider to provide the Services in accordance with any individual Service Level measured on a monthly basis.

Service Levels: the service levels to which the Services are to be provided, as set out in the Specification or otherwise as part of the documentation issued with the ITT.

Service Provider Party: the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender: the tender or other response submitted by the Service Provider in response to the ITT.

Services: the services to be delivered by or on behalf of the Service Provider under this Contract, as more particularly described in the Specification and any additional services agreed between the Service Provider and the Council under the Change Control Procedure.

Special Conditions: any special conditions set out in the Contract Acceptance Letter.

Specification: the specification provided as part of the ITT and any additions to that specification as are agreed in writing between the Council and the Service Provider for additional services or deliverables.

Staff Vetting Procedure: the Council's procedures and policies for the vetting of personnel including (without limitation) those personnel whose role will involve Regulated Work or the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures.

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Substantial Modification: a substantial modification as defined in regulation 72 of the Public Contracts (Scotland) Regulations 2015.

Term: the period commencing on the Commencement Date and ending on the expiry of the Initial Term or any Extension Period or the earlier termination of this Contract in accordance with its terms.

Termination Date: the date of expiry or termination of this Contract.

Termination Payment Default: means that the Service Provider has provided the Council with a Valid Invoice and undisputed Charges under that Valid Invoice have been overdue for payment for a period of 60 days or more.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (CRATUPEAR) and as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Valid Invoice: a properly constituted invoice on the Service Provider's headed paper or as otherwise required by the Council (which may include e-invoicing) addressed to the City of Edinburgh Council, containing a Purchase Order Number and where the Service Provider is registered for VAT and the supply is not exempt from VAT a VAT registration number and full breakdown of costs Net, VAT and Gross.

Working Day: any day other than a Saturday or Sunday on which the Scottish clearing banks are open for business.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignee.
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of these terms and conditions and any reference to this Contract includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied, assigned or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.10 References to clauses and schedules are to the clauses and schedules of these terms and conditions; references to paragraphs are to paragraphs of the relevant schedule.
- 1.11 The words **include** or **including** are to be construed as meaning without limitation.

Schedule 2 Contract management

This is the Schedule 2 referred to in the foregoing Terms and Conditions

1. AUTHORISED REPRESENTATIVES

1.1 The Council's initial Authorised Representative: [INSERT DETAILS]

1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

2. KEY PERSONNEL

[INSERT DETAILS]

3. MEETINGS

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

4. REPORTS

4.1 Type (including financial)

4.2 Contents

4.3 Frequency

4.4 Circulation list

Schedule 3 Change Control

This is the Schedule 3 referred to in the foregoing Terms and Conditions

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Service Provider sees a need to change this Contract, the Council may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 3.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Service Provider shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 3, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the Council and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this Contract by the Council; or
 - (c) a recommendation to change this Contract by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Council, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this Contract by the Service Provider shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;

- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Service Provider shall constitute an amendment to this Contract. Any Change Control Note shall be materially in the form set out below.

CONTRACT CHANGE NOTE (CCN)

SEQUENTIAL NUMBER: [to be allocated by the Council]

SUPPLIER NAME:

CONTRACT TITLE/REFERENCE:

ORIGINATOR: [for the [Council/Service Provider]

DATE CHANGE FIRST PROPOSED:

NUMBER OF PAGES ATTACHED:

WHEREAS the Service Provider and the Council entered into a Contract for the provision of the above mentioned Service dated [] and now wish to amend that Contract;

Reason for proposed change:
[Party proposing change to complete]

Full details of proposed change:
[Party proposing change to complete]

Details of likely impact (if any) of proposed change on other aspects of the Contract:
[Party proposing change to complete]

IT IS AGREED as follows:

1. With effect from [date] the Contract shall be amended as set out below:
[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc.]
2. Except as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

Signed for and on behalf of the Service Provider		Signed for and on behalf of City of Edinburgh Council (Contracting Authority)	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

Schedule 4 Benchmarking

This is the Schedule 4 referred to in the foregoing Terms and Conditions

1. INTERPRETATION

The definitions in this paragraph apply in this schedule.

Benchmarked Services: the Services taken as a whole.

Benchmarker: the independent third party appointed by the Council following discussions with the Service Provider under paragraph 4 of this Schedule 4.

Comparison Sample: a sample of organisations providing Equivalent Services identified in accordance with paragraph 5.1(d) of this Schedule 4.

Equivalent Services: services that are identical, or similar in all material respects, to the Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied to a customer similar in size and nature to the Council over a similar period.

Median Price: in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. In the event that there are an even number of organisations in the Comparison Sample then the Median Price will be the arithmetic mean of the middle two prices.

2. BENCHMARK REVIEW

2.1 The Council may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this Schedule 4. The first Benchmark Review may not take place until at least [18] months after the Commencement Date and each subsequent Benchmark Review must be at least [12] months after the previous one.

2.2 Subject to paragraph 2.4, if any Benchmark Review determines that the Charges do not represent Good Value (as defined in paragraph 3.2), then the Service Provider shall, in accordance with Schedule 3 (Change Control) and within [three months] of completion of the Benchmark Review, make a proposal for a changes to the Services, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 6.1(c), under which there will be a new Initial Term, and modifications may be made to the Services and the Service Levels.

2.3 On receipt of the proposal from the Service Provider under paragraph 2.2 the Council shall have the option to:

- (a) accept the new proposal in which case the Parties shall record the change in accordance with Schedule 3; or
- (b) reject the proposal and elect to continue to receive the Services on the existing basis; or

- (c) reject the proposal and terminate this Contract on three months' notice in writing to the Service Provider without cost other than the Charges up to the date of such termination.
- 2.4 If the Service Provider reasonably believes the Benchmarker has not complied with the provisions of this Schedule 4 in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Service Provider may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.
- 3. **PURPOSE AND SCOPE OF BENCHMARK REVIEW**
- 3.1 The purpose of the Benchmark Review shall be to establish whether the Services as a whole are **Good Value**.
- 3.2 The Benchmarked Services as a whole shall be Good Value if the Fees attributable to the Services are, having regard to the Service Levels, less than or equal to [10]% more than the Median Price for Equivalent Services provided by a Comparison Sample.
- 4. **APPOINTMENT OF BENCHMARKER**
- 4.1 Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. [If the parties cannot agree on the independent third party within [NUMBER] days of receipt by the Service Provider of the Council's written request, then the Benchmarker shall be [INSERT CONSULTANTS].]
- 4.2 The Council has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.
- 4.3 Each party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of the Benchmarker shall be shared equally by the parties.
- 4.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
 - (a) benchmarking shall be carried out in an independent and objective manner;
 - (b) the Benchmarker shall be jointly instructed by the parties;
 - (c) benchmarking shall be truly comparative in respect of the technology, services and service levels;
 - (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
 - (e) immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.
- 4.5 The Service Provider shall not be deemed to be in breach for any failure to perform any obligation under this Contract (nor will it be liable for Service Credits) where such

failure results from any disruption to the Service Provider's performance as a result of disruption caused by the Benchmarker.

5. BENCHMARKING PROCESS

5.1 The Council's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within **[NUMBER]** days after the date of appointment of the Benchmarker. The plan shall include:

- (a) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
- (b) a description of the information that the Benchmarker requires each party to provide;
- (c) a description of the benchmarking methodology to be used; and
- (d) details of any organisations providing Equivalent Services which the Council proposes, having consulted with the Service Provider (and including any organisations providing Equivalent Services reasonably proposed by the Service Provider), are included within the Comparison Sample.

5.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:

- (a) the contractual and business environment under which the Equivalent Services are being provided;
- (b) any front-end investment and development costs;
- (c) the Service Provider's risk profile, including the financial, performance or liability risk (including any limitation or exclusion or limitation of the Service Provider's liability under this Contract) associated with the provision of the Equivalent Services as a whole; and
- (d) any other factors reasonably identified by the Service Provider which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear non-competitive.

5.3 Each party shall give notice in writing to the Benchmarker and to the other party within **[NUMBER]** days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.

5.4 Where a party suggests amendments to the draft plan under paragraph 5.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 5.2 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the

Benchmarker shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within **[NUMBER]** days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.

- 5.5 Failure by a party to give notice under paragraph 5.3 shall be treated as approval of the draft plan by that party.
- 5.6 Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 5.7 The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 5.8 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 5.9 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Council and the Service Provider with full details of all data and methodologies employed at all stages of the Benchmark Review.

6. BENCHMARK REPORT

- 6.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:
 - (a) include a finding as to whether or not the Benchmarked Services as a whole are Good Value;
 - (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
 - (c) if the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, that would be required to make the Benchmarked Services Good Value.
- 6.2 If the Benchmark Report states that the Services, Charges or Service Levels (or any part of them) that are benchmarked are not Good Value then paragraph 2.2 shall apply.

Schedule 5 TUPE

This is the Schedule 5 referred to in the foregoing Terms and Conditions

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Admission Agreement: the agreement substantially in the form set out in Part 1 of this Schedule 5 (or as otherwise provided by the Council if not set out in Part 1 of this Schedule 5) to be entered into in accordance with regulation 5 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

Appropriate Pension Provision: in respect of:

- (a) Eligible Employees, either:
 - (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, immediately prior to the Relevant Transfer; or
 - (ii) an occupational pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members immediately prior to the Relevant Transfer.

Bond: an indemnity or bond to be executed in the Council's standard form to the value referred to in the ITT or Contract Acceptance Letter.

Council's Actuary: the actuary or firm of actuaries appointed by the Council for the purposes of paragraph 6 of this Schedule 5.

Effective Date: the date or dates on which the Services (or any part of the Services) transfer from the Council or any Third Party Employer to the Service Provider or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-contractor.

Eligible Employees: the Transferring Employees and/or employees of Third Party Employers who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or 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; and

- (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 Service Provider arising out of the employee's employment with the transferor; and
- (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.

Employment Liabilities: all claims, including claims for redundancy payments, 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, claims in respect of pension rights, compensation for less favourable treatment of part-time workers, and any claims (whether in delict, 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.

LGPS: the Local Government Pension Scheme (Scotland).

LGPS Regulations: the regulations governing the LGPS, including:

- (a) the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228); and
 - (b) the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230); and
 - (c) the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (SSI 2008/229)
- (all as amended or replaced from time to time).

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

Service Provider's Final Staff List: the list of all the Service Provider's and Sub-Contractors' personnel employed or engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractors' personnel

employed or 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.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-contractor to the Council or any Replacement Service Provider.

Staffing Information: in relation to all persons detailed on the Service Provider'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.

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Service Provider or Sub-contractor by virtue of the application of TUPE.

Third Party Employer: a service provider engaged by the Council to provide any of the Services to the Council and whose employees will transfer to the Service Provider on the Effective Date.

Transferring Employees: employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Service Provider or Sub-Contractor by virtue of the application of TUPE.

2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER

- 2.1 The Council and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Service Provider or Sub-contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. Such a Relevant Transfer shall occur on the relevant Effective Date.
- 2.2 The Council shall be responsible for all remuneration, benefits, entitlements and outgoings payable in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date.
- 2.3 The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against Employment Liabilities arising from or in connection with any claim by or on behalf of any actual or alleged Transferring Employee or Third Party Employee in respect of their actual or claimed employment or engagement, and/or the termination of such employment or engagement, on or after the Effective Date, and in respect of:
 - (a) any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider taking on or after the Effective Date;

- (b) any such person informing the Council or any Third Party Employer they object to being employed by the Service Provider or Sub-Contractor; and
 - (c) any change in identity of the Transferring Employees' or Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Service Provider or Sub-Contractor may consider taking on or after the Effective Date.
- 2.4 The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor 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 and otherwise from and including the Effective Date.
- 2.5 The Service Provider acknowledges and accepts that TUPE may apply so that the contracts of employments of the Transferring Employees and any Third Party Employees, any collective agreement with any recognised trade union in respect of the Transferring Employees automatically transfer to the Service Provider or any Sub-Contractor on the Transfer Date (subject to the right of any Transferring Employees to object to transfer).
- 2.6 The Service Provider shall immediately on request by the Council and/or any Third Party Employer provide details of any measures that the Service Provider or any Sub-Contractor of the Service Provider envisages it will take in relation to any Transferring Employees and any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider shall 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 or any obligation to inform and/or consult under TUPE.

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 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 Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the

Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information requested, including information as to the application of TUPE to the employees. The Service Provider shall notify the Council of any material changes to this information as and when they occur. The Service Provider agrees that, in preparing its Provisional Staff List it will consult with and take into account any information provided by the Council in respect of the designation of such staff.

3.3 From the earliest of (i) the date on which notice of early termination of this Contract (or part of the Services under this Contract) has been given; and (ii) the date which is 12 months prior to the end of the Term, the Service Provider will not (and will procure that its Sub-Contractors will not), without the prior written consent of the Council:

- (a) assign any person to the provision of the Services (or the relevant part) which is the subject of a Subsequent Transfer who is not listed in the Service Provider's Provisional Staff List;
- (b) increase the total number of employees on the Service Provider's Provisional Staff List, save for fulfilling assignments and projects previously scheduled and agreed;
- (c) replace or dismiss or give notice to dismiss any person listed on the Service Provider's Provisional Staff List or deploy any other person to perform the Services (or the relevant part), save for fulfilling assignments and projects previously scheduled and agreed and/or replacing voluntary resignations or staff terminated by due disciplinary process to satisfy previously agreed work streams, provided that any replacement is employed or engaged on the same terms and conditions as the person he/she replaces;
- (d) make, propose or permit any material changes to terms and conditions of those listed on the Service Provider's Provisional Staff List or introduce any new contractual or customary practices concerning lump sum or termination payments to any such person or group of persons;
- (e) increase the proportion of working time spent on the Services (or the relevant part) by any person listed on the Service Provider's Provisional Staff List.

3.4 At least 28 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.

3.5 The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

- 3.6 The Service Provider warrants to the Council and the Replacement Service Provider that the Service Provider's Provisional Staff List, the Service 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 Service Provider's Final Staff List.
- 3.7 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to full or partial 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 Service Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.9 Within seven (7) Working Days after a Subsequent transfer, the Service Provider will provide to the Council, or relevant Replacement Service Provider, in respect of each person on the Service Provider's Final Staff List (and/or any other person whose employment transfers or is alleged to transfer to the Council or Replacement Service Provider: the most recent month's copy payslip data, details of cumulative pay for tax and pension purposes, details of cumulative tax paid, tax code, details of any voluntary deductions from pay, and bank/building society account details for payroll purposes.
- 3.10 The Service Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Service Provider against all Employment Liabilities relating to any claim by or on behalf of any person listed on the Service Provider's Final List and/or any other person whose employment or engagement transfers or is claimed to transfer to the Council and/or a Replacement Service Provider (or whose employment is claimed would have so transferred had he not resigned) arising from or connected with
- (a) the actual or claimed employment or engagement of such person or the actual or claimed termination of such employment or engagement prior to the Service Transfer Date
 - (b) any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation under TUPE, 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 and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 If any person not referred to in the Service Provider's Final Staff List claims or alleges that their employment has transferred to the Council or any Replacement Service Provider under TUPE or otherwise as a result of a Subsequent Transfer, or would have so transferred had he not resigned, then the Council or Replacement Service Provider shall be entitled to terminate such actual or alleged employment and, provided that

such termination takes effect within 2 months of such allegation, the Service Provider shall indemnify the Council and/or the Replacement Service Provider (as appropriate) in respect of all Employment Liabilities relating to such person's employment, engagement and/or its termination.

- 3.12 The Service Provider shall, if so requested by the Council, enter into an appropriate deed of indemnity with any Replacement Service Provider on the same terms as appear in paragraphs 3.9 and 3.11 and shall indemnify the Council in respect of any liabilities arising from a failure to do so, including as a result of any liabilities which arise under any back-to-back indemnity provided by the Council to any Replacement Service Provider.
- 3.13 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.
- 3.14 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 Service Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are provided with Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this Contract.

5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

- 5.1 Where the Service Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Service Provider shall or shall procure that it and/or each relevant Sub-Contractor 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. The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate or Bond value in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.
- 5.2 The Service Provider shall indemnify and keep indemnified the Council and/or any Replacement Service Provider and, in each case, their service providers, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Service Provider or Sub-Contractor 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 Service Provider shall and shall procure that it and any Sub-Contractor 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 Bond required in accordance with the LGPS Regulations and Admission Agreement. The format for the Bond shall be the Council's format.
- 5.4 The Service Provider shall and shall procure that any relevant Sub-Contractor 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 Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

6. SERVICE PROVIDER'S PENSION SCHEME

- 6.1 Where the Service Provider or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS, the Service Provider shall or shall procure that any relevant Sub-Contractor 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 (the **Service Provider's Scheme**). The Service Provider's 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 LGPS.

and the Service Provider shall produce evidence of compliance with this paragraph 6.1 to the Council prior to the date of the Relevant Transfer.

- 6.2 The Service Provider shall and shall procure that any relevant Sub-Contractor shall allow Eligible Employees to transfer their accrued benefits under the LGPS to the Service Provider's Scheme on a fully protected basis
- 6.3 The Council's Actuary shall determine the terms for any such bulk transfers from the LGPS to the Service Provider's Scheme following the Effective Date, the terms of which will be based substantially on the actuarial method and assumptions referred to in the ITT or Contract Acceptance Letter. The Service Provider shall procure and shall procure that any relevant Sub-Contractor shall procure that the benefits to be awarded in the Service Provider's Scheme in respect of such a bulk transfer shall be of broadly equivalent value to the benefits being given up in the LGPS and full (or day-for-day) service credits will be awarded in the Service Provider's Scheme to any Eligible Employee who consents to such a bulk transfer.
- 6.4 Upon a Subsequent Transfer, to which paragraph 3 of this Schedule 5 applies, the Service Provider shall procure that a bulk transfer value from the Service Provider's Scheme to the LGPS (or other pension scheme provided by the Replacement Service

Provider for transferring Eligible Employees) is offered to the Eligible Employees, in respect of their accrued benefits in the Service Provider's Scheme. Such bulk transfer value shall be calculated as a past service reserve transfer value on the basis of such actuarial method and assumptions as the appointed scheme actuary to the Service Provider's Scheme shall determine and agree with the Council's Actuary to be reasonable, but in any event, being no less favourable to the Eligible Employees, in the opinion of the Council's Actuary, than the terms of the initial bulk transfer from the LGPS to the Service Provider's Scheme.

7. PENSIONS FOR NEW JOINERS TO THE WORKFORCE

7.1 The Service Provider shall and shall procure that any relevant Sub-Contractor shall offer any employees engaged in the provision of the Services who are not Eligible Employees with access to one of the following pension arrangements:

- (a) access to the LGPS under the Admission Agreement or to the Service Provider's Scheme (as applicable); or
- (b) membership of a contracted-out final salary based defined benefit pension scheme; or
- (c) a defined contribution Registered Pension Scheme (having the meaning given to that term by Section 150(2) of the Finance Act 2004) in respect of which the employer must match employee contributions up to at least 6%.

8. INDEMNITY

8.1 The Service Provider shall indemnify, and keep indemnified in full the Council against all and any costs, expenses, liabilities, damages and losses (including legal costs or expenses) of whatever nature (including for this purpose in relation to any court, Employment Tribunal or Pensions Ombudsman proceedings, order judgement, award or direction awarded) which the Council may sustain, incur or pay arising out of or in connection with the Service Provider's (or any relevant Sub-Contractor's) provision of, or any failure to provide, any retirement or death benefits prior to the Service Transfer Date, whether on having reached a particular age or on the onset of serious ill-health or incapacity or otherwise, including, without prejudice to the generality of the foregoing, any liability attributable to compliance with the requirements of TUPE, as interpreted by the European Court of Justice cases of Beckmann v Dynamco Whicheloe Macfarlane Limited and Martin & Others v South Bank University.

Schedule 6 Council's Premises and Assets

This is the Schedule 6 referred to in the foregoing Terms and Conditions

[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR LICENCES TO BE INSERTED AND ANY COUNCIL ASSETS]

Schedule 7 Insurance

This is the Schedule 7 referred to in the foregoing Terms and Conditions

The following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 or such higher amount as may be in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) [product liability insurance with a limit of indemnity of not less than £ **[INSERT AMOUNT]** in relation to any one claim or series of claims.]

Schedule 8 Sustainability

This is the Schedule 8 referred to in the foregoing Terms and Conditions

1. SUSTAINABILITY

1.1 The Service Provider must assist the Council in achieving its Sustainable Edinburgh 2020 commitments by taking account of the Council's Sustainable Procurement Policy which requires the Council through its procurement and management of suppliers, inter alia, to

- (a) Deliver community benefits;
- (b) Minimise (carbon based) energy use;
- (c) Minimise water use;
- (d) Minimise the use of raw materials;
- (e) Minimise waste;
- (f) Use recycled packaging, where practicable, and minimise, reuse and recycle packaging;
- (g) Minimise the release of greenhouse gases which contribute to climate change;
- (h) Prepare for and adapt to the anticipated impacts of climate change so as to minimise the risk of disruption and the need to take remedial measures;
- (i) Minimise pollution to air, water and land;
- (j) Conserve and enhance biodiversity;
- (k) Avoid genetically modified food or food with genetically modified ingredients; and
- (l) Consider animal welfare, and wherever possible, avoid goods which have been developed using animal testing.

The Service Provider will achieve this by developing, implementing, maintaining and regularly reporting on a Sustainable Development Action Plan which delivers the sustainability requirements specified by the Council.

1.2 The Service Provider shall (and shall procure that the Service Provider's Personnel shall) operate and actively sustain a clear ethical sourcing policy, spanning the full supply chain, which does not knowingly support the trade in slavery, prostitution, arms, illegal drugs and tobacco nor suppliers who breach International Labour Organisation conventions.

2. SUSTAINABLE TIMBER

2.1 In respect of any services or supplies to the Council which require the provision or use of timber or timber products the Service Provider will procure such timber or timber products from legal and well managed forests which are certified under third party

certification schemes and comply with the criteria set out in “UK Government Timber Procurement Policy: Criteria for Evaluating Category A Evidence”.

- 2.2 The Service Provider shall provide on request by the Council such evidence that the timber source is sustainable as is set out in “UK Government Timber Procurement Policy: Framework for Evaluating Category B Evidence”.
- 2.3 The Service Provider will where practicable use recycled timber and products using recycled timber.
- 2.4 The Service Provider will complete and submit to the Council on request the Council’s Timber and Wood Products Monitoring Form along with the following documentary evidence that the timber and timber products have been procured sustainably: -
 - (a) suppliers Forestry Stewardship Council, the Programme for Endorsement of Forest Certification Scheme or equivalent certificates;
 - (b) delivery notes or invoices stating chain of custody numbers;
 - (c) details of the Service Providers onsite timber monitoring arrangements; and
 - (d) details of any action taken by the Service Provider to deal with non-compliance.

3. ROAD SAFETY

- 3.1 The Service Provider shall ensure that any vehicle larger than 7.5 tonnes unloaded weight used in the delivery of this Contract (1) bears prominent signage on its rear to warn cyclists of the dangers of passing the vehicle on the inside and (2) has Fresnel lenses fitted to the passenger window to improve 'nearside' driver visibility.
- 3.2 The Service Provider shall carry out a driving licence check with the DVLA for all drivers employed by it prior to the commencement of the Contract and shall carry out follow up checks on at least an annual basis for those with less than 6 points on their driving licence and at least quarterly checks for those with 6 or more points on their driving licence. The Service Provider shall not permit any driver disqualified from driving a vehicle to be used in the delivery of this Contract.
- 3.3 The Service Provider shall provide the Council with an updated Collision Report, reporting all collisions between its vehicles used in the delivery of this Contract and other road users, at the end of each quarter and within five (5) Working Days of a written request from the Council to evidence that it is monitoring and investigating collisions on an ongoing basis.

Schedule 9 Step-in

This is the Schedule 9 referred to in the foregoing Terms and Conditions

1. The Council may take action under this Schedule 9 in the following circumstances:
 - (a) any of the circumstances in any of clauses 31.1(a) to (m) (inclusive) of the foregoing terms and conditions occurs;
 - (b) where the Service Provider is not in breach of its obligations under this Contract but the Council considers that the circumstances constitute an emergency;
 - (c) where a Regulatory Body has advised the Council that the exercise by the Council of its rights under this clause is necessary;
 - (d) because a serious risk exists to the health or safety of persons, property or the environment; and/or
 - (e) to discharge a statutory duty.
2. Before the Council exercises its right of step-in under this Schedule 9 it shall permit the Service Provider the opportunity to demonstrate to the Council's reasonable satisfaction within twenty (20) Working Days that the Service Provider is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Council to take action.
3. If the Council is not satisfied with the Service Provider's demonstration pursuant to paragraph 2 above, the Council may:
 - (a) where the Council considers it expedient to do so, require the Service Provider by notice in writing to take those steps that the Council considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Council's right to step-in;
 - (b) appoint any person to work with the Service Provider in performing all or a part of the Services (including those provided by any Sub-contractor); or
 - (c) take the steps that the Council considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-contractor).
4. The Service Provider shall co-operate fully and in good faith with the Council, or any other person appointed in respect of paragraph 3(b) above, and shall adopt any reasonable methodology in providing the Services recommended by the Council or that person.
5. If the Service Provider:
 - (a) fails to confirm within ten (10) Working Days of a notice served pursuant to paragraph 3(a) above that it is willing to comply with that notice; or

- (b) fails to work with a person appointed in accordance with paragraph 3(b) above; or
- (c) fails to take the steps notified to it by the Council pursuant to paragraph 3(c) above,

then the Council may take action under this Schedule 9 either through itself or with the assistance of third party contractors, provided that the Service Provider may require any third parties to comply with a confidentiality undertaking equivalent to clause 28 (Confidentiality) of the foregoing terms and conditions.

6. If the Council takes action pursuant to paragraph 5 above, the Council shall serve a notice ("Step-in Notice") on the Service Provider. The Step-in Notice shall set out the following:
 - (a) the action the Council wishes to take and in particular the Services it wishes to control;
 - (b) the reason for and the objective of taking the action;
 - (c) the date it wishes to commence the action;
 - (d) the time period which it believes will be necessary for the action;
 - (e) whether the Council will require access to the Service Provider's premises;
 - (f) to the extent practicable, the effect on the Service Provider and its obligations to provide the Services during the period the action is being taken.
7. Following service of a Step-in Notice, the Council shall:
 - (a) take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "Required Action");
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Service Provider;
 - (c) co-operate wherever reasonable with the Service Provider in order to enable the Service Provider to continue to provide any Services in relation to which the Council is not assuming control; and
 - (d) act reasonably in mitigating the cost that the Service Provider will incur as a result of the exercise of the Council's rights under this clause.
8. For so long as and to the extent that the Required Action is continuing, then:
 - (a) the Service Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

- (b) subject to paragraph 9 below, the Council shall pay to the Service Provider the Charges after the deduction of any applicable Service Credits and the Council's costs of taking the Required Action.

- 9. If the Required Action results in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Council not taken the Required Action, then the Service Provider shall be entitled to an agreed adjustment of the Charges, provided that the Service Provider can demonstrate to the reasonable satisfaction of the Council that the Required Action has led to the degradation.

- 10. Before ceasing to exercise its step in rights under this clause the Council shall deliver a written notice to the Service Provider ("Step-Out Notice"), specifying:
 - (a) the Required Action it has actually taken; and
 - (b) the date on which the Council plans to end the Required Action ("Step-Out Date") subject to the Council being satisfied with the Service Provider's ability to resume the provision of the Services and the Service Provider's plan developed in accordance with paragraph 11 below.

- 11. The Service Provider shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Council's approval a draft plan ("Step-Out Plan") relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

- 12. If the Council does not approve the draft Step-Out Plan, the Council shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Council for the Council's approval. The Council shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

- 13. The Service Provider shall bear its own costs in connection with any step-in by the Council under this Schedule 9.

Schedule 10 Data Protection Clauses

This is the Schedule 10 referred to in the foregoing Terms and Conditions

1. DEFINITIONS

1.1 The definitions in this paragraph apply in this schedule.

Data Controllers in Common: where two or more persons share a pool of personal data for which they determine the purpose and means of processing independently of each other;

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

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Applicable Law as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all Applicable Law about the processing of personal data and privacy;

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

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018;

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

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

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Parties: the parties to the Contract, and "Party" shall be construed appropriately;

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, [including those outlined in Schedule [x] (Security)] [**GUIDANCE – INSERT IF APPROPRIATE TO HAVE A SCHEDULE SETTING OUT SPECIFIC SECURITY MEASURES**];

Service Provider Personnel: means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under the Contract;

Sub-processor: any third Party appointed to process Personal Data on behalf of the Service Provider related to this Contract.

2. DATA PROTECTION

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Service Provider is the Data Processor, unless otherwise specified in Schedule 11. The only processing that the Service Provider is authorised to do is listed in Schedule 11 by the Council and may not be determined by the Service Provider.
- 2.2 The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 2.3 The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
- (a) process that Personal Data only in accordance with Schedule 11, unless the Service Provider is required to do otherwise by any Applicable Laws. If it is so required, the Service Provider shall promptly notify the Council before processing the Personal Data unless prohibited by any Applicable Laws;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;

- (c) ensure that:
 - i. the Service Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 11);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Service Provider's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by the Contract; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - i. the Council or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Service Provider 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 Council in meeting its obligations); and
 - iv. the Service Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Service Provider is required by any Applicable Laws to retain the Personal Data.

2.5 Subject to clause 2.6, the Contract shall notify the Council immediately if the Service Provider:

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

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Laws; or
 - (f) becomes aware of a Data Loss Event.
- 2.6 The Service Provider's obligation to notify under clause 2.5 shall include the provision of further information to the Council in phases, as details become available.
- 2.7 Taking into account the nature of the processing, the Service Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 2.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- (a) the Council determines that the processing is not occasional;
 - (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Service Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 2.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

- 2.11 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Service Provider must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 10 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 2.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor, and shall indemnify the Council in respect of any loss, damages or claims incurred by the Council as a result of any breach of the Data Protection Legislation or this Schedule 10 by, the Service Provider and / or any Sub-processor, except and to the extent that such liabilities have resulted directly from the Council's instructions.
- 2.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Service Provider amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.15 Where the Parties include two or more [Joint Controllers OR Data Controllers in Common] as identified in Schedule 11, those Parties shall enter into a [joint controller agreement OR data sharing agreement] based on the terms outlined in Schedule 12 in replacement of Clauses 2.1-2.14 for the Personal Data under [joint control OR to be shared between the Parties as Data Controllers in Common].

Schedule 11 Schedule of Processing, Personal Data and Data Subjects

This is the Schedule 11 referred to in the foregoing Terms and Conditions

[NB THIS SCHEDULE MUST BE COMPLETED ON A CONTRACT BY CONTRACT BASIS]

- i. The contact details of the Council’s Data Protection Officer are:
 Kevin Wilbraham,
 Information Governance Unit
 City of Edinburgh Council
 Waverley Court - 2:1
 4 East Market Street
 Edinburgh
 EH8 8BG
 Email: Information.compliance@edinburgh.gov.uk | Tel: 0131 469 6200
- ii. [The contact details of the Service Provider’s Data Protection Officer are: **[Insert Contact details]**] **[DELETE IF SP DOES NOT, AND IS NOT REQUIRED TO, HAVE A DPO]**
- iii. The Service Provider shall comply with any further written instructions with respect to processing by the Council.
- iv. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor in accordance with Clause 2.1.</p> <p>[GUIDANCE: YOU MAY NEED TO VARY THIS SECTION WHERE (IN CERTAIN CASES) THE COUNCIL AND SERVICE PROVIDER HAVE A DIFFERENT RELATIONSHIP. FOR EXAMPLE, WHERE THE PARTIES ARE JOINT CONTROLLER OR DATA CONTROLLERS IN COMMON OF SOME PERSONAL DATA:</p> <p><i>“Notwithstanding Clause 2.1 the Parties acknowledge that they are also [Joint Controllers/Data Controllers in Common] for the purposes of the Data Protection Legislation in respect of:</i></p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties, or to be shared between the parties for their own independent purposes]</p> <p><i>In respect of Personal Data [under Joint Control/to be shared between the Parties as Data Controllers in Common], Clause 2.1-2.15 in the preceding Schedule will not apply and the Parties agree to put in place a Joint Controller Agreement/Data</i></p>

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

Schedule 12 Schedule of Terms Relating to [Joint Controller/Data Controllers in Common]

This is the Schedule 12 referred to in the foregoing Terms and Conditions]

[GUIDANCE: INSERT ONLY WHERE JOINT CONTROLLER, OR DATA CONTROLLERS IN COMMON APPLIES IN SCHEDULE 11 – LEGAL CAN PROVIDE JOINT CONTROLLER/DATA SHARING TERMS]

[In this Schedule the Parties must outline each party's responsibilities for:

- *providing information to data subjects under [Article 13 and 14](#) of the GDPR.*
- *responding to data subject requests under [Articles 15-22](#) of the GDPR*
- *notifying the Information Commissioner (and data subjects) where necessary about data breaches*
- *maintaining records of processing under [Article 30](#) of the GDPR*
- *carrying out any required Data Protection Impact Assessment*
- *The agreement must include a statement as to who is the point of contact for data subjects.*

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clause 2.2-2.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

*Where there is a Joint Control/Data Controllers in Common relationship, but **no** controller to processor relationship under the contract, this completed Schedule 12 should be used instead of Clause 2.1-2.15 in Schedule 10.]*