

**The City of Edinburgh Council**

**Terms and Conditions for Services [Long Form]**

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The Contract

# Contractual documents

## The Contract between the Council and the Service Provider consists of (i) the ITT (which includes these Terms and Conditions and the Specification); (ii) the Service Provider’s Tender (including the Pricing Schedule and any clarifications to the Service Provider’s tender); and (iii) the Contract Acceptance Letter; and includes any documents referred to in the ITT and the Contract Acceptance Letter.

## 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:

### the Contract Acceptance Letter (including any special conditions); then

### the Terms and Conditions; then

### the Specification; then

### the Pricing Schedule; then

### the ITT (excluding the documents referred to at (b) and (c) above; then

### any clarifications to the Service Provider’s Tender; then

### the Service Provider’s Tender; then

### any other terms and conditions of contract issued to the Service Provider, unless specifically stated as varying these Terms and Conditions.

## The Schedules to these Terms and Conditions form part of the Terms and Conditions and shall have effect as if set out in full in the body of these Terms and Conditions and any reference to the Terms and Conditions and the Contract includes the Schedules.

Conditions Precedent, Commencement and duration

# Conditions Precedent

## It shall be a condition of the Contract that, the Service Provider shall deliver all of the items specified in the Contract Acceptance Letter (the **"Completion Deliverables"**). The rights and obligations of the Parties shall have no force or effect unless the Completion Deliverables have been properly executed (if required) and delivered to the Council in a form satisfactory to the Council. The parties acknowledge that if this condition has not been fulfilled any performance of the Contract by the Service Provider shall be at the risk of the Service Provider and the Council shall not be liable for and the Service Provider irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within 28 days of the Contract Acceptance Letter, the Council shall have the right to terminate the Contract by notice in writing to the Service Provider.

# Term

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

# Extending the initial term

## The Council may extend the 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 the Contract, it shall give the Service Provider at least three (3) months' written notice of such intention before the expiry of the Initial Term (in relation to the first extension) or any Extension Period (in relation to any subsequent extension).

## If the Council gives such notice then the Term shall be extended by the period set out in the notice.

## If the Council does not wish to extend the Term the Contract shall expire on the expiry of the Initial Term or, where the contract has previously been extended, on the expiry of the relevant Extension Period, and the provisions of clauses 40 (Exit Management) and 41 (Consequences of Termination) shall apply.

# Warranties

# Service Provider warranties and due diligence

## The Service Provider warrants and represents that:

### it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;

### in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;

### it has not committed 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 committed any breach of the Data Protection Legislation by unlawfully processing personal data in connection with any blacklisting activities;

### it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking;

### as at the Commencement Date, all information contained in the SPD and 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 issue of the Contract Acceptance Letter;

### no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

### it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

### the Service Provider has not suffered an Insolvency Event;

### it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

### in the 3 years prior to the Commencement Date:

#### it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

#### it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

### it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

### it has made appropriate inquiries and carried all due diligence so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;

### there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Council under the Contract, save as may have been specifically disclosed in writing to the Council prior to issue of the Contract Acceptance Letter; and

### it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the **‘Premises’**) before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

## Save as provided in the 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.

## The Service Provider shall promptly notify the Council in writing if it becomes aware during the Term that:-

### any of the warranties were at the Commencement Date or have become during the Term, untrue or misleading;

### inaccuracies exist in information provided to it by the Council which materially and adversely affects its ability to perform the Services or meet any Service Levels.

## 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 5.3 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.

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

The Services

# Supply of services and Deliverables

## The Service Provider shall provide the Services, or procure that they are provided and deliver the Deliverables and procure that they are delivered:

### in accordance with the terms of the Contract, each Purchase Order and the reasonable directions of the Council from time to time;

### with reasonable skill and care and in accordance with Good Industry Practice it being acknowledged that the Council relies on the Service Provider's skill, care, diligence and judgement in the supply of the Services and performance of the Contract;

### on the dates, at the times and at the locations required by the Council;

### in all respects in accordance with the Council's Policies;

### in accordance with the Cyber Security Requirements;

### in accordance with all Applicable Laws, Necessary Consents and the requirements of any Regulatory Bodies; and

### to the reasonable satisfaction of the Council

## 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.

## 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 and the resultant Change is dealt with through the Change Control Procedure.

## In the event that the Service Provider does not comply with the provisions of this condition 6 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).

## Ownership and risk in any Deliverables which are corporeal moveables shall pass to the Council on delivery.

## 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.

Contract management

# Management Arrangements

## The Parties must comply with the Management Arrangements.

## The Council will monitor the performance of the Services by the Service Provider throughout the Term to ensure that delivery of the Services is in accordance with the provisions of the Contract.

## The Service Provider shall co-operate, and shall procure that the Service Provider Personnel, and its Sub-Contractors, co-operate with the Council in carrying out the monitoring referred to in clause 7.2 and in complying with the Management Arrangements at no additional charge to the Council.

# Service Levels

## Where any of the Services are stated in the Contract to be subject to a specific Service Level, the Service Provider shall provide those Services in such a manner as will ensure that the Achieved Service Level in respect of those Services is equal to or higher than such specified Service Level.

## Service Levels for any new or varied Services will be determined and included via the Change Control Procedure.

## The Service Provider shall provide records of and, in accordance with Schedule 2, the Management Reports shall summarise the Achieved Service Levels.

## If any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Council may have, the Council may (i) serve a Default Notice on the Service Provider; and/or (ii) apply Service Credits in accordance with the provisions of clause 18.

# Business Continuity

## The Service Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.

## 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 set out in, those risk assessments to the Council promptly in writing following each review and shall update the Business Continuity Plan accordingly and submit the same to the Council for approval (which approval will not be unreasonably withheld).

## Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:

### implement the Business Continuity Plan;

### if approved by the Council, acting reasonably in all the circumstances, continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and

### 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 9 (and the reason for the declaration of a Disaster was not breach of any of the other terms of the 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 set out in the Contract 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.

# Service Provider Conduct

# Health and Safety

## 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 or that may affect the Service Provider in the performance of the Contract.

## 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 which have been notified to the Service Provider from time to time.

## 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.

## 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.

# Council's Premises and Assets

## Unless alternative arrangements have been agreed with the Council in advance, and if so specified in the ITT, the Service Provider shall deliver the Services from the Council’s Premises or with access to the Council’s Assets.

## The Council shall provide the Service Provider with such accommodation at, and facilities in, the Council's Premises as is specified and on the terms set out in Schedule 6 or which is otherwise agreed by the parties in writing from time to time solely for the purpose of performing the Service Provider's obligations under the Contract.

## Subject to the requirements of clause 40 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 and the Council's Premises left in a clean, safe and tidy condition.

## The Service Provider shall ensure that:

### where using the Council's Premises and any Council Assets they are kept clean, safe, tidy and properly secure and it will comply and cooperate with the Council's Authorised Representative's reasonable directions regarding the security of the same;

### any equipment brought onto Council Premises is in a safe and clean condition and is removed from Council Premises when reasonably required by the Council throughout the Term;

### 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 and, at the Council's request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Council's Premises in connection with the Contract and giving such other particulars as the Council may reasonably request;

### any Council Premises and 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 no Council Assets are removed from Council Premises unless expressly permitted under the Contract or by the Council's Authorised Representative;

## 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 the Council's Assets or to any property of any other recipient or user of the Services in the course of providing the Services.

## Any property brought onto the Council's Premises by the Service Provider is done so at the Service Provider's own risk and the Council has no liability for any loss of or damage to any such property unless the damage was caused by the Council or those for whom the Council is responsible.

# Conflict of Interest

## The Service Provider must take appropriate steps to ensure that the Council is not placed in a position where, in the reasonable opinion of the Council, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Council under the Contract.

## The Service Provider must disclose by notice to the Council full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

# Human rights, Equalities and Equal Opportunities

## In providing the Services, the Service Provider shall:-

### undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;

### have in place and comply with suitable equalities and diversity policies;

### comply with the Equality Act 2010, all equal opportunities obligations and the Public Sector Equality Duty and ensure compliance with the Council’s Policies on such matters and have regard to any guidance provided by Scottish Ministers for local authorities on the Public Sector Equality Duty which is applicable from time to time;

### prepare, or assist in the preparation of, reports in order to secure the Council’s compliance with the Public Sector Equality Duty.

## 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:

### assessing the Service Provider’s compliance with its obligations under this clause 13;

### enabling the Council to review diversity in employment and use of Services, such as numbers of 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 including where the Council undertakes an equalities impact assessment;

### 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; and

### enabling the Council to prepare reports in order to secure the Council’s compliance with the Public Sector Equality Duty.

## 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 Equality Act 2010. Where any investigation is undertaken (whether against the Council or the Service Provider) 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 the Contract being in contravention of the Equality Act 2010, the Service Provider shall free of charge:

### provide any information requested in the timescale allotted;

### attend any meetings as required and permit the Service Provider’s Personnel affected to attend;

### promptly allow access to and investigation of any document or data deemed to be relevant;

### allow itself and any Service Provider's Personnel to appear as witness in any ensuing proceedings; and

### 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 the Council may have been ordered or required to pay to a third party.

## Any breach of this Clause 13 shall be deemed to be a material breach in terms of the Contract.

## In the event that the Service Provider enters into any subcontract in connection with the 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.

# Prevention of Corruption

## The Service Provider:

### shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with the Contract commit a Prohibited Act;

### 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 the Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of the Contract.

## The Service Provider shall:

### 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;

### 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 authorised officer of the Service Provider) compliance with this clause 14 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

## 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.

## If any breach of clause 14.1 is suspected or known, the Service Provider must notify the Council immediately.

## If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 14.1, 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 the Contract.

## If the Prohibited Act is committed by (i) the Service Provider; (ii) a senior officer of the Service Provider; or (iii) an employee, Sub-Contractor or supplier acting:

### 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

### in circumstances where any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be) ought reasonably to have had such knowledge.

### Then the Contract will be immediately terminated in accordance with the terms of Clause 37.1(b). In all other circumstances, in determining whether to exercise the right of termination under Clause 37.1(b), the Council shall give all due consideration, where appropriate, to action other than termination of the Contract.

## Any notice of termination under clause 37.1(b) must specify:

### the nature of the Prohibited Act;

### the identity of the party whom the Council believes has committed the Prohibited Act; and

### the date on which the Contract will terminate.

## Despite clause 0 (Dispute resolution), any dispute relating to:

### the interpretation of clause 14; or

### the amount or value of any gift, consideration or commission,

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

# Compliance with Anti-Slavery and Human Trafficking Laws

## In performing its obligations under the Contract, the Service Provider shall:

### comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;

### not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;

### include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this Clause 15;

### notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract;

### maintain a complete set of records to trace the supply chain of all goods and services (including the Services and the Deliverables) provided to the Council; and

### provide the Council and its third party representatives access to such records.

## If required to in terms of the Modern Slavery Act 2015, the Service Provider shall prepare and deliver to the Council, each year during the Term, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking are not taking place in any of its supply chains or in any part of its business.

## If the Service Provider commits a breach of this Condition 15 the Contract can be immediately terminated in accordance with the terms of Clause 37.1(b) .

# Tax Arrangements

## Where the Service Provider is liable to be taxed in the UK in respect of consideration received under the Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

## Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under the Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

## The Council may, at any time during the Term, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 16.1 and 16.2 above or why those clauses do not apply to it.

## A request under sub-clause 16.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.

## The Council may supply any information which it receives under clause 16 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

## The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 16 by all of their servants, employees, agents, consultants and sub-contractors.

## Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 16 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

## The Service Provider (if an individual) represents that the Service Provider is regarded by both Her Majesty’s Revenue and Customs and the Department for Work and Pensions as self‑employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar impost for which the Council may be liable in respect of the Service Provider by reason of the Contract.

## In providing the services, the Service Provider will ensure that the correct amount of tax and National Insurance Contributions are paid and/or deducted in respect of workers engaged via the Contract and the Service Provider will comply and procure compliance with all applicable requirements relating to tax and National Insurance, including without limitation, those relating to intermediaries (including those known as "IR35"), and any other legislation in force from time to time relating to any payments made to such workers. The Service Provider will upon request specifically advise the Council of compliance in this regard.

Charges and Payment

# Payment

## In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Service Provider following receipt of a Valid Invoice.

## The Service Provider shall ensure that each invoice issued to the Council for payment of the Charges is in accordance with the Pricing Schedule and sent to the Council's Authorised Representative. Any such invoices shall take into account any Service Credits which have been accrued in accordance with clause 18.3.

## The Council shall pay the Charges which have become payable within 30 days of receipt of an undisputed Valid Invoice from the Service Provider. For the avoidance of any doubt, no out of pocket expenses will be included in the Charges unless specifically specified in the Pricing Schedule (or otherwise agreed in advance between the Parties) and provided that such expenses are reasonable and have been properly incurred and can be properly vouched.

## Where the Council disputes any sum to be paid by it then, provided the Service provider has first reissued a Valid Invoice for the undisputed amount only, 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 0 (Dispute Resolution). 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.

## Where any invoice submitted is not a Valid Invoice payment in accordance with the terms and conditions of the Contract may be delayed.

## Subject to clauses 17.4 and 17.5, interest shall be payable on the late payment of any undisputed Charges properly invoiced under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue.

## The Charges are stated exclusive of VAT, which (if chargeable) shall be added at the prevailing rate as applicable and paid by the Council following delivery of a Valid 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 the Contract.

## The Service Provider shall maintain and complete accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to the 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.

## 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 the 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.

## 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.

# Service Credits and Community Benefit Credits

## If a Service Failure occurs the Service Provider shall pay to the Council the Service Credit relevant to the Service Failure.

## 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 and that the Service Provider confirms that it has taken the Service Credit into account in setting the level of the Charges.

## Where applicable the Service Provider shall automatically credit the Council with any applicable Service Credits. 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 the 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.

## 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 following service of a Default Notice, 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.

## 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 agreed between the Council and the Service Provider, both acting reasonably. 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 the 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.

# Disputes

# Dispute Resolution

## If any dispute arises in relation to the Contract the parties’ shall:-

### require that the Authorised Representatives first seek to resolve the matter through discussion;

### 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 resolution to any dispute and such efforts shall involve the escalation of the dispute to more senior officials of the parties;

### If the parties’ senior officials cannot resolve the dispute within ten (10) Working Days then the matter shall be referred 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 Chief Executive Officer (or equivalent) of the Service Provider.

### Each Party shall be obliged to procure the relevant officials attend all proposed meetings in order to resolve any matters in dispute to the parties’ mutual satisfaction.

## If the parties are unable to resolve the matter following the procedure set out in Condition 19.1, then either party may refer the dispute for mediation, arbitration or other alternative dispute resolution, but neither party shall be obliged to agree to do so. Any arbitrator appointed pursuant to this provision will be agreed between the parties or, failing agreement within 14 days, be an arbitrator appointed by the Scottish Arbitration Centre on the written application of either party. The seat of any arbitration will be in Scotland and the language used in the arbitral proceedings shall be English. Any arbitration will be subject to the Arbitration (Scotland) Act 2010.

## 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.

# Step In by the Council

## If any of the following circumstances arise, the parties shall comply with the provisions of Schedule 8 (Step-in):-

### if the Service Provider suffers an Insolvency Event or ceases or threatens to cease to carry on business in the United Kingdom;

### where the Council considers that the circumstances constitute an emergency (regardless of whether the Service Provider is in breach of the Contract);

### because a serious risk exists to the health or safety of persons, property or the environment;

### where a Regulatory Body has advised the Council that the exercise by the Council of its rights under this clause is necessary which, without prejudice to the foregoing generality includes a Care Commission rating of less than 2 (where such rating is applicable to the performance of the Services); and/or

### to discharge a statutory duty.

Staff

# Key personnel

## The Service Provider shall appoint the Key Personnel as the individuals who shall be responsible for the matters allocated to such Key Personnel and shall retain them 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.

## The Service Provider shall not remove nor replace any of its Key Personnel unless:

### requested to do so by the Council;

### the person is on long-term sick leave, maternity, paternity, adoption or parental leave or is otherwise absent from their employment for an extended period;

### the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;

### the person resigns or their employment is otherwise terminated with the Service Provider; or

### the Service Provider obtains the prior written consent of the Council.

## The Service Provider shall inform the Council of the identity and relevant experience 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.

## The Service Provider shall ensure that the role of its Key Personnel is not vacant (in terms of a permanent representative) for more than 6 months. 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 becoming aware of the role becoming vacant.

## 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.

## If the Service Provider replaces the Key Personnel as a consequence of this clause 21, the cost of effecting such replacement shall be borne by the Service Provider.

# Personnel used to Provide the Services

## At all times, the Service Provider shall ensure that:

### 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 and carry out their activities with due skill and care;

### there is an adequate number of Service Provider's Personnel to provide the Services properly;

### 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

### all of the Service Provider's Personnel comply with the Council's Policies including those that apply to persons who are allowed access to the applicable Council's Premises and obey all lawful and reasonable directions of the Council when performing the obligations under the Contract.

## The Council may refuse to grant access to, and remove, from the Council's Premises any of the Service Provider's Personnel who do not comply with the Council's Policies, or if they otherwise present a security threat.

## 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 qualifications, training and skills to perform the Services in accordance with the requirements of the Contract.

## 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, including for the avoidance of doubt any information pursuant to Clause 25 and Schedule 5(Employee Transfers) which the Council wishes to make available to prospective providers of the Services following Termination of the Contract. 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.

## 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 as the prevailing industry norm for similar services, locations and environments.

# Staff Vetting

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

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

## In addition to the requirements of Clause 23.1, and if the Services include any Regulated Work, the Service Provider shall ensure that all individuals engaged in the provision of the Services are:

### subject to a valid protecting vulnerable groups check undertaken through Disclosure Scotland including a check against the adults' barred list or the children's barred list, as appropriate; and

### the Service Provider shall continually monitor the level and validity of the checks under this clause 23.3 for each member of staff to ensure that they remain appropriate, valid and up to date throughout the Term.

## 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 users of the Services and the Service Provider warrants that at all times for the purposes of the 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.

## 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 23 have been met.

## The Service Provider shall make all necessary referrals about any person carrying out the Services to the Scottish Ministers in accordance with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007.

# Right to Work

## The parties acknowledge that the Service Provider is the organisation with ultimate responsibility for establishing that all individuals engaged in the provision of Services are legally entitled to do so for the purposes of the Immigration, Asylum and Nationality Act 2006 (**2006 Act**).

## The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

### subject to a valid Right to Work check as required by the 2006 Act and associated Home Office guidance; and

### the Service Provider shall continually monitor the validity of the checks under this Condition 24 for each member of staff to ensure that they remain appropriate, valid and up to date throughout the Term.

## The Service Provider warrants that at all times for the purposes of the 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 not legally entitled to carry out the activity.

## 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 Condition 24 have been met.

# Employee Transfers

The parties agree that the provisions of Schedule 5 shall apply.

# 

# Contract Changes

# Change control and continuous improvement

## Any requirement for a Change shall be subject to the Change Control Procedure.

## The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services, including any improvements that would assist the Council in achieving best value.

## Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 26.2 and Schedule 2 shall be addressed by the parties using the Change Control Procedure.

# Sub-Contracting, Assignation and Change of Control

## Neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under the Contract without the prior written consent of the other party.

## Notwithstanding condition 27.1, the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under the Contract subject to:

### deduction of sums in respect of which the Council exercises its right of recovery under condition 17.9; and

### all the related rights of the Council under the Contract in relation to the recovery of sums due but unpaid.

## The Service Provider must notify or ensure that any Assignee notifies the Council of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council is under no obligation to vary its arrangements for making payments or for handling invoices.

## The Service Provider must not sub-contract the whole nor any part of its obligations under the Contract except with the express prior written consent of the Council or as set out in the Service Provider's Tender and verified by the Council prior to the date of the Contract.

## In the event that the Council consents to and the Service Provider enters into any Sub-Contract in connection with the Contract, the Service Provider shall:

### 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;

### 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 in respect of Services and the Sub-Contractor’s invoice relates to such Services then, to the extent that it relates to such Services, the Sub-Contractor's invoice shall be treated as valid and payment shall be made to the Sub-Contractor without deduction except to the extent that the Service Provider is exercising a right of retention or set-off in respect of a breach of contract by the Sub-Contractor or in respect of a sum otherwise due by the Sub-Contractor to the Service Provide; .

### notify the Sub-Contractor that the Sub-Contract forms part of a larger contract for the benefit of the Council and that should the Sub-Contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the Sub-Contractor to the Council;

### include a right of termination on the part of the Service Provider if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or employment law;

### impose obligations on the Sub-Contractor to prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks;

### impose obligations on its Sub-Contractor (including for the avoidance of doubt this paragraph ((d)) in the same terms as those imposed on it pursuant to this condition 27.5 and shall procure that the Sub-Contractor complies with such terms; and

### 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.

## Where the Service Provider proposes to enter into a sub-contract which relates to delivery of the Services it must:

### advertise its intention to do so in at least one trade journal and the Public Contracts Scotland Portal; and

### follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

## Where the Council seeks to verify whether there are grounds for the exclusion of a Sub-Contractor under Regulation 71 of the Public Contracts (Scotland) Regulations 2015, then the Service Provider will procure delivery of all information required by the Council, including a Single Procurement Document in respect of the Sub-Contractor and:

### if the Council finds there are compulsory grounds for exclusion, the Service Provider shall replace or shall not appoint the Sub-Contractor;

### 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.

## 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.

## Notwithstanding clause 27.1, 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.

## The Service Provider must notify the Council whenever it proposes to undergo a change of Control, or a change of Control is likely to occur and immediately following a change in Control that has occurred.

# Liability

# Indemnities

## Subject to clause 29, 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 the Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of the Service Provider or of any of the Service Provider's Personnel 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 the Contract or an Applicable Law by the Council or its representatives (which representatives do not include the Service Provider or any Service Provider's Personnel).

# Limitation of liability

## Subject to clause 29.5 and clause 29.6, neither party shall be liable to the other party (as far as permitted by law) for indirect 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.

## 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 the Contract.

## Subject to clause 29.5, the Council's total aggregate liability 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 the 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 the Contract in the Contract Year in respect of which the claim arises.

## Subject to clause 29.5, the Service Provider's total aggregate liability:

### in respect of clause 10 (Health and Safety), clause 13 (Human Rights, Equalities and Equal Opportunities), clause 14 (Prevention of corruption), clause 23 (Staff vetting), clause 31 (Freedom of Information), clause 33 (Data Protection), clause 34 (Confidentiality), clause 36 (Intellectual Property), and the indemnities given by the Service Provider in Schedule 5, is unlimited;

### 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;

### for all loss, destruction, corruption, degradation, inaccuracy or damage to data (excluding damages relating to breach of clause 33 (Data Protection)) caused by the Service Provider’s default or breach of the Contract shall be £1,000,000 in any Contract Year;

### 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 the Contract shall in no event exceed £10,000,000 in any Contract Year; and

### 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 the 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 the Contract in the Contract Year in respect of which the claim arises.

## Notwithstanding any other provision of the Contract neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence;

### breach of any obligation as to title implied by statute; or

### any other act or omission, liability for which may not be limited under any Applicable Laws.

## Subject to the financial limits of liability contained in clause 29.4, the Council may, amongst other things, recover as a direct loss:

### any additional operational and/or administrative costs and expenses arising from the Service Provider’s default or breach of the Contract;

### any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider’s default or breach of the Contract; and

### the additional cost incurred by the Council of procuring Replacement Services for the remainder of the Term.

# Insurance

## 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.

## 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.

## 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.

## The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.

## 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.

# Information, Data and Records Management

# Freedom of Information

## 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.

## The Service Provider shall and shall procure that its Sub-Contractors shall:

### transfer any 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;

### provide the Council with a copy of all Information in its possession or control 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

### 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.

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

### is exempt from disclosure in accordance with the provisions of the FOISA or the Environmental Information (Scotland) Regulations; and/or

### is to be disclosed in response to a Request for Information.

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

## 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:

### without consulting with the Service Provider; or

### following consultation with the Service Provider and having taken its views into account,

provided always that where clause 31.5(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.

## The Service Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure in accordance with, and for the periods set out in, condition 32 and shall permit the Council to inspect such records as requested from time to time.

## 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 31.5.

# Records Management

## 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) 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.

## The Service Provider shall ensure that none of its actions in the provision of the Services to the Council cause the Council to (i) be in breach of its obligations under the 2011 Act; or (ii) receive an action notice in terms of section 7 of the 2011 Act.

## The Service Provider shall, at no cost, provide the Council with all reasonable assistance and such documentation in relation to the Arrangements as 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.

## On termination of the Contract for whatever reason, the Public Records held by the Service Provider which are to be delivered to the Council in terms of the CEC Records Management Plan and the Arrangements shall be delivered to the Council forthwith at no cost to the Council including full ownership of the records with all Intellectual Property in relation thereto and all information reasonably required to locate individual items within the records, and shall be included with the data and other material belonging to the Council to be transferred in terms of clause 40.5; Provided that if the Service Provider suffers an Insolvency Event then immediately upon the occurrence of an Insolvency Event, the Public Records held by the Service Provider and due to be transferred to the Council pursuant to this clause 32.4 shall be deemed to be held in trust for the Council and the Service Provider shall thereafter transfer such Public Records to the Council on the same terms as contained herein.

## 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.

## Where the terms of the CEC Records Management Plan and the Arrangements conflict, the CEC Records Management Plan shall take precedence.

## The Council may require the transfer of Public Records from the Service Provider to the Council during the Term 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 on the same terms as set out in clause 32.4.

# Data Protection

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

## [The Parties acknowledge that for the purposes of the Data Protection Legislation they are [Controllers in Common] OR [Joint Controllers] of any Personal Data processed in connection with the Services. This clause is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. The Parties agree that the provisions of Schedule 9 and Schedule 10 shall not apply in relation to the Parties’ data protection obligations under the Contract.]

## [Where the Parties are [Joint Controllers OR Controllers in Common], the Parties shall enter into a [joint controller agreement OR data sharing agreement] in respect to the Personal Data under [joint control OR to be shared between the Parties as Controllers in Common]. The Parties agree to act reasonably and in good faith regarding agreeing the terms of such agreement.]

## OR

## [The parties agree that the provisions of Schedule 9 and Schedule 10 shall apply in relation to the parties’ data protection obligations under the Contract.]

## The Council shall process all Service Provider Personal Data in accordance with the Council's privacy notice (as amended from time to time). The Council may provide the Service Provider with direct marketing communications provided that the Service Provider has not opted out of such communications.

# Confidentiality

## Subject to clause 34.2 and clause 0, 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.

## Clause 34.1 shall not apply to any disclosure of information:

### required by Regulatory Body or any Applicable Law, provided that clause 31.1 shall apply to any disclosures required under the FOISA or the Environment Information (Scotland) Regulations;

### that is reasonably required by persons engaged by a party in the performance of such party's obligations under the Contract;

### 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 34.1;

### by the Council of any document to which it is a party and which the parties to the Contract have agreed contains no commercially sensitive information;

### to enable a determination to be made under clause 0;

### which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

### by the Council to any other department, office or agency of the Government; and

### by the Council relating to the Contract and in respect of which the Service Provider has given its prior written consent to disclosure.

## 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 Council's employees, rate-payers or Service users, are delivered up to the Council or securely destroyed at the sole discretion of the Council.

# Audit

## 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:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with the 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;

### to review the integrity, confidentiality and security of any data relating to the Council or any Service users;

### to review the Service Provider's compliance with Data Protection Legislation and the FOISA in accordance with clause 33 (Data Protection) and clause 31 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created during the provision of the Services;

### to review any books of account kept by the Service Provider in connection with the provision of the Services;

### to carry out the audit and certification of the Council's accounts;

### to carry out an examination of the economy, efficiency and effectiveness with which the Council has used its resources;

### to verify the accuracy and completeness of the Management Reports delivered or required by the Contract;

## and the Service Provider must retain and maintain until 5 years after the end of the Term full and accurate records of the Contract including the orders placed, the Services provided and payments made and reimbursed under the Contract.

## 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 the Contract, the Council may not conduct an audit under this clause 35 more than twice in any calendar year.

## 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.

## Subject to the Service Provider'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:

### all information requested by the above persons within the permitted scope of the audit;

### 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

### access to the Service Provider's Personnel.

## 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.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 35, unless the audit identifies a material failure to perform its obligations under the 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.

## If an audit identifies that:

### the Service Provider's failure to perform its obligations under the Contract relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the Service Provider shall provide all such information as soon as possible and in any event within 30 days of the request;

### 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

### 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.

# Intellectual property

## As between the parties, each party is and shall remain the sole and exclusive owner of all right, title and interest in its own pre-existing Intellectual Property.

## [The Service Provider grants to the Council a perpetual, irrevocable, worldwide, fully paid up, non-exclusive, royalty free licence (with the right to sub-licence) to all Intellectual Property owned by or licensed to the Service Provider to the extent necessary or desirable for the Council's receipt and use of the Services and the Deliverables.]

## **OR**

## [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 (but excluding the Service Provider's pre-existing Intellectual Property):

### in the Deliverables; or

### in the course of performing the Services; or

### exclusively for the purpose of performing the Services,

(together the "**Assigned Rights**") shall vest in the Council on creation.

## The Service Provider hereby assigns to the Council, including by way of present assignation of future rights, absolutely all right title and interest in and to the Assigned Rights, including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned Rights whether occurring before, on, or after the date of the Contract.

## 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 36.2]

## 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 by the use, supply or availability of the Services or Deliverables, or by the use of the Intellectual Property referred to in clause[s] 36.2 [and 36.4], except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

## The Service Provider shall do all such acts as the Council requires to give the Council the benefit of this clause 36.

Termination

# Termination for breach

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

### if the Service Provider has not remedied a breach of any obligation under the Contract within 28 days of receipt of notice from the Council to do so;

### if the Service Provider is in breach of any of clause 12 (Conflict of Interest), clause 13 (Human Rights, Equalities and Equal Opportunities), clause 13 (Prevention of corruption), clause 15 (Compliance with Anti-Slavery and Human Trafficking Laws), clause 23 (Staff vetting), clause 0 (Freedom of Information), clause 33 (Data Protection), clause 34 (Confidentiality) or clause 36 (Intellectual Property);

### if the Service Provider is in breach of any obligation under the Contract which is not, in the Council's opinion, capable of remedy;

### the Service Provider is in material breach of the Contract;

### if a Consistent Failure has occurred;

### if a Catastrophic Failure has occurred;

### if the Service Provider suffers an Insolvency Event or ceases or threatens to cease to carry on business in the United Kingdom;

### if there is a change of Control of the Service Provider which the Council has not approved pursuant to the Contract;

### 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;

### 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;

### the Contract has been subject to a Substantial Modification;

### the Service Provider was, at the time of contract award, in one of the situations referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those Regulations and should have been excluded from the procurement process;

### the 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;

### if at any time during the Term the Service Provider or any person falling within the description set out in paragraph (2) of regulation 58 of the Public Contracts Scotland Regulations commits an offence referred to in paragraph (1) of that regulation;

### the Service Provider fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law; or

### any representation, warranty or statement made or repeated by the Service Provider in connection with the Contract proves to have been misleading or incorrect when made or repeated and the circumstances giving rise to such misrepresentation if, in the reasonable opinion of the Council, capable of remedy they have not been remedied within 28 days of notice from the Council.

## If the Contract is terminated by the Council pursuant to this clause 37 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 and in making alternative arrangements for the provision of the Services.

## The Service Provider may terminate the 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 the Contract shall be deemed to have been withdrawn.

# Termination on notice

## The Council may terminate the Contract at any time by giving 3 months' written notice to the Service Provider.

# Force majeure

## Subject to the remaining provisions of this clause 39, neither party to the Contract shall be liable to the other for any delay or non-performance of its obligations under the Contract to the extent that such non-performance is due to a Force Majeure Event.

## In the event that either party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such party shall:

### 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;

### use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and

### resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

## 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.

## 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.

## 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 the 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.

## 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 the Contract. Following such notification, the 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.

## The Council may, during the continuance of any Force Majeure Event, terminate the 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.

# Exit Management

## A draft of the Exit Management Plan shall be produced by the Service Provider and supplied to the Council within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 40.2. The Council shall provide to the Service Provider the Council’s comments on the plan within one (1) month of the Council’s receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Council and shall issue the final version of the Exit Management Plan to the Council within ten (10) Working Days of receipt of the Council’s comments.

## The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Management Plan which shall include:

### the activities required to enable the Council to re-tender the provision of the Services;

### the activities necessary to support any Replacement Service Provider or the Council in carrying out any necessary due diligence relating to all or part of the Services;

### details of the management arrangements to be provided by the Service Provider prior to the Termination Date;

### support for the Replacement Service Provider or the Council during their preparation of any relevant plan for the transition of the Services to the Replacement Service Provider or Council, including prior to and during such transition period;

### the maintenance of a ‘business as usual’ environment for the Council during the period when the Exit Management Plan is being implemented; and

### all other necessary activities to support the preparation for, and execution of, a smooth and orderly transfer of all or part of the Services to either a Replacement Service Provider or to the Council.

## No amendment of the Exit Management Plan shall be made without prior written consent of the Council.

## On the expiry of the Term, or if the 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.

## On termination of the 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.

# Consequences of Termination

## The provisions of clause 8.2 (provision of records), clause 11 (Council Premises and Assets), clause 14.5 (Prevention of Corruption) clause 16 (Taxation), clause 17.9 (retention and set-off), clause 0 (Dispute Resolution) clause 24 (Employee Transfers) (including Schedule 5), clause 27.10 (Indemnities), clause 29 (Limitation of Liability), clause 30 (Insurance), clause 31 (Freedom of Information), clause 32 (Records Management), clause 33 (Data Protection) (including Schedule 9), clause 35 (Audit), clause 36 (Intellectual Property), clause 37 (Termination for Breach), clause 40 (Exit Management Plan), this clause 41(Consequences of Termination) clause 42 (Non-Solicitation), clause 43 (Waiver), clause 44 (Cumulation of Remedies), clause 50 (Governing Law and Jurisdiction), Schedule 1 (Definitions and Interpretation), and Schedule 4 (Cyber Security Requirements) shall survive termination or expiry of the Contract.

General provisions

# Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of the 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 the 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.

# Waiver

## 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 the Contract.

# Cumulation of Remedies

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

# Severability

If any provision of the 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 the Contract that is fundamental to the accomplishment of the purpose of the 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.

# Partnership or Agency

Nothing in the Contract shall be construed as constituting a contract of employment, partnership or joint venture between the parties or as constituting either party as the agent of the other for any purpose whatsoever and neither party is entitled to act in the name of, on behalf of, or otherwise bind the other party except as specified by the terms of the Contract.

# Publicity

The Service Provider shall not:

### make any press announcements or publicise the Contract or its contents in any way; or

### use the Council's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Council.

# Notices

## Any notice, demand or communication in connection with the Contract shall be in writing, marked for the attention of the Executive Director of 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, if the Service Provider is a company, to its registered office, or to any other address which the recipient has notified in writing to the sender prior to despatch.

## The notice, demand or communication is deemed given:

### if delivered personally, at the time of delivery to the address provided for in the Contract; or

### 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.

# Entire Agreement

The ITT, the Contract Acceptance Letter, 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 or 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.

# Governing Law and Jurisdiction

## The 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.

1. Definitions and interpretation

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

1. Definitions and Interpretation
   1. The definitions and rules of interpretation in Schedule 1 apply in the 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 agreed with the Council pursuant to Clause 32.1;

Assigned Rights: is defined in clause 36.1.

Authorised Representatives**:** the persons respectively designated as such by the Council and the Service Provider, the first such persons being set out in the Contract Acceptance Letter, or otherwise intimated to the Council on or before the Commencement Date.

Bribery Act**:** the Bribery Act 2010 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 or otherwise agreed with the Council.

Catastrophic Failure:

### 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

### any action by the Service Provider, whether in relation to the Services and the 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

### Any other matter referred to in the Contract as a catastrophic failure.

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

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

Change Control Procedure**:** the procedure for implementing any change to the 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.

Community Benefits: means the community benefits outlined in the Service Provider's Tender.

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**:**

(a) the service of 3 Default Notices within a period of 12 consecutive months; or

(b) the application of Service Credits in 3 of the preceding 12 consecutive months; or

(c) any other matter referred to in the Contract as a Consistent Failure.

Contract: the agreement between the Council and the Service Provider consisting of the documents referred to in Clause 1.

Contract Acceptance Letter: the letter issued by the Council to the Service Provider in respect of the Services accepting the terms of the Service Provider's Tender.

Contract Change Note: the contract change note required in accordance with and in the form set out in Schedule 3.

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

Control: has the meaning ascribed in section 450 of the Corporation Tax Act 2010 and **"Controls"** and **"Controlled"** shall be interpreted accordingly.

**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.

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 Policies: means any of the Council's policies that have been identified in the ITT or otherwise notified to the Service Provider.

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 the Contract.

**Council's Protected Information**: means any information provided by the Council to the Service Provider which (i) carries a protective marking such as “Official”, “Secret” or “Top Secret”; or (ii) is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

Cyber Security Requirements: the requirements set out in Schedule 4.

1. **Data Protection Legislation**: means:
   1. to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.
   2. to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Service Provider is subject, which relates to the protection of Personal Data.

Default Notice**:** is defined in clause 6.4.

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 and specified [ ].

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

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 the Service Provider's exit from providing the Services provided to the Council and updated from time to time in accordance with the provisions of clause 40.

Extension Period: has the meaning in clause 4.1.

FOISA**:** the Freedom of Information (Scotland) Act 2002 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 Event**:** any cause affecting the performance by a party of its obligations under the 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, pandemic or epidemic and any disaster, but excluding, (i)any consequences of the UK leaving the EU, (ii) any industrial dispute relating to the Service Provider, or the Service Provider's Personnel; and (iii) any other failure in the Service Provider's supply chain.

**EU GDPR**: means the General Data Protection Regulation (Regulation (EU) 2016/679) as it has effect in EU law.

Good Industry Practice**:** the exercise of the 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.

Insolvency Event: means:-

### 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;

### 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 (a) or (c) of this definition 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;

### where the Service Provider is a company, if:-

#### the company proposes or passes a resolution for winding up or dissolution or proposes or passes a resolution or takes any step in connection with the appointment of any such officer set out in (iv) below (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 submits to its creditors or any of them a proposal under Part 1 of the Insolvency Act 1986; or;

#### an administrator, administrative receiver, receiver, manager, provisional liquidator, interim liquidator, liquidator, monitor or supervisor is appointed to it or in respect of any of its business or assets by a creditor or by the court; or

#### possession is taken of any of its property under the terms of a floating charge; or

#### it makes any application for, or becomes subject to, a moratorium under Part A1 of the Insolvency Act 1986; or

#### it is struck off or dissolved or otherwise ceases to maintain its corporate existence.

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.

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

Key Personnel**:** those personnel identified in the Contract Acceptance Letter or in the ITT or Service Provider’s Tender by each party as being key to the success of the implementation and/or operation of the Services for the roles attributed to such personnel, as modified pursuant to clause 21.

**Management Arrangements** means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification, any specified Service Levels and the terms of the Contract, as set out in Schedule 2.

Management Reports**:** the reports containing the details required in 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:

### to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### 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 the Contract;

### committing any offence:

#### under the Bribery Act;

#### under legislation creating offences concerning fraudulent acts;

#### at common law concerning fraudulent acts relating to the Contract or any other contract with the Council;

#### defrauding, attempting to defraud or conspiring to defraud the Council; or

#### any offence of any other kind referred to in Regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

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 the Contract (if any).

Purchase Order Number: the unique number allocated to the order for goods or services to be provided under the 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 the Contract or any other affairs of the Council and **"Regulatory Bodies"** shall be construed accordingly.

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

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 the 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.

**SPD:** means the Single Procurement Document completed by the Service Provider as part of the Service Provider's Tender.

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 or as otherwise set by the Council acting reasonably.

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 in terms of the Contract.

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 including any presentation which is scored for the purposes of tender evaluation.

Services**:** the services to be delivered by or on behalf of the Service Provider under the Contract, as more particularly described in the Specification, and set out in the Purchase Order (if any) and any additional services agreed between the Service Provider and the Council under the Change Control Procedure.

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) procedures and policies applicable to 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 Termination Date.

Terms and Conditions: means these terms and conditions including the Schedules.

Termination Date**:** the date of expiry of the Initial Term or any Extension Period or the earlier termination of the 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.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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 meeting all the requirements set out in Regulation 70A of the Public Contracts (Scotland) Regulations 2015) addressed to the City of Edinburgh Council, containing the 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 the Contract.

## 1.3 A person includes a natural person, partnership, company or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignee.

## 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established and all other legal persons of whatever kind and howsoever constituted.

## 1.5 Words in the singular shall include the plural and vice versa and words importing the masculine include the feminine and the neuter.

## 1.6 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.

## 1.7 Any obligation in the Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

## 1.8 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 the Contract) at any time.

## 1.9 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 to these Terms and Conditions.

## 1.10 The words include or including are to be construed as meaning without limitation.

1. Management Arrangements

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

1. Authorised representatives
   1. The Council's Authorised Representative will be the point of contact for the Service Provider and liaise with the Service Provider on all operational and contractual issues, including complaints and dispute resolution.
   2. The Service Provider's initial Authorised Representative should be notified to the Council's Authorised Representative prior to the Commencement Date.
2. Meetings

**DRAFTING NOTE:** Consider if different types of meetings need to be held between different representatives and consider the frequency, required attendees, purpose and agenda for each type of meeting]

* 1. The Authorised Representatives and relevant Key Personnel shall meet every [ ] **days/weeks/months]** for the purposes of **[ ]** and the Service Provider shall, at each meeting, present its previously circulated Management Reports for review and discussion.
  2. The Council will be responsible for scheduling the date, time and place of meetings and the Service Provider shall be required to attend such meetings provided that reasonable notice has been given of the date, time and place of the meeting.
  3. The meetings will cover, amongst other topics, the most recently submitted Management Report. The Council reserves the right to alter the agenda of any meeting but will endeavour to give attendees as much notice as reasonably practicable.
  4. The Council will determine who must attend from the Service Provider’s Key Personnel.
  5. All costs incurred by the Service Provider in attending such meetings will be the responsibility of the Service Provider.

1. Reporting Requirements

**DRAFTING NOTE:** specify the type (including financial), format and contents of each type of Management Report and consider the frequency of delivery and the required recipients.

* 1. The Service Provider shall provide to the Council the Management Reports to the Council every [ ] **days/weeks/months]** in an electronic format. Management Reports must be clear and concise, and provide a top level summary of performance with supporting documents.
  2. Management Reports must provide the Council with robust information on the service delivery and must include the Service Provider’s performance against any objectives and/or Service Levels, as set out in the Contract.
  3. Management Reports must include a detailed written analysis of the performance of all services undertaken in the time period which the Management Report covers. The Service Provider must also undertake trend analyses across these time periods and this must be presented in the form of a written report and tables.
  4. The detail provided must be sufficient to measure the performance of the Contract against all objectives and Service Levels. Where the Management Report shows a negative trend, the Service Provider will be expected to provide quantitative analysis or narrative explanation, as appropriate, to accompany the Management Report along with a mitigation / improvement plan.
  5. The Management Report must be submitted to the Council [specify timing ] and, in addition to the requirements detailed above, must include:
     + - * Executive summary;
         * A summary of overall quarterly and yearly performance;
         * Compliance with any administrative, quality assurance, ethical, sustainability and financial requirements of the Contract;
         * details of all Community Benefits delivered during the reporting period and cumulatively during the Term;
         * Provide details of all Sub-Contracts awarded with details of the advertising and procurement process involved in selecting the Sub-Contractor.
  6. The Service Provider must ensure the quality of all Management Reports such that the Council is able to use the Management Reports without the need for rigorous review each time.
  7. The Management Reports must be fully transferable by secure email exchange between the Service Provider and the Council.
  8. The Council may give the Service Provider an opportunity to comment on any Management Report in respect of the Service Provider’s operation and, in particular to highlight any mitigating circumstances in respect of any failure. The Service Provider must give due regard to any comments made by Council but the findings of any outcome, after having such regard, are final. The Council may serve a Default Notice or take other enforcement action in terms of the Contract as a result of any default.
  9. The ownership of any material and/or Management Reports and any other outputs produced as a result of this Contract will rest with the Council.
  10. All data and reports which are supplied electronically will be supplied in the Council's preferred format which is compatible with the software utilised by the Council. The Service Provider must ensure all electronic files to be submitted to the Council are free of viruses. The Service Provider must provide data and reports to the Council in an editable electronic format, on request.

1. Continuous Service Improvement
   1. The Service Provider must put in place a process to capture, assess, report and make recommendations to the Council on initiatives and proposals for continuous improvement in the provision of the services.
   2. 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:

### the emergence of new and evolving relevant technologies and new skills in the sector which could improve the Services;

### new or potential improvements to the Services including the quality, responsiveness, procedures, governance, benchmarking methods, performance mechanisms, service level reporting, audit and customer support services in relation to the Services;

### 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

### changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefit to the Council;

### project lessons learned

1. Contract Compliance
   1. In terms of and during the term of the Contract, the Service Provider is required to provide the Council with:-
      1. Evidence of the relevant insurance policies being in place as outlined in Schedule 7 on an annual basis from the Commencement Date;
      2. Certifications required in terms of clause 14.2 (Prevention of Corruption) within 20 Working Days of the Commencement Date and annually thereafter;
      3. A copy of the Service Provider's Anti-Bribery Policy in terms of clause 14.3;
      4. If not included in the Service Provider's Tender, provide a Business Continuity Plan within 3 months of the Commencement Date. The Service Provider is obliged to keep the Business Continuity Plan under review and to provide the Council with any updated Business Continuity Plan when available;
      5. A draft Exit Management Plan within 3 months of the Commencement Date in accordance with clause 40. The Service Provider is obliged to keep the Exit Management Plan under review and to provide the Council with any updated Exit Management Plan when available and in any event at the commencement of the final year of the Contract;
      6. If required in terms of the legislation, a copy of the annual Slavery and Human Trafficking Report in terms of clause 15.2.
2. Invoicing

**DRAFTING NOTE:** Consider any bespoke invoicing requirements.

* 1. The Service Provider must put in place arrangements for secure electronic transfer of invoices to the Council in compliance with the reasonable requirements of the Council.
  2. The Service Provider must ensure that invoices are validated prior to submission to the Council, meaning that the data fields on the invoices are compliant with reasonable requirements of the Council. For example, that dates are expressed in a particular format.
  3. The Service Provider must put in place arrangements for ensuring that invoices are compliant with the Contract prior to submission.
  4. Sufficient narrative to enable the Council to ensure that work billed has been properly carried out and properly billed for; where the Council considers that sufficient narrative has not been provided, the Service Provider shall provide such narrative promptly on request.
  5. Further information on invoicing requirements will be supplied to the successful firm on appointment.

1. Mobilisation Plan

**DRAFTING NOTE:**  Sometimes a Mobilisation Plan will have been requested as part of the Tender and this provision is designed to implement that plan. If no such plan was included in the tender you can amend this clause to include any bespoke mobilisation issues you think need to be addressed prior to the Commencement Date.

* 1. The Mobilisation Period is the time from the date of the Contract Acceptance Letter to the Commencement Date.
  2. The Service Provider must submit a final Mobilisation Plan with sufficient supporting material, which must include a detailed timetable, programme plan and activity schedule, within 30 days of contract award.
  3. The Mobilisation Plan must set out how the Key Personnel will be involved in delivery of the Mobilisation Plan.
  4. The Mobilisation Plan must include clearly identified stages, milestones and quality gateways and a proposal for reporting to the Council on progress against these. This proposal must include the evidence which could be available to the Council on request in order to confirm that each milestone has been met
  5. The Service Provider must explain how they propose to project manage the Mobilisation Plan, illustrating practical project stages with important end of stage events set out with quality assurance review and approval processes described.
  6. The Mobilisation Plan must set out clearly the interdependencies and sequencing of activities so that the impact of missing any milestone is clear.
  7. The Mobilisation Plan must set out how all parts of the supply chain required to deliver services under the Contract will be put in place
  8. The Mobilisation Plan must set out how any technology proposed by the Service Provider will be specified, developed, tested and deployed including any software licences that may be necessary. The Mobilisation Plan must set out how the Service Provider will demonstrate to the Council that the technology is fit for purpose, for example through sample testing, robust reviews and rigorous assertion of quality assured processes.
  9. The Council recognises that the Service Provider will need particular support during the Mobilisation Period. Equally, the Council expects openness and transparency from the Service Provider with regard to any risks or issues with delivering against the Mobilisation Plan. Representatives from the Council would expect to meet any relevant personnel from the Service Provider on a weekly basis during the Mobilisation Period to answer queries, monitor progress and troubleshoot.

1. Complaints

**DRAFTING NOTE:** include any bespoke requirements in relation to complaint handling and consider complaints received from service users.

1. Service Levels
   1. Service levels are intended to reflect the key objectives of the Contract. The Council shall finalise the Service Levels following contract award but it is anticipated that the key areas will be:

* Quality of Service
* Timeliness of Delivery
* Accuracy of Billing
* Timeliness of Billing
  1. The Service Provider shall monitor its own performance against each Service Level and report to the Council in the Management Reports.

1. Service Credits

The circumstances under which Service Credits arise and the values of those Service Credits are set out in the Service Provider's Tender. As part of the Management Arrangements the Council and the Service Provider shall discuss any circumstances which have given rise to application of a Service Credit.

1. Change Control

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

1. General principles
   1. Where the Council or the Service Provider sees a need to change the 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.
   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 the Contract in compliance with its terms before such Change.
   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.
   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
   1. Discussion between the Council and the Service Provider concerning a Change shall result in any one of the following:
      1. no further action being taken; or
      2. a request to change the Contract by the Council; or
      3. a recommendation to change the Contract by the Service Provider.
   2. Where a written request for a change is received from the Council, the Service Provider shall, unless otherwise agreed, submit two copies of a Contract Change Note signed by the Service Provider to the Council within three weeks of the date of the request.
   3. A recommendation to amend the Contract by the Service Provider shall be submitted directly to the Council in the form of two copies of a Contract Change Note signed by the Service Provider at the time of such recommendation. The Council shall give its response to the Contract Change Note within three weeks.
   4. Each Contract Change Note shall contain:
      1. the title of the Change;
      2. the originator and date of the request or recommendation for the Change;
      3. the reason for the Change;
      4. full details of the Change, including any specifications;
      5. the price, if any, of the Change;
      6. a timetable for implementation, together with any proposals for acceptance of the Change;
      7. a schedule of payments if appropriate;
      8. details of the likely impact, if any, of the Change on other aspects of the Contract including:
         1. the timetable for the provision of the Change;
         2. the personnel to be provided;
         3. the Charges;
         4. the Documentation to be provided;
         5. the training to be provided;
         6. working arrangements;
         7. other contractual issues;
      9. the date of expiry of validity of the Contract Change Note; and
      10. provision for signature by the Council and the Service Provider.
   5. For each Contract Change Note submitted by the Service Provider the Council shall, within the period of the validity of the Contract Change Note:
      1. allocate a sequential number to the Contract Change Note; and
      2. evaluate the Contract Change Note and, as appropriate:
         1. request further information;
         2. arrange for two copies of the Contract Change Note to be signed by or on behalf of the Council and return one of the copies to the Service Provider; or
         3. notify the Service Provider of the rejection of the Contract Change Note.
   6. A Contract Change Note signed by the Council and by the Service Provider shall constitute an amendment to the Contract. Any Contract Change 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 Services 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: |  |

1. Cyber Security Requirements

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

**Definitions**

The defined terms used in this Schedule 4 shall have the following meanings:

“**Cyber Security Incident**” means any thing, event, act or omission which gives, or may give, rise to:

* 1. unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
  2. reduced integrity of an information system, data or electronic communications network;
  3. unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
  4. disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
  5. unauthorised changes to firmware, software or hardware;
  6. unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
  7. removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
  8. the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
  9. a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the Data Protection Legislation, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003 or any other applicable legal requirements in connection with cybersecurity and/or privacy

in connection with the Services and/or the Contract;

“**Cyber Security Requirements**” means the Council’s requirements in connection with cyber security as set out in the Annex to this Schedule 4, and the Specification;

1. Service Provider’s Warranty

The Service Provider warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and the Contract (including in respect of any certification or accreditation).

1. Service Provider's Obligations
   1. The Service Provider shall implement and maintain all security measures:
      1. as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
      2. to enable it to discharge its obligations under this Schedule 4; and
      3. to ensure there are no Cyber Security Incidents

in all cases to the Council’s reasonable satisfaction and in accordance with Good Industry Practice.

* 1. The Service Provider shall notify the Council promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.
  2. The Service Provider shall assist the Council to comply with any applicable cyber security requirements, codes, policies and practices in connection with the Services and/or the Contract.

1. Cyber Security Incidents
   1. The Service Provider shall notify the Council immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the Council. Where such initial notification is not in writing, then the Service Provider shall provide the Council with a written notification setting out the details required under this paragraph 3.1 promptly and in any case within twelve (12) hours from the initial notification.
   2. Following a Cyber Security Incident, the Service Provider shall:
      1. use its best endeavours to mitigate the impact of the Cyber Security Incident;
      2. investigate the Cyber Security Incident completely and promptly, and shall keep the Council fully informed of the progress and findings of its investigation;
      3. where required to do so, inform any applicable regulator of the Cyber Security Incident; and
      4. take any action deemed necessary by the Council in the circumstances, including complying with any additional security measures deemed appropriate by the Council.
   3. The Service Provider shall perform its obligations under this paragraph 3 at no additional charge to the Council, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Council.
2. Information and Audit
   1. Promptly upon request, the Service Provider shall provide to the Council such information and records in connection with the Service Provider’s obligations under this Schedule 4 as the Council may request.
   2. The Service Provider agrees (and procures that its sub-contractors agree) that the Council, its agents and its representatives may conduct such audits as are considered necessary by the Council acting reasonably, including for the following purposes:
      1. to ascertain the impact of any Cyber Security Incident;
      2. to review and verify the integrity, confidentiality and security of any data relating to the Contract; or
      3. to review the Service Providers and/or any sub-contractor’s compliance with its obligations under this Schedule 4.
   3. The Service Provider shall (and shall ensure that any sub-contractor shall) provide the Council, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including:
      1. all data and/or records requested by the Council;
      2. access to any relevant premises and to any equipment owned/controlled by the Service Provider, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Service Provider, shall secure sufficient rights of access for the Council, its agents and representatives as are necessary to allow audits to take place; and
      3. access to any relevant individuals.
   4. The Council shall use its reasonable endeavours to:
      1. provide at least 10 days’ notice of its intention to conduct an audit (but is not obliged to do so); and
      2. ensure that the conduct of each audit does not unreasonably disrupt the Service Provider and/or sub-contractor or delay the performance of the Contract.
   5. The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 4 unless an audit identifies a breach of the terms of this Schedule 4 by the Service Provider and/or sub-contractor, in which case the Service Provider shall reimburse the Council on demand for all the Council's reasonable costs and expenses incurred in conducting the audit.
3. Breach of Cyber Security Requirements
   1. A breach of this Schedule 4 by the Service Provider is a material breach for the purposes of clause 37.1(d) (Termination on Breach).
   2. If the Service Provider fails to comply with the provisions of this Schedule 4, the Council may take any action it considers appropriate or necessary (and the Service Provider shall comply with the Council’s requests in this respect), including:
      1. suspending the whole or any part of the Service Provider's obligations under the Contract;
      2. requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and the Contract and cease to have any access to the Council’s Protected Information and any Personal Data processed in connection with the Services under the Contract;
      3. requesting the Service Provider return and/or arrange the evidenced secure and permanent destruction of the Council’s Protected Information and any Personal Data processed in connection with the Services under the Contract; and
      4. implementing additional or alternative measures, both technical and organisational, to protect and secure the Council’s Protected Information and any Personal Data processed in connection with the Services under the Contract.

**ANNEX**

**CYBER SECURITY REQUIREMENTS**

[Drafting Note:- if there are bespoke requirements for cyber security measures to be in place as part of the Contract, these should be inserted here. You should consider whether accreditations or other evidence of compliance is required. Following completion of the Scottish Government's testing on the Cyber Security Procurement Support Tool (CSPST) and roll out within the Council, these T&Cs should be updated to include the relevant SG suggested wording for Annex A and Annex B and the Cyber Security Plan for the Service Provider]

1. Employee Transfers

**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:

* + 1. Eligible Employees, either:
       1. 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
       2. 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:

* + 1. the identity and age of the employee; and
    2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
    3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
    4. 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
    5. 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, protective awards, 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:

* + 1. the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228); and
    2. the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230); and
    3. 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 individuals whose contracts transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE.

**Replacement Service Provider** means any third party service provider appointed to perform the Services (in whole or in part) by the Council from time to time.

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 Provider Representatives**” means all persons engaged by the Service Provider in the performance of its obligations under the Contract including:

* + - its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
    - its agents, Service Providers and carriers; and
* any sub-contractors of the Service Provider and any employees of and workers of any such sub-contractors assigned to carrying out activities in provision of the Services under the Contract.

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.

1. Transfer of Employees to the Service Provider
   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. 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 excluding bonuses or commission which are payable on or before the date of the Effective Date but attributable in whole or in part to the period from the Effective Date.
   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:
      1. any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider taking on or after the Effective Date;
      2. any such person informing the Council or any Third Party Employer they object to being employed by the Service Provider or Sub-Contractor; and
      3. 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.
   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 including all bonuses or commission which are payable on or before the date of the Effective Date but attributable in whole or in part to the period from the Effective Date
   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, and 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).
   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.
2. Employment Exit Provisions
   1. The 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 the 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.
   2. The Council may at any time by notice require the Service Provider to disclose such information as the Council may require to the Council or at the direction of the Council to any prospective Replacement Service Provider relating to the manner in which the Services are organised or about any individual who is assigned to carry out activities in provision of the Services, whether employed or engaged by the Service Provider or Service Provider Representatives (“**Assigned Employee**”). The information required by the Council about Assigned Employees may include Employee Liability Information and/or Staffing Information
   3. The Service Provider must disclose by notice all such information as is required by the Council under clause 3.1 within such reasonable period specified by the Council. The Service Provider acknowledges that the Data Protection Legislation does not prevent the disclosure of anonymised data that is not Personal Data.
   4. The Service Provider warrants for the benefit of the Council and any Replacement Service Provider that all information provided pursuant to this clause shall be true and accurate in all material respects at the time of providing the information. The Council may at any time require the Service Provider to confirm whether the information provided under this clause remains true and accurate in all material respects or ask it to provide updated information.
   5. The Council shall be permitted to use and disclose all of the information provided by the Service Provider under this clause for the purpose of rendering the Services and/or inviting bids from any prospective Replacement Service Provider.
   6. From the earliest of (i) the date on which notice of early termination of the Contract (or part of the Services under the 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:
      1. 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;
      2. increase the total number of persons on the Service Provider’s Provisional Staff List, save for fulfilling assignments and projects previously scheduled and agreed;
      3. 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;
      4. 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;
      5. 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.
   7. 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.
   8. 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.
   9. 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.
   10. 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.
   11. The Council regards compliance with this [Paragraph 3](https://uk.practicallaw.thomsonreuters.com/Document/I33f1546ce8cd11e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&view=hidealldraftingnotes#co_anchor_a183032) as essential to the Contract. In particular, failure to comply with Paragraph 3.2 and Paragraph 3.4 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this Paragraph 3.9 shall not exceed an amount equivalent to the Charges that would be payable in the [three] month period following the Service Provider's failure to comply with Paragraphs 3.2 or Paragraph 3.4 as the case may be.
   12. 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 the 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.
   13. 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.
   14. 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:-
       1. 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; and
       2. 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.
   15. If any person not referred to in the Service Provider’s Final Staff List claims or alleges that their employment or engagement 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 or engagement 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.
   16. 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 3.11 to 3.13 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.
   17. The parties agree that the Contract (Third Party Rights) (Scotland ) Act 2017 shall apply from [Paragraphs 3.2 to 3.14](https://uk.practicallaw.thomsonreuters.com/Document/I33f1546ce8cd11e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&view=hidealldraftingnotes#co_anchor_a101627), to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1 of the Contract (Third Party Rights) (Scotland ) Act 2017 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.
   18. It is expressly agreed that the parties may by agreement rescind or vary any terms of the 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.
3. Pensions
   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 the Contract.
4. Admitted body status to the Local Government Pension Scheme
   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.
   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 the Contract.
   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.
   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.
5. Service Provider’s pension scheme
   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:
      1. established no later than three months prior to the date of the Relevant Transfer; and
      2. 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.

* 1. 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
  2. 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.
  3. 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.

1. Pensions for New Joiners to the Workforce
   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:
      1. access to the LGPS under the Admission Agreement or to the Service Provider’s Scheme (as applicable); or
      2. membership of a contracted-out final salary based defined benefit pension scheme; or
      3. 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%.
2. Indemnity
   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.
3. 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]

1. Insurance

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

## The following levels of cover:

### 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;

### employer's liability insurance with a limit of indemnity of not less than £5,000,000or 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;

### professional indemnity insurance with a limit of indemnity of not less than £[INSERT AMOUNT] 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;

### [product liability insurance with a limit of indemnity of not less than £ [INSERT AMOUNT] in relation to any one claim or series of claims.]

### [motor vehicle insurance on a fully comprehensive basis]

1. Step-in

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

1. If Clauses 20.1 (a), (b) or (c) apply the Council shall immediately be entitled to serve a Step-In Notice pursuant to Paragraph 5.
2. If Clauses 20.1 (d) or (e) apply, prior to serving a Step-In Notice pursuant to Paragraph 5, the Council shall first serve written notice on the Service Provider (with specific reference to the exercise of its rights under Clause 20.1) allowing the Service Provider a period of ten (10) Working Days to remedy the circumstances giving rise to the right of step-in or to otherwise submit a remediation plan to the Council which satisfies the Council that the Service Provider will be able to provide the Services in accordance with the terms of the Contract upon implementation of the remediation plan.
3. If the Service Provider has not remedied the circumstance giving rise to the right of step-in or the Council is not satisfied with the Service Provider's remediation plan submitted pursuant to Paragraph 2 above, the Council may, where the Council considers it expedient to do so:

### require the Service Provider by notice in writing to take any 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;

### 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

### 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).

1. 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.
2. If Paragraph 1 applies or the Service Provider:

### 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

### fails to work with a person appointed in accordance with Paragraph 3(b) above; or

### fails to take the steps notified to it by the Council pursuant to paragraph 3(c) above,

the Council shall serve a notice ("**Step-in Notice**") on the Service Provider. The Step-in Notice shall set out the following:

### the action the Council wishes to take and in particular the Services it wishes to control;

### the reason for and the objective of taking the action;

### the date it wishes to commence the action;

### the time period which it believes will be necessary for the action;

### whether the Council will require access to the Service Provider's premises;

### to the extent practicable, the effect on the Service Provider and its obligations to provide the Services during the step-in period.

1. Following service of a Step-in Notice, the Council shall:

### 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**");

### keep records of the Required Action taken and provide information about the Required Action to the Service Provider;

### 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

### act reasonably in mitigating the cost that the Service Provider will incur as a result of the exercise of the Council's step-in rights.

1. For so long as and to the extent that the Required Action is continuing, then:

### the Service Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

### 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.

1. 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.
2. 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:

### the Required Action it has actually taken; and

### 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 10 below.

1. 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 the Contract.
2. 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.
3. The Service Provider shall bear its own costs in connection with any step-in by the Council under this Schedule 8.
4. Data Protection Clauses

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

1. Definitions
   1. The definitions in this Paragraph apply in this schedule.

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

**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 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;

**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 4 (Cyber Security Requirements);

**Service Provider Representatives**: 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 the Contract.

1. Data Protection
   1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor, unless otherwise specified in Schedule 10. The only processing that the Service Provider is authorised to do is listed in Schedule 10 by the Council and may not be determined by the Service Provider.
   2. The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation, or if any changes to the Data Protection Legislation may adversely affect the Service Provider's performance of the Services.
   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:
      1. a systematic description of the envisaged processing operations and the purpose of the processing;
      2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
      3. an assessment of the risks to the rights and freedoms of Data Subjects; and
      4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
   4. The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
2. process that Personal Data only in accordance with Schedule 10, 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;
3. 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:
4. nature of the data to be protected;
5. harm that might result from a Data Loss Event;
6. state of technological development; and
7. cost of implementing any measures;
8. ensure that:
9. the Service Provider Representatives do not process Personal Data except in accordance with the Contract (and in particular Schedule 10);
10. it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that they:
11. are aware of and comply with the Service Provider’s duties under this clause;
12. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
13. 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
14. have undergone adequate training in the use, care, protection and handling of Personal Data; and
15. not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
16. the Council or the Service Provider has provided appropriate safeguards in relation to the transfer as determined by the Council;
17. the Data Subject has enforceable rights and effective legal remedies;
18. 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
19. 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;
20. 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.
    1. Subject to clause 2.6, the Service Provider shall notify the Council immediately if the Service Provider:
21. receives a Data Subject Request (or purported Data Subject Request);
22. receives a request to rectify, block or erase any Personal Data;
23. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
24. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
25. 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
26. becomes aware of a Data Loss Event.
    1. The Service Provider’s obligation to notify under Paragraph 2.5 shall include the provision of further information to the Council in phases, as details become available.
    2. 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 Paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
27. the Council with full details and copies of the complaint, communication or request;
28. 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;
29. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
30. assistance as requested by the Council following any Data Loss Event;
31. 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.
    1. The Service Provider shall maintain complete and accurate records and information regarding any processing of Personal Data it carries out for the Council, including but not limited to, the access, control and security of the Personal Data, approved Sub-processors and affiliates, the processing purposes, categories of processing, any transfers of personal data to a third country and related safeguards, and a general description of the Protective Measures referred to in Paragraph 2.4(b). The Service Provider shall provide such records and information to the Council on request.
    2. The Service Provider shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
    3. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
    4. Before allowing any Sub-processor to process any Personal Data related to the Contract, the Service Provider must:
32. notify the Council in writing of the intended Sub-processor and processing;
33. obtain the written consent of the Council;
34. 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 such written agreement shall terminate automatically on termination of the Contract for any reason; and
35. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
    1. 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. On the Council's written request, the Service Provider will audit a Sub-processor's compliance with its obligations under the written agreement referred to at Paragraph 2.11(c) and provide the Council with the audit results.
    3. 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).
    4. 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.
36. Schedule of Processing, Personal Data and Data Subjects

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

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

* + 1. 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 200 2340

* + 1. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Legislation.
    2. The Service Provider shall comply with any further written instructions provided by the Council from time to time with respect to processing Personal Data under the Contract.

| **Description** | **Details** |
| --- | --- |
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor in accordance with Paragraph 2.1 of Schedule 9. |
| Subject matter of the processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.*  *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.]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *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.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]* |
| Type of Personal Data being Processed | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]* |
| Categories of Data Subject | *[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.]* |