

This agreement is dated [DATE]

Parties

- (1) Borough Council of King's Lynn and West Norfolk of Chapel Street, Kings Court, King's Lynn, Norfolk PE30 1EX (**Authority**)
- (2) [FULL COMPANY NAME] incorporated and registered in [England and Wales] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

BACKGROUND

- (A) The Authority wishes to enter into an agreement with this Supplier in relation to the management and running of the Guildhall, King's Lynn (the Property)
- (B) The Supplier is a charitable organisation and is willing and able to manage the Property in accordance with the terms and conditions of this agreement

Agreed terms

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in **Schedule 2**).

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in **Schedule 4**.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services as identified in **Error! Reference source not found.**

Authority Premises: the buildings and premises specified in **Error! Reference source not found.**, or as otherwise agreed between the parties in accordance with the Change Control Procedure.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the

Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the Term, the pricing structure and any other relevant factors.

Catastrophic Failure:

- a) [a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster;]
- b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority[;]
- c) [[OTHERS]].

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

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Change in Law: any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

Charges: to include how and what will be charged? will company account to Council for profits/ or will Council be responsible for passing on funding or a mix of 2.

Commencement Date: the date of this agreement.

Commercially Sensitive Information: the information listed in **Error! Reference source not found.** comprising the information of a commercially sensitive nature relating to the pricing of the Services, the Supplier's intellectual property rights or the Supplier's business operations which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;

- b) any information developed by the parties in the course of carrying out this agreement;
- c) any Commercially Sensitive Information.

Consistent Failure: shall have the meaning set out in Part 3 of Schedule 2.

Consumer Prices Index: the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles such index.

Contract Year: any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Controller: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].

Data Subject: as defined in the Data Protection Legislation.

[**Disaster Recovery Plan:** the disaster recovery plan [prepared pursuant to OR as set out in Error! Reference source not found. as amended from time to time].]

Dispute Resolution Procedure: the procedure set out in clause 17.

Domestic law: the law of the United Kingdom or part of the United Kingdom.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in 0.

FOIA: the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;

- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and

but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-Contractor's supply chain.

Health and Safety Policy: the health and safety policy of the Authority being one of the Mandatory Policies.

General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

GHG emissions: emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended from time to time including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), nitrogen trifluoride (NF₃), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF₆), each expressed as a total in units of carbon dioxide equivalent.

Information: has, for the purposes of clause 22, the meaning given under section 84 of FOIA.

Initial Term: means the duration of the agreement starting at 00.01 am on the Commencement Date and ending at 11.59 pm on the day before the [NUMBER] anniversary of the Commencement Date.

Insolvency Event: where:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party];
- c) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) [other than for the sole

purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);

f) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

g) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;

i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);

j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

KPIs: the key performance indicators for all and each part of the Services as specified in Schedule 2.

Key Personnel: those personnel identified Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 11.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

Mandatory Policies: the Authority's policies [and codes] [attached OR listed] in [Schedule 1], as amended by notification to the Supplier from time to time.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Prohibited Plastic Items: means the single-use plastic items listed in [ANNEX] to [Schedule 1].

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

Remediation Notice: a written notice given by the Authority to the Supplier pursuant to clause 27 to initiate the Remediation Plan Process.

Remediation Plan: the plan agreed in accordance with clause 27 for the resolution of a Supplier's default in complying with its obligations under this agreement.

Remediation Plan Process: the process for resolving certain of the Supplier's defaults as set out in clause 27.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time.

Representatives: means, in relation to party, its employees, officers, contractors, subcontractors, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.

[**Service Credits:** a sum which the Authority is entitled to deduct or invoice for a Service Failure as specified in Part 2 of Schedule 2.]

[**Service Failure:** a shortfall or failure by the Supplier to deliver any part of the Services in accordance with any Target KPI.]

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

Sustainability report: the report to be submitted to the Authority by the Supplier in accordance with clause 7.4.

Sub-Contract: any contract or agreement (or proposed contract or agreement) between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: a person with whom the Supplier enters into a Sub-Contract[, and any third party with whom that third party enters into a subcontract or its servants or agents].

Target KPI: the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 2.

Term: the period of the Initial Term as may be varied by:

- a) any extension pursuant to clause 2.2; or
- b) the earlier termination of this agreement in accordance with its terms.

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

Termination Notice: any notice to terminate this agreement which is given by either party in accordance with clause 28 or clause 29.

Termination Payment Default: is defined in Schedule 3.

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

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

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

Working Hours: the period from 9.00am to 5.00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** excludes fax [but not **OR** and] e-mail.
- 1.10 [Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.]
- 1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.14 If there is any conflict or ambiguity between any of the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) **Schedule 1** to this agreement;
 - (c) the remaining schedules to this agreement other than **Error! Reference source not found.**;
 - (d) **Error! Reference source not found.** to this agreement.

Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.

Commencement and duration

2. Commencement and duration

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Authority may, by giving the Supplier not less than [NUMBER] months' written notice prior to expiry of the Initial Term, request the extension of this agreement in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period of up to [NUMBER] years from the day following expiry of the Initial Term.

3. Due diligence and Supplier's warranty

- 3.1 The Supplier acknowledges and confirms that:
- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
 - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause **3.1(a)**;
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
 - (d) it has entered into this agreement in reliance on its own due diligence.

- 3.2 No representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3 The Supplier:
- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
 - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 3.4 The Supplier shall not be entitled to recover any additional costs or charges from the Authority arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 3.3(b), save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier may recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

The services

4. Supply of services

- 4.1 The Supplier shall provide the Services to the Authority with effect from the [Commencement Date **OR** [DATE]] for the duration of the Term in accordance with the provisions of this agreement, including without limitation **Schedule 1** and **Schedule 2**.
- 4.2 In providing the Services, the Supplier shall at all times:
- (a) without prejudice to clause **5**, provide the Services with reasonable care and skill and in accordance with Best Industry Practice;

- (b) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (c) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Authority).
- (d) allocate sufficient resources to provide the Services in accordance with the terms of this agreement;
- (e) ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Authority, attend such meetings at the premises of the Authority or elsewhere as may be reasonably required by the Authority; and
- (f) provide such reasonable co-operation and information in relation to the Services to such of the Authority's other suppliers as the Authority may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Authority.

5. KPIs

- 5.1 Where any Service is stated in **Schedule 2** to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 5.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within **Schedule 2**.
- 5.3 The Supplier shall provide monthly reports summarising the Achieved KPIs as provided for in clause **15**.
- 5.4 [In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, the provisions of **Error! Bookmark not defined.****Error! Reference source not found.** shall apply.]

6. Compliance and change in laws

- 6.1 In performing its obligations under this agreement, the Supplier shall at all times comply with:
 - (a) all applicable Law;
 - (b) the Mandatory Policies.

The Supplier shall maintain such records as are necessary pursuant to the Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority (or its authorised representative).

- 6.2 Without limiting the generality of the obligation under clause 6.1, the Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 6.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 6.4 Without limiting the general obligation set out in clause 6.1, the Supplier shall (and shall procure that the Supplier Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) [the Authority's equality and diversity policy as provided to the Supplier from time to time;]
 - (iii) [any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;]
 - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 6.5 The Supplier shall monitor and shall keep the Authority informed in writing of any changes in the Law which may impact the Services and shall provide the Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Supplier shall only implement such changes in accordance with the Change Control Procedure.

6.6 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.

7. **Supplier environmental obligations**

7.1 The Supplier shall ensure that:

- (a) its operations comply with all applicable environmental Law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
- (b) the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with environmental Law;
- (c) it will only use packaging materials that comply with applicable environmental Law.

7.2 The Supplier shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:

- (a) assess the environmental impact of all past, current and future operations;
- (b) specify steps to continuously improve environmental performance, and reduce pollution, emissions and waste;
- (c) specify measures to reduce the use of all raw materials, energy and supplies;
- (d) require Supplier Personnel to be trained in environmental matters.

7.3 The Supplier shall, in performing its obligations under this agreement:

- (a) [comply with any environmental related KPIs [in Schedule 2];]
- (b) not provide to the Authority any goods or deliverables comprising wholly or partly of Prohibited Plastic Items;
- (c) not use any goods or deliverables which comprise wholly or party of a Prohibited Plastic Item to provide the Services unless the use is either related to management of the Supplier's general operations, or otherwise agreed in writing with the Authority;
- (d) minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by Supplier Personnel, emissions from Supplier offices and equipment[; **OR** .]
- (e) [[OTHERS].]

- 7.4 On each anniversary of the Commencement Date, the Supplier shall complete and submit to the Authority a Sustainability Report in relation to the Services being provided, which shall [be in the form specified in Schedule 4 and] include contain information on:
- (a) the Supplier's GHG emissions using the most recent government conversion factors for greenhouse gas reporting;
 - (b) the Supplier's water use (in metres cubed);
 - (c) the Supplier's energy consumption relating to assets used at Authority Premises or other locations;
 - (d) transport use (and resulting GHG emissions) for goods delivered to, or Supplier Personnel travel to, Authority Premises or other Authority locations;
 - (e) volume of waste produced at Authority Premises or other locations that relate to the provision of the Services; and
 - (f) the overall sustainability impact of the Services, including improvements identified by the Supplier, new policies or targets adopted to reduce the environmental impact of the Supplier's operations and contributions towards any Authority environmental policies or targets.
- 7.5 The Authority may audit the Supplier's compliance with this clause 7 in accordance with clause 25.

8. Use of Authority Premises and Assets

- 8.1 With effect from the Commencement Date, the Authority shall grant the Supplier a non-exclusive and revocable licence to enter the Authority Premises for the sole purpose of providing the Services to the Authority. The licence shall be subject to the conditions of this agreement, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties.
- 8.2 The licence granted pursuant to clause 8.1 shall terminate immediately on the Termination Date.
- 8.3 The Supplier shall ensure that visiting or using the Authority Premises, the Supplier Personnel shall:
- (a) keep the Authority Premises clean, tidy and properly secure;
 - (b) co-operate as far as may be reasonably necessary with the Authority's employees;
 - (c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Authority; and

- (d) comply with all the rules and regulations that the Authority notifies to the Supplier from time to time [in writing] relating to the use and security of the Authority Premises.

8.4 The Supplier shall ensure that the Supplier Personnel shall not:

- (a) obstruct access to the Authority Premises, or any part of them; or
- (b) do or permit to be done on the Authority's Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Authority or the occupiers of or visitors to the Authority Premises.

8.5 The Supplier shall ensure that any Authority Assets are:

- (a) used with all reasonable care and skill and in accordance any manufacturer guidelines or instructions;
- (b) kept properly secure; and
- (c) not removed from the Authority Premises unless expressly permitted under this agreement or agreed in writing with by the Authority's Authorised Representative.

8.6 The Authority shall maintain and repair the Authority Assets but where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier Personnel (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.

8.7 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier Personnel to any property of the Authority or other recipient of the Services, or to any of the Authority Premises in the course of providing the Services. The Supplier shall be responsible for the reasonable costs of repair or replacement and, without prejudice to its other rights and remedies under this agreement or otherwise, the Authority shall be entitled to set off such reasonable costs of repair or replacement against sums owing to the Supplier under this agreement.

8.8 Subject to the requirements of clause 32 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

9. Charges, invoicing and payment

9.1 To be agreed

10. Interest

- 10.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) Period. From when the overdue sum became due, until it is paid.

Staff

11. Key personnel

- 11.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 11.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) required to do so by the Authority in accordance with clause 12.2 or clause 12.3;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the Authority.
- 11.3 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than [NUMBER] Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.
- 11.4 If the Supplier replaces the Key Personnel as a consequence of this clause 11, the cost of effecting such replacement shall be borne by the Supplier.

12. Supplier Personnel

- 12.1 At all times, the Supplier shall ensure that:
- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Supplier Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Supplier Personnel comply with the Mandatory Policies.
- 12.2 The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any of the Mandatory Policies, or if they otherwise present a security threat.
- 12.3 The Supplier shall replace any of the Supplier Personnel whom the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 12.4 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier Personnel. The Supplier shall ensure that the Supplier Personnel cannot be individually identified from the information so provided.
- 12.5 [The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.]

13. Safeguarding children and vulnerable adults

- 13.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 13.2 The Supplier shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
 - (b) monitor the level and validity of the checks under this clause 13.2 for each member of staff;
 - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 13.3 The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 13.4 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 13 have been met.
- 13.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to [the service users **OR** children **OR** vulnerable adults].]

14. TUPE

The parties agree that the provisions of **Error! Reference source not found.** shall apply to any Relevant Transfer of staff under this agreement.

Contract management

15. Review and monitoring

- 15.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this agreement. The first Authorised Representatives are listed in **Schedule 4**. The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services (including by signing Change Control Notes).
- 15.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice

to the other party, replace that person from time to time where reasonably necessary in the interests of its business.

- 15.3 The Authorised Representatives shall meet at not less than monthly intervals to monitor and review the performance of this agreement, including the achievement of the Target KPIs. Such meetings shall be minuted by the Authority's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.
- 15.4 Without prejudice to any other reports required under this agreement, in advance of each meeting to be held in accordance with clause 15.3:
- (a) the Supplier shall provide the Authority with a monthly written report detailing its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
 - (b) the Authority shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- 15.5 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause 27 shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 15.6 A review meeting to assess the Supplier's performance of its obligations under this agreement shall be held at [six-monthly] intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Authorised Representatives.
- 15.7 The Authority may increase the extent to which it monitors the performance of the Services if the Supplier fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Authority shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Authority pursuant to this clause 15.7.
- 15.8 The Supplier shall submit any other management reports to the Authority in the form and at the interval specified in Schedule 4, or as specified elsewhere in this agreement.

16. Change control, benchmarking and continuous improvement

- 16.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 16.2 [The parties shall comply with the provisions of **Error! Reference source not found.** (Benchmarking).]

- 16.3 The Supplier shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services, and use all reasonable endeavours to ensure that the Authority receives the benefit of any such efficiencies.
- 16.4 Where the Supplier identifies a potential efficiency:
- (a) it shall promptly inform the Authority and shall advise the Authority whether, in the Supplier's professional opinion, the implementation of any change necessary to enable the Authority to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and
 - (b) if the Authority concludes that the implementation of the necessary change is desirable, the Supplier shall implement the change.
- 16.5 Where the achievement of the benefit by the Authority would necessitate the making of a Change Control Note, the Change Control Procedure shall apply but the Supplier shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this clause 16 (including any consequent reductions in the Charges) shall accrue solely to the Authority.

17. **Dispute resolution**

- 17.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then[, except as expressly provided in this agreement,] the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within [30] Working Days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it;
 - (c) if the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within [30] Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within [NUMBER] Working Days of referral of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. [A copy of the ADR notice should be sent to CEDR];

- (d) [if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within [NUMBER] Working Days from the date of the ADR notice, where appropriate, in conjunction with the mediation, CEDR will be requested to decide that point for the parties having consulted with them; and]
 - (e) Unless otherwise agreed between the parties, the mediation will start not later than [NUMBER] Working Days after the date of the ADR notice.
- 17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
- 17.3 If for any reason the Dispute is not resolved within [NUMBER] Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 44.

18. Sub-Contracting

- 18.1 Subject to clause 18.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.
- 18.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 18.3 The Authority shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

Liability

19. Indemnities

- 19.1 Subject to **Error! Bookmark not defined.****Error! Reference source not found.**, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
 - (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
 - (c) the enforcement of this agreement.

20. Limitation of liability

- 20.1 The Supplier has obtained insurance cover in respect of certain aspects its own legal liability for individual claims not exceeding £[AMOUNT] per claim. [The Supplier has been unable to obtain insurance in respect of certain types of liability at a commercially viable price.] The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Authority is responsible for making its own arrangements for the insurance of any excess liability.
- 20.2 References to liability in this clause 20 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 20.3 Nothing in this clause 20 shall limit the Authority's payment obligations under this agreement.
- 20.4 Nothing in this clause 20 shall limit any liability under:
- (a) clause 26 (*IPR indemnity*)
 - (b) the indemnities in **Error! Reference source not found.** (*TUPE*)
 - (c) breach of clause 31 (*Bribery*)
 - (d) [[OTHERS].]
- 20.5 Nothing in this agreement limits any liability which cannot legally be limited, including for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

20.6 Subject to [Error! Bookmark not defined.Error! Reference source not found.] clause 20.4 and clause 20.5, the Supplier's total aggregate liability to the Authority:

- (a) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 23 shall not exceed £[AMOUNT];
- (b) in respect of physical damage to the Authority's (or third party's) property caused or arising by reason of any act or omission of the Supplier or Supplier Personnel, shall not exceed £[AMOUNT LINKED TO RELEVANT INSURANCE POLICY] for any one event or series of connected events; and
- (c) in respect of all other claims, losses or damages arising in each Contract Year, shall not exceed the cap.

20.7 In clause 20.6(c):

- (a) The cap is the greater of £[MINIMUM AMOUNT] and [NUMBER IN WORDS] per cent ([PERCENTAGE]%) of the total charges in the Contract Year in which the breaches occurred; and
- (b) The total charges mean the sum of the Charges paid by the Authority and all Charges payable under this agreement in respect of Services actually supplied by the Supplier, whether or not invoiced by the Authority.

20.8 Subject to [clause 20.1] clause 20.3, clause 20.4 and clause 20.5, the Authority's total aggregate liability in respect of all claims, (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), losses or damages arising in each Contract Year shall not exceed the cap.

20.9 In clause 20.8:

- (a) The cap is the greater of £[MINIMUM AMOUNT] and [NUMBER IN WORDS] per cent ([PERCENTAGE]%) of the total charges in the Contract Year in which the breaches occurred.
- (b) The total charges mean the sum of the Charges paid by the Authority and all Charges payable under this agreement in respect of Services actually supplied by the Supplier, whether or not invoiced by the Authority.

20.10 Subject to [clause 20.1,]clause 20.3, clause 20.4 and clause 20.5, clause 20.10(b) identifies the kinds of loss that are not excluded. Subject to that, clause 20.10(a) excludes specified types of loss.

- (a) Types of loss wholly excluded:

- (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.
- (b) Types of loss and specific losses are not excluded:
- (i) Sums paid by the Authority to the Supplier pursuant to the agreement in respect of any Services not provided in accordance with the agreement.
 - (ii) Wasted expenditure.
 - (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the agreement. These include consultancy costs, additional costs of management time
 - (iv) Losses incurred by the Authority arising out of or in connection with any third party claim against the Authority which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by Sub-Contractors, the Supplier's Personnel, regulators and customers of the Authority.
 - (v) Anticipated savings in respect of [INDICATION OF SOURCE OF SAVINGS].
 - (vi) [OTHER SPECIFIC LOSSES.]

20.11 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.2 and clause 5. In view of these commitments, the terms implied by sections 3[, 4] and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

20.12 Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become aware of [the event having occurred **OR** its having grounds to make a claim in respect of the event] and shall expire [NUMBER] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

21. Insurance

21.1 The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing [as a minimum the levels of cover set out in **Error! Reference source not found.** **OR** as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of at least £[AMOUNT] million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of at least £[AMOUNT] million per claim **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £[AMOUNT] million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) product liability insurance with a limit of at least £[IAMOUNT] million in relation to any one claim or series of claims,]

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, 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 Supplier.

21.2 The Supplier shall give the Authority, 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.

21.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

21.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

21.5 [The Supplier shall hold and maintain the Required Insurances for a minimum of six years following expiry or earlier termination of the agreement.]

Information

22. Freedom of information

- 22.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 22.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 22.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that the Authority considers is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 22.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

23. Data processing

- 23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 23.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Schedule 9 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 23.3 Without prejudice to the generality of clause 23.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 23.4 Without prejudice to the generality of clause 23.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Authority which are set out in Schedule 9, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (h) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 25 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

23.5 The Supplier's liability for losses arising from breaches of this clause is as set out in clause 20.6(a).

- 23.6 Where the Supplier wishes to appoint a subprocessor to process any Personal Data relating to this agreement, such subprocessor shall constitute a Sub-Contractor and the Supplier shall:
- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent from the Authority;
 - (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 23.
- 23.7 [Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 23 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 replaced by attachment to this agreement).]

24. Confidentiality

- 24.1 The provisions of this clause do not apply to any Confidential information:
- (a) is or becomes available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - (d) the parties agree in writing is not confidential or may be disclosed;
 - (e) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.
- 24.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
 - (b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 24.
- 24.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 24.2.

24.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including under the FOIA or EIRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

24.5 The provisions of this clause 24 shall survive for a period of [INSERT] years from the Termination Date.

25. Audit

25.1 During the Term and for a period of [NUMBER] years after the Termination Date, the Supplier shall allow the Authority (acting by itself or through its Representatives) to access any of the Supplier's premises, systems, Supplier Personnel and relevant records as may reasonably be required to:

- (a) fulfil any legally enforceable request by any regulatory body;
- (b) verify the accuracy of Charges or identify suspected fraud;
- (c) review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (d) review the Supplier's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 23 (Data Protection) and clause 22 (Freedom of Information), and any other legislation applicable to the Services; or
- (e) verify that the Services are being provided and all obligations of the Supplier are being performed in accordance with this agreement.

25.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this agreement, the Authority may not conduct an audit under this clause 25 more than [twice] in any calendar year.

25.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

- 25.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier Personnel.
- 25.5 The Authority shall endeavour to (but is not obliged to) provide at least [15] Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 25.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Supplier to perform its obligations under this agreement in any material manner in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 25.7 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this agreement, the provisions of clause 27 shall apply;
 - (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within [20] days from the date of receipt of an invoice or notice to do so. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
 - (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the underpayment within [NUMBER] days from the date of receipt of an invoice for such amount.

26. Intellectual property

- 26.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.

26.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

27. Remediation Plan Process

27.1 Subject to Clause 27.2, if the Supplier is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Authority may not terminate this agreement without first operating the Remediation Plan Process. If the Supplier commits such a default, the Authority shall give a Remediation Notice to the Supplier which shall specify the default in outline and the actions the Supplier needs to take to remedy the default.

27.2 The Authority shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in clause 28.1(a), clause 28.1(d), clause 28.1(e), clause 28.1(f), clause 28.1(g), clause 28.1(h)[, clause 28.1(i)] and clause 28.1(j).

27.3 Within [NUMBER] Business Days of receipt of a Remediation Notice, the Supplier shall:

- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
- (b) inform the Authority that it does not intend to submit a Remediation Plan, in which event the Authority shall be entitled to serve a Termination Notice.

27.4 The Authority shall either approve the draft Remediation Plan within [NUMBER] Business Days of its receipt pursuant to Clause 27.3(a), or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Authority within [NUMBER] Business Days of its receipt of the Authority's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.

27.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.

27.6 If, despite the measures taken under clause 27.4, a Remediation Plan cannot be agreed within [NUMBER] Business Days then the Authority may elect to end the Remediation Plan Process and serve a Termination Notice.

- 27.7 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, the Authority may:
- (a) terminate this agreement by serving a Termination Notice;
 - (b) give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
 - (c) refer the matter for resolution under the Dispute Resolution Procedure.
- 27.8 If, despite the measures taken under clause 27.7, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Authority may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 27.9 The Authority shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Supplier as had previously been addressed in a Remediation Plan within a period of [NUMBER] months following the conclusion of such previous Remediation Plan. In such event, the Authority may serve a Termination Notice.

Termination

28. Termination

- 28.1 Without affecting any other right or remedy available to it, and subject to clause 27, the Authority may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:
- (a) if the Supplier is in material breach of this agreement, which is irremediable;
 - (b) the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
 - (c) the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
 - (d) the circumstances referred to in clause 27.9 occur;
 - (e) a Consistent Failure has occurred;
 - (f) a Catastrophic Failure has occurred;
 - (g) if there is an Insolvency Event;
 - (h) if the Authority elects to terminate pursuant to clause 31.6;
 - (i) [if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Authority reasonably objects,

provided that the Authority serves its Termination Notice within [NUMBER] months of the date on which the Supplier informs the Authority (by written notice) of the change of control or on which the Authority otherwise becomes aware of the change of control;]

- (j) the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

28.2 Either party may, during the continuance of a Force Majeure Event, terminate this agreement if the circumstances in clause 30.6 arise.

28.3 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

29. Termination on notice

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving 6 months' written notice to the Supplier.

30. Force majeure

30.1 Subject to the remaining provisions of this clause 30, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

30.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

30.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event [but not later than [NUMBER] days from its start], notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

- 30.4 If the Supplier is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services[, or if they are the result of the Supplier's failure to comply with the Disaster Recovery Plan (unless such failure is also due to a Force Majeure Event affecting the operation of the Disaster Recovery Plan)].
- 30.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 30.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [NUMBER] weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving [NUMBER] weeks' notice to the Affected Party.

31. Prevention of bribery

- 31.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:
- (a) has committed a Prohibited Act;
 - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 31.2 The Supplier shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 31.1 at the relevant time.
- 31.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Term:
- (a) not commit a Prohibited Act;
 - (b) not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

- (c) [comply with the Authority's Anti-bribery and Anti-Corruption Policy as updated from time to time and set out in **Schedule 1** **OR** have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;]
- (d) notify the Authority (in writing) if it becomes aware of any breach of clause **31.3(a)** or clause **31.3(b)**, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage [in connection with performance of this agreement].

31.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this agreement and the steps taken to comply with its obligations under clause **31.3**.

31.5 The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause **25**.

31.6 If the Supplier is in default under this clause **31** the Authority may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the default; or
- (b) immediately terminate this agreement.

31.7 Any notice served by the Authority under clause **31.6** shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

32. Consequences of termination or expiry

32.1 On the expiry of the Term or if this agreement is terminated for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall cooperate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.

32.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier [Authorised Representative or Chief Executive Officer] shall certify full compliance with this clause.

- 32.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 5.3 (provision of records), clause 19 (Indemnities), clause 20 (Limitation of Liability), clause 21 (Insurance), clause 22 (Freedom of Information), clause 23 (Data Processing), clause 24 (Confidentiality), clause 25 (Audit) and this clause 32 (Consequences of termination), shall remain in full force and effect.
- 32.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

General provisions

33. Waiver

- 33.1 A waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent right or remedy].
- 33.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

34. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

35. Severance

- 35.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 35.2 If any provision or part-provision of this agreement is deemed deleted under clause 35.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

36. No partnership or agency

- 36.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

36.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

37. Third party rights

37.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

37.2 [The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.]

38. Assignment and other dealings

38.1 The Authority may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Supplier.

38.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

39. Publicity

The Supplier shall not:

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

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

40. Notices

40.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); [or]
- (b) [sent by email to the following addresses (or an address substituted in writing by the party to be served):

- (i) Party 1: [ADDRESS].
- (ii) Party 2: [ADDRESS].]

40.2 Any notice shall be deemed to have been received:

- (a) If delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at [9.00 am] on the [second] Working Day after posting[; or **OR** .]
- (c) [if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.]

40.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

41. Entire agreement

41.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

41.2 Each party acknowledges that in entering into this agreement it does not rely on[, and shall no remedies in respect of,] any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

41.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

42. Variation

Subject to clause 16, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

43. Counterparts

43.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.

43.2 Transmission of [an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made,

each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

44. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

45. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Signed by
for and on behalf of Director
BCKLWN

Signed by [NAME OF
DIRECTOR] for and on Director
behalf of [NAME OF
SUPPLIER]

Schedule 1 Specification – include what Council want Co to do at Venue

Schedule 2 Performance regime

Part 1 KPIs

1. The KPIs

1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	KPI category (Red/ Green)
		[NUMBER]%	
		[NUMBER]%	
		[NUMBER]%	

1.2 The Supplier shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with [Schedule 4](#).

Part 2 [Service credits]

1. [Calculation of service credits]

1.1 Service Credits shall accrue for any Service Failure and shall be calculated in accordance with this Schedule.

1.2 If the level of performance of the Supplier during a measurement period achieves the Target KPI, no service points shall accrue to the Supplier in respect of that KPI.

1.3 If there is a Service Failure in the relevant measurement period:

- (a) the number of service points that shall accrue to the Supplier in respect of a Service Failure shall be the applicable number as set out in the table below depending on whether the Service Failure is a Minor Failure, a Serious Failure or a Severe Failure. Service credits shall be calculated in accordance with the following formula:

Service credit payable per month = (Total number of service points/100) x Charges payable by the Authority for the period.]

KPI No.	KPI title	Definition	Frequency of measurement	Category of Service Failure	Service points

KPI1	[Availability]	[INSERT DEFINITION OR REFER TO RELEVANT PARAGRAPH]		Target KPI: [[NUMBER] %] Minor failure: [[NUMBER] % - [NUMBER] %] Serious failure: [[NUMBER] % - [NUMBER] %] Severe failure: [NUMBER] % - [NUMBER] % KPI threshold: [below [NUMBER] %]	0 [1] [2] [3] [4]
KPI2	[NAME OF KPI]	[INSERT DEFINITION OR REFER TO RELEVANT PARAGRAPH]		Target KPI: [[NUMBER]] Minor failure: [[NUMBER]] Serious failure: [[NUMBER]] Severe failure: [[NUMBER]] KPI threshold: [[INSERT]]	0 [1] [2] [3] [4]
KPI3	[NAME OF KPI]	[DEFINITION]		Target KPI: [NUMBER] Minor failure: [[NUMBER]] Serious failure: [[NUMBER]] Severe failure:	0 [1] [2] [3] [4]

				[[INSERT NUMBER]] KPI threshold: [[NUMBER]]	
KPI4	[NAME OF KPI]	[DEFINITION]		Target KPI: [INSERT NUMBER] % Minor failure: [[NUMBER]%- [NUMBER] %] Serious failure: [[NUMBER] % - [NUMBER] %] Severe failure: [[NUMBER] % - [NUMBER] %] KPI threshold: [[NUMBER] % - [NUMBER] %]	0 [1] [2] [3] [4]

OR

- (b) The number of service credits payable shall be the applicable number set out in the table below depending on the Achieved KPI.

KPI achieved	Service Credit payable	Supplier's performance
[NUMBER] % on target (Target KPI)	None	Contract performing well
[NUMBER]-[NUMBER] % on target	[NUMBER] % of applicable Charges for period	Minor under performance
[NUMBER]-[NUMBER] % on target	[NUMBER] % of applicable Charges for period	Contract under performing. Supplier to implement recovery programme
[NUMBER]-[NUMBER] % on target	[NUMBER] % of applicable Charges for period	Major under performance. Supplier to implement recovery programme

Less than [NUMBER]% on target	[NUMBER]% of applicable Charges for period	Supplier guilty of Consistent Failure and contract potentially subject to termination
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OR

(c) [[OTHER PERFORMANCE REGIME.]]

Part 3 Consistent failure

1. Consistent failure

In this agreement, **Consistent Failure** shall mean:

(a) a failure to meet

(i) 5 or more of the Target KPIs labelled ["Red"] in a rolling [NUMBER] month period; or

(ii) 10 or more Target KPIs labelled ["Green"] in a rolling [NUMBER] month period.]

OR

(iii) [[INSERT NUMBER] or more Target KPIs in a rolling [NUMBER] month period.]

[AND/OR]

(b) [the Supplier accruing Service Credits in any period of [NUMBER] consecutive months, or any [NUMBER] months in a rolling 12-month period, in excess of £[AMOUNT].]

[AND/OR]

(c) [the Authority serving [NUMBER] Remediation Notices in a rolling [INSERT NUMBER] month period.]

[AND/OR]

(d) [the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.]

Schedule 3 Charges and payment

1. Calculation of the Charges

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

2. Charges based on a fixed price

Service	Monthly cost (£)
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
TOTAL	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]

3. Charges based on hourly rates

Hours of service in invoice period	Hourly rate (£)
[Up to 100]	[INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY]
[101-200]	[INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY]
[201-300]	[INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY]

4. Payment triggered by meeting milestones

Workstream	Milestone	Date completion expected	Charge payable on completion (£)
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]

[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]
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5. Menu pricing

Type of Fixed Cost	Charges (£)
[INSERT TYPE OF SERVICE TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE]

Schedule 4 Contract management

1. Authorised representatives

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

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

2. Key personnel

[INSERT DETAILS]

3. Reports

3.1 Type

3.2 Contents

3.3 Frequency

3.4 Circulation list

Schedule 5 Subsidy Control – The Council may obtain grants in relation to the property which can be passed to the Supplier to be used in accordance with this agreement. Subsidy Control requirements shall be assessed on each occasion.

Schedule 6 Change control

1. General principles

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier 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 6, shall be undertaken entirely at the expense and liability of the Supplier.

2. Procedure

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

- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Authority and the Supplier; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 28.1(j) will be apportioned.

2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:

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

2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

Schedule 7 Exit management plan

1. Purpose of Schedule

(i) The Supplier is required to ensure the orderly transition of the Services to the Authority or any replacement supplier (as applicable) in the event of any termination or expiry of this agreement. This Schedule describes the roles and responsibilities of the parties which are intended to achieve this, and the principles upon which the Exit Plan shall be based.

(b) Obligations during the Term to facilitate exit

(i) During the Term, the Supplier shall:

1. create and maintain registers of:
 - a. all assets (excluding assets owned by the Authority required to perform the agreement;
 - b. subcontracts and other agreements (including software licences) required to perform the agreement.
2. compile and maintain a procedures manual, describing how the Services are delivered, including the processes used; and
3. maintain copies of any subcontracts or other agreements referred to in the registers.

(c) Exit Plan

(i) The parties shall use their reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within 30 Business Days of its submission, either party may refer the dispute to the Dispute Resolution Procedure.

(ii) The Exit Plan shall:

1. address each of the issues set out in this Schedule to facilitate the transition of the Services from the Supplier to the replacement supplier or Authority (as applicable) and ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
2. detail how the Services will transfer to the replacement supplier or Authority (as applicable) including, to the extent applicable, details of the processes, documentation, data transfer, systems migration, security, and the segregation of the Authority's technology components from any technology components run by the Supplier or any of its subcontractors;
3. provide a timetable for exit and compliance with the requirements of the agreement.

(iii) The Supplier shall review and, if appropriate, update the Exit Plan on a basis consistent with the principles set out in this Schedule:

1. to reflect any changes in the Services that have occurred since the Exit Plan was last agreed; and
2. following any major change to the Services under the agreement.

(iv) During the Exit Period, the Supplier shall comply with all of its obligations in the Exit Plan.

(d) Exit Assistance

(i) During the Exit Period, the Supplier shall:

1. provide the Authority or replacement supplier with the procedures manual compiled pursuant to paragraph 2.12;
2. provide access, during Business Hours, to the Authority or replacement supplier to:
 - a. any information relating to the Services as remains in the possession or control of the Supplier;
 - b. such members of the Supplier's Personnel involved in the provision of the performance of the agreement and who are still employed or engaged by the Supplier.

(e) Payment for Exit Services

(i) The Supplier shall not be entitled to reimbursement of its costs incurred in providing the Exit Assistance.

(f) Transfer of assets

- (i) At least 60 Business Days before the Termination Date, the Supplier shall provide the Authority with the register referred to in paragraph 2.1(a)a, indicating which assets are capable of legal transfer to the Authority or replacement supplier (as applicable).
- (ii) The Authority shall notify the Supplier at least 30 Business Days after receipt of the list pursuant to paragraph (i) which, if any, assets need to be transferred to it or any replacement supplier. The Supplier shall sell any transferring assets to the Authority or replacement supplier (as applicable) at Net Book Value. Risk in such transferring assets shall pass to the Authority or replacement supplier (as applicable) on the Termination Date and title shall pass to the Authority or replacement supplier (as applicable) on payment for the same.]

(g) Transfer of contracts

- (i) At least 60 Business Days before the Termination Date, the Supplier shall provide the Authority with the up-to-date register referred to in paragraph 2.1(a)b, identifying which contracts are used exclusively to deliver the Services.
- (ii) The Authority shall notify the Supplier at least 30 Business Days after receipt of the list pursuant to paragraph (i) which exclusive third party contracts, if any, the Authority requires to be transferred to it or any replacement supplier.

(iii) The Supplier shall, at the Authority's request and with the co-operation of the Authority, procure the novation to the Authority or replacement supplier (as applicable) of any transferring third party contracts notified to it under paragraph (ii).

Schedule 8 TUPE

The parties agree that the provision of the services under this agreement will constitute a relevant transfer for the purposes of TUPE and, accordingly, that it will not operate so as to terminate the contracts of employment of any of the employees. Such contracts shall be transferred to the Supplier pursuant to TUPE with effect from the Commencement Date.

The Authority undertakes to the Supplier:

that it has paid and shall pay all sums due to or in relation to the employees up to and including the Commencement Date (whether arising under common law, statute, equity or otherwise) including all salaries, wages, bonus or commission, expenses, holiday pay, National Insurance and pension contributions, liability to Taxation and other sums payable in respect of any period up to the Commencement Date;

that it has complied and shall comply in all respects with its obligations under regulation 11 and regulation 13 of TUPE (subject to the Supplier complying with its obligations under regulation 13 (4) of TUPE); and

to fully indemnify and hold the Supplier harmless against all demands (including legal and other professional fees and expenses) which the Supplier may suffer, sustain, incur, pay or be put to arising from or in connection with any contract of employment or engagement or collective agreement which is transferred to the Supplier by virtue of TUPE not disclosed to the Supplier and the termination of any such contract.

The parties agree that the provision of the services under this agreement will constitute a relevant transfer for the purposes of TUPE and, accordingly, that it will not operate so as to terminate the contracts of employment of any of the employees. Such contracts shall be transferred to the Supplier pursuant to TUPE with effect from the Commencement Date.

The Authority undertakes to the Supplier:

that it has paid and shall pay all sums due to or in relation to the employees up to and including the Commencement Date (whether arising under common law, statute, equity or otherwise) including all salaries, wages, bonus or commission, expenses, holiday pay, National Insurance and pension contributions, liability to Taxation and other sums payable in respect of any period up to the Commencement Date;

that it has complied and shall comply in all respects with its obligations under regulation 11 and regulation 13 of TUPE (subject to the Supplier complying with its obligations under regulation 13 (4) of TUPE); and

to fully indemnify and hold the Supplier harmless against all demands (including legal and other professional fees and expenses) which the Supplier may suffer, sustain, incur, pay or be put to

arising from or in connection with any contract of employment or engagement or collective agreement which is transferred to the Supplier by virtue of TUPE not disclosed to the Supplier and the termination of any such contract.

Schedule 9 Data processing

Shared Personal Data.

1. This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the Data Discloser) will regularly disclose to the other party Personal Data collected by the Data Discloser for the Services.
2. Effect of non-compliance with UK Data Protection Legislation. Each party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation, and any material breach of the UK Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

Particular obligations relating to data sharing.

3. Each party shall:
 - 3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Service;
 - 3.2 give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the permitted recipients, their successors and assignees;
 - 3.3 process the Personal Data only for the provision of the Services;
 - 3.4 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
 - 3.5 not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - (a) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - (b) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

Mutual assistance.

4. Each party shall assist the other in complying with all applicable requirements of the UK Data Protection Legislation. In particular, each party shall:
 - 4.1 consult with the other party about any notices given to data subjects in relation to the Personal Data;

- 4.2 promptly inform the other party about the receipt of any data subject access request;
- 4.3 provide the other party with reasonable assistance in complying with any data subject access request;
- 4.4 not disclose or release any Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- 4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- 4.6 notify the other party without undue delay on becoming aware of any breach of the UK Data Protection Legislation;
- 4.7 at the written direction of the Data Discloser, delete or return Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- 4.8 use compatible technology for the processing of Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 4; and
- 4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the UK Data Protection Legislation.

Indemnity.

5. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.