

CABINET - 15TH OCTOBER 2020

Report of the Strategic Director – Commercial Development Lead Member: Councillor Tom Barkley, Deputy Leader

Part A

ITEM CHANGES TO THE PROCUREMENT SERVICE

Purpose of Report

This report seeks authority to enter into a Service Level Agreement (SLA) with Nottingham City Council and seeks delegations to conduct negotiations and enter into said agreement.

Recommendation

That authority be delegated to the Strategic Director – Commercial Development to negotiate, agree and enter into a Service Level Agreement (SLA) with representatives of Nottingham City Council for the provision of procurement services to Charnwood Borough Council in line with the details provided in the report.

Reason

In order to provide an enhanced procurement service to support the Council in delivery of savings and cost avoidance for the MTFS.

Policy Justification and Previous Decisions

Charnwood Borough Council (CBC) and Nottingham City Council (NCC) are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999. Pursuant to the Local Authority (Goods and Services) Act 1970 local authorities may provide services for other public authorities. The proposed arrangement will be established pursuant to the 1970 Act. Legal Services will provide advice and assistance as part of the transfer to the new arrangements and will ensure a suitable Service Level Agreement is agreed. As an interim measure, Legal Services will also assist in the preparation of a Memorandum of understanding if this is the most expedient approach to formalising interim arrangements.

Implementation Timetable including Future Decisions and Scrutiny

The decision will come into effect immediately, subject to Call-in.

The target date for implementation of the Service Level Agreement is 29 January 2021.

Report Implications

The following implications have been identified for this report.

Financial Implications

The cost of the service is £55,000 per year and the proposed arrangement will last for 3 years.

In conjunction with the appointment of Nottingham City Council, two posts of the establishment will be deleted. The total salary budget for these posts of £70,100 will be replaced by the cost of the service and will provide a residual savings to the General Fund Revenue Account of £15,100 per year.

Post	Budget 20/21
Procurement Manager L310	£56,500
Procurement Assistant M267	£13,600
Total Budget	£70,100
Less the annual cost of the service	-£55,000
Savings to the General Fund Revenue Account	£15,100

Risk Management

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
That NCC do not wish to provide the service	Remote (1)	Minor (1)	Very Low (1)	NCC officers have obtained authorisation to provide the service to CBC.
That the service provides limited benefits to CBC	Remote (1)	Serious (3)	Low (3)	As is evidenced by other local authorities that have used this service, significant financial benefits can be achieved.
That CBC employees do not engage fully with the new service	Unlikely (2)	Serious (3)	Moderate (6)	An implementation programme will be provided for all managers. Contract Procedure Rules will be updated to align to the service.

Equality and Diversity

No implications

Crime and Disorder

No implications

Sustainability

No implications

Key Decision:

Yes

Background Papers:

None

Officer to contact:

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Part B

Introduction

1. Robust procurement is essential to the Council to obtain value for money in purchasing goods and services as well as to drive cashable savings and cost avoidance.
2. In the context of the financial challenges facing the Council now and through the medium term, it is more important than ever that this service is fit for purpose and able to support a range of procurement activity.
3. The current Procurement team at the Council consists of two employees: one permanent junior officer and one interim procurement manager whose contract will expire in January 2021. Whilst there is no complaint about the efficacy and quality of the service currently being delivered by these officers, the resources the Council will require in the future will far outweigh the current team's capacity.
4. There are a number of public sector procurement partnerships available which the Council could join to help bolster their capacity; however, the services provided may vary significantly (e.g. capital project and large contract experience) as well as the level of professional expertise (e.g. the number of procurement officers with professional accreditation).
5. This report therefore sets out the case for contracting such a service from Nottingham City Council (NCC).

NCC's service

6. Under powers granted by the Local Authorities (Goods and Services) Act 1970, public bodies can enter contracts with other public bodies for the provision of goods and services.
7. NCC was approached by Ashfield District Council (ADC) in January 2018. ADC had benchmarked several procurement partnership options prior to this point, and enquired with NCC if their services could be provided in the same fashion. Under agreement obtained in March 2018, NCC and ADC formulated a procurement service that remains in situ today and has 3 member Districts (ADC, Mansfield District Council, and Bassetlaw District Council).
8. The NCC procurement team supporting NCC procurement and this service to Districts consists of 20+ officers who are professionally accredited to lead and support large procurement activities such as IT contracts, building/development contracts and service provider contracts. Furthermore, whilst NCC would provide a main contact for Charnwood Borough Council, work undertaken to support us will be spread amongst the team, providing resilience for sickness and holiday absence.
9. NCC spend levels are generally 10 times larger than a District Council which allows NCC to purchase goods and services at more effective prices. As a unitary, many procured elements will be analogous to those purchased by this Council, thereby providing experience and potential leverage of spend to achieve best value for Charnwood.
10. The results delivered by this service are tangible. In the financial year 19/20, NCC achieved £700,000 of cost avoidance for ADC. The service was also audited by ADC's audit team and received an assured rating.

11. Should we not be satisfied with the service as delivered, the agreement can be terminated by either side with 12 months' written notice (see the appendix for the Draft Service Level Agreement).

Financial Implications

12. The cost of the service is £55,000 per year and the proposed arrangement will last for 3 years.

13. In conjunction with the appointment of Nottingham City Council, two posts of the current establishment will be deleted. Those posts are:

Post	Budget 20/21
Procurement Manager L310 (interim)	£56,500
Procurement Assistant M267 (vacant)	£13,600
Total	£70,100

14. The total salary budget of £70,100 will be replaced by the cost of the service and will provide a residual savings to the General Fund Revenue Account of £15,100 per year.

Employee Implications

15. The contract for the interim Procurement Manager post will end in January 2021. The current Senior Procurement Officer post is unaffected and will remain part of the establishment.

Appendix: DRAFT SERVICE LEVEL AGREEMENT

DATED

SERVICE LEVEL AGREEMENT

FOR THE PROVISION OF PROCUREMENT SERVICES

between

XXXXXXXXX COUNCIL

and

NOTTINGHAM CITY COUNCIL

This agreement is dated

Parties

- (1) XXXXXXXX of XXXXXXXXXXXXXXXX (**Authority**)
- (2) NOTTINGHAM CITY COUNCIL of Loxley House, Station Street, Nottingham NG2 3NG (**Supplier**)

BACKGROUND

- (A) The Authority requires procurement services in order to ensure that contracts are procured in accordance with legislative requirements and provide best value to the Authority.
- (B) The Supplier is able to provide procurement services to assist the Authority in procuring its corporate contracts.

Agreed terms

1. Definitions and Interpretation

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

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 3.

Authority Assets: any materials, software, equipment, internet access and welfare facilities owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services as outlined in clause 8

Authority's Premises: XXXXXXXXXXXX which are to be made available for use by the Supplier on the terms set out in this agreement.

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 term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure: 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.

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 4.

Charges: the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 2.

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) Personal Data;

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

Controller: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Data Subject: as defined in the Data Protection Legislation.

Default: any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:

- a) in the case of the Authority, of its employees, servants, agents;
- b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to the subject matters of this agreement and in respect of which such party is liable to the other.

Default Notice: is defined in clause 4.2.

Dispute Resolution Procedure: the procedure set out in clause 18.

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.

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

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
- g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

Health and Safety Policy: the health and safety policy of the Authority as provided to the Supplier on or before the Service Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Information: has the meaning given under section 84 of FOIA.

Law: means any legal provision the Supplier must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere.

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 15 and Schedule 3.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Payment Plan: the plan for payment of the Charges as set out in Schedule 2.

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 in relation to obtaining this agreement or any other contract with the Supplier;
- 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; (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.

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.

Remediation Notice: a notice served by the Authority in accordance with clause 27.1(a).

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 a party, its employees, officers, representatives and advisors.

Request for Information: a request for information or an apparent request under the 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 Commencement Date: **DATE**

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

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.

Term: means the period starting on the Service Commencement Date and ending on **DATE** or 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 in accordance with clause 27 (Termination)

Termination Payment Default: is defined in Schedule 2.

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

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((*EU*) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

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

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules, appendices and annexures 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, appendices and annexures.
- 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 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.9 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.
- 1.10 A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.11 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.

- 1.12 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, description, definition, phrase or term preceding those terms.

Commencement and duration

2. Term

- 2.1 This agreement shall take effect on the Service Commencement Date and shall continue for the Term until its expiry in accordance with clause 27.

3. Not Used

The services

4. Supply of services

- 4.1 The Supplier shall provide the Services to the Authority with effect from the Service Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1.
- 4.2 In the event that the Supplier does not comply with the provisions of clause 4.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

5. Not Used

6. Service standards

The Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with Best Industry Practice;
- (b) in all respects in accordance with the Authority's relevant and notified policies;
and
- (c) in accordance with all applicable Law.

7. Compliance

- 7.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 7.2 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.

7.3 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.

7.4 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.

7.5 Without limiting the general obligation set out in clause 6, 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); and
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

8. Authority's Premises and Assets

8.1 The Authority shall, subject to clause 7 and clause **Error! Reference source not found.**, provide the Supplier with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of providing the Services. The

Supplier's right of access will terminate upon termination of this agreement, subject to clause 8.3.

- 8.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority's Premises as is agreed by the parties from time to time.
- 8.3 Subject to the requirements of clause 31, 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's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 8.4 The Supplier shall ensure that:
- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
 - (b) only those of the Supplier Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
 - (c) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Service Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative; and
 - (d) any Authority Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.
- 8.5 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (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.
- 8.6 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents or employees to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.
- 8.7 The Supplier shall indemnify the Authority against all and any damage to the Authority Premises and the Authority Assets caused by the same.

Charges and payment

9. Not Used

10. Payment

- 10.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier in accordance with the Payment Plan.
- 10.2 Unless otherwise stated in **Schedule 2**, the Charges:
- (a) shall remain fixed during the Term; and
 - (b) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 10.3 The Supplier shall invoice the Authority for payment of the Charges beginning of each financial quarter. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time.
- 10.4 Where the Supplier submits an invoice to the Authority in accordance with clause 10.3, the Authority will consider and verify that invoice in a timely fashion or in any event no later than 10 Working Days from receipt of the invoice.
- 10.5 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 10.6 Where the Authority fails to comply with clause 10.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 10.5 after a reasonable time has passed.
- 10.7 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause **18**. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 28 days after resolution of the dispute between the parties.
- 10.8 Subject to clause 10.7, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause **11**. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 27.3 for failure to pay undisputed charges.
- 10.9 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The

Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

10.10 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.

11. Interest

11.1 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.

12. Not Used

Staff

13. Not Used

14. Supplier Personnel

14.1 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 all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

14.2 The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any such policies, or if they otherwise present a security threat.

14.3 The Supplier shall replace any of the Supplier Personnel who 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.

14.4 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 necessary and appropriate for the provision of the Services. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

14.5 The Supplier shall use its reasonable endeavours to ensure continuity of personnel.

Contract management

15. Reporting and meetings

15.1 The Supplier shall provide the Management Reports in the form and at the intervals set out in Schedule 3.

15.2 The Authorised Representatives and relevant Supplier Personnel shall meet in accordance with the details set out in Schedule 3 and the Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

16. Monitoring

16.1 The Authority may monitor the performance of the Services by the Supplier.

16.2 The Supplier shall co-operate with the Authority in carrying out the monitoring referred to in clause 17.1 at no additional charge to the Authority.

17. Change control and continuous improvement

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

17.2 The Supplier shall throughout the Term identify new or potential improvements to the Services that it may become aware of. These may include:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 17.3 Any potential Changes highlighted as a result of clause 18.3 shall be addressed by the parties using the Change Control Procedure.

18. Dispute resolution

- 18.1 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 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Head of Law and Governance (or equivalent) and the Supplier's Head of Contracting and Procurement (or equivalent) who shall attempt in good faith to resolve it;
 - (c) if the Authority's Head of Law and Governance (or equivalent) and the Supplier's Head of Contracting and Procurement are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will escalate the dispute to the Chief Executive of each Party who shall attempt in good faith to resolve it; and
 - (d) if the chief Executives of each Party are for any reason unable to resolve the Dispute within 30 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, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.
- 18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 42 which clause shall apply at all times.

19. Sub-Contracting and assignment

- 19.1 Subject to clause 20.2, 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.

- 19.2 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.
- 19.3 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where there has been a succession into the position of the Supplier, following a local government reorganisation.

Liability

20. Indemnities

- 20.1 Subject to clause 21.4, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of:
- (a) the Supplier's breach or negligent performance or non-performance of this agreement; or
 - (b) any claim made against the Authority arising out of the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or non-performance of this agreement by the Supplier or Supplier Personnel.
- 20.2 The indemnity under clause 21.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.

21. Limitation of liability

- 21.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
- 21.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.
- 21.3 Subject to clause 22.1 and clause 22.6, the Supplier's aggregate liability:
- (a) is unlimited in respect of:
 - (i) any breach of clause 30; and
 - (b) in respect of all other claims, indemnities, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement, shall be limited in each Contract Year to £50,000.00 (fifty thousand pounds)

- 21.4 Subject to clause 22.1 and clause 22.6, the Authority's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (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), shall be limited in any Contract Year to £50,000.00 (fifty thousand pounds)
- 21.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other liability for which may not be limited under any applicable law.

22. Insurance

- 22.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than ££5,000,000 in relation to any one claim or series of claims;
 - (b) employer's liability insurance 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 £500,000 (five hundred thousand pounds) in the aggregate;
- (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.
- 22.2 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.
- 22.3 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.
- 22.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

22.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

Information

23. Freedom of information

23.1 The Parties acknowledge that each is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with each other to enable a Party to comply with their information disclosure requirements.

23.2 Where a Party receives a request for information in relation which it is holding on behalf of the other Party, it shall:

- (a) transfer to the other Party 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;
- (b) provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within such reasonable timescales given by the other Party or where no timescale is given within 5 Working Days;
- (c) provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

23.3 Each Party shall be responsible for determining at its absolute discretion whether the information:

- (a) Is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
- (b) Is to be disclosed in response to a request for information.

23.4 Notwithstanding any other term of this agreement, each Party consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

23.5 A Party shall, prior to publication, consult with the other Party on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion.

24. Data processing

24.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 24 is in addition to, and does not relieve, remove or replace, a

party's obligations or rights under the Data Protection Legislation. In this clause 24, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

24.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Schedule 5 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.

25. Confidentiality

25.1 Subject to clause 25.2, each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 25.

25.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

25.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, 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 25.3.
- 25.4 If so requested by the disclosing party at any time by notice in writing to the other party, the receiving party shall:
 - (a) destroy or return to the disclosing party all documents and materials and any copies containing, reflecting, incorporating or based on the disclosing party's Confidential Information; and
 - (b) erase all of the disclosing party's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form.
- 25.5 The provisions of this clause 25 shall survive for a period of 5 years from the Termination Date.

26. Audit

- 26.1 During the Term and for a period of 6 years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:
 - (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers of the Services at the level of detail agreed in Schedule 22 (Payment);
 - (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
 - (c) to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 24 (Data Protection) and clause 23 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Authority's accounts;
 - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

- 26.2 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 26 more than twice in any calendar year.
- 26.3 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.
- 26.4 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.
- 26.5 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.
- 26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 26.7 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. 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 under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.

Termination

27. Termination for breach

27.1 The Authority may terminate this agreement with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 27.1 if the Supplier has failed to remedy such breach within such period stipulated within a notice from the Authority (a **Remediation Notice**) to do so and where such Remediation Notice clearly sets out the breach and how it is to be remedied; or
- (b) if a Catastrophic Failure has occurred;

27.2 The Authority may terminate this agreement in accordance with the provisions of clause 29 and clause 30

27.3 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.

28. Termination on notice

Without affecting any other right or remedy available to it, either party may terminate this agreement at any time by giving 12 months' written notice to the other party.

29. Force majeure

29.1 Provided it has complied with the remaining provisions of this Clause 29, 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.

29.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

29.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely 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.

- 29.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.
- 29.5 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.
- 29.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' notice to the Affected Party.

30. Prevention of bribery

- 30.1 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.
- 30.2 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 30.1 at the relevant time.
- 30.3 The Supplier shall (and shall procure that its Supplier Personnel shall):
- (a) not commit a Prohibited Act; and/or
 - (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) 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) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with performance of this agreement.
- 30.4 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 30.3.
- 30.5 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 26.
 - (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.
- 30.6 Any notice served by the Authority under clause 30.6 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).

31. Consequences of termination or expiry

- 31.1 On the expiry of the Term or if this agreement is terminated for any reason, the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.
- 31.2 On termination or expiry of this agreement 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's Personnel shall certify full compliance with this clause.
- 31.3 Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 20 (Indemnities), clause 21 (Limitation of Liability), clause 22 (Insurance), clause 23 (Freedom of Information), clause 24 (Data Protection), clause 25 (Confidentiality), clause 26 (Audit), clause 27 (Termination for Breach) and this clause 31 (Consequences of termination), shall remain in full force and effect.
- 31.4 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

32. Non-solicitation

In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this agreement[, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

33. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall 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. Severability

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 37.1, 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. 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.

38. 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.

39. Notices

- 39.1 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).

- 39.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- (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.

- 39.3 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.

40. Entire agreement

- 40.1 This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 40.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent

or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

41. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

42. 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.

43. 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 on behalf of)
XXXXXXXXX COUNCIL)

Authorised Signatory

SIGNED on behalf of)
NOTTINGHAM CITY COUNCIL)

Authorised Signatory

Schedule 1 Specification

The Supplier shall provide the following to the Authority as the service to be delivered under this agreement (“the Services”)

Strategy

- Look for opportunities for income generation via concession contracts
- Supporting councils to improve the lives of citizens through utilising social value measures where relevant within tenders
- Access to the increased buying power of a unitary authority for a range of goods, services and works to help reduce cost.
- Align and support department sourcing strategies with the Council’s procurement strategy
- Ensure Council’s strategy is referenced and supported in all procurement activity

Management Information

- Monthly procurement reports to identify
 - Savings
 - Spend commitments
 - Procurement activity
 - Social value outcomes
- Transparency reporting

Operational

- Administering tender from start to award of contract including, but not limited to;
 - Support to ensure specifications are appropriate for the requirement
 - Completing tender documentation in line with legislation,
 - Identifying the best way to procure the services
 - Supporting the development of tender evaluation,
 - Criteria for award – price/quality most economically advantageous tender,
 - Co-ordinating responses to questions from suppliers,
 - Co-ordinating tender evaluation,
 - Developing and sending award letters and all other letters related to the tender
- Compliance with regulations – PCR2015, Contract Procedure Rules and project specific when required
- Procurement option appraisals as and when required
- Quarterly review meetings as a minimum with accounts manager
- Soft market testing as and when required
- Quarterly meetings with legal services
- Supplier engagement – market intelligence
- Transparency obligations are met – publishing opportunities and awards

Resources

- Access to a team of procurement specialists ensuring tenders are managed by individuals with relevant experience
- Procurement training
- Review of existing procurement information and processes
- Weekly drop-in sessions
- Due North support
- Forward plan support – PIMS

Schedule 2 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 and/or shared saving] basis

The cost of the service is a flat rate fee of £xxxxxxx per annum exclusive of V.A.T.

[Savings will be shared as follows:]

3. Payment Plan

The Supplier shall submit invoices to the Authority for payment at the following intervals:

xxxxxxxxxx

4. Termination Payment Default

In the event that at any time undisputed Charges amounting to 25% of the Charges have been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.

Schedule 3 Contract management

1. Authorised representatives

- 1.1 The Authority's initial Authorised Representative:– xxxxxxxxxxxx
- 1.2 The Supplier's initial Authorised Representative: Steve Oakley, Head of Procurement and Contracts

2. Meetings

- 2.1 Type
- 2.2 Quorum
- 2.3 Frequency
- 2.4 Agenda

3. Reports

- 3.1 Type
- 3.2 Contents
- 3.3 Frequency
- 3.4 Circulation list

Schedule 4 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 4.
- 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 4, shall be undertaken entirely at the expense and liability of the Supplier unless otherwise agreed by the Authority.

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; and
- (j) provision for signature by the Authority and the Supplier;

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 5 Data Processing Agreement (Controller to Processor)

1. INTRODUCTION

- 1.1 This Schedule 5 is to ensure the protection and security of Data passed from the Authority to the Supplier for Processing or Data accessed by the Supplier on the authority of the Authority for Processing or otherwise received by the Supplier for Processing on the Authority's behalf;
- 1.2 The GDPR place certain obligations upon a Controller to ensure that any Processor it engages provides sufficient guarantees to ensure that the Processing of the Data carried out on its behalf is secure and protects the rights of the Data Subject;
- 1.3 This Schedule 5 exists to ensure that there are sufficient security guarantees in place and that the Processing carried out by the Processor on the Controller's behalf complies with obligations under Article 28 of the GDPR;
- 1.4 This Schedule 5 further defines certain service levels to be applied to all Data related services provided by the Processor.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Schedule 5:

"Data" means any information of whatever nature that, by whatever means, is provided to the Supplier by the Authority, is accessed by the Supplier on the authority of the Authority or is otherwise received by the Supplier on the Authority's behalf, for the purposes of the Processing specified in paragraph 5.4 and shall include, without limitation, any Personal Data;

"Data Breach" means any event, actual or suspected, which has or may be likely to a detrimental effect on the security, integrity or quality of the Data;

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

"Data Protection Impact Assessment" means an assessment by the Authority of the impact of the envisaged Processing on the protection of Personal Data;

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

"Services" shall have the meaning as defined in Clause 1.1 of this agreement.

"DPA 2018" means the Data Protection Act 2018;

"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer", "Processing" and "Special Category Personal Data", shall have the same meanings as are assigned to those terms in the GDPR;

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

"Good Industry Practice" shall have the meaning as defined in Clause 1.1. of this agreement;

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory

guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which EBC is bound to comply;

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680);

“Protective Measures” means appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Supplier’s Personnel” shall have the meaning as defined in Clause 1.1 of this agreement;

"Services" means Processing of the Data by the Supplier in connection with and for the purposes set out in **Schedule 1**; and

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this agreement.

2.2 In this Schedule 5 any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes references to:

2.2.1 that enactment as re-enacted, amended, extended or applied by or under any other enactment (before, on or after the date of this Agreement);

2.2.2 any enactment which that enactment re-enacts (with or without modification); and

2.2.3 any subordinate legislation made (before, on or after the date of this Agreement) under that enactment, as re-enacted, amended, extended or applied as described in paragraph 2.2.1, or under any enactment referred to in paragraph 2.2.2.

2.3 In this Schedule 5:

2.3.1 references to a person include an individual, a body corporate and an unincorporated association of persons;

2.3.2 references to a Party to this Agreement include references to the successors or assignees (immediate or otherwise) of that Party.

2.4 Paragraphs 2.1 to 2.3 apply unless the contrary intention appears.

3. APPLICATION OF THIS SCHEDULE 5

3.1 This Schedule 5 shall apply to:

3.1.1 all Data sent by the Authority to the Supplier for Processing from the Service Commencement Date;

3.1.2 all Data accessed by the Supplier on behalf of the Authority for Processing from the Service Commencement Date.

4. DATA PROCESSING

4.1 In consideration of the undertakings provided by the Authority in paragraph 5, the Supplier agrees to Process the Data to which this agreement applies in accordance with the terms and conditions set out in this agreement, and its schedules and annexes, and in particular, the Supplier agrees that it shall:

- 4.1.1 process that Personal Data only in accordance with **Appendix 1** and the written instructions of the Authority, unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- 4.1.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority, as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the Data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- 4.1.3 ensure that:
 - (i) the Supplier's Personnel do not process Personal Data except in accordance with this agreement (and in particular **Appendix 1**);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier's Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Supplier's duties under this paragraph;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Supplier or as otherwise permitted by this agreement; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 4.1.4 not transfer 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 as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal 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 (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 4.1.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of this agreement unless the Supplier is required by Law to retain the Personal Data.
- 4.2 Subject to clause 4.1, the Supplier shall notify the Authority immediately if it:
 - 4.2.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

- 4.2.2 receives a request to rectify, block or erase any Personal Data;
 - 4.2.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 4.2.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this agreement;
 - 4.2.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 4.2.6 becomes aware of a Data Loss Event.
- 4.3 Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 4.2 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 4.3.1 the Authority with full details and copies of the complaint, communication or request;
 - 4.3.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 4.3.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 4.3.4 assistance as requested by the Authority following any Data Loss Event; and
 - 4.3.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Authority with the Information Commissioner's Office or such other authority.
- 4.4 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
- 4.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 4.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 4.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 4.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 4.5 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph 4.
- 4.6 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 4.7 The Supplier agrees and acknowledges that nothing within this agreement relieves the Supplier of its own direct responsibilities and liabilities under the Data Protection Legislation.
- 4.8 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 4.9 The Supplier shall appoint a representative within the European Union if required by the Data Protection Legislation.
- 4.10 The Authority may, at any time on not less than 30 (thirty) working days' notice, revise this paragraph by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 4.11 The parties agree to take account of any guidance issued by the Information Commissioner's Office or any other replacement regulatory authority. The Authority may on not less than 30 (thirty) working days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office or such other regulatory authority.
- 4.12 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 4.13 The provisions of this paragraph 4 shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

5. DATA TO BE PROVIDED BY THE AUTHORITY

- 5.1 The Authority will provide the Data as described in **Appendix 1** to the Supplier.
- 5.2 The Authority will only provide Data which is relevant to the purpose outlined in paragraph 5.4. The Authority will not provide any Data it considers to be irrelevant or excessive.
- 5.3 The Data provided by the Authority under this agreement may contain Personal Data and Special Categories of Personal Data as defined by the Data Protection Legislation.
- 5.4 Data will be provided for the specific purpose set out in **Appendix 1 and Schedule 1**.
- 5.5 All intellectual property rights in the Data shall belong to the Authority. The Data shall be identified, clearly recorded and marked as such by the Supplier on all media and in all documentation.

6 OBLIGATIONS OF THE AUTHORITY

- 6.1 The Authority agrees that it shall ensure that it complies at all times with the Data Protection Legislation, and, in particular, the Authority shall ensure that any disclosure of Personal Data made by it to the Supplier is made with the Data Subject's consent or is otherwise lawful.
- 6.2 For the purposes of this agreement, the provisions that provide the legal basis for this processing of Personal Data are listed below:
 - (i) GDPR – Article 6(1)(a) - the data subject has given consent to the processing of his or her personal data for one or more specific purposes.

(ii) GDPR – Article 6(1)(b) – processing is necessary for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract.

(iii) GDPR – Article 6(1)(c) – processing is necessary for compliance with a legal obligation to which the controller is subject.

(iv) GDPR – Article 6(1)(d) – processing is necessary in order to protect the vital interests of the data subject or another natural person.

(v) GDPR – Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller

(vi) GDPR – Article 6(1)(f) - processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

6.3 For the purposes of this agreement, the provisions that provide the legal basis for the processing of Special Categories of Personal Data are listed below:

(i) GDPR – Article 9(2)(a) - The data subject has given explicit consent to the processing of the personal data for one or more specified purposes.

(ii) GDPR – Article 9(2)(b) – processing is necessary for the carrying out of obligations and exercising specific rights of the controller or of the data

subject in the field of employment and social security and social protection law.

(iii) GDPR – Article 9(2)(c) – processing is necessary to protect the vital interests of the data subject or other natural person where the data subject is physically or legally incapable of giving consent

(iv) GDPR – Article 9(2)(d) - processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(v)GDPR – Article 9(2)(e) – processing relates to personal data which are manifestly made public by the data subject.

(vi) GDPR – Article 9(2)(f) – processing is necessary for the establishment, exercise or defence of legal claims.

(vii) GDPR – Article 9(2)(g) - processing is necessary for reasons of substantial public interest

(viii) GDPR – Article 9(2)(h) - processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services is carried out

(ix) GDPR – Article 9(2)(i) - processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

(x) GDPR – Article 9(2)(j) - processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.

7. SUB-PROCESSING

7.1 Before allowing any Sub-processor to process any Personal Data related to this agreement, the Supplier must:

7.1 notify the Authority in writing of the intended Sub-processor and processing;

7.2 obtain the prior written consent of the Authority;

7.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in paragraph 4 such that they apply to the Sub-processor; and

7.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

7.9 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

8. TERMINATION

8.1 Upon termination of this agreement, the Supplier shall forthwith deliver to the Authority or securely destroy at the Authority's sole option and as described by the Authority in **Appendix 1** all of the Authority's Data in its possession or under its control.

8.2 Paragraph 8.1 is subject to the statutory requirements of retention of Data as legally required.

9. INDEMNITIES IN RELATION TO DATA PROCESSING

9.1 The Supplier shall be liable for and shall indemnify (and keep indemnified) the Authority against each and every action, proceeding, liability, cost, claim, loss, monetary penalty, expense (including reasonable legal fees and disbursements on a solicitor client basis) and demands incurred by the Authority which arise directly as a result of the Supplier's

breach or negligence of the data processing activities under this agreement or non-compliance of the processor obligations under the Data Protection Legislation.

- 9.2 The Parties acknowledge the provisions of Regulation 82 of the GDPR and any claim made by the Authority under clause 9.1 shall be considered against the provisions of Regulation 82.

APPENDIX 1 TO SCHEDULE 5

Processing, Personal Data and Data Subjects

1. The Supplier shall comply with any further written instructions with respect to processing provided by the Authority.
2. Any such further instructions shall be incorporated into this Appendix.

Description	Description
Subject matter of the processing	Processing of Data which may include Personal Data and Sensitive Personal Data in order to provide the Services
Duration of the processing	As long as is fair and necessary to carry out the Services
Nature and purposes of the processing	To process the information in order to undertake the Services in relation to the Authority's procurement activities. The data to be processed shall be done so in accordance with Data Protection legislation.
Type of Personal Data	Names, addresses, contact details of tenderers/members of the public and those submitting tenders relating to the Authority's contracts. Names, addresses and information relating to any of the Authority's employees which may be subject to TUPE in certain circumstances.
Categories of Data Subject	Tenderers, members of the public and employees

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Personal Data provided under this agreement shall not be kept any longer than necessary and if requested by the Authority must be returned to the Authority, destroyed or erased (including all copies whether paper or electronic) by the Supplier. The Data shall be destroyed in an appropriate manner, as follows:</p> <ul style="list-style-type: none"> • All electronic data must be destroyed in an appropriate manner which renders it irretrievable. This could be logically, physically, digitally or magnetically destroyed. • All paper documents should be immediately strip shredded or incinerated. <p>The Supplier will provide the Authority with confirmation in writing that all the Data has been destroyed, the date of</p>
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