

## HB PUBLIC LAW STANDARD DOCUMENT

<b>Title</b>	<b>High Value Service Contract</b>
<b>Point of Contact</b>	Contracts, Employment and Governance Team Karen King - Assistant Team Leader (Karen.king@harrow.gov.uk)

### Standard notes:

1. This standard document is intended for use by lawyers and clients.
2. Use of this document is mandatory because it is up to date and reflects current council policies.
3. There is a specific template for Public Health Contracts. Please contact a member of the Contract, Employment and Governance Team for the Public Health Contract template.
4. If you have any drafting questions in relation to a specific award or contract, please contact Legal Advisers within the Contract, Employment and Governance Team.

### Notes:

#### Scope of document

1. This standard document consists of terms and conditions and schedules. It has been designed for use by all council departments procuring services with a total value of £100,000 or above.
2. In certain circumstances, council departments may wish to utilise a simpler contract even when the total value of the services being procured is £100,000 or above in which case the low value service contract may be more appropriate.
3. This document is for services only and does not envisage that goods will be supplied under it.
4. This document assumes that there will be TUPE liability and is therefore suitable for outsourced services where a relevant TUPE transfer is likely to occur.
5. This document is not suitable for construction works, for which industry standard forms of contract are available, or for IT contracts, for which you should use a suitable or

appropriate framework. If you need more advice on appropriate contracts for construction works, you should contact the Contracts, Employment and Governance Team.

6. For the Agreement to be subject to these Conditions, you must not accept any Service Provider terms and conditions that are sent to you either separately, attached to an Award Letter or the Conditions or sent to you in soft or hard copy. If any of these events occur, you must ensure that any Service Provider terms and conditions are rejected and the rejection is evidenced in writing.

### Drafting considerations

1. The Agreement provides for an extension period exercisable by the Authority on giving written notice. The Agreement also envisages that a variation of the scope of the services may be required by the Authority. Any such variation should be made in writing. Before extending or varying the Agreement in this way, you should always consider:
  - a. whether any governance issues arise with extending/varying the Agreement;
  - b. whether this may result in the contract falling within the scope of the Public Contracts Regulations 2015 such that a tender process will be required.
2. The Agreement provides that the Service Provider must comply with the Authority's data security requirements, staff vetting procedures, equality and diversity policy and environmental policy as notified to the Service Provider from time to time.
3. **The Agreement contains square bracketed text throughout the Agreement that you will need to replace with the requested information, or where optional text is provided, delete the option that is not relevant**
4. You will need to adhere to appropriate governance requirements during the procurement of the service and in relation to preparing the Agreement. Please seek advice from the Legal Advisors within HB Public Law if you have any queries.

### Social Value

1. Please refer to the Social Value in Procurement Guide on the Hub for further guidance.
2. Related social value contract conditions must be included in this Agreement to reflect the importance of such social value elements. Please discuss the social value criteria included in the procurement process with HB Public Law and we can provide appropriate contract Clauses to be included in the Agreement. Social value conditions should be set out in Schedule 14 (Social Value).

### **Version control:**

Version	Date	Lead Author	Main Changes
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1.0	3 Oct 2014	Sarah Inverary	Initial consultation
1.1	9 Oct 2014	CP&I Law Team	Minor amendments following consultation
1.2	Jan 2015	CP&I Law Team	Final
1.3	6 Mar 2015	CP&I Law Team	Amended to include PCR 2015 changes and LBH procurement changes
1.4	3 July 2015	Karen King	Final version
1.5	March 2016	Jemille Gibson	Amended to include Anti-Slavery and Counter-Terrorism Clauses
1.6	December 2016	Jemille Gibson	Addition of WRRR Schedule and general amendments
1.7	July 2017	Greta O'Shea	Amendments following review
1.8	February 2018	Puja Shah	Amendments following review incl new data protection provisions
1.9	March 2019	Karen King	Drafting amendments re counter terrorism, business continuity and blacklisting
1.10	June 2019	Karen King	E-invoicing and Final Review
1.11	May 2020	Karen King	Covid-19 clause
1.12	March 2022	Karen King	Subcontracting clause amendments
1.13	May 2023	Puja Shah	Amendments following review

**DISCLAIMER: This Model Agreement is not intended to constitute advice in any specific situation. HB Public Law gives you no warranty or assurance about this document. HB Public Law accepts no liability for any losses or damages whatsoever caused by the use of this document where legal input has not been sought from HB Public Law. HB Public Law strongly recommend that you seek advice from the Contract, Employment and Governance Team prior to sending out an initial draft to the Service Provider to ensure that its contents are applicable for the specific services required.**

Dated .....20[ ]

Between

**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF HARROW**

AND

**[INSERT NAME OF SERVICE PROVIDER]**

---

**CONTRACT FOR THE PROVISION OF  
[INSERT TYPE OF SERVICES]**

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Harrow Council  
Harrow Council Hub  
Forward Drive  
Harrow  
HA3 8NT

DX 30450 Harrow 3

Ref [ ]

**CONTENTS**

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**CLAUSE**

1. Definitions and Interpretation..... 7

2. Term..... 16

3. Extending the initial term ..... 16

4. Due diligence and Service Provider's warranty ..... 16

5. Supply of services..... 18

6. KPIs ..... 18

7. Service standards ..... 18

8. Compliance ..... 19

9. Authority's Premises and Assets ..... 20

**10. {Disaster recovery} ..... 21**

**11. Whistleblowing ..... 22**

12. Payment..... 23

**13. {Service credits}..... 25**

14. Key personnel..... 25

**15. {Other personnel used to provide the services} ..... 26**

**16. {Safeguarding children and vulnerable adults} ..... 27**

**17. {TUPE} ..... 28**

**18. {Work Related Road Risk (WRRR) Terms} ..... 28**

19. Reporting and meetings..... 29

20. Monitoring ..... 29

21. Change control, benchmarking and continuous improvement ..... 29

22. Dispute resolution ..... 30

23. Sub-Contracting and assignment ..... 30

24. Indemnities ..... 31

25. Limitation of liability..... 32

26. Insurance ..... 33

27. Freedom of information..... 34

28. Data protection ..... 35

29. Information Management..... 39

30. Requests for Information ..... 39

31. Information Sharing ..... 40

32. Confidentiality ..... 40

33. Audit..... 41

34. Intellectual property ..... 43

35. Termination for breach..... 43

36. Termination Required by the Public Contracts Regulations 2015..... 44

36A Termination on notice ..... 45

37. Force majeure and Coronavirus ..... 45

38. Prevention of bribery..... 48

39. Anti-Slavery ..... 49

**40. {Counter-Terrorism} ..... 50**

41. Blacklisting..... 52

42. Business Continuity ..... 53

43. Consequences of termination ..... 54

44.	<b>{Non-solicitation}</b> .....	56
45.	Waiver .....	56
46.	Rights and remedies .....	56
47.	Severability .....	56
48.	Partnership or agency .....	57
49.	Third party rights .....	57
50.	Publicity .....	57
51.	Notices .....	58
52.	Entire Agreement .....	58
53.	Counterparts .....	58
54.	Governing Law .....	59
55.	Jurisdiction .....	59
SCHEDULE 1.	Specification .....	62
SCHEDULE 2.	Performance regime .....	63
SCHEDULE 3.	Service Provider's Tender .....	67
SCHEDULE 4.	Charges and payment .....	68
SCHEDULE 5.	Contract Management .....	70
SCHEDULE 6.	{Disaster Recovery Plan} .....	71
SCHEDULE 7.	Change Control .....	72
SCHEDULE 8.	Benchmarking .....	75
SCHEDULE 9.	Exit Management Plan .....	80
SCHEDULE 10.	TUPE .....	81
SCHEDULE 11.	Commercially Sensitive Information .....	94
SCHEDULE 12.	Authority's Premises and Assets .....	95
SCHEDULE 13.	Work related road risk (WRRR) terms .....	96
SCHEDULE 14.	Social Value .....	101
SCHEDULE 15.	Processing, Personal Data and Data Subjects .....	102
SCHEDULE 16.	Insurance .....	106

THIS AGREEMENT is dated the                      day of                      20[ ]

## PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW** of Harrow Council Hub, Forward Drive, Harrow, Middlesex HA3 8NT (**Authority**).
- (2) **[INSERT NAME OF SERVICE PROVIDER]** incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (**Service Provider**).

Each a **Party**, together the Parties.

## BACKGROUND

- (A) The Authority sought proposals for the provision of **[INSERT DETAILS OF THE SERVICE]** by means of a public tender exercise. {The Authority placed a contract notice {REFERENCE} on {DATE} on Find a Tender seeking expressions of interest from potential providers for the provision of {INSERT OUTLINE OF SERVICES}.
- (B) The Authority has selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

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

**Agreement:** the suite of documents including these terms and conditions and schedules attached hereto forming the contract between the Authority and the Service Provider

**Associated Company:** any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in [Schedule 5](#).

**Authority Assets:** any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services **{as identified in Schedule 12}.**

**Authority's Premises:** the premises identified in [Schedule 12](#) and which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this 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 KPIs, the term, the pricing structure and any other relevant factors.

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

**{Business Continuity Plan:** has the meaning given to it in Clause 42 (Business Continuity).}

### **Catastrophic Failure**

- (a) **{a failure by the Service Provider for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.}**
- (b) **{a failure by the Service Provider for whatever reason to implement the Business Continuity Plan and/or invoke as necessary the IT Recovery Plan successfully and in accordance with its terms on the occurrence of a business interruption or series of business interruptions to the provision of the Services.}**
- (c) any action by the Service Provider, 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.
- (d) any action by the Service Provider, 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 staff and general public.
- (e) **{{INSERT OTHERS}}**

**Change:** any change to this Agreement including to any of the Services.

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

**Change Control Procedure:** the procedure for changing this Agreement, as set out in [Schedule 7](#).



**Charges:** the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in [Schedule 4](#).

**Commencement Date:** **{INSERT DATE}**.

**Commercially Sensitive Information:** the information listed in [Schedule 11](#) comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

**Confidential Information:** information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, the Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all Personal Data.

**Consistent Failure:** shall have the meaning set out in [Part 1](#) of [Schedule 2](#).

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

**Controller:** the meaning given in the UK GDPR.

**Coronavirus:** the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

**Coronavirus Event:** a Coronavirus epidemic or pandemic that is likely to directly and reasonably prevent, hinder or delay the performance of the Service Provider's obligations under the Agreement.

**Crown:** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

**Crown Body:** any department, office or agency of the Crown.

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

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

**Data Protection Legislation:** (i) the DPA; (ii) the UK GDPR and (iii) all applicable Law about the processing of Personal Data and privacy.

**Data Protection Officer:** the meaning given in the UK GDPR.

**Data Subject:** the meaning given in the UK GDPR.

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

**Default Notice:** is defined in Clause 5.2.

**{Disaster:** an event defined as a disaster in the Disaster Recovery Plan.}

**{Disaster Recovery Plan:** a plan which sets out the procedures to be adopted by the Service Provider in the event that {INSERT WHAT DISASTER RECOVERY PLAN IS TO COVER} by reason of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event); the Disaster Recovery Plan at the date of this Agreement being set out in [Schedule 6](#).}

**Dispute Resolution Procedure:** the procedure set out in Clause 22.

**DPA:** the Data Protection Act 2018

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

**Exit Management Plan:** the plan set out in [Schedule 9](#).

**{Extremist Activity:** vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.}

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, 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 cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

**Health and Safety Policy:** the health and safety policy of the Authority **{and/or other relevant Central Government Body}** as provided to the Service Provider on or before the Commencement Date and as subsequently provided to the Service Provider 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.

**Initial Term:** the period commencing on the Commencement Date and ending on the {NUMBER} anniversary of the Commencement Date.

**Insolvency Event:** where:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or {(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply};
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors {other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party};
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) {other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party};
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (f) {the Service Provider (being an individual) is the subject of a bankruptcy petition or order;}
- (g) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within {14} days;

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

(i) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; ~~{or}~~

~~(i) {the Service Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.}~~

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

~~{IT Disaster Recovery Plan: the plan which shall be adopted by the Service Provider that details the set of procedures to implement recovery processes and restore information technology infrastructure, hardware and software in time to meet the needs of the Authority and the Services following a Disaster; the IT Disaster Recovery Plan at the date of this Agreement being set out in Part 2 of [Schedule 6](#).}~~

**KPIs:** the key performance indicators set out in [Schedule 2](#).

**Key Personnel:** those personnel identified [Schedule 5](#) for the roles attributed to such personnel, as modified pursuant to Clause 14.

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Service Provider is bound to comply;

**Management Reports:** the reports to be prepared and presented by the Service Provider in accordance with Clause 19 and [Schedule 5](#) ~~{to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs}~~.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from

time to time for the performance of the Service **{including without limitation all {INSERT DETAILS OF SPECIFIC CONSENTS REQUIRED (IF ANY)}}.**

**Payment Plan:** the plan for payment of the Charges as set out in [Schedule 4](#).

**Personal Data / Personal Data Breach:** the meaning given in the UK GDPR.

**Prohibited Act:** the following constitute Prohibited Acts:

- (k) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (l) 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;
- (m) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (n) any activity, practice or conduct which would constitute one of the offences listed under Clause 1.1(m), if such activity, practice or conduct had been carried out in the UK.

**Processor:** the meaning given in the UK GDPR.

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

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

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

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

**Remediation Notice:** a notice served by the Authority in accordance with Clause 35.2(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 Service Provider.

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

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

**{Service Credits:** the sums attributable to a Service Failure as specified in [part 2 of Schedule 2.](#)}

**Service Failure:** a failure by the Service Provider to provide the Services in accordance with any Target KPI.

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

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

**Service Provider's Tender:** the tender submitted by the Service Provider and other associated documentation set out in [Schedule 3](#).

**Services:** the services to be delivered by or on behalf of the Service Provider under this Agreement, as more particularly described in Schedule 1.

**SME Company:** means a company with:

- (a) 250 (two hundred and fifty) employees or less; and/or
- (b) A turnover of £35,000,000 (thirty five million) or less.

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

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

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

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

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

- (o) any extensions to this Agreement which are agreed pursuant to Clause 3; or
- (p) the earlier termination of this Agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Agreement.

**Termination Payment Default:** is defined in [Schedule 4](#).

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

**UK GDPR:** the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as defined by the DPA.

**Whistleblowing Policy and Guidelines:** the whistleblowing policy and guidelines of the Authority as provided to the Service Provider on or before the Commencement Date and as subsequently provided to the Service Provider from time to time.

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

- 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) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 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 it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes emails but not **faxes**.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the Agreement;
  - (b) Schedule 1 to this Agreement;
  - (c) the remaining schedules to this Agreement other than [Schedule 3](#);
  - (d) [Schedule 3](#) to this Agreement.

## **COMMENCEMENT AND DURATION**

### **2. TERM**

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. EXTENDING THE INITIAL TERM**

- 3.1 The Authority may extend this Agreement beyond the Initial Term by a further period or periods of up to **{NUMBER}** years (Extension Period). If the Authority wishes to extend this Agreement, it shall give the Service Provider at least **{NUMBER}** months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of Clause 43 shall apply.

### **4. DUE DILIGENCE AND SERVICE PROVIDER'S WARRANTY**

- 4.1 The Service Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is



able to provide the Services in accordance with the terms of this Agreement;

- (b) it has received all information requested by it from the Authority pursuant to Clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to Clause 4.1(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Agreement in reliance on its own due diligence.

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

4.3 The Service Provider:

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

4.4 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with Clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 4.5 Nothing in this Clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## THE SERVICES

### 5. SUPPLY OF SERVICES

- 5.1 The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement.
- 5.2 In the event that the Service Provider does not comply with the provisions of Clause 5.1 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).

### 6. KPIs

- 6.1 Where any Service is stated in [Schedule 2](#) to be subject to a specific KPI, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 6.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within [Schedule 2](#).
- 6.3 The Service Provider shall provide records of and Management Reports summarising the Achieved KPIs as provided for in Clause 19.

6.4 {In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, the provisions of Clause 13 shall apply.}

### 7. SERVICE STANDARDS

Without prejudice to Clause 6, the Service Provider shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with {the best practice prevailing in the {INSERT INDUSTRY RELEVANT TO TYPE OF SERVICES BEING PROVIDED} industry from time to time};
- (b) in all respects in accordance with the Authority's policies set out in Schedule 1; and
- (c) in accordance with all Applicable Laws.

## 8. COMPLIANCE

- 8.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of the Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 8.3 The Service Provider 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.
- 8.4 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 Service Provider shall instruct the Service Provider's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 Without limiting the general obligation set out in Clause 8.1, the Service Provider shall (and shall procure that the Service Provider's 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 Service Provider from time to time; and
    - (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; and
  - (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).

- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Service Provider 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.

8.6 The Service Provider shall at the request of the Authority monitor the representation among:

- (a) the Service Provider Personnel, and
- (b) the service users

of persons having one of the different protected characteristics set out in the Equality Act 2010, having regard to the Authority's own procedures for monitoring representation among its own employees.

This shall be at no additional cost to the Authority.

8.7. The Service Provider shall at the request of the Authority submit an annual report to the Authority demonstrating its compliance with this Clause 8 and shall provide such additional information as the Authority may reasonably require for the purpose of assessing the Service Provider's compliance with this Clause. This shall be at no additional cost to the Authority.

## 9. **AUTHORITY'S PREMISES AND ASSETS**

9.1 The Authority shall, subject to Clause 8 and Clause 15 **and the provisions of the {lease OR licence} set out in [Schedule 12](#)**, provide the Service Provider (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Service Provider reasonably requires for the purposes only of properly providing the Services.

9.2 The Authority shall provide the Service Provider with such accommodation and facilities in the Authority's Premises as is specified in [Schedule 12](#) or which is otherwise agreed by the parties from time to time.

9.3 Subject to the requirements of Clause 43 and the Exit Management Plan, in the event of the expiry or termination of the Agreement, the Authority shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Authority's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly removed by the Service Provider.

9.4 The Service Provider shall ensure that:

- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the

Authority's Authorised Representative's reasonable directions regarding the security of the same;

- (b) only those of the Service Provider's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
- (c) any Authority Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this Agreement or by the Authority's Authorised Representative.

9.5 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 Service Provider 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 Service Provider as a debt.

9.6 The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors 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.

## **10. { DISASTER RECOVERY }**

10.1 The Service Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan as set out in Schedule 6.

10.2 The Service Provider shall ensure that, as a minimum, the Disaster Recovery Plan:

- (a) Fully integrates with the Authority's own disaster recovery **{and business continuity}** arrangements and policies;
- (b) Includes detailed plans for restoring and maintaining the provision of the Services depending on the nature of the disruptive incident;
- (c) Includes detailed plans for restoring, adapting and/or maintaining the provision of the Services in the event of a Coronavirus Event;
- (d) Includes plans for maintaining regular communication with the Authority during a business interruption or series of business interruptions; and
- (e) Includes an **IT Disaster Recovery Plan**

10.3 Following the notification of a Disaster in respect of any of the Services, the Service Provider shall:

- (a) invoke the Disaster Recovery Plan;

- (b) continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

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

## **11. WHISTLEBLOWING**

- 11.1 The Service Provider agrees to report to the Authority in accordance with the Authority's Whistleblowing Policy and Guidelines any circumstances relating to or arising out of this Agreement (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Services, which give rise to a reasonable belief that one or more of the following matters (referred to in this clause as "instances of malpractice") has occurred, is occurring or is likely to occur:
- (a) a criminal offence (including any form of abuse);
  - (b) a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
  - (c) miscarriage of justice;
  - (d) danger to health and safety;
  - (e) damage to the environment;
  - (f) any other matter designated as malpractice in the Whistle blower Policy and Guidelines; and/or
  - (g) concealment of any of the above.
- 11.2 The Service Provider shall ensure that it has a whistleblowing policy in place which:
- (a) encourages employees and service users to question and act upon concerns and provides avenues for employees and service users to raise concerns;
  - (b) ensures that employees and service users raising concerns receive feedback;

- (c) provides guidance to employees and service users on the process for progressing matters further if such employees and service users are not satisfied (e.g. contacting the Authority, police, safeguarding teams; Authority's complaints team);
- (d) reassures staff that in the event that any staff, agent or sub-supplier of the Service Provider should make a report to the Authority (or to any other person authorised by law) pursuant to this clause, the Service Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report in good faith; and
- (e) enables its staff and service users to raise a grievance relating to their own employment/service provision.

## CHARGES AND PAYMENT

### 12. PAYMENT

- 12.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this Agreement, the Authority shall pay the Charges to the Service Provider **in accordance with the Payment Plan**.
- 12.2 Invoices and credit notes for payments must be sent to [harrow.invoices@proactiscapture.com](mailto:harrow.invoices@proactiscapture.com).
- 12.3 The Authority shall pay for the Services within 30 days<sup>1</sup> of receipt by the Authority of a detailed invoice (and where VAT is payable a VAT invoice) as set out below.
- 12.4 The Authority will not process or pay against pro forma invoices, account statements or remittance advice notes.
- 12.5 All invoices must meet the following criteria to ensure prompt payment. It is essential that each invoice/credit note is:
  - a) in PDF format and is sent as a single PDF (not as multiple invoices/credit notes on 1 PDF) without password protection
  - b) addressed to either London Borough of Harrow or Harrow Council
  - c) contains a valid purchase order number - these are 10 numbers starting with either 6500 and 6600 (if you do not have a valid purchase

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<sup>1</sup> **HBPL Drafting Note:** Please note that the Council's standard payment terms are 30 days. However, where the Service Provider is an SME (i.e. a company with 250 employees or less and turnover under £35m), the Council will accept 14 day payment terms if requested.

order number you should contact the department or person who ordered the goods/services as they will be able to provide this)

- d) has a unique invoice number
  - e) has an invoice date
  - f) shows the net, gross and VAT amounts
  - g) has a VAT registration number (where applicable)
- 12.6 All payments will be made as per the Authority's agreed payment terms and conditions. Service Provider queries regarding payment should be emailed to [accountspayable@harrow.gov.uk](mailto:accountspayable@harrow.gov.uk).
- 12.7 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 22. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of **{NUMBER}** days after resolution of the dispute between the parties.
- 12.8 Subject to Clause 12.5, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue **{unless it is entitled to terminate this Agreement under Clause 35.7 for failure to pay undisputed charges}**.
- 12.9 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 Service Provider 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 Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Agreement.
- 12.10 The Service Provider 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 (six) years from the end of the Contract Year to which the records relate.
- 12.11 Where the Service Provider enters into a Sub-Contract with a Service Provider or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 (thirty) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements. Where such Sub-



Contractor is a SME Company, the Service Provider shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding 14 (fourteen) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

- 12.12 The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this Agreement or any other Agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.
- 12.13 If the Authority wishes to set off any amount owed by the Service Provider to the Crown or any part of the Crown (including the Authority) against any amount due to the Service Provider pursuant to Clause 10 it shall give notice to the Service Provider within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
- 12.14 The Service Provider shall make any payments due to the Authority **{or to the Crown or any part of the Crown}** without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Service Provider.

### **13. {SERVICE CREDITS}**

**If the Service Provider commits a Service Failure, the Service Provider shall pay to the Authority the Service Credit set out in Part 2 of [Schedule 2](#).**

### **STAFF**

#### **14. KEY PERSONNEL**

- 14.1 Each party shall appoint the persons named as such in [Schedule 5](#) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 14.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;

- (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
  - (d) the person resigns from their employment with the Service Provider; or
  - (e) the Service Provider obtains the prior written consent of the Authority.
- 14.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within **{NUMBER}** Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 14.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than **{NUMBER}** Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.
- 14.5 The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 14.6 If the Service Provider replaces the Key Personnel as a consequence of this Clause 14, the cost of effecting such replacement shall be borne by the Service Provider.

**15. {OTHER PERSONNEL USED TO PROVIDE THE SERVICES}**

- 15.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
  - (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

- (d) all of the Service Provider's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
- 15.2 The Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 15.3 The Service Provider shall replace any of the Service Provider's 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 Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 15.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 15.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

## **16. {SAFEGUARDING CHILDREN AND VULNERABLE ADULTS}**

- 16.1 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- 16.2 The Service Provider shall:
  - (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
  - (b) monitor the level and validity of the checks under this Clause 16.2 for each member of staff;
  - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

- 16.3 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 16.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 16 have been met.
- 16.5 The Service Provider shall as soon as possible, and in any event within one Working Day, notify the Authority's Local Authority Designated Officer (**LADO**) and Contract Manager of any safeguarding concern, allegation, or incident relating to its staff and volunteers under The Working Together 2015 guidelines to protect children by contacting the Authority's Multi-Agency Safeguarding Hub (**MASH**).
- 16.6 On receipt of a request from the Authority's Contract Manager, the Service Provider shall at its own cost attend and form part of:
- (a) a child protection conference meeting;
  - (b) a team around the child;
  - (c) a core group meeting of professionals to support the child; and/or
  - (d) a child in need review meeting.
- 16.7 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to **the service users OR children OR vulnerable adults**.

**17. {TUPE}**

The parties agree that the provisions of [Schedule 10](#) shall apply to any Relevant Transfer of staff under this Agreement.

**18. {WORK RELATED ROAD RISK (WRRR) TERMS}**

The parties agree that the provisions of [Schedule 13](#) shall apply to this Agreement.

**CONTRACT MANAGEMENT**

**19. REPORTING AND MEETINGS**

- 19.1 The Service Provider shall provide the management reports in the form and at the intervals set out in [Schedule 5](#).
- 19.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in [Schedule 5](#) and the Service Provider shall, at each meeting, present its previously circulated Management Reports **{and Financial Reports}** in the format set out in that Schedule.

**20. MONITORING**

- 20.1 The Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents may monitor the performance of the Services by the Service Provider which, for the avoidance of doubt, shall include, but not be limited to, holding regular contract monitoring reviews and/or requesting additional reports to be produced.
- 20.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in Clause 20.1 at no additional charge to the Authority.

**21. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT**

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

**21.2 {The parties shall comply with the provisions of [Schedule 8](#) (Benchmarking).}**

- 21.3 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authority's Authorised Representative **{quarterly}** in the first Contract Year and once every **{six}** months for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) **new or potential improvements to the Services including the {quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services {DELETE/ADD ADDITIONAL REQUIREMENTS AS APPROPRIATE}};**
- (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;

- (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; and
- (e) any other innovative suggestions

21.4 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with Clause 21.3 shall be addressed by the parties using the Change Control Procedure.

## 22. DISPUTE RESOLUTION

22.1 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 **{SENIOR OFFICER TITLE}** and the Service Provider's **{SENIOR OFFICER TITLE}** who shall attempt in good faith to resolve it; and
- (c) if the Authority's **{SENIOR OFFICER TITLE}** and the Service Provider's **{SENIOR OFFICER TITLE}** 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 Solve. 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 Solve. The mediation will start not later than **{NUMBER}** days after the date of the ADR notice.

22.2 The commencement of mediation shall not prevent the parties commencing or continuing **{court or arbitration}** proceedings in relation to the Dispute under Clause 53 which Clause shall apply at all times.

## 23. SUB-CONTRACTING AND ASSIGNMENT

23.1 Subject to Clause 23.3, neither party shall assign, novate 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 Service Provider

sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

23.2 In the event that the Service Provider enters into any Sub-Contract in connection with this Agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms;
- (c) impose an obligation on its Sub-Contractor in terms that the Sub-Contractor shall only accept instructions commissioning new services and/or variations to any Sub-Contract from the Service Provider and shall use all reasonable endeavours to procure that the Sub-Contractor complies with such obligation. For the avoidance of doubt, the Authority shall not issue instructions commissioning new services and/or variations to any Sub-Contractor and neither shall the Sub-Contractor accept any such instructions and/or variations from the Authority; and
- (d) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

23.3 The Authority shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## **LIABILITY**

### **24. INDEMNITIES**

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or applicable law by the Authority or its Representatives (excluding any Service Provider's Personnel).

Limitation of liability

25.

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- 25.1 Subject to Clause 25.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 25.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
- 25.3 Subject to Clause 25.5, the Service Provider's total aggregate liability:
- (a) is unlimited in respect of:
    - (i) the indemnities in [Schedule 10](#);
    - (ii) any breach of Clause 38;
    - (iii) {the Service Provider's wilful default;}
    - (iv) {any breach of Clause 28 (Data Protection);}
    - (v) {any breach of Clause 34 (Intellectual Property); and}
  - {OTHERS}**
    - (vi)
  - (b) in respect of Service Credits, is limited, in each Contract Year, to **{PERCENTAGE}**% of the Charges that are payable by the Authority in the applicable Contract Year; and
  - (c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall in no event exceed **£{AMOUNT}** in each Contract Year or, if lower, **{PERCENTAGE}**% of the aggregate Charges paid under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.}
- 25.4 Subject to Clause 25.5, the Authority's maximum aggregate liability to the Service Provider for all claims arising in any Contract Year (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 not in any circumstances exceed **£{}**.
- 25.5 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;

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<sup>2</sup> Please consult with insurance team to agree suitable liability levels for each contract.



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

## Insurance

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26.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing **{an adequate level of cover OR as a minimum the levels of cover set out in 1 OR as a minimum the following levels of cover:**

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

(the **Required Insurances**) {The cover shall be} in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider'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 Service Provider.

26.2 The Service Provider 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.

26.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative

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<sup>3</sup> Please consult with insurance team to agree suitable insurance levels for each contract

arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

- 26.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement.
- 26.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Agreement.

## **INFORMATION**

### **27. FREEDOM OF INFORMATION**

- 27.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR. The Service Provider shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
  - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 27.2 The Service Provider acknowledges that the Authority may be required under the FOIA and EIR to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Authority shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

**28. DATA PROTECTION**

- 28.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor.
- 28.2 The only processing that the Service Provider is authorised to do is listed in Schedule 15 [Part A] by the Controller and may not be determined by the Processor OR [The Parties acknowledge that for the purposes of the Data Protection Legislation, the Parties are Joint Controllers and the Service Provider may act as a Processor on behalf of the Authority. When the Service Provider is acting as a Processor on behalf of the Authority, the Parties acknowledge that the only processing that the Service Provider is authorised to do is listed in Schedule 15 [Part A] by the Authority and may not be determined by the Service Provider. The Parties shall enter into a Joint Controller Agreement in the form attached at Schedule 15 [Part B] in accordance with the UK GDPR, in replacement of Clauses 28.3 to 28.15 for the Personal Data under Joint Control.]
- 28.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 28.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 28.5 The Processor shall, carry out its own Data Protection Impact Assessment prior to commencing any processing under this Agreement where required under the Data Protection Legislation and otherwise as may be appropriate to ensure the security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, and shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 15, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller 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;
- (c) ensure that:
  - (i) the Processor's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 15);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor's Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor's 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 Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor 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 Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (e) at the written direction of the Controller, and at the Processor's sole cost, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 28.6 Subject to Clause 28.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 28.7 The Processor's obligation to notify under Clause 28.6 shall include the provision of further information to the Controller in phases, as details become available.
- 28.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation including any complaint, communication or request made under Clause 28.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Controller following any Data Loss Event including but not limited to all information and findings relating to any internal or external investigation into the Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 28.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 28. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in the UK GDPR; and
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 28.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 28.11 The Processor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 28.12 Before allowing any Sub-Processor to process any Personal Data related to this Agreement, the Processor must:
  - (a) notify the Controller in writing of the intended Sub-Processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written Agreement with the Sub-Processor which give effect to the terms set out in this Clause 28 such that they apply to the Sub-Processor; and
  - (d) provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 28.13 The Processor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 28.14 The Processor may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 28.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 28.16 Where the Parties include two or more Joint Controllers as identified in Schedule 15 in accordance with the UK GDPR, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 15 in replacement of Clauses 28.3 to 28.15 for the Personal Data under Joint Control.

## **29. INFORMATION MANAGEMENT**

- 29.1 The Service Provider must ensure:
- (a) It has a named and appropriately trained individual(s) responsible for information management, data protection and freedom of information and;
  - (b) It has an appointed senior management group/forum responsible for addressing organisational concerns, issues and risks regarding information management and security.
- 29.2 Every individual working for the Service Provider is personally responsible for the safekeeping of any personal and sensitive Personal Data they obtain, handle, use and disclose.
- 29.3 It is the responsibility of the Service Provider to ensure that every employee knows how to obtain, use and share Personal Data in line with the Data Protection Legislation.
- 29.4 Mandatory induction training must be provided to all employees (permanent or temporary) and routine refresher training undertaken to ensure responsibilities are clear and up to date.

## **30. REQUESTS FOR INFORMATION**

- 30.1 Business as usual (BAU) and Subject Access Requests (SAR) regarding the Service must be appropriately logged, monitored and responded to in line with due process currently followed by the Service Provider.
- 30.2 On receipt of a BAU or SAR request where information is either known to be held, or likely to be held by another contractor, the Service Provider in receipt of the request will provide the requester with appropriate advice and contact details to enable them to make a revised request to the correct organisation.

**31. INFORMATION SHARING**

- 31.1 The Service Provider agrees to sign the necessary Information Sharing Agreement with the other parties regarding the Service and to comply with its terms.
- 31.2 The Service Provider also agrees to have sufficient Information Sharing Agreements in place when engaging in information sharing with other relevant services or with external parties. No data is to be passed from the Service Provider to any sub-contractor or other service provider without an agreed and signed Data Processor contract in place.
- 31.3 Where data is procured from or contains intellectual property from a third provider, the use, re-use and sharing of data will be compliant with the source terms and conditions.
- 31.4 The Service Provider shall supply to the other parties such information and assistance as may be reasonably requested as being necessary to enable the other parties to perform their own obligations in relation to the Service.
- 31.5 The Service Provider shall treat all Confidential Information belonging to the other provider as confidential and shall not disclose any Confidential Information belonging to the other provider to any other person without the other provider's consent, except to such persons and to such extent as may be necessary for the performance of the Service Provider's obligations or as required to comply with legal obligations.

**32. CONFIDENTIALITY**

- 32.1 Subject to Clause 32.2, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 32.2 Clause 32.2 shall not apply to any disclosure of information:
  - (a) required by any applicable law, provided that Clause 27.2 shall apply to any disclosures required under the FOIA or the EIR;
  - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;
  - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 32.1;
  - (d) by the Authority of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;



- (e) to enable a determination to be made under Clause 22;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

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

### 33. **AUDIT**

33.1 During the Term and for a period of 6 (six) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all Service Providers (including Sub-Contractors) of the Services **{at the level of detail agreed in [Schedule 4 \(Payment\)](#)};**
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with Clause 28 (Data Protection) and Clause 27 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created {during the provision of the Services};
- (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the 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.

33.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this Clause 33 more than **{twice}** in any calendar year except where the Authority (acting reasonably) suspects that default or breach of this Agreement may have occurred.

- 33.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services. The Service Provider shall not unreasonably withhold permission for each audit.
- 33.4 Subject to the Authority's obligations of confidentiality, the Service Provider 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 controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Service Provider's Personnel.
- 33.5 The Authority shall endeavour to (but is not obliged to) provide at least {15} days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 33.6 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 Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 33.7 If an audit identifies that:
- (a) the Service Provider has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within {20} days. The Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
  - (c) the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the under-payment {less the cost of audit incurred by the Authority if this was due to a default by the Service Provider in relation to invoicing} within {20} days.

#### 34. INTELLECTUAL PROPERTY

34.1 In the absence of prior written Agreement by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

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

shall vest in the Authority on creation.

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

#### TERMINATION

#### 35. TERMINATION FOR BREACH

35.1 The Authority may terminate this Agreement

35.2 in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Authority may only terminate this Agreement under this Clause 35.1 if the Service Provider has failed to remedy such breach within {28 days} of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) {if there is an Insolvency Event.}
- (e) {if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010.}

35.3 Where the Authority seeks to terminate the Agreement under Clause 35.1 above, it may rely on a single material breach or failure or on a number of breaches and/ or failures or repeated breaches and/or failures (whether of the same or different obligations and regardless of whether such breaches and/or failures are cured) which taken together constitute a material breach.

- 35.4 The Authority may also terminate this Agreement in accordance with the provisions of Clauses 36-41.
- 35.5 Where the Authority has the right to terminate this Agreement under Clause 35.1 (a)-(c), it may, prior to or instead of terminating the whole of this Agreement, serve a notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.
- 35.6 If this Agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.
- 35.7 The Service Provider 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 Service Provider's notice to terminate this Agreement shall be deemed to have been withdrawn.

**36. TERMINATION REQUIRED BY THE PUBLIC CONTRACTS REGULATIONS 2015**

- 36.1 The Authority may terminate this Agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:
- (a) the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
  - (b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure; or
  - (c) the Agreement should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union 2012.
- 36.2 If this Agreement is terminated by the Authority pursuant to Clause 36.1(a), the Authority and the Service Provider shall act towards each other in good faith in determining any costs of termination incurred by the Parties in accordance with the principles of open-book accounting and commercial fair

mindedness and they shall mitigate any potential losses so far as reasonably practicable.

- 36.3 If this Agreement is terminated by the Authority pursuant to Clause 36.1(b), such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause. The Authority shall mitigate any potential losses so far as reasonably practicable.
- 36.4 If this Agreement is terminated by the Authority pursuant to Clause 36.1(c), such termination shall be at no loss or cost to the Service Provider and the Authority hereby indemnifies the Service Provider against any such losses or costs which the Service Provider may suffer as a result of any such termination for cause. The Service Provider shall mitigate any potential losses so far as reasonably practicable.

### **36A TERMINATION ON NOTICE**

Without affecting any other right or remedy available to it, the Authority may terminate this Agreement at any time by giving {NUMBER} months' written notice to the Service Provider.

### **37. FORCE MAJEURE AND CORONAVIRUS**

- 37.1 Subject to the remaining provisions of this Clause 37, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
- 37.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
  - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 37.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 37.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable Service Provider should have foreseen and provided for the cause in question.
- 37.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 37.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this 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.
- 37.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than **{NUMBER}** Working Days.

37.8 **Coronavirus**

- 37.8.1 **{Notwithstanding the ongoing and foreseeable nature of the global Coronavirus pandemic,}** subject to the remaining provisions of the Clause 37.8, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Coronavirus Event.
- 37.8.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Coronavirus Event, such party shall:
- a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement, including but not limited to remote working and all other reasonable measures; and

- c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 37.8.3 The Service Provider cannot claim relief from the performance of any of its obligations under the Agreement which are unaffected by a Coronavirus Event, and can only claim partial relief from performance of obligations which are only partially affected by a Coronavirus Event, and shall therefore remain liable for performance or partial performance as appropriate of all obligations under the Agreement that are reasonably achievable despite the existence of a Coronavirus Event.
- 37.8.4 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Coronavirus Event and to facilitate the continued performance of this Agreement.
- 37.8.5 Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Coronavirus Event in accordance with Best Industry Practice.
- 37.8.6 The affected party shall notify the other party as soon as practicable after the Coronavirus 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 Coronavirus Event unless agreed otherwise by the parties.
- 37.8.7 The Authority may, during the continuance of any Coronavirus Event, terminate this Agreement by written notice to the Service Provider if the Coronavirus Event affects all or a substantial part of the Services and continues for more than sixty (60) Working Days or within any other reasonable timeframe reasonably stipulated by the Authority.
- 37.8.8 Where the Authority has the right to terminate this Agreement under Clause 37.8.7 above it may, prior to or instead of terminating the whole of this Agreement, serve a notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the Coronavirus Event.
- 37.8.9 If this Agreement is terminated by the Authority under this clause such termination shall be at no loss or cost to the Authority and

the Authority shall not be liable to the Service Provider for any losses or costs which the Service Provider may suffer as a result of any such termination including, for the avoidance of any doubt, any claim for loss and expense or loss of business or profits

### **38. PREVENTION OF BRIBERY**

- 38.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) 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.
- 38.2 The Service Provider shall not during the term of this Agreement:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 38.3 The Service Provider shall during the term of this Agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under Clause 38.3(a) and make such records available to the Authority on request.
- 38.4 The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 38.1 and/or Clause 38.2, or has reason to believe that it has or any of the Service Provider's Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) 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; and/or

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 38.5 If the Service Provider makes a notification to the Authority pursuant to Clause 38.4, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 33.
- 38.6 If the Service Provider is in Default under Clause 38.1 and/or Clause 38.2, the Authority may by notice:
- (a) require the Service Provider to remove from performance of this Agreement any Service Provider's Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Agreement.
- 38.7 Any notice served by the Authority under Clause 38.6 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).

## **39. ANTI-SLAVERY**

- 39.1 The Service Provider, if required to make a statement under Section 54 of the Modern Slavery Act 2015, shall notify the Authority each time its statement is published.
- 39.2 The Service Provider warrants from the Commencement Date and throughout the Contract Period that to the best of its knowledge:
- (a) No activity constituting an offence under the Modern Slavery Act 2015 is occurring within its business; and
  - (b) No activity constituting an offence under the Modern Slavery Act 2015 is occurring within its supply chain.
- 39.3 The Service Provider shall procure that any of its Sub-Contractors shall not engage in activity which would constitute a breach of Clause 39.2.

- 39.4 The Service Provider acknowledges that the Authority is subject to the requirements of Section 52 of the Modern Slavery Act 2015 and the Modern Slavery Act 2015 (Duty to Notify) Regulations 2015 and shall assist and co-operate with the Authority (at the Service Provider's expense) to enable the Authority to comply with its duties.
- 39.5 If the Service Provider becomes aware of or has a reasonable suspicion of a breach of Clauses 39.2 and/or 39.3, it shall immediately notify the Authority.
- 39.6 If the Service Provider makes a notification to the Authority pursuant to Clause 39.5 above, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to access the documents which led the Service Provider to make the notification.
- 39.7 If the Service Provider is in default under Clauses 39.2 and/or 39.3, the Authority may:
- (a) Require the Service Provider to remove from performance of this Agreement any Service Provider Personnel, Sub-Contractors or Sub-Contractor Personnel whose acts or omissions have caused the default;
  - (b) Immediately terminate this Agreement;
  - (c) Refer the matter to the Police and/or other relevant agencies, authorities and bodies;
  - (d) Take all or any combination of actions listed at (a), (b), (c)
- 39.8 If the Service Provider is in Default under Clauses 39.2 and/or 39.3, the Authority shall make a notification to the Secretary of State pursuant to section 52 of Modern Slavery Act 2015.

#### **40. {COUNTER-TERRORISM}**

- 40.1 The Service Provider acknowledges that the Authority is subject to the requirements of Section 26 of the Counter Terrorism and Security Act 2015 (the "Prevent Duty") and shall assist and co-operate with the Authority (at the Service Provider's expense) to enable the Authority to comply with its duties.
- 40.2 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider Personnel have at any time prior to the Commencement Date:
- (a) Been engaged in any Extremist Activity or been subject to an investigation or prosecution which relates to alleged Extremist Activity.

- (b) Disseminated extremist views or been subject to an investigation or prosecution which relates to alleged dissemination of extremist viewpoints.
  - (c) Allowed its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints
- 40.3 The Service Provider shall not, and shall procure that any of its sub-contractors shall not:
  - (a) Allow its resources, or the resources of the Authority, to the extent that they are available for the Service Provider's use, to provide a platform for Extremist Activity or to disseminate extremist viewpoints.
  - (b) Allow its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints.
  - (c) Do or suffer to be done anything which may cause the Authority to be in breach of its obligations under the Prevent Duty.
- 40.4 The Service Provider shall immediately notify the Authority (in writing if appropriate), if it becomes aware of any breach of Clauses 40.2 or 40.3 above.
- 40.5 If the Service Provider makes a notification to the Authority pursuant to Clause 40.4 above, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to access the documents which led the Service Provider to make the notification.
- 40.6 If the Service Provider is in default under Clauses 40.2 and/or 40.3, the Authority may:
  - (a) Require the Service Provider to remove from performance of this Agreement any Service Provider Personnel whose acts or omissions have caused the default;
  - (b) Immediately terminate this Agreement;
  - (c) Refer the matter to the Police and/or other relevant agencies, authorities and bodies.
  - (d) Take all or any combination of actions listed at (a), (b), (c)
- 40.7 If the Authority takes action under Clause 40.6 above it may (if appropriate) specify to the Service Provider the nature of the breach, the identity of the party who the Authority believes has engaged in the Extremist Activity and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## 41. BLACKLISTING

- 41.1 The Service Provider warrants from the Commencement Date and throughout the Contract Period that to the best of its knowledge it has not at any time done any act contrary to the Employment Relations Act 1999 (Blacklisting) Regulations 2010, s137 of the Trade Union and Labour Relations (Consolidation) Act 1992 and/or the Data Protection Act 2018 at any time in relation to:
- (a) the recruitment of prospective employees (e.g. seeking references, vetting);
  - (b) the dismissal of an employee;
  - (c) the treatment of existing employees (including through the provision of names for inclusion in any blacklist, or through the imposition of other detriment for any related reason); and
  - (d) the use of a blacklist for any reason.
- 41.2 The Service Provider represents and warrants that any organisation with which it is legally related (through any parent/subsidiary or group structure) has not done any act contrary to the Employment Relations Act 1999 (Blacklisting) Regulations 2010, s.137 of the Trade Union and Labour Relations (Consolidation) Act 1992 and/or the Data Protection Act 2018 in relation to:
- (a) the recruitment of prospective employees (e.g. seeking references, vetting);
  - (b) the dismissal of an employee;
  - (c) the treatment of existing employees (including through the provision of names for inclusion in any blacklist, or through the imposition of other detriment for any related reason); and
  - (d) the use of a blacklist for any reason.
- 41.3 The Service Provider warrants from the Commencement Date and throughout the Contract Period that it shall ensure the principles contained in the Employment Relations Act 1999 (Blacklisting) Regulations 2010 and the Data Protection Act 2018 have been, or will be, brought to the attention of all:
- (a) employers;
  - (b) sub-contractors;
  - (c) suppliers;

- (d) employment /recruitment agencies; and
- (e) associated companies

providing services, information or materials connected with this Agreement, and any contract entered into with such sub-contractors, suppliers, employment/recruitment agencies or associated companies will be made on the basis of compliance with the principles contained in the Employment Relations Act 1999 (Blacklisting) Regulations 2010 and the Data Protection Act 2018.

## 42. BUSINESS CONTINUITY

- 42.1 The Service Provider acknowledges that the Authority has business continuity and emergency planning obligations pursuant to the requirements of the Civil Contingencies Act 2004.
- 42.2 The Service Provider shall provide to the Authority on the Commencement Date, or within {30/60/90} days of the Commencement Date, draft documented arrangements for the Authority's approval (such approval not to be unreasonably withheld) that meet good practice guidelines to effectively protect the Authority from the consequences of a business interruption or series of business interruptions to the provision of the Services (the "**Business Continuity Plan**"). The Business Continuity Plan shall, as a minimum, set out details of the response to, management of recovery from and continuity strategies that will be implemented when a business interruption or series of business interruptions to the provision of the Services occurs.
- 42.3 The Service Provider shall ensure that, as a minimum, the Business Continuity Plan:
  - (a) fully integrates with the Authority's own business continuity arrangements and business continuity policies;
  - (b) includes detailed plans for restoring and maintaining the provision of the Services depending on the nature of the disruptive incident;
  - (c) includes detailed plans for restoring, adapting and/or maintaining the provision of the Services in the event of a Coronavirus Event;
  - (d) includes plans for maintaining regular communication with the Authority during a business interruption or series of business interruptions; and
  - (e) includes an IT service continuity plan.
- 42.4 The Service Provider shall provide an annual update to the Service Provider of the Business Continuity Plan ensuring compliance at all times with this clause.

- 42.5 The Service Provider shall undertake a test of the Business Continuity Plan no less than once per annum; or more frequently if it is practicable under this Agreement. The Service Provider shall inform the Authority when such tests or exercises are scheduled (providing at least one month's notice) and, if requested to do so, the Service Provider shall provide to the Authority a written report of the outcomes of such tests or exercises.
- 42.6 The Authority reserves the right to attend any business continuity tests or exercises undertaken by the Service Provider and to invite the Service Provider to any relevant business continuity exercises held by the Authority.
- 42.7 The Authority reserves the right to audit the Business Continuity Plan. The Authority will accept audits that cover the Services carried out by a {United Kingdom Accreditation Service} accredited auditor, provided that the scope of the audit covers the Services delivered by this Agreement.
- 42.8 The Service Provider shall promptly, and in any event within {90} days, implement any actions or remedial measures which the Service Provider or Authority considers to be necessary as a result of:
- (a) audits;
  - (b) business continuity tests or exercises;
  - (c) business interruptions;
  - (d) emerging risks;
  - (e) a change to the Services; and/or
  - (f) a change to underlying business processes.

#### **43. CONSEQUENCES OF TERMINATION**

- 43.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Service Provider.
- 43.2 On termination of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Service Provider 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 at the Service Provider's cost and the Service Provider's {Authorised Representative or Chief Executive Officer} shall certify full compliance with this Clause.

43.3 The provisions of Clause 6.3 (provision of records), Clause 24 (Indemnities), Clause 26 (Insurance), Clause 27 (Freedom of Information), Clause 28 (Data Protection), Clause 33 (Audit), Clause 35 (Termination for Breach) and this Clause 43 (Consequences of termination) shall survive termination or expiry of this Agreement.

## GENERAL PROVISIONS

### 44. {NON-SOLICITATION}

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 the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this 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.

### 45. 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.

### 46. RIGHTS AND REMEDIES

{Except as expressly provided in this Agreement, the OR} The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### 47. SEVERABILITY

- 47.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.
- 47.2 If {one party gives notice to the other of the possibility that} any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.



48. **PARTNERSHIP OR AGENCY**

- 48.1 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 **except as expressly provided in Clause{s} {NUMBER(S)}.**
- 48.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person or entity.

49. **THIRD PARTY RIGHTS**

- 49.1 No one other than a party to this Agreement **{, their successors and permitted assignees,}** shall have any right to enforce any of its terms.

**OR**

**{Except as expressly provided {in Clause {NUMBER} OR elsewhere in this Agreement,} a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. {This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.}**

49.2

- 49.3 **{The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.}**

50. **PUBLICITY**

- 50.1 The Service Provider 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}.
- 50.2 the Authority may require the Service Provider to use where appropriate and in consultation with and express written consent of the Authority, the Authority's name and logo along with the Service Provider's logos, trademarks and brand names on its vehicles, equipment and uniforms.

## 51. NOTICES

- 51.1 Any notice {or other communication} 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 recorded 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); and
  - (b) sent by email to the party's Authorised Representative at the email address specified by each party.
- 51.2 Any notice {or communication} 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};
  - (b) if sent by pre-paid first-class recorded post or other next working day delivery service, at {9.00 am} on the {second} Working Day after posting {or at the time recorded by the delivery service}.
  - (c) if sent by email, at {9.00 am} on the next Working Day after transmission.
- 51.3 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. For the purposes of this Clause, "writing" shall include e-mail.

## 52. ENTIRE AGREEMENT

- 52.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it {AND REFER TO ANY OTHER NECESSARY DOCUMENTS OR REPRESENTATIONS} 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.
- 52.2 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.

## 53. 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. {No counterpart shall be effective until each party has executed at least one counterpart.}

**54. 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.

**55. 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.

**IN WITNESS** whereof the Parties have executed and delivered this Contract as a deed the day and year first before written.

Executed as a deed by  
**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF HARROW**  
by affixing its Common Seal hereto  
in the presence of:

.....

**Authorised Signatory**

Executed as a deed by

acting by either: two of its directors; a director and its company secretary or by a single director in the presence of a witness

.....  
Director Signature

.....  
Director Name

.....  
Director/Secretary Signature

.....  
Director/Secretary Name

Witness signature: .....

Witness name:.....

Address: .....

.....

.....

Occupation: .....

**SCHEDULE 1. SPECIFICATION**

**SCHEDULE 2. PERFORMANCE REGIME**

**PART 1. KPI**

**1. THE KPIS**

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

<b>KPI Description</b>	<b>Method of calculating service delivery/ measurement period</b>	<b>Target KPI</b>	<b>KPI category (Red/ green)</b>
		{NUMBER}%	
		{NUMBER}%	
		{NUMBER}%	

1.2 The Service Provider shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with [Schedule 5](#).

**PART 2. {SERVICE CREDITS}**

**1. {Calculation of Service Credits}**

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

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

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

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

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

{OR {INSERT OTHER FORMULA}}

KPI No.	KPI title	Definition	Frequency of measurement	Category of Service Failure	Service points
KPI1	{Availability}	{INSERT DEFINITION OR REFER TO RELEVANT PARAGRAPH}		Target KPI: {{NUMBER}}% Minor failure: {{NUMBER}}%-{{NUMBER}}% Serious failure: {{NUMBER}}%-{{NUMBER}}% Severe failure: {{NUMBER}}%-{{NUMBER}}% KPI threshold: {below {{NUMBER}}%}	0 {1} {2} {3} {4}
KPI2	{NAME OF KPI}	{INSERT DEFINITION OR REFER TO RELEVANT PARAGRAPH}		Target KPI: {{NUMBER}} Minor failure: {{NUMBER}} Serious failure: {{NUMBER}} Severe failure: {{NUMBER}} KPI threshold: {{INSERT}}	0 {1} {2} {3} {4}
KPI3	{NAME OF KPI}	{DEFINITION}		Target KPI: {NUMBER} Minor failure: {{NUMBER}} Serious failure: {{NUMBER}} Severe failure: {{INSERT NUMBER}}	0 {1} {2} {3} {4}



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

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

<b>KPI achieved</b>	<b>Service Credit payable</b>	<b>Service Provider's performance</b>
{NUMBER}% on target (Target KPI)	None	Contract performing well
{NUMBER}-{NUMBER}% on target	{NUMBER}% of applicable Charges for period	Minor under performance
{NUMBER}-{NUMBER}% on target	{NUMBER}% of applicable Charges for period	Contract under performing. Service Provider to implement recovery programme
{NUMBER}-{NUMBER}% on target	{NUMBER}% of applicable Charges for period	Major under performance. Service Provider to implement recovery programme
Less than {NUMBER}% on target	{NUMBER}% of applicable Charges for period	Service Provider guilty of Consistent Failure and contract potentially subject to termination

**{OR}**

(c) **{OTHER PERFORMANCE REGIME}**

**PART 3. CONSISTENT FAILURE**

**1. Consistent Failure**

In this agreement, **consistent failure** shall mean:

a) a failure to meet:

- i. 5 or more of the Target KPIs labelled {"Red"} in a rolling {INSERT NUMBER} month period; or
- ii. 10 or more Target KPIs labelled {"Green"} in a rolling {INSERT NUMBER} month period.
- iii. OR
- iv. {{INSERT NUMBER}} or more Target KPIs in a rolling {INSERT NUMBER} month period.}}
- v. {AND/OR}

b) {the Service Provider being liable to pay £{INSERT NUMBER} to the Authority in Service Credits in respect of {two consecutive months}.}

**{AND/OR}**

c) {the Authority serving {INSERT NUMBER} Remediation Notices in a rolling {INSERT NUMBER} month period or {INSERT NUMBER} Default Notices in a rolling {INSERT NUMBER} period.}

**{AND/OR}**

d) {the Service Provider repeatedly breaching any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.}

**SCHEDULE 3. SERVICE PROVIDER'S TENDER**

**SCHEDULE 4. CHARGES AND PAYMENT**

**1. CALCULATION OF 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**

<b>Service</b>	<b>Monthly cost (£)</b>
{INSERT RELEVANT PART OF SERVICES}	{INSERT FIGURE TO BE CHARGED TO AUTHORITY}
{INSERT RELEVANT PART OF SERVICES}	{INSERT FIGURE TO BE CHARGED TO AUTHORITY}
{INSERT RELEVANT PART OF SERVICES}	{INSERT FIGURE TO BE CHARGED TO AUTHORITY}
<b>TOTAL</b>	{INSERT FIGURE TO BE CHARGED TO AUTHORITY}

**3. CHARGES BASED ON HOURLY RATES**

<b>Hours of service in invoice period</b>	<b>Hourly rate (£)</b>
{Up to 100}	{INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY}
{101-200}	{INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY}
{201-300}	{INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY}

**4. PAYMENT TRIGGERED BY MEETING MILESTONES**

<b>Workstream</b>	<b>Milestone</b>	<b>Date completion expected</b>	<b>Charge payable on completion (£)</b>
{INSERT}	{INSERT DETAILS}	{INSERT DATE}	{INSERT FIGURE}
{INSERT}	{INSERT DETAILS}	{INSERT DATE}	{INSERT FIGURE}
{INSERT}	{INSERT DETAILS}	{INSERT DATE}	{INSERT FIGURE}

**5. MENU PRICING**

<b>Type of Fixed Cost</b>	<b>Charges (£)</b>
{INSERT TYPE OF SERVICE TO BE PROVIDED}	{INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE}
{INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED}	{INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE}
{INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED}	{INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE}
{INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED}	{INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE}

**6. PAYMENT PLAN**

{INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE Service Provider AND WHEN THEY WILL BE DUE FOR PAYMENT}

**7. TERMINATION PAYMENT DEFAULT**

In the event that at any time undisputed Charges of **£{AMOUNT}** have been overdue for payment for a period of **{60}** days or more, the Authority will have committed a Termination Payment Default.

## **SCHEDULE 5. CONTRACT MANAGEMENT**

### **1. AUTHORISED REPRESENTATIVES**

1.1. The Authority's initial Authorised Representative: {INSERT DETAILS}

1.2. The Service Provider's initial Authorised Representative: {INSERT DETAILS}

### **2. KEY PERSONNEL**

**{INSERT DETAILS}**

### **3. MEETINGS**

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

### **4. REPORTS**

4.1 Type

4.2 Contents

4.3 Frequency

4.4 Circulation list

**SCHEDULE 6. {DISASTER RECOVERY PLAN}**

**{To be inserted if appropriate for the nature / value of the contract}**

**Part 1. Disaster recovery plan**

*{To be inserted if appropriate}*

**Part 2. IT Disaster recovery plan**

*{To be inserted if appropriate}*

## **SCHEDULE 7. CHANGE CONTROL**

### **1. GENERAL PRINCIPLES**

- 1.1. Where the Authority or the Service Provider sees a need to change this Agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this [Schedule 7](#).
- 1.2. Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider 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 Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4. Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this [Schedule 7](#), shall be undertaken entirely at the expense and liability of the Service Provider.

### **2. PROCEDURE**

- 2.1 Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
  - a) No further action being taken; or
  - b) A request to change this Agreement by the Authority; or
  - c) A recommendation to change this Agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this Agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control



Note signed by the Service Provider 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 Service Provider.

2.5 For each Change Control Note submitted by the Service Provider 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 Service Provider; or
- iii. notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this Agreement.

## SCHEDULE 8. BENCHMARKING

### 1. INTERPRETATION

The definitions in this paragraph apply in this schedule.

**Benchmarked Services:** the Services taken as a whole.

**Benchmarker:** the independent third party appointed by the Authority following discussions with the Service Provider under paragraph 4 of this [Schedule 8](#).

**Benchmarking Report:** the report produced by the Benchmarker following a Benchmark Review.

**Comparison Sample:** a sample of organisations providing Equivalent Services identified in accordance with paragraph 5.1 (d) of this [Schedule 8](#).

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

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

### 2. BENCHMARK REVIEW

2.1. The Authority may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this [Schedule 8](#). The first Benchmark Review may not take place until at least {18} months after the Commencement Date and each subsequent Benchmark Review must be at least {12} months after the previous one.

2.2. Subject to paragraph 2.4, if any Benchmark Review determines that the Charges do not represent Good Value (as defined in paragraph 3.2), then the Service Provider shall, in accordance with [Schedule 7](#) (Change Control) and within {three months} of completion of the Benchmark Review, make a proposal for a changes to the Services, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 6.1(c), under which there will be a new Initial Term, and modifications may be made to the Services and the KPIs.

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

- a) accept the new proposal in which case the Parties shall record the change in accordance with [Schedule 7](#);
- b) reject the proposal and elect to continue to receive the Services on the existing basis; or
- c) reject the proposal and terminate this Agreement on {three months'} notice in writing to the Service Provider without cost other than the Charges up to the date of such termination.}

2.4. If the Service Provider reasonably believes the Benchmarker has not complied with the provisions of this [Schedule 8](#) in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Service Provider may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

### **3. PURPOSE AND SCOPE OF BENCHMARK REVIEW**

3.1. The purpose of the Benchmark Review shall be to establish whether the Services as a whole are **Good Value**.

3.2. The Benchmarked Services as a whole shall be Good Value if the Fees attributable to the Services are, having regard to the KPIs, less than or equal to {10}% more than the Median Price for Equivalent Services provided by a Comparison Sample.

### **4. APPOINTMENT OF BENCHMARKER**

4.1. Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. {If the parties cannot agree on the independent third party within {NUMBER} days of receipt by the Service Provider of the Authority's written request, then the Benchmarker shall be **{INSERT CONSULTANTS}.}**

4.2. The Authority has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.

4.3. Each party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of the Benchmarker shall be shared equally by the parties.

4.4. The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:

- a) benchmarking shall be carried out in an independent and objective manner;
- b) the Benchmarker shall be jointly instructed by the parties;
- c) benchmarking shall be truly comparative in respect of the technology, services and KPIs;
- d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
- e) immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.

4.5. The Service Provider shall not be deemed to be in breach for any failure to perform any obligation under this Agreement (nor will it be liable for Service Credits) where such failure results from any disruption to the Service Provider's performance as a result of disruption caused by the Benchmarker.

## **5. BENCHMARKING PROCESS**

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

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

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

- a) the contractual and business environment under which the Equivalent Services are being provided;
- b) any front-end investment and development costs;
- c) the Service Provider's risk profile, including the financial, performance or liability risk (including any limitation or exclusion or limitation of the Service

Provider's liability under this Agreement) associated with the provision of the Equivalent Services as a whole; and

- d) any other factors reasonably identified by the Service Provider which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear non-competitive.

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

5.4. Where a party suggests amendments to the draft plan under paragraph 5.3, the Benchmarking shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 5.2 shall apply to any amended draft plan. If the Benchmarking believes that the suggested amendments are not reasonable then the Benchmarking shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within {NUMBER} days of the matter first being referred to each of them by the Benchmarking for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.

5.5. Failure by a party to give notice under paragraph 5.3 shall be treated as approval of the draft plan by that party.

5.6. Once the plan is approved by both parties, the Benchmarking shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarking.

5.7. The Benchmarking shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.

5.8. In conducting the Benchmark Review, the Benchmarking shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.

5.9. The Benchmarking shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Authority and the Service Provider with full details of all data and methodologies employed at all stages of the Benchmark Review.

## **6. BENCHMARK REPORT**

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

## **SCHEDULE 9. EXIT MANAGEMENT PLAN**

This schedule should contain clauses to ensure an orderly transfer of services at the end of a contract either back to the Authority or to another provider.

The parties should consider, as a minimum, what happens to: assets; software; how the transfer of data to a new Service Provider is handled; and how service continuity should be maintained.



## SCHEDULE 10.TUPE

{Drafting Note - If the Local Authority does not have any internal employees who will transfer under TUPE to the Service Provider at the point the Service Provider commences the services - Delete the clauses highlighted in yellow (clauses 2, 4, 5, 6, and the part sentence highlighted in clause 3).}

### 1. Interpretation

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

**Admission Agreement:** the Agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by {the administering authority,} the Authority and the Service Provider or Sub-Contractor, as appropriate {in the Administering Authority's standard form **OR** in the form attached at Annex C}.

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

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

**Bond:** the bond to be executed in the {Authority's standard form/ the form set out in Annex D} to the value of {VALUE} under paragraph 5.4.

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

#### **Eligible Employees**

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

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

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

- c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor;
- e) information about any collective Agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

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

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

**LGPS:** Local Government Pension Scheme.

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

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

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

**Replacement Services:** any services that are fundamentally the same as any of the Services and which the 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 Service Provider.

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

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

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

**Sub-Contractor:** the contractors or Service Providers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Authority.

**Service Provider's Final Staff List:** the list of all the Service Provider's and Sub-Contractor's personnel assigned to an organised grouping of employees which has as its principal purpose the provision of the Services or any part of the Services at the Service Transfer Date.

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

**Third Party Employees:** employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Service Provider or Sub-Contractor by virtue of the application of TUPE. {An indicative list of the Third Party Employees, as at the date of execution of the Agreement, is attached at Annex B.}

**Third Party Employer:** a service provider engaged by the Authority to provide {some of the} Services to the Authority before the Effective Date and whose employees will transfer to the Service Provider on the Effective Date.

**Transferring Employees:** employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE. {A list of the Transferring Employees, as at the date of execution of the Agreement, is attached at Annex A.}

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

## **2. Transfer of employees to the service provider on the effective date**

2.1. The Authority and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees {and Third Party Employees} shall transfer to the Service Provider or Sub-Contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The {first} Relevant Transfer shall occur on the {Effective Date OR {DATE}}.

2.2. The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Service Provider, as required by TUPE. The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.

2.3. Subject to paragraph 2.4, the Authority shall indemnify and keep indemnified the Service Provider against any losses, except indirect losses, incurred by the Service Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Service Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

2.4. The Service Provider shall be liable for and indemnify and keep indemnified the Authority {and any Third Party Employer} against any Employment Liabilities arising from or as a consequence of:

a) any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider making on or after the Effective Date;

b) any of the employees informing the Authority {and any Third Party Employer} they object to being employed by the Service Provider or Sub-Contractor; and

c) any change in identity of the Transferring Employees' {and Third Party Employees'} employer as a result of the operation of TUPE or as a result of any proposed measures the Service Provider or Sub-Contractor may consider taking on or after the Effective Date.

2.5. The Service Provider shall be liable for and indemnify and keep indemnified the Authority {and any Third Party Employer} against any failure to meet all

remuneration, benefits, entitlements and outgoings for the Transferring Employees, { the Third Party Employees,} and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

2.6. The Service Provider shall immediately on request by the Authority {and/or the Third Party Employer} provide details of any measures that the Service Provider or any Sub-Contractor envisages it will take in relation to any Transferring Employees {and any Third Party Employees}, including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider will give confirmation of that fact, and shall indemnify the Authority {and any Third Party Employer} against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### 3. Employment Exit Provisions

- 3.1. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2. The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify the Authority of any material changes to this information as and when they occur.
- 3.3. At least 28 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4. The Authority shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing

Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as the Services (or any part of the Services). For the avoidance of doubt, the Authority will comply at all times with the Data Protection Legislation.

- 3.5. The Service Provider warrants to the Authority {and the Replacement Service Provider} that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
- 3.6. The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7. The Authority regards compliance with this paragraph 3 as fundamental to the Agreement. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 3.7 shall not exceed an amount equivalent to the Charges that would be payable in the {three} month period following the Service Provider's failure to comply with paragraph 3.2 or paragraph 3.3, as the case may be.
- 3.8. Any change to the TUPE Information which would increase the total employment costs of the staff in the {six} months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Service Provider shall and shall procure that any Sub-contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.
- 3.9. In the {six} months prior to termination of this Agreement, the Service Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
- 3.10. The Service Provider shall indemnify and keep indemnified in full the Authority and each and every Replacement Service Provider against all Employment Liabilities relating to:

- a) any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or
- b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 3.11. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11 and to paragraph 5.3, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13. Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **4. Pensions**

4.1. The Service Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date.

4.2. The provisions of paragraph 4, paragraph 5 and paragraph 6 shall be directly enforceable by an affected employee against the Service Provider or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Service Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

#### **5. Admitted Body Status to the Local Government**

5.1. Where the Service Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Service Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. {The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate {and Bond value} in respect of any Eligible Employee who elects to join the LGPS {on or after} the Effective Date.}

5.2. {For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the administering authority under the Admission Agreement, the Authority shall ensure that the Eligible Employees' past service benefits accrued prior to the Effective Date are fully funded as at the Effective Date, as determined by the Fund's actuary.}

5.3. The Service Provider shall indemnify and keep indemnified the Authority and/or any Replacement Service Provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Service Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Agreement.

5.4. The Service Provider shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement. {The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the value of the Bond or guarantee.}

5.5. The Service Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

## 6. Service Provider Pension Scheme

6.1. Where the Service Provider or Sub-Contractor does not wish to or is otherwise prevented from offering {all or some of} the Eligible Employees membership or continued membership of the LGPS, the Service Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and



including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- a) established no later than {three months} prior to the date of the Relevant Transfer; and
- b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme,  
and the Service Provider shall produce evidence of compliance with this paragraph **Error! Reference source not found.** to the Authority prior to the date of the Relevant Transfer.

6.2. The Authority's actuary shall determine the terms for bulk transfers from the LGPS to the Service Provider's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Agreement.

6.3. The Service Provider shall and shall procure that each relevant Sub-Contractor shall:

- a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- b) promptly provide to the Authority such documents and information mentioned in paragraph 6.3(a) which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
- c) fully cooperate (and procure that the trustees of the Service Provider's scheme shall fully cooperate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the Agreement.

**Annex A. List of transferring Employees**

**Annex B. {List of third party Employees}**

**Annex C. Admission Agreement**

**Annex D. Bond Agreement**

**SCHEDULE 11.COMMERCIALLY SENSITIVE INFORMATION**

**{DETAILS OF ANY SERVICE PROVIDER INFORMATION TO BE CLASSIFIED AS  
COMMERCIALLY SENSITIVE}**

**SCHEDULE 12. AUTHORITY'S PREMISES AND ASSETS**

{DETAILS OF AUTHORITY PREMISES AND ANY APPLICABLE LEASES OR LICENCES TO BE INSERTED ANY AUTHORITY ASSETS}

## **SCHEDULE 13. WORK RELATED ROAD RISK (WRRR) TERMS**

### **1. Fleet Operator Recognition Scheme (FORS) Accreditation**

Where the Service Provider operates Delivery and Servicing Vehicles and/or Public Service Vehicles, it shall within 90 days of the Contract Date:

- a) unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Authority, is an acceptable substitute to FORS (the "Alternative Scheme"); and (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.
- b) The Service Provider shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme.
- c) Alternatively, where the Service Provider has attained Silver Accreditation or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

### **2. (Safety Equipment on Vehicles**

The Service Provider shall ensure that any Large Vehicle, which it uses to provide the Services, shall:

- a) Have Side Guards fitted, unless the Service Provider can demonstrate to the reasonable satisfaction of the Authority that the vehicle will not perform the function for which it was built if Side Guards are fitted;
- b) Have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- c) Have equipment fitted with an audible means of warning other road users of the vehicle's left manoeuvre.
- d) Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside and of getting too close to the vehicle.

### **3. Driver Licence Checks**

The Service Provider shall ensure:



- a) It has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- b) That each of its Drivers has a driving licence check with the DVLA or equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Service Provider's risk scale, provided that the Service Provider's risk scale has been approved in writing by the Authority within the last 12 months:
  - I. 0 - 3 points on the driving licence - annual checks;
  - II. 4 - 8 points on the driving licence - six monthly checks;
  - III. 9 - 11 points on the driving licence - quarterly checks; or
  - IV. 12 or more points on the driving licence - monthly checks.

#### **4. Driver Training**

The Service Provider shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, eLearning, practical and on the job training) and continued professional development to include training covering the safety of Vulnerable Road Users and on-cycle hazard awareness, throughout the Term of the Contract.

#### **5. Collision Reporting**

The Service Provider shall:

- a) Ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports. For example, the CLOCS Manager [www.clocs-manager.org.uk](http://www.clocs-manager.org.uk).
- b) notify the Authority of any collisions involving injuries to persons or fatalities within five working days of an incident occurring and provide to the Authority an updated Collision Report within five working days on written request.

#### **6. Subcontracts**

These terms shall also apply to the Service Provider's subcontractors or any of them and in this event the Service Provider shall ensure that any specified subcontracts awarded by it include terms requiring subcontractors to comply with these obligations. The Service Provider shall provide documentary evidence of the inclusion of such terms in their subcontracts if requested to do so by the Authority.}

## **7. Monitoring and Failure to Comply with WRRR requirements**

Service Providers will self-certify their compliance at the start of the Contract, within 90 days of the Commencement Date and provide annual updates on their compliance, as well as notifying the Authority if their compliance changes at any stage.

Spot checks will be undertaken at random times at the Authority's properties and also at Service Provider's vehicle operators' sites or depots.

A copy of the Enforcement Procedure is attached at Appendix A. Service Providers should note that the Authority has the option to terminate this Contract in the event of non-compliance with clauses 1 to {6} above. The Authority reserves the right to amend the Enforcement Procedure in the future. A copy of any amended Enforcement Procedure will be issued to you.

If the Service Provider fails to comply with paragraphs 1-{6} above:

- a) The Service Provider shall be in material breach of this Contract and subject to the Enforcement Procedure attached at Appendix A; and
- b) The Authority may refuse the Service Provider, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Authority for any purpose (including but not limited to deliveries).

## **Definitions**

**Bronze Accreditation** means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.forsonline.org.uk](http://www.forsonline.org.uk)

**Car-Derived Van** means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment.

**CLOCS Manager** means the construction logistics and cycle safety best practice, work related road risk safety reporting system that enables fleet operators to capture, investigate and analyse incidents, collisions and near-misses, as detailed at [www.clocs-manager.org.uk](http://www.clocs-manager.org.uk)

**Collision Report** means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities and within 5 working days of a collision occurring.

**Delivery and Servicing Vehicle** means a Large Vehicle, a Van, Car-Derived Van or Public Service Vehicle. This excludes cars, motorcyclists and grey fleet vehicles (vehicles used for business travel but hired or owned by the individual rather than the Service Provider).

**Driver** means any employee of the Service Provider (including an agency driver), who operates a Delivery and Servicing Vehicle on behalf of the Service Provider while delivering the Services.

**DVLA** means the Driver and Vehicle Licensing Agency.

**eLearning** means an online driver training course offered via FORS which can be found at: [http://www.fors-online.org.uk/index.php?page=AE\\_INTRO&return=PTE\\_INTRO](http://www.fors-online.org.uk/index.php?page=AE_INTRO&return=PTE_INTRO)

**Enforcement Procedure** means the procedure detailed in Appendix A.

**FORS** means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating Van and Large Vehicle fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws as well as their environmental, social and economic performance.

**FORS Standard** means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: [www.fors-online.org.uk](http://www.fors-online.org.uk)

**Gold Accreditation** means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk)

**Large Vehicle** means a vehicle with a MAM exceeding 3,500 kilograms. This includes Public Service Vehicles, when meeting this weight threshold.

**MAM** means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely when used on the road. This is also known as the gross vehicle weight (GVW).

**Public Service Vehicle (PSV)** means a motor vehicle that is adapted to carry nine or more passengers and is used to carry passengers for hire or reward. PSVs which carry eight or fewer passengers are currently out of scope.

**Side Guards** means guards that are fitted between the front and rear axles of a lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986.

**Silver Accreditation** means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk)

**TfL** means Transport for London

**Van** means a vehicle with a MAM not exceeding 3,500 kilograms.

**Vulnerable Road Users** means a pedestrian, cyclist, motorcyclist or person of reduced mobility.

**WRRR** means work related road risk

## Appendix A: Enforcement Procedure

### Method

In conjunction with self-certification and spot check monitoring that Service Providers are compliant with the Work Related Road Risk (WRRR) terms, an enforcement programme is needed to mitigate and respond to any identified non-compliance. Enforcement of WRRR terms is intended to be:

- An appropriate deterrent - to increase compliance rates
- Proportionate - relative to the extent of non-compliance (e.g. scale and frequency of non-compliance) and also the extent of risk (e.g. risk posed to Vulnerable Road Users)
- Consistent and efficient - in being issued and done so immediately upon having been identified, so that non-compliance can be rectified as soon as possible

The table below demonstrates the three stages of the enforcement escalation procedure. It should be noted that these do not have to be followed in order, neither does enforcement at one stage automatically lead to the next; this document is for information and does not prejudice the Authority's ability to issue a higher level of enforcement, if deemed appropriate.

**Table 1: Enforcement Escalation Levels**

LEVEL OF ENFORCEMENT ESCALATION	WHAT WILL BE DONE?
STAGE 1 - Breach of Contract Letter 1	A notification letter sent to the Service Provider's Contract Manager (and maybe CEO/ Senior person), outlining the detail of the non-compliance and the need to demonstrate compliance urgently, within a specified timeframe, to remedy breach of contract. Support to rectify the issue may also be sign-posted
STAGE 2 - Breach of Contract Letter 2 and meeting with Service Provider to resolve	If the issue is not rectified within the specified timeframe, or a different area of non-compliance is identified, then a second notification letter will be sent and/or a meeting arranged with the Service Provider to resolve the issue. Support may also be sign-posted
STAGE 3 - Non-compliance, breach, termination of Contract	If stage 1 and 2 do not bring about an improvement, then the option of termination of the contract remains as an option to the Council to pursue based on the specific circumstances

Table 2 outlines the enforcement procedure and level of enforcement (stage 1, 2, 3) resulting from specific non-compliant actions. It should be noted that these are indicative actions and timescales and the Authority reserves the right to assess any identified non-compliance on a case by case basis.

Please note any information held by the Council is potentially accessible under Freedom of Information (FOI) requests.

**Table 2: Enforcement Escalation Level per Nature of Non-Compliance**

Work Related Road Risk Term	Examples of Nature of Non-Compliance	Risk Impact Rating (1=L,2=M,3=H)	Enforcement Escalation Level
<b>Fleet Operator Recognition Scheme (FORS) (or equivalent) accreditation within 90 days</b>	Not achieved within 90 days of contract start date	1 (higher after ~120 days)	Stage 1 Stage 2 (after ~120 days); Stage 3 (after ~150 days)
	Accreditation removed at annual audit or due to illegal action	3	Stage 2 or Stage 3 if in conjunction with other non-compliance issues
<b>Approved Driver Training</b>	No training completed or a non-approved course taken	2	Stage 2 or Stage 3 if in conjunction with other non-compliance issues
	Training is not completed to the recommended frequency	1	Stage 1 or Stage 2 if in conjunction with other non-compliance issues

<b>Blind Spot Minimisation (where applicable)</b>	No evidence provided to demonstrate blind spots eliminated and minimised as far as practical and possible, or evidence unsatisfactory - further steps could have been taken	3	Stage 2 or Stage 3 if in conjunction with other non-compliance issues
	Blind spot minimisation technology is faulty, not functional or missing	3	Stage 2 or Stage 3 if in conjunction with other non-compliance issues
<b>Installation of left hand manoeuvre warnings(where applicable)</b>	Warnings not installed or not functional	3	Stage 2 or Stage 3 if in conjunction with other non-compliance issues
<b>Installation of Cyclist Warning Stickers (where applicable)</b>	No stickers, stickers are incorrect or dirty or loose	1	Stage 1
<b>Monitoring, Reporting and Analysis of Collisions</b>	Collision causing injury or fatality not reported within 5 days	2	Stage 2 or Stage 3 if in conjunction with other non-compliance issues
	Collisions not being captured, investigated and analysed	3	Stage 2 or Stage 3 if in conjunction with other non-compliance issues



<b>Subcontractors Compliance</b>	Subcontractors compliance monitoring and enforcement not developed or implemented	2	Stage 2 if one-off instance not monitored /enforced
		3	or Stage 3 if full monitoring and enforcement procedure not developed or implemented (or in conjunction with other issues)

#### **SCHEDULE 14. SOCIAL VALUE**

On a case by case basis, the social value offering from the successful tenderer, and the remedy for failure to deliver such offering, will need to be included in this schedule with necessary amendments made to the main body of the contract.

## SCHEDULE 15. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

### [PART A]

This Schedule shall be completed by the Controller, who may take account of the view of the Processor(s), however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: **[Insert Contact Details]**
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact Details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details <sup>4</sup>
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor in accordance with Clause 28.1.</p> <p><b>[Notwithstanding Clause 28.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of <u>[[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]]</u></b></p> <p><b>[In respect of Personal Data under Joint Control, Clauses 28.3-28.15 will not apply and the Parties agree to put in place a Joint <u>Controller Agreement as outlined in Schedule 4 Part B instead.</u></b></p>

<sup>4</sup> **HB Public Law Drafting Note:** If officers have any queries regarding completion of this schedule, please refer such queries to the Council's Information Management Team in the first instance.

Subject matter of the processing	<p><i>{This should be a high level, short description of what the processing is about i.e. its subject matter}</i></p> <p><i>Example: This Contract is for X Services. The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<p><i>{Clearly set out the duration of the processing including dates}</i></p>
Nature and purposes of the processing	<p><i>{Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise</i></p> <p><i>Making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc}</i></p>
Type of Personal Data	<p><i>{Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc}</i></p>
Categories of Data Subject	<p><i>{Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc}</i></p>

<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><i>{Describe how long the data will be retained for, how it be returned or destroyed}</i></p>
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## **[PART B]**

### **[JOINT CONTROLLER AGREEMENT]**

In this Annex the Parties must outline each Party's responsibilities for:

- providing information to data subjects
- responding to data subject requests
- notifying the Information Commissioner (and data subjects) where necessary about data breaches
- maintaining records of processing
- carrying out any required Data Protection Impact Assessment

The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clauses 28.3-28.15.

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

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Part B should be used instead of Clauses 28.3-28.15.

**SCHEDULE 16.INSURANCE**

**{INSERT FURTHER DETAILS OF REQUIRED INSURANCE}**