

## HB PUBLIC LAW STANDARD DOCUMENT

<b>Title</b>	<b>Low 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 below the total value of £100,000.
2. In certain circumstances, council departments may wish to utilise a more comprehensive contract even when the total value of the services being procured is below £100,000 in which case the high 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 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.
5. 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, sustainability 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 Legal Advisers within HB Public Law if you have any queries.

## Version control:

Version	Date	Lead Author	Main Changes
1.0	30 Oct 2014	Karen King	Initial consultation
1.1	21 Nov 2014	Karen King	Amendments following review
1.2	18 Dec 2014	Karen King	Review
1.3	March 2015	Procurement	Review
1.4	30 May 2015	Karen King	Final version provided to procurement
1.5	25 June 2015	Karen King	FINAL VERSION FOR HUB
1.6	March 2016	Jemille Gibson	Addition of requested Clauses
1.7	December 2016	Jemille Gibson	Addition of general amendments
1.8	July 2017	Greta O'Shea	Amendments following review
1.9	February 2018	Puja Shah	Amendments following review incl new data protection provisions
1.10	March 2019	Karen King	Drafting amendments re counter terrorism, business continuity and blacklisting
1.11	June 2019	Karen King	E-invoicing and Final Review
1.12	April 2020	Karen King	Covid-19 clause
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]**

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**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 [ ]

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 has invited and received from the Service Provider a proposal for the provision of **[INSERT DETAILS OF THE SERVICE]** (the **Services**).
- (B) The Authority has **{, through a competitive process,}** selected the Service Provider to provide the Services and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.
- (C) The Service Provider has agreed to provide the Services to the Authority upon the terms set out in this Agreement.

**AGREED TERMS**

**1. Definitions**

**Agreement** means the suite of documents including these terms and conditions **{the Specification, the Pricing Schedule and the Service Provider’s Tender/Quote}** which forms the contract between the Authority and the Service Provider

**Approval and Approved** The written consent of the Contract Manager or his/her authorised representative as notified in writing to the Service Provider

**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, any key performance indicators, the term, the pricing structure and any other relevant factors.

**{Business Continuity Plan**

**has the meaning given to it in Clause 19.2}**

**Clause**

means a clause within the Agreement

**Commencement Date**

**{insert date}**

**Confidential Information**

means 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

**Contract Manager**

means the person for the time being appointed by the Authority as being authorised to place orders on behalf of the Authority and to administer the Agreement on behalf of the Authority or such person as may be nominated in writing by the Contract Manager to act on its behalf from time to time

**Contract Period**

means the duration of the Agreement which commences on the Commencement Date and continues for the Initial Contract Period unless extended under Clause 28 below or terminated earlier by either Party pursuant to the terms of this Agreement

**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

<b>Data Loss Event</b>	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
<b>Data Protection Impact Assessment</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
<b>Data Protection Legislation</b>	means (i) the DPA; (ii) the UK GDPR and (iii) all applicable Law about the processing of Personal Data and privacy
<b>Data Protection Officer</b>	the meaning given in the UK GDPR
<b>Data Subject</b>	the meaning given in the UK GDPR
<b>Data Subject Access Request</b>	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
<b>DPA</b>	means the Data Protection Act 2018
<b>EIR</b>	means 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.
<b>{Extremist Activity:</b>	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.}
<b>FOIA</b>	means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time, together with any guidance or codes of practice issued by the Information Commissioner or such other individual, body or organisation which may from time to time replace the Information Commissioner
<b>Information</b>	has the meaning given under section 84 of the Freedom of Information Act 2000

<b>Initial Contract Period</b>	means the period commencing on the Commencement Date and ending on <b>{insert date}</b>
<b>Intellectual Property and Intellectual Property Rights</b>	means the following and the rights in the following: patents, inventions, trade marks, service marks, logos, designs (whether registerable or otherwise), applications for any of the foregoing, copyright, databases, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>{Invitation to Tender or ITT / Request for Quotation or RFQ}</b>	<b>{means an {invitation/request} for Service Providers to {bid/provide a quotation} for the Services required by the Authority}</b>
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply.
<b>Party</b>	means a party to this Agreement and Parties shall be construed accordingly
<b>Personal Data / Personal Data Breach</b>	the meaning given in the UK GDPR
<b>Premises</b>	means the location where the Services are to be provided
<b>{Prevent Duty}</b>	<b>has the meaning given to in Clause 17}</b>
<b>Price</b>	the prices as set out in the Pricing Schedule attached to this Agreement at Schedule 2
<b>Processor</b>	the meaning given in the UK GDPR
<b>Protective Measures</b>	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.



<b>Quote</b>	{means the Service Provider's quotation provided in response to the RFQ attached to this Agreement at Schedule 3}
<b>Requests for Information</b>	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR
<b>Review Date</b>	means the date as agreed between the Parties prior to the commencement of the Agreement
<b>Services</b>	means the services to be provided as specified in the Specification attached to this Agreement at Schedule 1
<b>Service Provider's Personnel</b>	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under this Agreement
<b>{Service Provider's Tender}</b>	{means the Service Provider's tender response to the ITT attached to this Agreement at Schedule 3}
<b>Specification</b>	means the description of the Services to be provided under the Agreement and attached at Schedule 1
<b>Standing Orders</b>	means the applicable version of standing orders or contract procedure rules of the Authority
<b>Sub-Processor</b>	any third Party appointed to process Personal Data on behalf of the Service Provider related to this Agreement
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)
<b>UK GDPR</b>	means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as defined by the DPA
<b>Whistleblowing Policy and Guidelines:</b>	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
<b>Working Day</b>	means the hours of 9am to 5pm Monday to Friday inclusive but excluding Bank and Public Holidays

**Year** means a period of 12 consecutive months or part thereof during the Contract Period, the first year having commenced on the Commencement Date and each subsequent year commencing on the anniversary of the Commencement Date of this Agreement

## **2. General**

- 2.1. The Authority's Contract Manager will be agreed in writing prior to the Commencement Date of the Agreement.
- 2.2. These terms and conditions apply to the Services provided by the Service Provider to the Authority and shall bind the Authority and Service Provider.
- 2.3. The Authority and the Service Provider may not change or vary any part of the Agreement or schedule unless they agree to do so in writing in accordance with Clause 31.
- 2.4. Except with the written consent of the other Party, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way.
- 2.5. The Agreement constitutes the entire Agreement between the Parties relating to the subject matter of the contract. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 2.6. The Service Provider shall provide as a minimum the following information:
  - a. Name/Address of Service Provider;
  - b. Contact name and telephone number of the Service Provider's office;
  - c. Documentation identifying the Service Provider's Personnel; and
  - d. Contact name and telephone number of the officer of the Authority who ordered the Services.

## **3. Provision of Services**

- 3.1. Time of performance of the Services shall be of the essence.
- 3.2. The Service Provider shall provide the Services in a professional and timely manner and in accordance with best practice and the requirements of the Authority.

- 3.3. The Service Provider shall not delegate any duties or obligations in respect of the Services unless specifically authorised by the Authority.
- 3.4. The Service Provider shall notify the Authority immediately on becoming aware that it may be unable to provide the Services in accordance with the Agreement. The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the Contract Period in accordance with the provisions of this Agreement.
- 3.5. In the event that the Service Provider does not comply with the provisions of this Agreement in any way, the Authority may without prejudice to its other rights under this Agreement:
- a. specify by written notice to the Service Provider such dates and/or times for the provision of the Services as it sees fit to address such non-compliance with this Agreement; and/or
  - b. may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Service Provider; and/or
- 3.6. If this Agreement is terminated by the Authority as a result of the Service Provider's non-compliance with this Agreement 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 non-compliance including but not limited to the cost of purchasing alternative Services elsewhere.

#### **4. Price and Payment**

- 4.1. The Price shall be as detailed in the Pricing Schedule attached to this Agreement at Schedule 2 and shall not increase during the Contract Period.
- 4.2. Invoices and credit notes for payment must be sent to [harrow.invoices@proactiscapture.com](mailto:harrow.invoices@proactiscapture.com)
- 4.3. 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.
- 4.4. The Authority will not process or pay against pro forma invoices, account statements or remittance advice notes.
- 4.5. All invoices must meet the following criteria to ensure prompt payment. It is essential that each invoice/credit note is:

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

- 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 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)

4.6. 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)

## **5. Inspection of Services**

5.1. The Authority shall be entitled to inspect and observe the progress of the Services at any time whether on the Premises or those of the Service Provider or the Service Provider's Personnel and to reject any Services that are not in accordance with the Agreement. Upon rejection by the Authority the Service Provider shall forthwith re-provide any Services so rejected. Any such inspection or testing by the Authority shall not relieve the Service Provider of any obligations under the Agreement.

## **6. Service Provider's Warranties**

- 6.1. The Service Provider hereby represents and warrants to the Authority that the Services shall be provided in accordance with Clause 3.
- 6.2. The warranty above shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other warranties or by any other term of the Agreement.
- 6.3. The warranty shall continue in full force and effect notwithstanding delivery or payment for the Services and notwithstanding termination of the Agreement for any reason.
- 6.4. If during the inspection of the Premises any Services are shown to be defective but capable of remedy then the Service Provider shall remedy them in accordance with the Specification at Schedule 1.

## **7. Indemnity and Insurance**

7.1. The Service Provider shall indemnify the Authority and keep the Authority indemnified in full against all direct indirect or consequential liability loss

damages injury costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Authority as a result of or in connection with:

- a. any breach (in whole or part) of any of the warranties on the part of the Service Provider;
- b. any damage to property or Premises to the extent that such damage is caused by relates to or arises from the provision of the Services;
- c. any claim made against the Authority in respect of any liability loss damage injury cost or expense sustained by the Authority's employees or by any third party to the extent that such liability loss damage injury cost or expense is caused by relates to or arises from the provision of the Services;
- d. any negligent act or omission of the Service Provider or the Service Provider's Personnel in providing the Services which causes financial loss to the Authority;

7.2. The Authority may set off against any sums due to the Service Provider whether under these terms and conditions or otherwise any lawful set-off or counterclaim to which the Authority may at any time be entitled.

The Service Provider shall maintain employers and public liability insurance cover with a reputable insurance company to the satisfaction of the Authority and with minimum indemnity limits per occurrence of £{10,000,000} and £{5,000,000} respectively. In addition, at the request of the Authority, the Service Provider may be required to maintain professional indemnity cover with a minimum indemnity limit of £{1,000,000} per occurrence. Proof of cover will be produced before the Contract Commencement Date and at any time on demand by the Authority including the policy and evidence of premium payment.

7.3. 234

## **8. Service Provider's Obligations**

- 8.1. The Service Provider shall provide the Services with due skill and attention and in accordance with best industry practice in relation to the provision of services the same as or substantially similar to the Services
- 8.2. The Service Provider shall notify the Authority immediately on becoming aware that it may be unable to provide the Services either at the location specified and/or on the day(s) and/or at the times specified or in accordance with any instructions specified.

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

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

<sup>4</sup> Please consult with insurance team to agree suitable insurance levels for each contract

## **9. {Safeguarding Children and Vulnerable Adults}**

- 9.1. 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 Agreement as these terms are defined in the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012)
- 9.2. 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);
  - b. monitor the level and validity of the checks under this Clause 9.2 for each of the Service Provider's Personnel; and
  - 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.
- 9.3. The Service Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the 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.
- 9.4. 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 9 have been met.
- 9.5. 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).
- 9.6. 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.

9.7. 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}.

## **10. Status**

10.1. The Service Provider shall at no time act on the Authority's behalf nor shall they hold themselves out as acting on the Authority's behalf and the Service Provider understands that this Agreement does not create an agency or partnership of any kind between the Service Provider and the Authority.

## **11. Termination**

11.1. The Authority may terminate the Agreement without cause on giving the Service Provider a minimum of 30 days written notice.

11.2. The Authority shall be entitled immediately to terminate the Agreement and to recover from the Service Provider the amount of any loss resulting from such termination if the Service Provider is in breach of any of the terms of the Agreement.

11.3. The Authority may terminate the Agreement at any time before the Services are provided by giving written notice. On giving such written notice:

- a. the Service Provider shall cease to be bound to provide the Services and the Authority shall cease to be bound to accept the Services;
- b. the Authority shall cease to be bound to pay that part of the Price which relates to those Services which have not been accepted;
- c. the Authority shall not be liable for any loss or damage whatsoever arising from such termination.

11.4. The Authority may terminate this Agreement at any time in the event of the Service Provider (in the case of an individual) becoming bankrupt or making a composition or arrangement with his creditors or (in the case of a company) having a winding up order made or (except for the purposes of reconstruction or amalgamation) a resolution for voluntary winding up is passed or a receiver or manager administrator or administrative receiver is appointed or possession taken of the Service Provider's assets by or on behalf of the holders of any debentures secured by a floating charge and the Authority shall be entitled to repayment of any monies paid in advance.

11.5. The Agreement shall come to an end at the end of the Contract Period if it has not already come to an end or been terminated before that date.

11.6. Termination or coming to an end of the Agreement shall be without prejudice to any claims for prior breach of the Agreement and all of the terms and conditions which expressly or impliedly have effect after termination of the Agreement for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

## **12. Assignment**

12.1. The Service Provider shall not assign sub-contract licence or otherwise dispose of any part of its rights and obligations unless Agreement in writing has been given by the Authority. Before considering whether to give such Agreement the Authority must satisfy itself that any such assignment sub-contract licence or disposal shall be in accordance with the Authority's Standing Orders.

## **13. Severability**

13.1. Any provision herein which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of the Agreement.

## **14. Waiver**

14.1. No waiver or forbearance by the Authority (whether express or implied) in enforcing any of its rights under the Agreement or these terms and conditions shall prejudice its rights to do so in the future.

## **15. Anti-Corruption**

15.1. The Service Provider shall not:

- a. offer or agree to give any person working for or engaged by the Authority any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other Agreement between the Service Provider and the Authority, including its award to the Authority and any of the rights and obligations contained within it; or
- b. enter into this Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority by or for the Service Provider, or that an Agreement has been reached to that effect, unless details of any such arrangement have



been disclosed in writing to the Authority before execution of this Agreement.

15.2. If the Service Provider (including any of the Service Provider's Personnel) in all cases whether or not acting with the Service Provider's knowledge breaches:

- a. Clause 15.1; or
- b. the Bribery Act 2010

in relation to this Agreement or any other contract with the Authority, the Authority may terminate this Agreement by written notice with immediate effect.

15.3. Any termination under Clause 15.2 shall be without prejudice to any right or remedy that has already accrued, or substantially accrues, to the Authority.

15.4. Notwithstanding the Arbitration Clauses below any dispute relating to:

- a. the interpretation of Clause 15.1 to Clause 15.3 inclusive; or
- b. the amount of value of any gift, consideration or commission

shall be determined by the Authority and the decision shall be final and conclusive.

15.5. For the purpose of this Clause the expression "loss" shall include the reasonable cost to the Authority of the time spent by its officers in terminating the Agreement and in making alternative arrangements for the supply of the Services.

## **16. Anti-Slavery**

16.1. 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.

16.2. 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.

16.3. The Service Provider shall procure that any of its sub-contractors shall not engage in activity which would constitute a breach of this Clause.

- 16.4. 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.
- 16.5. If the Service Provider becomes aware of or has a reasonable suspicion of a breach of this Clause, it shall immediately notify the Authority.
- 16.6. If the Service Provider makes a notification to the Authority pursuant to Clause 16.5 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.
- 16.7. If the Service Provider is in Default under Clauses 16.2 and/or 16.3, the Authority may:
- 1.1.1. Require the Service Provider to remove from performance of this Agreement any of the Service Provider's Personnel whose acts or omissions have caused the default;
  - 1.1.2. Immediately terminate this Agreement;
  - 1.1.3. Refer the matter to the Police and/or other relevant agencies, authorities and bodies;
  - 1.1.4. Take all or any combination of actions listed at (a), (b) and (c)
- 16.8. If the Service Provider is in default under this Clause, the Authority shall make a notification to the Secretary of State pursuant to section 52 of Modern Slavery Act 2015.

## **17. Counter-Terrorism**

- 17.1. 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.
- 17.2. 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; and/or
- c. Allowed its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints.

17.3. 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; and/or
- c. Do or suffer to be done anything which may cause the Authority to be in breach of its obligations under the Prevent Duty.

17.4. The Service Provider shall immediately notify the Authority (in writing if appropriate), if it becomes aware of any breach of Clauses 17.2 or 17.3 above.

17.5. If the Service Provider makes a notification to the Authority pursuant to Clause 17.4 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.

17.6. If the Service Provider is in default under Clauses 17.2 and/or 17.3, 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; and
- d. Take all or any combination of actions listed at a, b or c.

17.7. If the Authority takes action under Clause 17.6 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).

## **18. {Blacklisting}**

18.1. 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.

18.2. 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.

18.3. 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. employees;
- 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.

## {Business Continuity}

### 19.5

- 19.1. The Service Provider acknowledges that the Authority has business continuity and emergency planning obligations pursuant to the requirements of the Civil Contingencies Act 2004.
- 19.2. 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.
- 19.3. 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

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<sup>5</sup> Please consider if this Business Continuity clause should be included in the contract on a case by case basis depending upon the criticality of the services to be supplied.

e. includes an IT service continuity plan.

19.4. 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.

19.5. 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.

19.6. 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.

19.7. 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.

19.8. 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.}

## **20. Dispute Resolution**

20.1. In the event that the Authority and the Service Provider cannot settle a dispute which will lead to the termination of the Agreement then the dispute may (at the option of either Party) be referred for expert determination by an expert who will be a member of the Institute of Arbitrators.

20.2. The expert shall be selected by mutual Agreement within 14 days of a request from one Party to the other. In the absence of Agreement the selection will be undertaken by a third party selected by mutual Agreement.

20.3. Fourteen (14) days after the expert has accepted the appointment the Parties shall submit a written report on the dispute to the expert and to each other and 7 days thereafter shall submit any written replies they wish to make to the expert and to each other.

20.4. Both Parties will then afford the expert any necessary assistance that the expert requires to consider the dispute.

20.5. The expert shall be instructed to deliver his/her determination to the Parties within 14 days of the submission of the written reports.

## **21. Data Protection**

21.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor.

21.2. The only processing that the Processor is authorised to do is listed in Schedule 4 [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 4 [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 4 Part B in accordance with the UK GDPR, in replacement of Clauses 21.3 to 21.15 for the Personal Data under Joint Control.]

21.3. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

21.4. 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.

21.5. 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 4, 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 4);
  - 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 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.

21.6. Subject to Clause 21.7, 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.

- 21.7. The Processor's obligation to notify under Clause 21.6 shall include the provision of further information to the Controller in phases, as details become available.
- 21.8. 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 21.6 (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.
- 21.9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. 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.
- 21.10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.11. The Processor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 21.12. 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 21 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.

21.13. The Processor shall remain fully liable for all acts or omissions of any Sub-Processor.

21.14. 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).

21.15. 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.

21.16. Where the Parties include two or more Joint Controllers as identified in Schedule 4 in accordance with the UK GDPR, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 4 in replacement of Clauses 21.3 to 21.15 for the Personal Data under Joint Control.

## **22. Confidentiality and Intellectual Property**

22.1. Each Party shall:

- a. treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- b. not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

22.2. At any time whether prior to or upon the termination or expiration of the Agreement 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 and the Service Provider shall not make or retain copies. The Service Provider shall certify full compliance with this Clause.

22.3. The Service Provider shall ensure that all 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.

22.4. The Service Provider shall:

- a. take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement is given only to such of the Service Provider's Personnel and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- b. take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement is treated as confidential and not disclosed (without prior Approval) or used by any of the Service Provider's Personnel or such professional advisors or consultants' otherwise than for the purposes of the Agreement;
- c. where it is considered necessary in the opinion of the Authority, ensure that the Service Provider's Personnel or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement; and
- d. not use any Confidential Information received otherwise than for the purposes of the Agreement or as otherwise set out in this Agreement.

22.5. The provisions of Clauses 22.1 to Clauses 22.3 shall not apply to any Confidential Information received by one Party from the other:

- a. which is or becomes public knowledge (otherwise than by breach of this Clause 22);
- b. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- d. is independently developed without access to the Confidential Information; or
- e. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 23(Freedom of Information).

22.6. Nothing in this Clause shall prevent the Authority:

- a. disclosing any Confidential Information for the purpose of the examination and certification of the Authority's accounts; or any 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; or
- b. disclosing any Confidential Information obtained from the Service Provider to any other department, office or to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;
- c. provided that in disclosing information under Clause 22.6 a) or b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

22.7. Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

22.8. In the event that the Service Provider fails to comply with Clauses 22.1 to Clauses 22.6, the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

22.9. All Intellectual Property conceived or made by the Service Provider in the course of providing the Services will belong to the Authority and the Service Provider hereby assigns and agrees to assign all their interest therein to the Authority. Whenever requested to do so by the Authority the Service Provider will at the Authority's expense execute any and all applications assignments or other instruments which the Authority deems necessary to give effect thereto.

## 23. Freedom of Information

- 23.1. The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Authority (at the Service Provider's expense) to enable the Authority to comply with these Information disclosure requirements.
- 23.2. The Service Provider shall in all respects co-operate with the Authority at the Service Provider's cost so as to enable the Authority to comply with its obligations under the Freedom of Information Act 2000.
- 23.3. The Service Provider shall and shall procure that its sub-contractors shall:
- a. transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - b. provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - c. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- 23.4. The Authority shall be responsible for determining at its absolute discretion whether:
- a. the Information is exempt from disclosure under the FOIA and the EIRs; or
  - b. the Information is to be disclosed in response to a Request for Information; and
  - c. in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Contract Manager.
- 23.5. The Service Provider acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the EIR to disclose Information:
- a. without consulting with the Service Provider, or

- b. following consultation with the Service Provider and having taken its views into account.
- 23.6. The Service Provider shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect and make copies of such records on Working Days, as requested by the Authority from time to time.
- 23.7. The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 23.4.

## **24. Health and Safety**

- 24.1. The Service Provider shall at all times adopt safe methods of work and comply with the requirements of the Health and Safety at Work etc Act 1974 as amended and all other relevant statutory provisions.
- 24.2. For the avoidance of doubt it is agreed that it is the responsibility of the Service Provider (at no additional cost to the Authority) to provide such health, safety and welfare measures as may be necessary and as required by legislation associated guidance and approved codes of practice both for the Service Provider's Personnel and all persons coming into the Premises.
- 24.3. The Service Provider shall within one month of the Commencement Date prepare and deliver to the Authority a Health & Safety Policy. The policy shall be reviewed annually at the same time and an amended copy delivered to the Authority. Copies of current policy shall at all times be made available to the Service Provider's Personnel.
- 24.4. The Service Provider shall nominate a competent qualified and experienced person to be responsible for the health, safety and welfare matters.
- 24.5. The Authority may suspend the provision of the Services in the event of non-compliance by the Service Provider with the requirements of this Clause and/or of any legislation with regards to health and safety matters. The Service Provider shall not resume provision of the Service until the Authority is satisfied that the non-compliance has been rectified. Any such period of suspension shall be considered to be a period during which the Service Provider has wrongfully failed to provide the Services.

## **25. Whistleblowing**

- 25.1. 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.

25.2. 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.

## **26. Equal Opportunities**



The Service Provider shall at all times comply with its statutory obligations under the Equality Act 2010 and Codes of Practice issued by the Equality and Human Rights Commission and other relevant legislation.

## **27. {TUPE}**

If TUPE applies on the Commencement Date and/or termination of this Agreement the Parties shall comply with their respective obligations under TUPE.

## **28. {Extension of Contract Period}**

Subject to satisfactory performance by the Service Provider during the Initial Contract Period, the Authority may wish to extend the Agreement for a further period of up to {insert extension period} year{s}. The Authority may approach the Service Provider if it wishes to do so before the end of the Initial Contract Period. The agreed terms and conditions in this Agreement will apply (subject to any variation pursuant to Clause 2) throughout any such extended period.

## **29. Force Majeure and Coronavirus**

- 29.1. Force Majeure shall mean any Act of God fire tempest war insurrection riot civil disturbance rebellion emergency government regulations or embargoes explosions floods or sustained failure of public power supplies and other events beyond the reasonable control of the Service Provider or the Authority where such events could not have been prevented by the taking of reasonable steps to avoid or mitigate such events.
- 29.2. The Service Provider shall not be liable for any delays or failures in performance of its obligations under the Agreement, in whole or in part (excluding payment of moneys due) to the extent that such delay or non-performance is due to Force Majeure.
- 29.3. The Authority shall not be liable for any delays or failures in performance of its obligations under this Agreement, in whole or in part, (excluding payment of moneys due) to the extent that such delay or non-performance is due to Force Majeure.
- 29.4. For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties or failure to provide adequate assets, premises, equipment, materials consumables and/or staff or similar matters, which a prudent and diligent Service Provider could have avoided with the application of foresight are not to be considered as events of Force Majeure.
- 29.5. The Party claiming Force Majeure will promptly notify the other in writing of the reasons for the delay or failure (and the likely duration) and will take all

reasonable steps to overcome the delay or failure and that Party will continue to perform all other obligations which are not prevented by such Force Majeure. As regards such delay or failure the Party claiming Force Majeure will take all reasonable steps to bring the circumstances to a close or to find a solution whereby the Agreement may be performed despite the Force Majeure.

- 29.6. If the Force Majeure in question prevails for a continuous period in excess of three months after the date on which the Force Majeure begins, the Parties shall meet to agree upon the action to be taken to avoid further delay in the performance of the Agreement. If no Agreement is reached within a further period of two months then either Party may be given notice in writing terminating the Agreement on a date being not less than one month after the date on which such notice is served.

## 29.7. **Coronavirus**

29.7.1 {Notwithstanding the ongoing and foreseeable nature of the global Coronavirus pandemic}, subject to the remaining provisions of this Clause 29.7, 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.

29.7.2 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.

29.7.3 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.

- 29.7.4 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.
- 29.7.5 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.
- 29.7.6 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.
- 29.7.7 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.
- 29.7.8 Where the Authority has the right to terminate this Agreement under Clause 29.7.7 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.
- 29.7.9 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.

### **30. Notices**

- 30.1. Any notice {or other communication} given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the other Party and shall be:
- a. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); and
  - b. sent by email to the Party's authorised representative at the email address specified by each Party.

30.2. 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 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}; and
- c. if sent by email, at {9.00 am} on the next Working Day after transmission.

30.3. 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.

### **31. Variation**

The Parties may agree in writing at any time to vary this Agreement.

### **32. Consequences of Termination**

- 32.1. On the expiry of the Contract Period or if this Agreement is terminated in whole or in part for any reason, 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.
- 32.2. On termination of this Agreement (or where reasonably so required by the Authority) 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 shall certify full compliance with this Clause.
- 32.3. The provisions of Clause 7 (Indemnity and Insurance), Clause 11 (Termination), Clause 21 (Data Protection), Clause 22 (Confidentiality & Intellectual Property), Clause 23 (Freedom of Information) and this Clause 32 (Consequences of Termination) shall survive termination or expiry of this Agreement.

### **33. Third Parties**

No person who is not a party to the Agreement shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

### **34. Jurisdiction**

The Agreement shall be governed and construed in accordance with the law of England and Wales and each Party agrees to submit to the exclusive jurisdiction of the Courts of England.

### **35. Costs**

Each of the Parties shall pay their own costs and expenses incurred by them in connection with this Agreement.

**IN WITNESS OF WHICH THE PARTIES HAVE SIGNED THIS AGREEMENT THE DAY AND YEAR FIRST BEFORE WRITTEN**

SIGNED for and on behalf of the  
**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF HARROW**

Signature: .....

Name: .....

Position: .....

SIGNED for and on behalf of  
**{INSERT NAME OF SERVICE PROVIDER}**

Signature: .....

Name: .....

Position: .....

**Schedule 1      SPECIFICATION**

**Schedule 2      PRICING SCHEDULE**



**Schedule 3** SERVICE PROVIDER'S TENDER SUBMISSION / QUOTE  
(delete as appropriate)

## Schedule 4 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>6</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 21.1.</p> <p>[Notwithstanding Clause 21.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of [[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]]</p> <p>[In respect of Personal Data under Joint Control, Clauses 21.3-21.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule 4 Part B instead.]</p>
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</i></p>

<sup>6</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.

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

## **[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 21.3-21.15.

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 21.3-21.15.