

**FLINTSHIRE COUNTY COUNCIL – SERVICES & GOODS WEBSITE**  
**TERMS AND CONDITIONS**

**PART A – PARTIES, BACKGROUND AND OPERATIVE PROVISIONS**

**A1. PARTIES**

- (1) **COUNCIL** (as defined in the purchase order); and
- (2) **CONTRACTOR / SELLER** (as defined in the purchase order).

**A2. NOT USED**

**A3. DEFINITIONS**

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

<b>Approval</b>	means the prior written approval of the Council.
<b>Auditor</b>	means an auditor appointed by the Council.
<b>Authorised Officer</b>	means the person designated as such by the Council.
<b>Business Continuity Plan</b>	means a plan to meet a serious event which threatens the Contractor’s ability to deliver the Service and requires the Contractor to make arrangements to allow for the continual delivery of the Services.
<b>Certified Data Wiping</b>	means data destruction through a service that can certify that data held on information technology systems (including hard disk drives and/or other digital media) has been wiped.
<b>Change in Law</b>	means the coming into effect or repeal (without enactment or consolidation) in England or Wales of any Law, or any amendments or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England or Wales (in each case after the Commencement Date).
<b>Commencement Date</b>	means the services commencement date i.e. the date of the purchase order.
<b>Complaint</b>	means an expression of dissatisfaction about the Contractor’s action or lack of action or about the standard of Service being delivered under the Contract or compliance or non compliance with a statutory obligation.
<b>Confidential Information</b>	means any information which has 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 information which would or would be likely to prejudice the commercial interests of any person, prices, methodologies, trade secrets, Intellectual Property Rights, know-how of either

	Party and all Personal Data and sensitive data within the meaning of the DPA.
<b>Contract</b>	means the written agreement between the Council and the Contractor consisting of the purchase order, these terms and conditions and any other document referred to in the Contract Clauses. In the event of conflict Clause A6.3 shall apply.
<b>Contract Manager</b>	means the person designated as such by the Contractor.
<b>Contract Period</b>	means the period from the Commencement Date to the Expiry Date unless otherwise terminated earlier or extended pursuant to the terms and conditions of the Contract.
<b>Contract Price</b>	means the price (exclusive of any applicable VAT), payable to the Contractor by the Council under the Contract, as set out in the purchase order, for the full and proper performance by the Contractor of its obligations under the Contract.
<b>Contract Year</b>	means a period of twelve (12) months, commencing on the Commencement Date.
<b>Control</b>	means control as defined by section 416 of the Income and Corporation Taxes Act 1988.
<b>Crown</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments.
<b>Data Controller</b>	has the meaning as set out in the DPA.
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract;
<b>Data Processor</b>	has the meaning as set out in the DPA.
<b>Data Protection Impact Assessment</b>	an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data;
<b>Data Protection Legislation</b>	means the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation and the Law Enforcement Directive in so far as it relates to the processing of data and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

<b>Data Subject</b>	means any living person who is the subject of Personal Data as defined in the DPA.
<b>Data Subject Access Request</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data.
<b>DBS</b>	means the Disclosure and Barring Service (established under the Protections of Freedoms Act 2012).
<b>DBS Checks</b>	means the checks conforming to the procedures of the DBS.
<b>Default</b>	means any breach of the obligations of the relevant Party (including but not limited to material breach or breach of a fundamental term or warranty) or any other default, act, omission, negligence or negligent statement of the relevant Party in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
<b>Dispute</b>	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services or any matter where this Contract directs the parties to resolve an issue by reference to Clause D7 Dispute Resolution Procedure.
<b>Dispute Notice</b>	means a notice served pursuant to Clause D7.1a).
<b>DPA</b>	means the Data Protection Act 1998 and the Data Protection Act 2018.
<b>EIR</b>	means the Environmental Information Regulations 2004 (SI 2004/3391), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>Extended Period</b>	means the period in Clause B 1.2.
<b>Equipment</b>	means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.
<b>Expiry Date</b>	means the date specified by the Council when the Contract is due to expire unless the Contract Period is extended or the Contract terminated in accordance with the terms and conditions of the Contract.
<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 and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>Force Majeure</b>	means any event or occurrence which is outside the reasonable control of the Party concerned and which is

	<p>not attributable to any act or failure to take preventative action by that Party, including</p> <ul style="list-style-type: none"> <li>• an act of war;</li> <li>• an act of God;</li> <li>• a decree of Government;</li> <li>• riots;</li> <li>• civil commotion; or</li> </ul> <p>any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been foreseen with reasonable foresight;</p>
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>Good Industry Practice</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
<b>Information</b>	has the meaning given under section 84 of the FOIA.
<b>Intellectual Property Rights</b>	means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, marketing methods and procedures and advertising literature, including the look and feel of any websites, and <b>Intellectual Property</b> shall refer to such materials.
<b>Inventions</b>	means any invention, idea, discovery, development, improvement or innovation made by the Contractor or the Key Personnel in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.
<b>Key Personnel</b>	means any key personnel identified by the Council or Contractor as being key personnel in respect of delivery of the Services.
<b>Key Performance Indicators</b>	means the key performance indicators identified by the Council;
<b>Law</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972,

	regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.
<b>LED</b>	means the Law Enforcement Directive (Directive (EU) 2016/680);
<b>Management Information</b>	means the management information required by the Council.
<b>Month</b>	means a calendar month.
<b>Party</b>	means the Contractor or the Council and <b>Parties</b> shall mean both the Contractor and the Council.
<b>Performance Management Periods</b>	means the performance management periods identified by the Council.
<b>Personal Data</b>	shall have the same meaning as set out in the DPA and relates only to personal data, or any part of such personal data, in relation to which the Contractor is providing Services under this Contract.
<b>Premises</b>	means the location or the locations made available to the Contractor for the purposes of the Contract as set out by the Council.
<b>Process</b>	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing.
<b>Prohibited Act</b>	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>• induce that person to perform improperly a relevant function or activity; or</li> <li>• reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>• under the Bribery Act 2010;</li> <li>• under the Modern Slavery Act 2015;</li> <li>• under legislation creating offences</li> <li>• concerning fraudulent acts;</li> <li>• at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or</li> </ul> <p>(d) defrauding, attempting to defraud or conspiring to defraud the Council; or</p>

	(e) failure to comply with Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992
<b>Property</b>	means the property, other than real property, issued or made available to the Contractor or the Key Personnel by the Council in connection with the Contract.
<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 the such measures adopted by it;
<b>Quality Standards</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with and any other quality standards set out by the Council.
<b>Regulatory Bodies</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council.
<b>Replacement Contractor</b>	means any third party service provider appointed by the Council to supply any services that are substantially the same as or similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
<b>Request for Information</b>	shall have the meaning set out in the FOIA or EIR as relevant (where the meaning set out for the term “request” shall apply).
<b>Required Insurances</b>	means the insurances contained in Clause E1 Insurances which shall be sufficient to provide the level of cover required for all risks which may be incurred by the Contractor in performance of its obligations under the Contract for so long as the Contractor shall have liability to the Council.
<b>Services</b>	means the services to be supplied as set out by the Council and/or listed in the purchase order. ‘Services’ also includes reference to any goods required by the Council.
<b>Staff</b>	means all persons (whether on a voluntary basis or not), including Key Personnel, employed or engaged by the Contractor to perform its obligations under the Contract

	together with the Contractor's agents, suppliers and Sub-Contractors and employees or agents of Sub-Contractors used in the performance of its obligations under the Contract.
<b>Staff Vetting Procedures</b>	means the Council's procedures and departmental policies for the vetting, as appropriate, of personnel for: (a) eligibility to work in the UK; (b) the handling of information of a sensitive or confidential nature; (c) the handling of information which is subject to any relevant security measure; (d) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006; and/or (e) where required, DBS Checks.
<b>Sub-Contract:</b>	means any contract between the Contractor and a third party under which the Contractor agrees to source the provision of any of the Services from that third party.
<b>Sub-Contractor</b>	means a contractor that enters into a Sub-Contract with the Contractor.
<b>TUPE</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
<b>Uninsurable</b>	means a) insurance is not available to the Contractor in respect of the risks in Clause E1.1 in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom.
<b>VAT</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>Working Day</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales.
<b>Works</b>	means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Contractor or the Key Personnel in the provision of the Services.

#### **A4. INTERPRETATION**

A4.1 The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) NOT USED
- (i) NOT USED
- (j) references in the Contract to any Clause without further designation shall be construed as a reference to the Clause to the Contract so numbered;
- (k) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the Contract so numbered; and
- (l) References to and requirements as to Services in the Contract Clauses shall apply to the goods where the context requires it.

## **A5. OFFICIAL NOTICES**

A5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, registered post or by the recorded delivery service). Such letters shall be addressed to the other Party in the manner referred to in this Clause. Provided the relevant communication is not returned as undelivered, the notice or communication shall either be deemed to have been given:

- (a) on the Working Day for letters sent by hand; or



- (b) two (2) Working Days after the day on which the letter was posted; or
- (c) sooner where the other Party acknowledges receipt of such letter.

A5.3 The address to send notices to each Party shall be:

- (a) for the Council: the address set out in the purchase order; and
- (b) for the Contractor: the address set out in the purchase order.

A5.4 For the avoidance of doubt no notice or communication under this Contract will be accepted by fax or email.

A5.5 Either Party may change its address for service by serving a notice in accordance with this Clause.

## **A6. ENTIRE AGREEMENT AND CONFLICT**

A6.1 This Contract 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 the Contract save that any variation agreed pursuant to Clause B1.2 (Contract Period) or Clause H1 (Contract Variation) shall be deemed to be part of this Contract.

A6.2 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 Contract.

A6.3 In the event of and only to the extent of any conflict between the Clauses of the Contract and any document referred to in those Clauses, the conflict shall be resolved in accordance with the following order of precedence:

- a) the Clauses of the Contract;
- b) the purchase order;
- c) NOT USED;
- d) any other document referred to in the Clauses of the Contract;
- e) NOT USED.

## **PART B - PROVISION OF SERVICES**

### **B1. CONTRACT PERIOD**

B1.1 Notwithstanding the date of this Contract, the Contract Period will commence on the Commencement Date and, unless terminated earlier in accordance with any

provisions within the Contract, it shall remain in force until the Expiry Date or any date agreed between the Parties as an extension beyond the Expiry Date.

- B1.2 If the Contract includes an option to extend, the Council may, by giving written notice to the Contractor not less than one Month before the Expiry Date, extend the Contract for the Extended Period.
- B1.3 The provisions of the Contract shall apply throughout the Extended Period.
- B1.4 For the avoidance of doubt the Contractor shall not be entitled to be paid any compensation from the Council upon expiry of this Contract.

## **B2. PERFORMANCE**

- B2.1 The Contractor shall supply the Services in accordance with the purchase order and requested services set out by the Council in consideration for the Contract Price.
- B2.2 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- B2.3 The Contractor shall be responsible for the accuracy of all drawings, documents and information supplied to the Council by the Contractor in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.
- B2.4 The Contractor shall:
  - a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - b) to the extent that the standard of Services has not been specified in the Contract, seek confirmation from the Council as to the relevant standard of the Services before commencing the supply of the Services; and
  - c) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B2.5 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services in accordance with Good Industry Practice.
- B2.6 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

- B2.7 The Council may inspect and examine the manner in which the Contractor supplies the Services at the Premises.
- B2.8 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- B2.9 If the Contractor at any time becomes aware of any material matter which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- B2.10 If the Contractor is to have or has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.11 The Council retains the Contractor for the performance of the Services on a non-exclusive basis.
- B2.12 At all times during the Contract Period the Contractor shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

**B3. CONTRACT MANAGER, KEY PERSONNEL AND STAFF**

- B3.1 The Contractor shall appoint the Contract Manager. The Contract Manager shall be competent in the subject matter of this Contract and, with the exception of a Dispute, shall be able to make decisions under the Contract without the need for the matter to be escalated within the Contractor's business. This will not limit in any way any other of the Contractor's rights or obligations.
- B3.2 The appointment of Key Personnel shall be identified by the Parties. The Contractor shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Council before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least two (2) Months' written notice must be provided by the Contractor of its intention to replace Key Personnel.
- B3.3 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council.
- B3.4 The Council may, by written notice, require the Contractor to immediately remove from the provision of the Services any Key Personnel that the Council considers in any respect unsatisfactory.

- B3.5 The Council may, by written notice, refuse to admit onto or withdraw permission to remain on the Premises any member of Staff whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.
- B3.6 At the Council's written request, the Contractor shall provide a list of the names of all persons who may require admission to the Premises, giving such particulars as the Council may reasonably require.
- B3.7 The Contractor shall procure that all Staff comply with such rules, regulations and requirements as may be in force and/or notified to the Contractor from time to time including those rules or requirements specifically, for example security, in connection with the Premises.
- B3.8 The Contractor warrants that it has complied with the Staff Vetting Procedures in respect of all Staff at or following the Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from carrying out, or whose previous conduct or records indicates that they would not be suitable to carry out, the Services.

**B4. LICENCE TO OCCUPY AND SECURITY OF THE PREMISES**

- B4.1 Subject to Clause B4.3 any land or Premises made available from time to time to the Contractor by the Council in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Council may require the Contractor to enter into a licence agreement for the use of the Premises and may require the Contractor to pay to the Council a licence fee.
- B4.2 The Parties agree that there is no intention on the part of the Council to create a tenancy of any kind in respect of the Premises whatsoever in favour of the Contractor or its Staff.
- B4.3 The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract or upon being given notice to do so by the Council at any time during the Contract Period.
- B4.4 The Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein. Any dispute as to the obligation to make good pursuant to this clause B4.4 shall be referred to dispute resolution pursuant to Clause D7 (Dispute Resolution).
- B4.5 The Contractor shall comply with all security requirements of the Council while on the Premises and shall ensure that all Staff comply with such requirements. The Contractor shall be responsible for the security of its own assets, Equipment and information used at the Premises in the performance of the Services and the Council shall have no liability whatsoever howsoever arising in

respect of any loss, damage, corruption, injury, cost or expense in respect of such assets, Equipment or information.

## **B5. PROPERTY**

- B5.1 Any Property provided to the Contractor by the Council shall be and remain the Property of the Council and the Contractor irrevocably licences the Council and its agents to enter upon any premises of the Contractor during normal business hours and on reasonable notice to recover any such Property. The Property shall be returned to the Council at the Contractor's cost on or before the Expiry Date.
- B5.2 The Contractor shall not in any circumstances have a lien or any other interest over the Property as fiduciary agent and bailee of the Council.
- B5.3 Unless the Contractor notifies the Council within five (5) Working Days of receipt of the Property, the Property shall be deemed to be in good condition when received by or on behalf of the Contractor.
- B5.4 The Property shall only be used in connection with the provision of the Services.
- B5.5 The Contractor shall ensure the security of the Property and shall maintain the Property in good condition.
- B5.6 The Contractor shall promptly notify the Council in the event of any defects, loss or damage arising in or occurring to the Property.
- B5.7 The Contractor shall be liable for all loss of or damage to, the Property (excluding fair wear and tear) unless such loss or damage was caused by the Council's Default. Any dispute as to the Contractor's liability pursuant to this clause B5.7 shall be referred to dispute resolution pursuant to Clause D7.

## **B6. EQUIPMENT**

- B6.1 Except as otherwise specified by the Council, the Contractor shall provide the Equipment to perform the Services at its own cost. Such Equipment shall be fit for purpose, well maintained (in accordance with the manufacturer's servicing and maintenance requirements), insured and, where necessary, fulfilling any Quality Standards and/or the requirements set out by the Council.
- B6.2 When using any Equipment, the Contractor shall have due regard where relevant to fuel economy and energy saving and ensure the Equipment is used in a safe manner and in conformance to the proper control requirements. This shall include clearly and accurately labelling containers to indicate their contents and ensuring that the Staff are properly instructed in such matters.
- B6.3 The Contractor shall be responsible for the security of all Equipment used by the Contractor in connection with the Services. The Council shall not be held liable for loss, damage or injury in respect of the same.

B6.4 At the end of the Contract any Equipment remaining on the Premises shall, subject to Clause D6.4 (f) and (g), be removed at the Contractor's expense.

**B7. ENVIRONMENTAL REQUIREMENTS AND SOCIAL VALUES**

B7.1 The Contractor shall be required to deliver any agreed social value elements in accordance with the Well-being of Future Generations (Wales) Act 2015 and the requirement of the Council.

B7.2 The Contractor shall co-operate with the Council in relation to the economic, social and environmental well-being of the Council's area and shall accordingly notify the Council of any best practice ideas which may improve the same.

**B8. HEALTH AND SAFETY**

B8.1 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of the Staff and any other persons working there.

B8.2 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

B8.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property.

B8.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

B8.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

**B9. PROVISION OF MANAGEMENT INFORMATION AND MEETINGS**

B9.1 The Contractor shall, unless otherwise agreed by the Parties, submit Management Information to the Council throughout the Contract Period as required by the Council.

B9.2 The Authorised Officer and the Contract Manager and, if applicable, Key Personnel, shall meet in accordance with the details as required in the Contract and the Contractor shall, at each meeting, present its previously circulated Management Information.

B9.3 The Authorised Officer and the Contract Manager shall meet at the end of the Contract Year for a review meeting of the Contract.

**B10. MONITORING OF CONTRACT PERFORMANCE**

The Contractor shall comply with the requirements for the monitoring of the performance of the Services including, but not limited to, providing the Management Information, performance of the Key Performance Indicators and such data and information as the Contractor may be required to produce under the Contract.

**B11. COUNCIL'S OBLIGATIONS**

Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

**B12. WARRANTY**

B12.1 The Contractor warrants and represents that:

- a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;
- b) the Contract is signed or executed (as the case may be) by a duly authorised representative or duly authorised representatives (as the case may be) of the Contractor;
- c) in entering the Contract it has not committed any Prohibited Act;
- d) as at the Commencement Date, all information, statements and representations are true, accurate and not misleading and it will advise the Council of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Contract;
- f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver,

administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

- h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- i) the Services shall be provided in a proper, skilful and workmanlike manner;
- j) the Services shall be provided and carried out by a sufficient number of appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- k) it shall at all times comply with the Quality Standards and, where appropriate, shall maintain accreditation with the relevant Quality Standards authorisations body; and
- l) it shall at all times perform its obligations under the Contract in accordance with Law and Good Industry Practice.

B12.2 The Contractor acknowledges that any breach of the warranties in Clause B12.1 shall be remedied by the Contractor at no cost to the Council and within such period of time notified to the Contractor by the Council. Failure to comply with the time limit specified by the Council pursuant to this Clause B12.2 shall constitute a material breach of this Contract and this Contract may be terminated by the Council pursuant to Clause D3.1 (Termination on Default) or Clause D5.1(c) (Termination Events).

## **PART C – CONTRACT PRICE AND PAYMENT**

### **C1. CONTRACT PRICE**

- C1.1 The Contract Price for the Services shall be the full and exclusive remuneration due to the Contractor in respect of the provision of the Services. Unless otherwise agreed in writing by the Council, the Contract Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- C1.2 Unless otherwise specified in accordance with this Contract (including Clause G4 Law and Change in Law) the Contract Price shall remain fixed for the Contract Period in respect of the Services.
- C1.3 NOT USED

### **C2. VAT**

- C2.1 The Contractor shall, where it is VAT registered, be entitled to charge the Council VAT in relation to the Services provided to the Council.



C2.2 The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for or to pay any VAT or other liability relating to payments made to the Contractor under the Contract. Any amounts due under this Clause C2.2 shall be paid by the Contractor to the Council not less than twenty (20) Working Days before the date on which the VAT or other liability is payable by the Council.

### **C3. INVOICING**

C3.1 Unless otherwise specified, the Contractor shall invoice the Council for payment of the Contract Price no later than seven (7) days after the end of each Month (or such other frequency as agreed between the Parties in writing).

C3.2 Every invoice shall include the purchase order number provided by the Council. Invoices shall not be processed by the Council without a purchase order number.

C3.3 If, following a request by the Council, the Contractor fails without due cause to provide verifiable records to evidence to the reasonable satisfaction of the Authorised Officer the due payment of the Contract Price then the Council shall be entitled to withhold payment. Once evidence is provided the Council shall verify the accuracy of the invoice without undue delay. Any undue delay by the Council in verifying invoices pursuant to this Clause C3.3 shall not be sufficient justification for failing to regard an invoice as valid and undisputed.

C3.4 Each invoice shall contain the information required by the Council and shall as a minimum state the purchase order number and a breakdown of the Services provided by the Contractor to the Council. The Council shall be entitled to request further information in order to verify whether an invoice is valid and undisputed and the Contractor shall supply any such information requested within seven (7) days of the Council making a request. VAT and any other tax payable shall be stated separately on invoices and shall be stated to be a net extra charge.

C3.5 Where the Contractor enters into a Sub-Contract in connection with the provision of the Services, it shall ensure that a Sub-Contract and any sub-contracts entered into by the Contractor's Sub-Contractor contain provisions having the same effect as Clauses C3.1 to C3.3 and C4.1. This Clause 3.5 is without prejudice to any terms for earlier payment that may be agreed between the Contractor and any Sub-Contractor.

### **C4. PAYMENT**

C4.1 Unless otherwise agreed and subject to the terms of this Contract, the Council shall pay for Services delivered any valid and undisputed sums due to the Contractor within thirty (30) days of receipt of a valid and undisputed invoice (cleared funds to arrive within thirty two (32) days).

C4.2 In the event that the Council requires additional information from the Contractor to verify and validate an invoice received from the Contractor, payment of valid and undisputed sums shall be made within thirty (30) days of receipt of such supporting documentation from the Contractor (cleared funds to arrive within thirty two (32) days).

- C4.3 The Council shall make all payments to the Contractor via the bankers' automated clearing service (BACS).
- C4.4 Except for reasons beyond the Council's control, where the Council has not made payment to the Contractor by the due date, the Council shall upon written request by the Contractor pay interest to the Contractor on any amount outstanding at a rate of 4% above the base rate of the Bank of England. The Parties agree that such a rate is a substantial contractual remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 and such interest shall be payable from the due date for payment until payment is actually made.
- C4.5 Wherever under the Contract or any other contract between the Parties any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor, under the Contract.
- C4.6 Any overpayment by either Party, whether of the Contract Price or VAT or otherwise, shall be a sum of money recoverable by that Party who made the overpayment from the Party in receipt of the overpayment.

## **C5. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITIES**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of services and not a contract of employment. The Contractor shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION ON INSOLVENCY OR RELATED EVENTS**

- D1.1 Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect by giving written notice to the Contractor if:
- a) the Contractor 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
  - b) the Contractor 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; or

- 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 the Contractor; or
- 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 Contractor; or
- e) the holder of a qualifying floating charge over the assets of the Contractor has become entitled to appoint or has appointed an administrative receiver; or
- f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor; or
- g) a creditor or encumbrancer of the Contractor 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 Contractor's assets and such attachment or process is not discharged within ten (10) days; or
- h) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause; or
- i) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **D2. TERMINATION ON CHANGE OF CONTROL**

D2 The Contractor shall notify the Council immediately if the Contractor undergoes a change of Control. The Council may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

- a) being notified that a change of Control has occurred; or
- b) where no notification has been made, the date that the Council becomes aware of the change of Control,

but shall not be permitted to terminate where an Approval was granted before the change of Control.

## **D3. TERMINATION ON DEFAULT**

D3.1 Without prejudice to Clause D3.2 the Council may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- a) the Contractor has not remedied the Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a notice specifying the Default and requesting it to be remedied; or
- b) the Default is not, in the opinion of the Council, capable of remedy.

D3.2 Notwithstanding Clause D3.1 the Council may terminate the Contract by giving written notice to the Contractor with immediate effect if:

- a) the Contractor repeatedly breaches any of the terms of this Contract 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 Contract; or
- b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 (the "Regulations") apply or would apply if the Contract had been a public contract awarded pursuant to the Regulations; or
- c) any warranty given by the Contractor in this Contract is found to be untrue or misleading; or
- d) the Contractor fails to meet any Key Performance Indicators (if applicable) in three (3) consecutive Performance Management Periods.

D3.3 If the Council fails to pay the Contractor valid and undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such valid and undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, provided that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under this Contract to recover sums from the Contractor.

D3.4 In respect of any right of the Council to terminate the Contract pursuant to Clause D1 (Termination on Insolvency and Other Events) or Clause D2 (Termination on Change of Control) or Clause D3 (Termination on Default), the Council may in its absolute discretion elect to terminate the Contract in whole or in part.

#### **D4. TERMINATION FOR CONVENIENCE**

D4.1 The Council may terminate this Contract at any time by giving three (3) Months' written notice to the Contractor.

#### **D5. TERMINATION EVENTS**

D5.1 Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect by giving written notice to the Contractor if:

- a) the Contractor is convicted of a criminal offence which the Council deems

relevant to the performance of the Services; or

- b) there is a risk or a belief by the Council, that reputational damage to the Council will occur as a result of the Contract continuing: or
- c) pursuant to B 12.2;or
- d) pursuant to Clause G3.7 of the Contract and the Council elects to terminate the Contract pursuant to the procedure in Clause G3.8 (Prevention of Prohibited Acts, Fraud, Bribery and Corruption); or
- e) the Contract has been subject to a substantial variation which does not comply with the principles of variation in Clause H1.3 and the Council elects to terminate the Contract pursuant to Clause H1.7 or Clause H1.5(e)(Contract Variation); or
- f) pursuant to Clause H7.3 (Force Majeure); or
- g) pursuant to Clause H9.3 (Conflict of Interest); or
- h) pursuant to Clause F3.9 (Data Protection);or
- i) NOT USED; or
- j) NOT USED

## **D6. CONSEQUENCES OF TERMINATION OR EXPIRY**

D6.1 Subject to Clauses D6.2 and D6.3, where the Council terminates the Contract in whole or in part, the Council shall be liable to pay to the Contractor only such elements of the Contract Price, if any, that have been properly incurred or accrued in accordance with the Contract or the affected part of the Contract prior to the time of termination provided that the Contractor evidences the same to the satisfaction of the Council. If the termination or partial termination is not immediate then the Contractor shall take all reasonable steps to mitigate any such costs. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available.

D6.2 The Council shall not be liable under Clause D6.1 to pay any sum that:

- a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated before the expiry of the Contract Period.

D6.3 The Council shall:

- a) be entitled to recover from the Contractor (or its representative as the case may be) such elements of the Contract Price, if any, that have been paid in advance for Services that have not been delivered at the date of termination;
- b) be entitled to recover from the Contractor as a debt the cost reasonably incurred of making other arrangements, including those associated with appointing a Replacement Contractor, and any additional expenditure incurred by the Council throughout the remainder of the Contract Period provided that the Council shall take all reasonable steps to mitigate such additional expenditure;
- c) not be obliged to make any further payments to the Contractor until the Council has established the final cost of making any alternative arrangements or appointing a Replacement Contractor (if applicable);
- d) include costs associated with the time spent by its officers in terminating the Contract and making alternative arrangements for the supply of Services or any part of them when assessing the costs;
- e) in the event that any sum of money owed by the Contractor to the Council exceeds any sum of money owed by the Council to the Contractor under this Contract then the Council shall, at its sole discretion, be entitled to deduct that sum from any current or future contract between the Parties; and
- f) be entitled to recover any debt owed by the Contractor to the Council through the courts of England and Wales or any other relevant jurisdiction.

D6.4 On termination of the Contract for any reason the Contractor shall:

- a) immediately return to the Council all Confidential Information, Personal Data and the Council's Intellectual Property in its possession or in the possession or under the control of any permitted contractors or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Contractor under Clause B5 (Property). Such property shall be handed back in good working order and in accordance with Clause B5.1;
- c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any Replacement Contractor and/or the completion of any work in progress;
- d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement

Contractor to conduct due diligence;

- e) grant a licence to the Council or its appointed agents to enter (for the purpose of recovery) any premises of the Contractor where any of the aforementioned items in this Clause may be held;
- f) permit the Council to acquire such of the Equipment owned by the Contractor in accordance with the provision of the Services. If no such mechanism has been provided, then the Council may elect to purchase the Property at market valuation or book value (whichever is the lesser); and
- g) ensure that where the Contractor has leased any Equipment, the document between the Contractor and the third party shall contain provisions permitting the assignment of the benefit of such lease to either the Replacement Contractor or the Council as the case may be on terms no less favourable than those contained in the lease between the Contractor and such third party at the Council's discretion.

D6.5 Except as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## **D7. DISPUTE RESOLUTION PROCEDURE**

- D7.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it then 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 (the "Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Officer and the Contract Manager shall attempt in good faith to resolve the Dispute;
  - b) if the Authorised Officer and the Contract Manager are for any reason unable to resolve the Dispute within twenty (20) Working Days of service of the Dispute Notice, the Dispute shall be referred to their respective senior managers who shall attempt in good faith to resolve it;
  - c) if the Dispute is not resolved within twenty (20) Working Days of it being referred to the senior managers, the Parties will attempt to settle it by mediation in accordance with the policies adopted by the Civil Mediation Council. Unless otherwise agreed between the parties, the mediator shall be nominated by the Civil Mediation Council. To initiate the mediation, a Party shall serve notice in writing to the other party to the Dispute, requesting a mediation. The Parties shall endeavour to commence the mediation no later than thirty (30) Working Days after the date of the request for mediation.

D7.2 The commencement of a Dispute or mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute and Clause H12 (Governing Law and Jurisdiction) Clause shall apply at all times.

## **D8. SURVIVAL**

D8.1 The Clauses which shall survive expiry or termination of this Contract are:

Clause D6 Consequences of Termination and Expiry;  
Clause D7 Dispute Resolution Procedure;  
Clause E2 Liability  
Clause F1 Intellectual Property;  
Clause F2 Confidentiality and Publicity;  
Clause F3 Data Protection;  
Clause F4 Freedom of Information and Environmental Information Regulations;  
Clause F6 Record Keeping, Audit Access and Monitoring;  
Clause G3 Prevention of Prohibited Acts, Fraud, Bribery and Corruption;  
Clause G5 TUPE and Re-Tendering;  
Clause H5 Severance;  
Clause H11 Non Solicitation; and  
Clause H12 Governing Law and Jurisdiction

## **PART E – INSURANCE AND LIABILITIES**

### **E1. INSURANCE**

- E1.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company the Required Insurances with, as a minimum, the levels of cover as set out by the Council. The limits referred to shall be in respect of any one occurrence of employer's liability, any one claim for public liability and any one period of insurance for products liability (if required). The Contractor shall cause any Sub-Contractor to take out and maintain such insurance and shall remain responsible for ensuring that any Sub-Contractor maintains insurance commensurate to the Required Insurances for the duration of the Contract. The obligations in this Clause E1.1 shall not affect the Contractor's liability for the acts and omissions of Sub-Contractors pursuant to Clause H6.3.
- E1.2 The cover under the Required Insurances shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss and shall be for an unlimited number of claims in any one (1) period of insurance. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- E1.3 The Contractor shall give the Council, on request, copies of all insurance policies consisting of the Required Insurances 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.



- E1.4 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- E1.5 The terms of any insurance shall not relieve the Contractor of any liabilities under the Contract.
- E1.6 The Contractor shall at all times take reasonable steps to minimise and mitigate any loss for which the Council is entitled to bring a claim against the Contractor.
- E1.7 The Contractor shall not take any action or fail to take any reasonable action or permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any insurance policy maintained pursuant to Clause E1.1.
- E1.8 Self-insurance shall not be accepted unless previously authorised in writing by the Council.
- E1.9 The Council reserves the right at its sole discretion to reasonably require that the minimum insurance amounts be revised on review should this be deemed necessary by the Council.
- E 1.10 Failure by the Contractor to comply with its obligations under this Clause may be regarded as a material breach of this Contract and Clause D3 shall apply.

## **E2. LIABILITY**

- E2.1 Nothing in the Contract or this Clause E2 shall be construed to limit or exclude either Party's liability for:
- a) death or personal injury caused by its negligence; or
  - b) fraud or fraudulent misrepresentation; or
  - c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- E2.2 Subject to Clause E2.1, the Contractor's total aggregate liability in respect of the indemnities in Clauses C2.2 (VAT), C5 (Taxation, National Insurance and Employment Liability), Clause F1.5 (Intellectual Property), Clause F3 (and in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.
- E2.3 The Contractor shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever howsoever arising out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Contractor or Staff of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising

from any advice given or omitted to be given by the Contractor or Staff, or any other loss which is caused directly or indirectly by any act or omission of the Contractor or Staff. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

- E2.4 Subject to Clause E2.1 and Clause E2.3, the liability of the Council will be limited to the amount paid to the Contractor for the Services provided in the previous Contract Year or if there is no previous Contract Year the amount paid in the current Contract Year.
- E2.5 In no event shall either Party be liable to the other for any:
- a) loss of profits;
  - b) loss of business;
  - c) loss of revenue; or
  - d) loss of or damage to goodwill.
- E2.6 The Council may, among other things, recover as a direct loss:
- a) any additional operational and/or administrative expenses including fines arising from the Contractor's Default;
  - b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default; and
  - c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Contractor.
- E2.7 The Contractor shall fully indemnify and the keep the Council fully indemnified at all times against any liability arising under this Clause E2 **Liability** which is Uninsurable.
- E2.8 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise in Law by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.
- E2.9 Under this Clause E2 **Liability** the Contractor shall be responsible as against the Council for the acts or omissions of Staff and any Sub-Contractor as if they were the acts or omissions of the Contractor.

## **PART F - PROTECTION OF INFORMATION**

### **F1. INTELLECTUAL PROPERTY**

- F1.1 The Council shall retain ownership of all its Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material provided to the Contractor by the Council.
- F1.2 Any Intellectual Property Rights created as a result of the Services, including those prepared or created by or on behalf of the Contractor (including Works and Inventions), shall belong to the Council unless the Authorised Officer has given Approval otherwise.

- F1.3 The Contractor hereby grants, or shall procure the direct grant, to the Council (at no cost to the Council) of a perpetual, royalty free, irrevocable and non-exclusive licence of its Intellectual Property Rights, and shall allow the Council to use the Intellectual Property Rights for any purpose relating to the exercise of the business or function of the Council provided in each case that such rights shall not extend to the commercial exploitation of the Contractor's Intellectual Property Rights. This licence shall include the right to sub-licence to a third party (including, for the avoidance of doubt, any Replacement Contractor or other third party invited by the Council to participate in a tendering process for the award of a contract to deliver replacement services).
- F1.4 The Contractor shall obtain necessary approvals before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights.
- F1.5 The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- F1.6 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

## **F2. CONFIDENTIALITY AND PUBLICITY**

- F2.1 Subject to Clause F2.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their Staff, Sub-Contractors and/or representatives from making any disclosure to any person of any matters relating thereto both during the Contract Period and for a period of 6 years following termination or expiry of the Contract.
- F2.2 Clause F2.1 shall not apply to any disclosure of information:
- i) required by any applicable law, provided that Clause F4 (Freedom of Information and Environmental Information Regulations) shall apply to any disclosure required under the FOIA or the EIR;
  - ii) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
  - iii) that is reasonably required by the Council;
  - iv) 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 F2.1;
  - v) by the Council of any document to which it is a party and which the parties

- to this Contract have agreed contains no Confidential Information;
- vi) to enable a determination under Clause D7 (Dispute Resolution Procedure);
  - vii) which is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;
  - viii) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
  - ix) by the Council relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure.
- F2.3 On or before the expiry of the Contract, the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council and, where applicable and with the Council's Approval undergo Certified Data Wiping.
- F2.4 The Contractor shall not make any press announcements or publicise the Contract in any way without the Council's Approval.
- F2.5 The Council shall be entitled to publicise the Contract in accordance with any legal obligation on the Council, including pursuant to FOIA, EIR or to any examination of the Contract by the Auditor.
- F2.6 The Contractor shall not do anything, or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

### **F3. DATA PROTECTION**

- F3.1 The Parties shall at all times comply with their obligations under the Data Protection Legislation.
- F3.2 Failure by the Contractor to comply with its obligations under this Clause F3 may be regarded as a material breach of the Contract.

### **F4. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

- F4.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIR. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;
  - (b) transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

(c) provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

(d) not respond directly to a Request for Information without Approval.

F4.2 The Contractor acknowledges that the Council may be required under the FOIA and EIR to disclose information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Council shall take reasonable steps to notify the Contractor 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 Contract) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

#### **F5. DISCRIMINATION**

F5.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

F5.2 The Contractor shall take all reasonable steps to secure the observance of Clause F5 (Discrimination) by its Staff.

#### **F6. RECORD KEEPING, AUDIT ACCESS AND MONITORING**

F6.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may either be agreed between the Parties or as required by Law), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contract entered into with the Council and the amounts paid by the Council.

F6.2 The Contractor shall keep the records and accounts referred to in Clause F6.1 in accordance with good accountancy practice.

F6.3 The Contractor shall on request afford the Council, the Council's representatives and/or the Auditor such access to records and accounts as may be required by the Council from time to time.

F6.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) requested under this Clause during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Council and/or the Auditor.

F6.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, except insofar as the Contractor accepts and acknowledges the

conduct of audits carried out by the Auditor is outside of the control of the Council.

- F6.6 The Contractor shall on demand provide the Auditor (and/or representatives of the Council) with all reasonable co-operation and assistance in relation to each audit, including:
- a) all information requested by the Council within the scope of the audit;
  - b) reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Services; and
  - c) access to Staff.
- F6.7 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 reveals a material Default by the Contractor in which case the Contractor shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

**F7. REPLACEMENT OF CORRUPTED DATA**

If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

**PART G – OBLIGATIONS INCLUDING STATUTORY OBLIGATIONS**

**G1. HEALTH AND SAFETY**

The Contractor shall comply, and it shall procure that all Staff shall comply, with all health and safety legislation in force and any health and safety policies of the Council as supplied by the Authorised Officer.

**G2. CORPORATE REQUIREMENTS**

- G2.1 Where identified to the Contractor as being relevant to the Contract, the Contractor shall be obliged to comply with, and shall ensure that Staff shall comply with, such relevant policies of the Council in addition to any policies available from time to time on the Council's website which may be relevant to :
- a) equality, social value and diversity policies;
  - b) health and safety policies;
  - c) safeguarding policies;
  - d) sustainability policies;

- e) information security rules;
- f) whistleblowing and/or confidential reporting policies;
- g) all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services;
- h) Modern Slavery; and
- i) rules preventing bribery by person's associated with the Council and the Council's procedures to prevent bribery by persons associated with Contractors delivering services to the Council.

**G3. PREVENTION OF PROHIBITED ACTS, FRAUD, BRIBERY AND CORRUPTION**

G3.1 The Contractor:

- a) shall not, and shall procure that the Staff shall not, in connection with this Contract, commit a Prohibited Act; and
- b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

G3.2 The Contractor shall have a policy or policies (which shall be disclosed to the Council on request) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

G3.3 The Contractor warrants that it has not paid a commission nor agreed to pay any commission to any employee or representative of the Council by the Contractor or on the Contractor's behalf.

G3.4 If any breach of this Clause is suspected or known, the Contractor shall notify the Council immediately.

G3.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of this Clause G3, the Contractor shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for six (6) years following the expiry or termination of this Contract.

G3.6 The Contractor shall:

- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant Regulatory Body, government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act

2010; and

- b) within fifteen (15) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this Clause G3 (Prevention of Prohibited Acts, Fraud, Bribery and Corruption) by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

G3.7 The Council may terminate this Contract by written notice with immediate effect if the Contractor or its Staff (in all cases whether or not acting with the Contractor's knowledge) breaches any provisions of this Clause G3.

G3.8 Any notice of termination under this Clause must specify:

- a) the nature of the Prohibited Act;
- b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- c) the date on which this Contract will terminate.

G3.9 Notwithstanding the terms of Clause D7 (Dispute Resolution Procedure) any Dispute relating to the interpretation of this Clause or the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

G3.10 Any termination under this Clause shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.

G3.11 If there is any breach of this Clause by the Contractor the Council may report the incident to the relevant Regulatory Body.

#### **G4. LAW AND CHANGE IN LAW**

G4.1 The Contractor shall comply at all times with the Law in its performance of the Contract.

G4.2 If a Change in Law, which was not reasonably foreseeable at the Commencement Date, has a direct effect upon the Contract Price the Contractor may notify the Council in writing of the full implication of the Change in Law, how it will impact on the Contract Price and request a price change.

G4.3 If the request for a change to the Contract Price pursuant to this Clause G4 (Law and Change in Law) is refused or is not acted upon by the Council within seven (7) Working Days of notification, the Contractor may request a meeting and the Parties shall meet within ten (10) Working Days of this request to discuss the full implications of the Change in Law on the Contract Price. If the Parties, within ten (10) Working Days of this meeting, have not agreed the



occurrence or the impact of the Change in Law, the Parties will need to follow the Dispute Resolution Procedure.

- G4.4 Any agreed additional sums payable as a result of the operation of this Clause shall result in an amended Contract Price provided that such variation to the Contract is in accordance with Clause (H1 Variation). For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

## **G5. TUPE, PENSIONS AND RE-TENDERING**

- G5.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Staff including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.
- G5.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant employees in order to do this.
- G5.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

## **PART H - GENERAL PROVISIONS**

### **H1. CONTRACT VARIATION**

- H1.1 No variation to the Contract is valid unless it is in writing and signed by the Council and the Contractor.
- H1.2 The Council shall be entitled to issue to the Contractor in writing a variation request requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of Services in an emergency.
- H1.3 Any variation to the Contract shall adhere to the following principles:
- (a) the scope and nature of possible modifications or options and conditions of use stated by the Council;
  - (b) the variation shall not alter the overall nature of the Services or the Contract; and
  - (c) the requirements of Regulation 72 of the Public Contract Regulations 2015 (as amended) (where relevant).

- H1.4 The Contractor shall notify the Council of the associated proposed charge, calculated in accordance with and pro-rata the rates and prices used to calculate the Contract Price, for effecting the requested variation.
- H1.5 If the Contractor is unable to provide the variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:
- a) agree that the Parties continue to perform their obligations under the Contract without the variation; or
  - b) terminate the Contract with immediate effect.
- H1.6 If the Parties agree a variation, the Contractor shall carry out such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.
- H1.7 Notwithstanding any provision in this clause H1 the Council may decide in its absolute discretion acting reasonably that it shall instead of processing a variation of the Contract proceed with termination pursuant to clause D5.1(e).

## **H2. RIGHTS AND REMEDIES**

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

## **H3. THIRD PARTY RIGHTS**

- H3.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- H3.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

## **H4. WAIVER**

- H4.1 A failure or delay by a party to exercise any right or remedy provided under this Contract or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- H4.2 A waiver of any right or remedy under this Contract or by Law is only effective if given in writing and served in accordance with the notice provisions and shall not be deemed a waiver of any subsequent breach or default.

## **H5. SEVERANCE**

If any provision or part-provision of this Contract 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 **H5 Severance** shall not affect the validity and enforceability of the rest of this Contract.

## **H6. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- H6.1 The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval.
- H6.2 Where the Council has provided Approval to the placing of Sub-Contracts, copies of each Sub-Contract shall (and/or any additional information requested by the Council in relation to the Sub-Contractor shall) be supplied to the Council as soon as reasonably practicable following a request from the Council in relation to the same.
- H6.3 Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- H6.4 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- H6.5 The Council shall have the absolute right to require the Contractor to replace a Sub-Contractor for any reason whatsoever whether or not there are compulsory or non-compulsory grounds for doing so.
- H6.6 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- a) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Council; or
  - b) any private sector body which substantially performs the functions of the Council; or
  - c) any other body established by the Council to substantially perform any of the functions that had previously been performed by the Council; or
  - (d) as required by Law.

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

- H6.7 In respect of Sub-Contractors, the following shall apply:
- H6.7.1 prior to the Commencement Date, the Contractor shall inform the Council of the name, contact details, legal representatives and if relevant, the European Single Procurement Document, of each Sub-Contractor;

H6.7.2 any changes to the information notified to the Council pursuant to Clause H 6.7.1 including any change to the Sub-Contractor engaged by the Contractor in the provision of the Services; and

H6.7.3 the Council shall have the absolute right to require the Contractor to replace a Sub-Contractor for any reason whatsoever whether or not there are compulsory or non- compulsory grounds for doing so pursuant to Regulation 57 of the Public Contracts Regulations 2015 (as amended).

## **H7. FORCE MAJEURE**

H7.1 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

H7.2 The Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

H7.3 If a Force Majeure Event prevents either Party from performing its obligations under the Contract in any material respect for a continual period of sixty (60) days, then without prejudice to any accrued rights or remedies under the Contract, either Party may terminate the Contract by notice in writing to the other Party having immediate effect.

## **H8. DISRUPTION AND BUSINESS CONTINUITY**

H8.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Contractor employed by the Council.

H8.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action will be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H8.3 If required by the Council, the Contractor shall (and will ensure that any Sub-Contractor shall) during the Contract Period have a Business Continuity Plan in place. The Contractor shall promptly provide (and shall ensure the Sub-Contractor provides) the Council with its Business Continuity Plan upon demand.

H8.4 On the occurrence of a Business Continuity Event, the Contractor shall invoke the Business Continuity Plan, if required by the Council to do so.

## **H9. CONFLICT OF INTEREST**

H9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff

and the duties owed to the Council under the provisions of the Contract.

H9.2 The Contractor shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause H9.1 arises or is reasonably foreseeable.

H9.3 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The actions of the Council under this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

#### **H10. COSTS AND EXPENSES**

Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

#### **H11. NON SOLICITATION**

H11.1 For the duration of the Contract and for a period of twelve (12) months thereafter neither the Council nor the Contractor shall:

- a) employ or offer employment to any of the other Party's staff or staff who have been associated with the procurement, the provision of and/or the contract management of the Services without that other Party's prior written consent; and/or
- b) assist or procure any third party to employ or offer employment contrary to this Clause H11.1.

#### **H12. GOVERNING LAW AND JURISDICTION**

H12.1 This Contract 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 laws of England and Wales.

H12.2 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 Contract or its subject matter or formation (including non-contractual disputes or claims).

#### **H13 WELSH LANGUAGE STANDARDS**

The Contractor shall comply with the provisions of the Welsh Language Standards and any scheme or standards that the Council shall have in force from time to time.

#### **I1 WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015**

- 11.1 The Contractor acknowledges that, under the Well-being of Future Generations (Wales) Act 2015 the Council is required to consider how services which the Council procures, improve the economic, social and environmental well-being of the area of the Council.
- 11.2 The Contractor shall ensure that, in providing the Services, it improves the economic, social and environmental well-being of the area of the Council in accordance with the requirements of the Council.