

Annex 2

Service and Goods Contract Conditions

Introduction

- (A) The Provider carries on the business of supplying the Goods and Services.
- (B) The Supplier wishes to supply and the Council wishes to buy the Goods and Services on the Conditions set out in this Annex.

Agreed Terms

These terms and conditions govern the Provider's provision of Services to the Council and are incorporated into the Contract.

1 Interpretation

1.1 In these Conditions, the following definitions apply:

Acceptance Criteria means any criteria with which any Goods must comply as set out in the Specification or evidenced by written agreement between the parties;

Achieved KPIs means in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Annex 7 (*Performance Regime*));

Annex means any of the following annexes:

- (a) Annex 1 – Provider Front Sheet;
- (b) this Annex 2 – Service and Goods Contract Conditions;
- (c) Annex 3 – Special Conditions;
- (d) Annex 4 – Schedule of Rates and Prices;
- (e) Annex 5 - Specification;
- (f) Annex 6 - Provider Details;
- (g) Annex 7 – Performance Regime;
- (h) Annex 8 (TUPE); and
- (i) Annex 9 (Schedule of Processing, Personal Data and Data Subjects);

Applicable Law means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulation policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements which the Provider is bound to comply; ;

Best Value Duty means the duty on local authorities to provide best value and to provide services efficiently, effectively and economically and to strive for constant improvement of all services as set out in the Local Government Act of 1999 and any similar duty;

Business Day means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

Charges means the charges for the Goods and Services referred to in Condition 14 (*Charges and Payment*) and set out in Annex 4 (*Schedule of Rates and Prices*);

Codes of Practice means the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to the Council's FOIA obligations, as amended, updated and replaced from time to time;

Commencement Date means the date indicated in PFS Section 3.1;

Commercially Sensitive Information means the information comprising the information of a commercially sensitive nature relating to the Provider, its Intellectual Property Rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss;

Condition(s) means these conditions in this Annex 2 (*Service and Goods Contract Conditions*), including any additional Annexes;

Confidential Information means all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by the Council or its Representatives to the Provider or its Representatives, including any information which is marked confidential or private and any information relating to the Council's members, customers, clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property;

Contract means the contract between the Council and the Provider for the provision of the Services comprising these Conditions;

Contract Period means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;

Contract Year means a period of twelve (12) months from the Commencement Date;;

Controller shall have the meaning given in the GDPR;

Council means Lichfield District Council whose office is at District Council House, Frog Lane, Lichfield, Staffordshire WS13 6YY;

Council Materials shall have the meaning given in Condition 4.4 (*Provider's general undertakings*);

Council Representative means any individual named as such in the Purchase Order or such person or persons as notified to the Provider by the Council in writing from time to time;

Council's Policies means the policies listed in PFS Section 6.1;

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

DPA 2018 means the Data Protection Act 2018;

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

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

Data Protection Officer shall have the meaning given to it under the GDPR;

Data Subject shall have the meaning given to it under the GDPR;

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

Delivery Location means the address specified by the Council indicated in PFS Section 3.3. Where no address is specified, the Delivery Location shall be Lichfield District Council, District Council House, Frog Lane, Lichfield, Staffordshire WS13 6YY;

Document includes any document in hard or electronic copy;

Effective Date means the date(s) on which the Services (or any part of the Services), transfer from the Council to the Provider or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor;

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

Expiry Date means the date indicated in PFS Section 3.2;

Extension Period means the length of time indicated in PFS Section 4.3;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

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

Goods means the goods (or any part of them) provided or to be provided by the Supplier under the Contract as set out in the Purchase Order and/or Specification and in all cases whether or not manufactured or produced by the Supplier;

Information has the meaning given under section 84 of FOIA;

Initial Term means the period commencing on the Commencement Date and ending on the Expiry Date.

Intellectual Property Rights means all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets);

KPIs means the key performance indicators set out in Annex 7 (*Performance Regime*);

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

Modern Slavery Legislation means the legislation referred to in section 54 of the Modern Slavery Act 2015;

Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including without limitation any necessary consents listed in the Specification;

Parties means both the Council and the Provider;

Personal Data has the meaning given to it under the GDPR ;

Public Body means any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies;

Purchase Order means the written order from the Council for Services incorporating or attached to these Conditions or an order made through an electronic invoice system;

Premises means any premises owned, leased to, controlled or occupied by the Council or its Representatives which are made available for use by the Provider or its Representatives for the delivery or performance of the Services;

Processor shall have the meaning given in the GDPR;

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (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;
- (c) committing any offence:
- (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council; and
- (d) any activity, practice or conduct which would constitute one of the offences listed under part (c) above, if such activity, practice or conduct had been carried out in the UK;

Protective Measures means 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;

Provider means the person, firm or company supplying the services identified in section 1 of the PFS ;

Provider Front Sheet / PFS means the document titled "Provider Front Sheet" appended to this Contract at Annex 1 (*Provider Front Sheet*);

Provider's Liability Percentage Cap means the percentage indicated in PFS Section 4.1;

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

Provider's Yearly Liability means the figure indicated in PFS Section 4.2;

Relevant Industry means the industry indicated in PFS Section 3.4;

Replacement Service Provider means any third party supplier of Replacement Services appointed by the Council from time to time;

Replacement Services means any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Council internally or by any Replacement Service Provider;

Representatives means:

for the Provider: **directors**, employees, officers, agents, consultants, advisors, sub-contractors, suppliers and/or other representatives identified in Annex 6 (*Provider Details*); and

for the Council: the Council Representative;

Request for Information means a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR;

Service Credits means the sums attributable to a Service Failure as specified in Part 2 of Annex 7 (*Performance Regime*);

Service Failure means a failure by the Provider to provide the Services in accordance with any Target KPI;

Services means the services provided or to be provided by the Provider under the Contract as may be set out in the Purchase Order and detailed within the Specification including the Goods and where relevant any Special Conditions;

Service Transfer Date means the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Council or any Replacement Service Provider;

Specification means any description of the Services (including any Goods to be produced) set out in Annex 5 (*Specification*);

Special Conditions means any terms and conditions annexed to this Contract at Annex 3 where such are indicated as required in PFS Section 2.1;

Sub-Contract means any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party;

Sub-Contractor means the contractors or suppliers that enter into a Sub-Contract with the Provider;

Sub-processor means any third party appointed to process Personal Data on behalf of the Provider;

Target KPI means the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Annex 7 (*Performance Regime*);

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

- (a) any extensions to this Contract which are agreed pursuant to Condition 2 (*Formation of Contract*) or
- (b) the earlier termination of this Contract in accordance with Conditions 2.1.2 and/or 2.1.3 (*Formation of Contract*);

Termination Date means the date of early termination of this Contract in accordance with its terms;

TUPE means Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended and any successor legislation;

TULRCA means Trade Union and Labour Relations (Consolidation) Act 1992 as amended and any successor legislation; and

Variation shall have the meaning given in Condition 6.1 (*Variation of the Services*).

1.2 References to PFS Sections are references to the information in the relevant section of the Provider Front Sheet.

1.3 In these Conditions, except where the context otherwise requires:

1.3.1 the masculine includes the feminine and vice-versa;

1.3.2 the singular includes the plural and vice versa;

1.3.3 a reference to any paragraph, Condition, term or Annex is, except where expressly stated to the contrary, a reference to such paragraph, Condition term or Annex of and to the Contract;

1.3.4 save where stated to the contrary, any reference to these Conditions, the Contract or to any other document shall include any permitted variation, amendment or supplement to such document;

1.3.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

1.3.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

1.3.7 headings are for convenience of reference only; and

1.3.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and

1.3.9 subject to Condition 25 (*Dispute resolution*), a reference to writing or written includes e-mails.

1.4 Subject to Condition 5.2 (*Compliance*), in the event of any inconsistency between the provisions of the body of these Conditions, the Annexes, or the Purchase Order, the inconsistency shall be resolved according to the following descending order of priority:

- (a) the Annexes;
- (b) the body of these Conditions;
- (c) the Purchase Order.

2 **Formation of Contract**

2.1 The Contract shall come into existence and take effect on the Commencement Date and shall remain in full force and effect until the earlier of:

2.1.1 the Expiry Date;

2.1.2 the Council exercises its exclusive rights under Condition 22.2 (*Termination*); or

2.1.3 it is terminated in accordance with these Conditions.

2.2 Provided the Contract has not been terminated pursuant to Conditions 2.1.2 and/or 2.1.3 (*Formation of Contract*) above, the Council may extend this Contract beyond the Initial Term by a further period or periods provided that any given extension shall not extend the Contract for a period longer than the Extension Period.

2.3 The council may exercise an extension under this Condition 2.2 at any time during the Term provided that any given extension is not longer than the Extension Period.

2.4 If the Council wishes to extend this Contract pursuant to Condition 2.2 (*Formation of Contract*) above, it shall:

2.4.1 give the Provider at least 30 days' notice of such intention before the expiry of the Initial Term or relevant Extension Period; or

2.4.2 in the event that it is not practical or possible to give the Provider the notice stated in Condition 2.4.1 (*Formation of Contract*) above, give the Provider reasonable notice before the expiry of the Initial Term or relevant Extension Period.

2.5 If the Council gives such notice then the Term shall be extended by the period set out in the notice on the same terms of this Contract.

2.6 These Conditions apply to the supply of the Services to the exclusion of any other terms that the Provider may seek to impose or incorporate (including any standard trading terms of the Provider), or which are implied by trade, custom, practice or course of dealing.

3 **Provider's warranties**

3.1 The Provider warrants that:

3.1.1 it shall provide the Services specified in the Specification in accordance with these Conditions with effect from the Commencement Date and for the duration of this Contract in accordance with the provisions of these Conditions;

3.1.2 it will meet any dates set out in the Specification for the delivery of the Goods or the performance of the Services or (where no dates are so specified) then the Provider will perform the Services (any delivery any Goods) within a reasonable time;

3.1.3 the design, construction and quality of Goods and the method and quality of performance of the Services will comply in all respects with all relevant

requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided;

- 3.1.4 it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
- 3.1.5 it will not do or omit to do anything which may cause the Council to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs;
- 3.1.6 its Representatives will behave in a polite and courteous manner at all times when on the Premises;
- 3.1.7 the Services will conform as to their quantity, quality and description with the Purchase Order or Specification, including with all Acceptance Criteria;
- 3.1.8 the Services will be fit for the purpose of this Contract and meet any standard or performance levels set out in the Specification or which can reasonably be expected for Services of the type in question;
- 3.1.9 the Services will conform to any literature or description supplied by the Provider to the Council prior to the issue of the Purchase Order;
- 3.1.10 it will perform the Services with all reasonable care, skill and diligence and in accordance with best practice in the Provider's industry, profession and trade;
- 3.1.11 it will use personnel to provide the Services and any Goods who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all of its obligations in accordance with the Contract;
- 3.1.12 it will use the best quality goods, tools, materials, standards and techniques in performing the Services;
- 3.1.13 it, and its Representatives will comply with all of the Council's Policies, procedures, signs, notices and other instructions either displayed at the Premises or notified to the Provider (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises;
- 3.1.14 without prejudice to the generality of the foregoing warranties to the extent that Goods are in physical or tangible form, they will:
 - (a) be of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and fit for purpose;
 - (b) be of sound materials and workmanship;
 - (c) be free from defects in design, materials and workmanship; and
 - (d) be equal in all respects to the examples, samples, patterns or specifications provided or given by the Council;

3.1.15 it will provide the Services with reasonable skill and care and in accordance with the best practice prevailing in the Relevant Industry from time to time; and

3.1.16 it shall provide the Services specified in the Specification at the Delivery Location, unless another location for the delivery of Services is agreed between the Parties in writing.

3.2 The Provider acknowledges and confirms that:

3.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;

3.2.2 it has received all information requested by it from the Council pursuant to Condition 3.2.1 (*Provider's warranties*) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;

3.2.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Condition 3.2.2 (*Provider's warranties*);

3.2.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and

3.2.5 it has entered into this Contract in reliance on its own due diligence.

4 **Provider's general undertakings**

The Provider undertakes to:

4.1 provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Services;

4.2 co-operate with the Council and any third party nominated by the Council in all matters relating to the Contract;

4.3 comply with all reasonable instructions of the Council;

4.4 hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Provider (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation;

4.5 promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the performance of the Services and leave the Premises in a clean and tidy condition, failing which the Council may dispose of them and make good the Premises at the expense of the Provider;

- 4.6 use all reasonable endeavours to transfer to the Council the benefit of any warranty or guarantee given by the manufacturer of any goods contained in the Goods of which the Provider is not the manufacturer;
- 4.7 notify the Council as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware; and
- 4.8 it will comply with the International Financial Reporting Standard for Small and Medium-sized Entities (**SMEs**) and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

5 **Compliance**

- 5.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 5.2 Notwithstanding Condition 1.4 (*Interpretation*), where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

6 **Variation of the Services**

- 6.1 The Council reserves the right on giving written notice to the Provider from time to time to require changes to the Services (including by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reason whatsoever. Such a change is hereinafter called **a Variation**.
- 6.2 In the event of a Variation the Charges may also be varied. Subject to mutual consent between the parties, such variation in the Charges shall be calculated by the Council and notified in writing to the Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- 6.3 The Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

7 **Provider's personnel**

- 7.1 The Council reserves the right:
- 7.1.1 to refuse to admit to the Premises and to require the Provider to replace with another suitably qualified person any Representative of the Provider whose admission would in the reasonable opinion of the Council be undesirable; and
 - 7.1.2 to request the replacement of any Representative of the Provider who in the Council's reasonable opinion is not suitably qualified or experienced to perform the Services.
- 7.2 Where any Representative of the Provider is named on the Purchase Order or in the Specification as fulfilling a specific role in connection with the performance of the Services, the Provider will use all reasonable endeavours to ensure that the named Representative

continues to fulfil the specified role and will not replace him or her without the Council's written consent, such consent not to be unreasonably withheld.

- 7.3 If reasonably so requested by the Council and subject to compliance by both parties with Data Protection Law, the Provider shall promptly provide a list of the names and addresses of all persons who may at any time require admission to the Premises in connection with the performance of the Services, specifying the role in which each such person is concerned with the Provider and giving such other particulars as the Council may require.

8 **Testing and acceptance of Goods**

- 8.1 All Goods must meet any relevant Acceptance Criteria.

- 8.2 The Council may test Goods at any time during the period of 15 Business Days following notification by the Provider of completion of the Services (or relevant part of the Services) and production at the Premises of the Goods.

- 8.3 If any Goods fail to meet their Acceptance Criteria the Council will notify the Provider accordingly specifying the non-conformity.

- 8.4 In the case of Goods which fail to meet the Acceptance Criteria the Council may either:

8.4.1 opt to reject them, in which case Condition 10 (*The Council's remedies*) will apply; or

8.4.2 request the Provider to remedy the non-compliance at its own expense either at the Premises or elsewhere and redeliver the Goods to the Council within fifteen (15) Business Days of the Council's notification under Condition 7.3 (*Testing and acceptance of Goods*), following which the Council shall have a further fifteen (15) Business Days in which to re-test the Goods for conformity with the Acceptance Criteria.

- 8.5 If any Goods fail to meet the Acceptance Criteria on re-testing under Condition **Error! Reference source not found.** (*Testing and acceptance of Goods*), the Council may reject them and exercise its rights under Condition 10 (*The Council's remedies*) or at its sole discretion repeat the steps in Condition 8 (*Testing and acceptance of Goods*).

9 **Risk and title**

- 9.1 Risk in Goods shall pass to the Council on acceptance under Condition 8 (*Testing and acceptance of Goods*).

- 9.2 Title to Goods shall pass to the Council on acceptance under Condition 8 (*Testing and acceptance of Goods*).

10 **The Council's remedies**

- 10.1 If:

10.1.1 the Provider fails to perform the Services by the date required under this Contract; or

10.1.2 the Provider fails to comply with its warranties set out in Condition 3 (*Provider's Warranties*); or

10.1.3 Condition 8.4 (*Testing and acceptance of Goods*) applies,

the Council may exercise any of the rights set out in Condition 10.2 (*The Council's remedies*).

10.2 The rights referred to in Condition 10.1 (*The Council's remedies*) are:

10.2.1 to refuse to accept any subsequent performance of the Services which the Provider attempts to make;

10.2.2 to refuse to accept any delivery of Goods which the Provider attempts to make;

10.2.3 to reject any Goods (in whole or in part) whether or not title has passed and to return them to the Provider at the Provider's own risk and expense;

10.2.4 to recover from the Provider any costs incurred by the Council in having a third party provide substitute Services or in performing the Services itself;

10.2.5 where the Council has paid in advance for Services that have not been performed by the Provider, to have such sums refunded by the Provider immediately on written request;

10.2.6 to claim damages for any additional costs, loss or expenses incurred by the Council which are attributable to the Provider's failures set out in Condition 10.1 (*The Council's remedies*);

10.2.7 to terminate the Contract with immediate effect by giving written notice to the Provider.

10.3 The rights set out in Condition 10.2 (*The Council's remedies*) are cumulative and the exercise by the Council of any one of them shall not preclude it from exercising any other.

10.4 The Council's rights under this Condition 10 (*The Council's remedies*) are in addition to its rights and remedies implied by statute and at common law.

11 **The Council's obligations**

11.1 The Council will:

11.1.1 provide the Provider with reasonable access to the Premises at reasonable times during Business Days for the purpose of providing the Services or delivering the Goods;

11.1.2 where appropriate, provide reasonable access to facilities on the Premises; and

11.1.3 provide such information as the Provider may reasonably request in connection with the provision of the Services provided that the Council (acting reasonably) considers such information necessary for the purpose of providing the Services.

12 TUPE

12.1 Where PFS Section 5.1 states that TUPE terms are required the parties the terms and conditions contained in Annex 8 shall apply to this Contract.

13 Liability

13.1 Subject to Condition 13.3 (*Liability*), neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

13.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

13.3 Subject to Condition 13.5 (*Liability*), the Provider's total aggregate liability:

13.3.1 is unlimited in respect of:

- (a) the indemnities in Annex 8 (*TUPE*) (where relevant);
- (b) any breach of Condition 27 (*Corruption*);
- (c) the Provider's wilful default;
- (d) the indemnities in Condition 28 (*Modern Slavery Legislation*);
- (e) any breach of Condition 32 (Data Protection Law).

13.3.2 in respect of any Service Credits, is limited, in each Contract Year, to 60% of the Charges that are payable by the Council in the applicable Contract Year; and

13.3.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed the Provider's Yearly Liability in each Contract Year or, if lower and a figure has been inserted into PFS Section 4.1, the Provider's Liability Percentage Cap of the aggregate Charges paid under or pursuant to this Contract in the subsequent Contract Year in respect of which the claim arises.

13.4 Subject to Condition 13.5 (*Liability*), the Council's maximum aggregate liability to the Provider for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable) shall not in any circumstances exceed £50,000.

13.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:

13.5.1 fraud or fraudulent misrepresentation;

- 13.5.2 death or personal injury caused by its negligence;
- 13.5.3 breach of any obligation as to title implied by statute; or
- 13.5.4 any other act or omission, liability for which may not be limited under any applicable law.
- 13.6 In this Condition 13 (*Liability*), a reference to the Council's liability for something is a reference to any liability whatsoever which the Council might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Council's negligence or from negligence for which the Council would otherwise be liable.
- 13.7 The Council shall not be in breach of the Contract, and shall not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Provider's breach of the Contract.
- 13.8 Subject to Condition 13.5 (*Liability*) the Council shall not have any liability for:
- 13.8.1 any indirect or consequential loss or damage;
- 13.8.2 any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
- 13.8.3 any damage to goodwill or reputation;
- 13.8.4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Provider or its Representatives; or
- 13.8.5 any loss, damage, costs or expenses suffered or incurred by any third party.
- 13.9 Subject to Condition 13.5 (*Liability*) the Council's total liability under this Contract shall be limited to the Charges it has paid or is due to pay to the Provider under the Contract.
- 14 Charges and payment**
- 14.1 The Charges for the Services and the date or dates on which they are payable are set out in Annex 4 (*Schedule of Rates and Prices*) and:
- 14.1.1 (in the case of Goods) shall be inclusive of any costs of packaging, insurance and carriage;
- 14.1.2 (in the case of Services) shall include all costs and expenses of the Provider and its Representatives directly or indirectly incurred in connection with their performance; and
- 14.1.3 unless otherwise specified shall be inclusive of any amounts in respect of valued added tax chargeable from time to time (**VAT**).

- 14.2 Pursuant to Condition 8 (*Testing and Acceptance of Goods*), unless otherwise provided in the Purchase Order, the Provider may invoice the Charges at any time on or after whichever is the later of acceptance of the Goods or completion of the Services.
- 14.3 Invoices must include the Purchase Order number and sufficient supporting information to enable the Council to identify the Goods and Services for which payment is claimed.
- 14.4 Where any taxable supply for VAT purposes is made under the Contract by the Provider to the Council, the Provider shall provide a valid VAT invoice.
- 14.5 Where Charges for the Services are based on the cost of time and materials at rates set out in the Purchase Order, the Provider shall maintain and provide to the Council complete and accurate records of the time spent and materials used in providing them and attach such records to the relevant invoice.
- 14.6 Subject to compliance by the Provider with the foregoing provisions of this Condition 14 (*Charges and payment*), the Council shall pay the Charges as invoiced within 30 days of receipt of the invoice.
- 14.7 The Provider shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any amount in whole or in part. The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Provider against any amount payable by the Council to the Provider.

15 **KPIs**

- 15.1 The Services shall be subject to KPIs where they have been indicated as such in PFS Section 2.3.
- 15.2 Where Services are subject to KPIs, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 15.3 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Annex 7 (*Performance Regime*).
- 15.4 The Provider shall provide records of and Management Reports summarising the Achieved KPIs as requested by the Council acting reasonably.

16 **Failure to achieve Target KPIs**

- 16.1 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Council may have, the provisions of Condition 17 (*Service Credits*) shall apply.

17 **Service Credits**

If the Provider commits a Service Failure, the Provider shall pay to the Council the Service Credit set out in Part 2 of Annex 7 (*Performance Regime*).

18 Intellectual property rights

- 18.1 Without prejudice to Condition 19 (*Indemnity*), The Provider 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 Right 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.
- 18.2 The Provider grants to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including all Goods unless otherwise provided in the Specification.
- 18.3 The Provider shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Council in accordance with the Contract.
- 18.4 The Council reserves to itself or its licensors all the Council Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Provider any rights in the Council Materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Provider to carry out its obligations under the Contract.

19 Indemnity

- 19.1 The Provider shall indemnify, and shall keep indemnified, the Council in full against all actions, proceedings, costs, demands, liabilities, expenses, damages and losses (whether direct or indirect), whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Council or its Representatives including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by the Council as a result of or in connection with:
- 19.1.1 any claim made against the Council for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Services with the Contract;
- 19.1.2 any claim made against the Council arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Provider;
- 19.1.3 any claim made against the Council arising out of, or in connection with, the negligence of the Provider or its Representatives whilst on, entering, or leaving the Premises;

- 19.1.4 any claim made against the Council for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Council's use of the Services;
- 19.1.5 all damage to the Council's property or the Premises caused by the Provider or its Representatives (including any damage or destruction to, corruption of, or loss of data held by the Council);
- 19.1.6 any breach of Data Protection Law by the Provider or its Representatives; and
- 19.1.7 any claim made against the Council by a third party resulting from, or arising out of any breach by the Provider of its obligations under Conditions 18 (*Intellectual property rights*) or 21 (*Confidentiality*).

19.2 The Provider shall not be liable to the Council for any losses, damage or injury to the extent that they are caused by or arise directly out of the act or omissions of the Council in breach of its obligations under the Contract.

20 **Insurance**

20.1 For the duration of the Contract and for a period of six years thereafter, the Provider shall maintain in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under the Contract, including death or personal injury, or loss of or damage to property.

20.2 The insurance required under Condition 20.1 (*Insurance*) shall include as a minimum the insurances listed in PFS Section 7.1.

20.3 The Provider shall, at the request of the Council, produce to the Council a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Provider has complied with its obligations under this Condition 20 (*Insurance*).

20.4 The Provider shall not do or permit anything, or make any omission, which might cause any insurance to be voided.

20.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities incurred in connection with the Contract.

20.6 The Provider shall inform the Council in writing whenever there is any change to the insurance referred to in this Condition 20 (*Insurance*) (including any change in the scope or level of cover or the identity of the insurer).

21 **Confidentiality**

21.1 Subject to Condition 21.2 (*Confidentiality*), the Provider shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by the Council.

21.2 The Provider undertakes:

- 21.2.1 to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Provider's obligations under the Contract, and shall ensure that all such Representatives are subject

to obligations of confidentiality corresponding to those set out in this Condition 21 (*Confidentiality*);

21.2.2 that the Provider and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract;

21.2.3 that any person employed or engaged by the Provider in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Council;

21.2.4 to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Condition 21 (*Confidentiality*);

21.2.5 that, without prejudice to the generality of the foregoing, neither the Provider nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party; and

21.2.6 to ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council.

21.3 The provisions of Condition 21 (*Confidentiality*) shall not apply to any information which:

21.3.1 is or becomes public other than by breach of this Condition 21 (*Confidentiality*); or

21.3.2 is in the possession of the Provider without restriction on disclosure before the date of receipt from the disclosing person; or

21.3.3 is independently developed by the Provider without access to the Confidential Information; or

21.3.4 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under FOIA or EIR.

22 **Termination**

22.1 The Council may terminate the Contract with immediate effect by giving written notice to the Provider if:

22.1.1 the circumstances set out in Conditions 10.2.6 (*The Council's remedies*) or 27.1 (*Corruption*), Condition 28.1.4 (*Modern Slavery Legislation*) or 37 (*Severance*) apply;

22.1.2 pursuant to Condition 25 (*Dispute resolution*) the Provider commits a material or persistent breach of the Contract resulting in a Dispute which is not remedied;

22.1.3 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of

section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 22.1.4 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
- 22.1.5 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 Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
- 22.1.6 the Provider (being an individual) is the subject of a bankruptcy petition order;
- 22.1.7 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 22.1.8 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 Provider (being a company);
- 22.1.9 a floating charge holder over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 22.1.10 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- 22.1.11 the Provider becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);
- 22.1.12 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 22.1.2 to Condition 22.1.10 (*Termination*) (inclusive);
- 22.1.13 the Provider suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
- 22.1.14 the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 22.1.15 the Provider does not comply with the provision of Condition 3.1.1 (*Provider's warranties*).

22.2 Without limiting its other rights or remedies, subject to any specific terms detailed in Annex 3, the Council may at any time terminate the Contract in whole or in part by giving the Provider 20 Business Days' notice, in which case the Council shall pay the Provider for any Services performed up until the date of termination, but shall not be liable for any anticipated profits or any other loss (either direct or indirect) in respect of the termination.

23 **Consequences of termination**

23.1 On expiry or termination of the Contract or any part of it for any reason the following shall apply:

23.1.1 where the Services are terminated, the Provider shall immediately deliver to the Council all Goods, whether or not then complete, and return all the Council Materials to the Council. If the Provider fails to do so, then the Council may, without limiting its other rights or remedies, enter the Provider's premises and take possession of the Goods and/or the Council Materials. Until they have been delivered or returned, the Provider shall be solely responsible for their safe-keeping and will not use them for any purpose; and

23.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

23.2 The following Conditions shall survive expiry or termination and shall continue in full force and effect: 1 (*Interpretation*), 2.1.3 (*Formation of Contract*), 3 (*Provider's warranties*), 4 (*Provider's general undertakings*), 8 (*Testing and acceptance of Goods*), 10 (*The Council's remedies*), Annex 8 (*TUPE*) (where relevant), 13 (*Liability*), 14 (*Charges and payment*), 18 (*Intellectual property rights*), 19 (*Indemnity*), 20 (*Insurance*), 21 (*Confidentiality*), 23 (*Consequences of Termination*), 24 (*Publicity*), 25 (*Dispute resolution*), 26 (*Conflict of interest*), 27 (*Corruption*), 29 (*Audit*), 30 (*Discrimination*), 31 (*Human rights*), 32 (*Data Protection Law*), 33 (*Best value*), 34 (*Freedom of information*), 35 (*Transfer of services*), 36 (*Notice*), 37 (*Severance*), 38 (*Waiver and accumulation of remedies*), 41 (*Partnership or Agency*), 43 (*Rights of third parties*), 44 (*Whistleblowing policy*), **Error! Reference source not found.** (Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013/351) and any other Condition which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

24 **Publicity**

24.1 The Provider shall not:

24.1.1 make any press announcements or publicise the existence or terms of the Contract without the Council's prior written consent and shall ensure the observance of the provisions of this Condition 24 (*Publicity*) by its Representatives; or

24.1.2 use the Council's name or logo in any promotion or marketing or announcement of orders,

without the prior written consent of the Council.

24.2 The Council shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Provider.

25 **Dispute resolution**

25.1 For the purposes of this Condition 25 (*Dispute resolution*) the notice provisions of Condition 36 (*Notice*) shall apply but for "writing" shall not include e-mail.

25.2 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it then except as expressly provided in this Contract, the parties shall follow the procedure set out in this Condition:

25.2.1 either party shall give to the other written notice of the Dispute to the contact address listed in Annex 6 (*Provider Details*) or other address nominated pursuant to Condition 36.4 (*Notice*) setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the senior Representatives within each of the parties shall attempt in good faith to resolve the Dispute;

25.2.2 if the Dispute cannot be resolved by the parties' senior Representatives within twenty Business Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation to be conducted in accordance with Condition 25.3 (*Dispute resolution*).

25.3 The following provisions shall apply to any such reference to mediation:

25.3.1 the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;

25.3.2 to initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than ten Business Days after the date of the ADR Notice;

25.3.3 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

25.3.4 to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

25.4 If the parties are able to resolve the Dispute through mediation under this Condition 25 (*Dispute resolution*), the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.

25.5 No party may commence any court or arbitration proceedings under Condition 42.2 (*Governing law and jurisdiction*) in relation to the whole or part of the Dispute until 30 Business Days after service of the ADR Notice, provided that the right to issue proceedings is not prejudiced by a delay.

25.6 The Provider shall continue to provide the Services and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Condition 25 (*Dispute resolution*).

26 **Conflict of interest**

26.1 The Provider shall take all appropriate steps to ensure that neither it nor any of its Representatives is placed in a position where (in the reasonable opinion of the Council) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Provider or its Representatives and, on the other hand, such persons' duties owed to the Council under the provisions of the Contract.

26.2 The Provider must disclose to the Council full details of any actual or potential conflict of interest in writing and comply with any reasonable instructions of the Council in connection with their resolution.

27 **Corruption**

27.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any of the Provider's Representatives, have at any time prior to the Commencement Date:

27.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

27.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

27.2 The Provider shall not during the Term of this Contract:

27.2.1 commit a Prohibited Act; and/or

27.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

27.3 The Provider undertakes to:

27.3.1 comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010;

27.3.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

- 27.3.3 comply with the Council's anti-corruption policies disclosed to the Provider from time to time;
- 27.3.4 ensure that any of its Representatives associated with the supply of the Services comply with this Condition 27 (*Corruption*); and
- 27.3.5 immediately notify the Council if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider.
- 27.4 For the purposes of Condition 27 (*Corruption*), the meaning of "foreign public official" and whether a person is **associated** with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
- 27.5 The Council shall be entitled to terminate the Contract forthwith and to recover from the Provider the amount of any loss resulting from such termination if the Provider or a Provider's Representative:
- 27.5.1 offers or agrees to give any person working for or engaged by the Council or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Provider and the Council or any Public Body, including its award to the Provider and any of the rights and obligations contained within it;
- 27.5.2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other Public Body by or for the Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before the Contract is entered into;
- 27.5.3 breaches an undertaking set out in this Condition 27 (*Corruption*); or
- 27.5.4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 27.6 For the purposes of Condition 27.1 (*Corruption*), **loss** shall include, but shall not be limited to:
- 27.6.1 the Council's costs in finding a replacement Provider;
- 27.6.2 direct, indirect and consequential losses; or
- 27.6.3 any loss suffered by the Council as a result of a delay in its receipt of the Services.

28 **Modern Slavery Legislation**

28.1 The Provider undertakes to the Council that:

- 28.1.1 it has not and its directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom or activity

which could or would place the Council in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

- 28.1.2 it has and shall maintain and implement procedures designed to ensure compliance with the Modern Slavery Legislation and prevent conduct that would give rise to an offence under the Modern Slavery Legislation;
- 28.1.3 if required by law to do so, it shall comply with its obligations under section 54 of the Modern Slavery Act 2015; and
- 28.1.4 in the event of a breach of Conditions 28.1.1 or 28.1.2 by the Provider the Council may at its sole discretion terminate this Contract. In the event of breach of Condition 28.1.3, the Council may terminate this Contract if such a breach is not remedied within 7 days of a receipt of a notice from the Council in respect of the same

and, without prejudice to the obligations set out above, the Provider will take all appropriate steps to satisfy itself, acting reasonably, that any third party whom the Provider enters into a Sub-Contract with has not and shall not engage in any activity that would constitute a breach of the Modern Slavery Legislation in relation to the Services and, for which purpose, shall include an undertaking similar to that contained above.

- 28.2 The Provider shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council as a result of any breach of this Condition 28 by the Provider or any breach of provisions equivalent to Condition 28.1 in any contract with a Sub-Contractor.

29 **Audit**

- 29.1 The Provider shall keep and maintain until six years after the Contract has come to an end, or for such longer period as may be specified by the Council in writing from time to time:
 - 29.1.1 all Information relating to the Contract; and
 - 29.1.2 full and accurate records of the following:
 - (a) the Services provided under the Contract;
 - (b) all Charges paid by the Council; and
 - (c) such other information as the Council specifies in writing from time to time.
- 29.2 The Provider shall on request afford the Council, the Council's Representatives or the Council's auditors such access to such information or records (including the information referred to in Conditions 29.1.1 and 29.1.2 (*Audit*)) as may (in the reasonable opinion of the Council) be required by the Council in order to comply with its legal obligations (including its obligations under FOIA and its obligations in connection with the Best Value Duty).

30 **Discrimination**

- 30.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in the provision of the Services.
- 30.2 The Provider shall take all reasonable steps to secure the observance of Condition by all of its Representatives employed in the performance of the Contract.
- 30.3 The Provider shall have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Council on a regular basis as agreed with the Council.

31 **Human rights**

- 31.1 The Provider shall (and shall use its reasonable endeavours to procure that its Representatives shall):
- 31.1.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Council's equality and diversity policy as provided to the Provider from time to time; and
 - (c) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
- 31.1.2 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 31.2 At all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract and the Provider shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

32 **Data Protection Law**

- 32.1 The Parties acknowledge that for the purposes of the Data Protection Law, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Annex 9 by the Council and may not be determined by the Provider.
- 32.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Law.

32.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

32.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Annex 9, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

- i. nature of the data to be protected;
- ii. harm that might result from a Data Loss Event;
- iii. state of technological development; and
- iv. cost of implementing any measures;

(c) ensure that :

- I. the Provider Representatives do not process Personal Data except in accordance with this Contract (and in particular Annex 9);
- II. it takes all reasonable steps to ensure the reliability and integrity of any Provider Representatives who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Provider's duties under this condition;
- (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of The Council has been obtained and the following conditions are fulfilled:

- (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is

transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

(iv) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by Applicable Law to retain the Personal Data.

32.5 Subject to condition 32.6 below, the Provider shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Law;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Applicable Law; or
- (f) becomes aware of a Data Loss Event.

32.6 The Provider's obligation to notify under condition 32.5 above shall include the provision of further information to the Council in phases, as details become available.

Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Law and any complaint, communication or request made under condition 32.5 above (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Law;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

32.7 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this condition. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;

- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

32.8 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

32.9 The Provider shall designate a data protection officer if required by the Data Protection Law.

Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this condition 30 such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

32.10 The Council may, at any time on not less than 30 Working Days' notice, revise this condition by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

32.11 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

32.12 The provisions of this Condition shall apply during the Contract and indefinitely after its expiry or termination.

33 **Best value**

33.1 The Provider shall:

- 33.1.1 not do anything which would cause the Council to be in breach of the Best Value Duty;
- 33.1.2 act at all times in a manner which is compatible with and corresponds with the Council's Best Value Duty;
- 33.1.3 in relation to its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

34 **Freedom of information**

34.1 The Provider acknowledges that the Council is subject to the requirements of FOIA and EIR and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its obligations under FOIA and EIR. The Provider shall act in

accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.

34.2 The Provider shall and shall procure that its Representatives shall:

34.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;

34.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

34.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

34.3 The Council shall be responsible for determining (in its absolute discretion) whether any Information:

34.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

34.3.2 is to be disclosed in response to a Request for Information

and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so in writing by the Council.

34.4 The Provider acknowledges that the Council may be obliged under the FOIA or EIR to disclose Information (including Commercially Sensitive Information):

34.4.1 without obtaining consent from or consulting with the Provider; or

34.4.2 following consultation with the Provider and having taken its views into account.

34.5 Where Condition 34.4.1 (*Freedom of information*) applies the Council shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention as soon as practicable after any such disclosure.

35 **Transfer of services**

35.1 Where the Council intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement provider, the Provider shall use all reasonable endeavours to ensure the seamless transition of the Services to the Council or a replacement provider and to ensure that the transition is effected with the minimum of disruption to the Council.

35.2 The Provider shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, report and any information, whether

held in electronic or written form, which the Council (acting reasonably) considers necessary.

36 **Notice**

36.1 Any notice given to a party under or in connection with this Contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the contact address listed in Annex 6 (*Provider Details*) or other address nominated pursuant to Condition 36.4 (*Notice*). For the purposes of this Condition, "writing" shall include e-mail if correctly sent to the address listed in Annex 6 (*Provider Details*).

36.2 Any notice shall be deemed to have been received:

36.2.1 if delivered by hand, on signature of a delivery receipt;

36.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Working Day after posting or at the time recorded by the delivery service;

36.2.3 [if sent by email, at 9.00 am on the next Working Day after transmission.]

36.3 This Condition 36 (*Notice*) is subject to Condition 25.1 (*Dispute resolution*) with regard to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

36.4 Either party to this Contract (and either Representative) may change its nominated address, email or other contact detail provided in Annex 6 (*Provider Details*) by prior notice to the other party.

37 **Severance**

If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Council it may be severed from the rest of the Contract which shall remain in full force and effect unless the Council in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event the Council shall be entitled to terminate the Contract by ten Business Days' written notice to the Provider.

38 **Waiver and accumulation of remedies**

38.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

38.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under

or in connection with the Contract. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.

38.3 The Council's rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

39 **Variations**

Subject to Condition 6 (*Variation of the Services*), neither the Council nor the Provider shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.

40 **Assignment or sub-contracting**

40.1 The Provider shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without the Council's prior written consent.

40.2 The Provider shall not sub-contract the performance of the Services or any part of them without the Council's prior written consent and any such consent shall not relieve the Provider of any of its obligations under the Contract.

40.3 Where the Provider enters into a Sub-Contract with a third party in connection with the Contract, it shall cause a term to be included in such Sub-Contract that requires payment to be made of undisputed sums by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

40.4 The Council may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations, being:

40.4.1 a Minister of the Crown;

40.4.2 any other local authority which has sufficient financial standing or financial resources to perform the obligations; or

40.4.3 any other public authority.

40.5 Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.

41 **Partnership or Agency**

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

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

42 **Governing Law and jurisdiction**

42.1 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 law of England and Wales.

42.2 Subject to Condition 25 (*Notice*) 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).

43 **Rights of third parties**

No person other than the Council or the Provider shall have any rights under the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

44 **Whistleblowing policy**

The Provider shall comply with the Council's whistleblowing procedure, which ensures that employees of the Provider are able to bring to the attention of the Council malpractice, fraud and breach of laws on the part of the Provider without fear of disciplinary and other retribution or discriminatory action.

The Council's Whistleblowing Policy can be found on the following link:

<https://www.lichfielddc.gov.uk/Council/Financial-information/Downloads/Whistleblowing-policy-2016.pdf>

Annex 3 – Special Conditions of Contract

EXAMPLE

Annex 4 – Schedule of Rates and Prices

If blank, the schedule is taken to be that detailed within the Purchase Order.

EXAMPLE

Annex 5 – Specification

If blank, the Specification is taken to be that detailed within the Purchase Order.

EXAMPLE

Annex 6 – Provider Details

EXAMPLE

Annex 7 – Performance Regime

EXAMPLE

Annex 8 – TUPE

TUPE provisions do not apply if not indicated as required in PFS Section 5.1.

EXAMPLE

Annex 9 – Schedule of Processing, Personal Data and Data Subjects

EXAMPLE