



BARNSELY
Metropolitan Borough Council

Barnsley Metropolitan Borough Council

APPENDIX EIGHT - FORM OF AGREEMENT (TERMS AND CONDITIONS)

Agreement Title: Provision of....

Agreement ID: DNxxx

A C Frosdick LLB DipLG
Executive Director for Core Services and
Solicitor to the Council
Town Hall
Barnsley
S70 2TA

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The proposed Agreement documents consist of the following documents:

Schedule 1	Form of Agreement
Schedule 2	Terms and Conditions
Schedule 3	Specification
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Schedule 6	Change Control Notice

SCHEDULE 1

FORM OF AGREEMENT

PARTIES

1. **Barnsley Metropolitan Borough Council** of Town Hall, Barnsley, South Yorkshire, S70 2TA (the 'Council')
2. _____ incorporated and registered in England and Wales with company number _____ whose registered office is at _____ (the 'Supplier')

together referred to as the "Parties" or individually a "Party".

RECITALS:

- (A) Following a tendering process the Council has appointed the Supplier to provide the Goods or Services in accordance with this Agreement.

IT IS AGREED:

1. This Agreement shall commence on _____ (Commencement Date) and shall terminate on _____ and then followed by [one/two/three etc] further renewal of [12] months at the sole discretion of the Council.
2. The Goods or Services to be provided by the Supplier to the Council shall be as set out in Schedule 3, Specification.
3. The charges payable by the Council to the Supplier for the provision of the Goods or Services for the duration of this Agreement as set out in Schedule 4 (Schedule of Fee).
4. This Agreement is comprised of the following documents:
 - 4.1 this Agreement (Schedule 1);
 - 4.2 terms and Conditions for the Supply of Goods and Services (Schedule 2); and
 - 4.3 the Schedules (Schedule 3 -6).

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

5. Terms and expressions used in this Agreement shall have the meanings given in the attached Conditions.
6. This Agreement shall not create any partnership or joint venture between the Council and the Supplier, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
7. The Agreement, effected by the signatures of the Parties below, constitutes the entire agreement between the Parties relating to the Goods or Services and supersedes all prior negotiations, representations or understandings whether written or oral.
8. Where the Supplier is not a company or an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this agreement on behalf of the Supplier shall be jointly and severally liable for the Supplier's obligations and liabilities arising under this agreement.
9. The Parties agree that clause (including, without limitation, the parties' agreement in respect of English governing law and their submission to the exclusive jurisdiction of the English courts) shall remain in full force and effect notwithstanding any future full or partial departure of the United Kingdom from the European Union

This agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of the **Council** by:

(1)

Print name
(a duly authorised signatory)

Signature

Date

Position

(2)

Print name
(a duly authorised signatory)

Signature

Date

Position

Signed by _____ for and on behalf of the **Supplier** by:

Print name
(a duly authorised signatory)

Signature

Date

Position

OR

Executed by [*Name of Company*] acting)
by [*Name of First Director*], a director and _____
[*Name of Second Director/Secretary*],) **First Director**
[*a director OR its Secretary*]

_____) _____
Second Director/Secretary

OR

Executed by [Name of Company] acting by _____)
[Name of Director], a director, in the
presence of: _____)
_____) _____
Director

Signature of Witness

Name of Witness

Occupation of Witness

Address of Witness

SCHEDULE 2

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

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

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

CEDR: Centre for Effective Dispute Resolution

Commencement Date: the date on which this Agreement is signed by both Parties

Conditions: these terms and conditions of Agreement.

Contract Finder: the Government's publishing portal for public sector procurement opportunities.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Council's Officer: the Executive Director, Director or Head of Service concerned or his designated officer.

Council Materials: has the meaning set out in clause 5.3.9.

Cybersecurity Requirements: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, [industry schemes] and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

"Data" means:-

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Council; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Council or the Supplier is the Data Controller.

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

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

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of

Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy;

Data Subject: any individual person who can be identified, directly or indirectly, via an identifier such as a name, an ID number, location data, or via factors specific to the person's physical, physiological, genetic, mental, economic, cultural or social identity.

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

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

(c) in the case of the Council, of its employees, servants, agents; or

(d) in the case of the Supplier, of its sub-contractors or any Supplier's Personnel, in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with the Agreement, (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of the Agreement or the consequences of non-existence or invalidity of the Agreement) whether contractual or non-contractual;

DPA 2018: Data Protection Act 2018

Expiry Date: A date as set out in this Agreement or the Order.

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

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings that is incorporated in the Agreement or agreed in writing by the Council.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

IT Systems: all computer hardware (including network and telecommunications equipment), mobile devices, data (including databases (Databases)) and software (including associated user manuals, object code and source code and other materials sufficient to enable a reasonably skilled programmer to maintain and modify the software) owned, used, leased or licensed by or in relation to the delivery of the Services.

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

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

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Order: the Council's order for the supply of Goods and/or Services, as set out in the Council's Order form.

Personal Data: any information relating to an identified or identifiable natural person.

Prohibited Act: the following constitute Prohibited 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 Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

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

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Agreement as set out in the Service Specification.

Service Specification: the description or specification for Services that is incorporated in the Agreement or agreed in writing by the Council.

SME: means small or medium sized business as described in section 7(1) of the Small Business, Enterprise and Employment Act 2015, which—

- (a) has an address in the United Kingdom,
- (b) carries out commercial activities as its principal activity,
- (c) is not part of a group which as a whole has an annual turnover which is equal to or greater than £25 million.

Special Conditions: any terms described as such and included by the Council in the Specification or other document incorporated in this Agreement.

Sub-Contract: an agreement between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

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

Supplier: the person or firm from whom the Council purchases the Goods and/or Services.

Supplier's Personnel: means all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

VCSE: Voluntary, Community, and Social Enterprise.

2. BASIS OF AGREEMENT

- 2.1 Where the Council has issued an invitation to tender or request for quotation, the Supplier's tender or quotation, when accepted by the Council by Order, shall constitute a binding Agreement incorporating these Conditions.
- 2.2 Where the Council has not issued an invitation to tender or request for quotation, the Order incorporating these Conditions shall be deemed to be accepted and a binding agreement entered into on the earlier of:
- 2.2.1 the Supplier issuing written acceptance of the Order; or
 - 2.2.2 any act by the Supplier consistent with the fulfilling of the Order.
- 2.3 These Conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 In the event of inconsistency between these Conditions and any Special Conditions, the Special Conditions shall take precedence.

3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
- 3.1.1 correspond with their description and any applicable Goods Specification;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council, expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgment;
 - 3.1.3 where applicable, be free from defects in design, materials and workmanship; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.
- 3.3 The Council shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement, and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.3 if the Supplier requires the Council to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- 4.2.1 on the date specified in the Goods Specification or Order (if any);
- 4.2.2 to the Council's premises, or such location as is set out in the Goods Specification or Order or as instructed by the Council before delivery (**Delivery Location**);
- 4.2.3 during the Council's normal hours of business, or as instructed by the Council.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

- 4.4.1 delivers less than the quantity of Goods ordered, the Council may reject the Goods;
- Or
- 4.4.2 delivers more than the quantity of Goods ordered, the Council may at its sole discretion reject the Goods on the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. The Council has no obligation to pay for any excess Goods delivered.

4.5 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in clause 6.1.

4.6 Title and risk in the Goods shall pass to the Council on completion of delivery.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from the date set out in the Service Specification or as instructed by the Council and for the duration of this Agreement provide the Services to the Council in accordance with the terms of the Agreement.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Council.

5.3 In providing the Services, the Supplier shall:

- 5.3.1 co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- 5.3.2 perform the Services with all reasonable skill, care and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;

- 5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6 use suitable quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- 5.3.9 hold all materials, equipment and tools, drawings, specifications and data, personal or otherwise supplied by the Council to the Supplier (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation; and
- 5.3.10 not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services.

6. COUNCIL REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the time agreed upon in writing, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 6.1.1 to terminate the Agreement with immediate effect by giving written notice to the Supplier;
 - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 6.1.3 to recover from the Supplier any costs incurred by the Council in obtaining substitute Goods and/or Services from a third party;
 - 6.1.4 where the Council has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 6.1.5 to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Council shall have one or more of the following rights, whether or not it has accepted the Goods:
 - 6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.2.2 to terminate the Agreement with immediate effect by giving written notice to the Supplier;
 - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.2.5 to recover from the Supplier any expenditure incurred by the Council in obtaining substitute Goods from a third party; and
 - 6.2.6 to claim damages for any additional costs, loss or expenses incurred by the Council arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 These Conditions shall extend to any substituted or remedial Services and/or repaired or replacement goods supplied by the Supplier.
- 6.4 The Council's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

7. COUNCIL'S OBLIGATIONS

7.1 The Council shall:

- 7.1.1 provide the Supplier, where necessary, with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services; and
- 7.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Council considers reasonably necessary for the purpose of providing the Services.

8. CHARGES AND PAYMENT

- 8.1 In consideration for the supply of Goods and/or Services by the Supplier, the Council shall, subject to clause 8.3, pay the Supplier the price set out in the tender or quotation or the Order, which shall be the full and exclusive remuneration of the Supplier in respect of the Goods and/or Services. Unless otherwise agreed in writing by the Council, the price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the delivery of the Goods and/or the performance of the Services.
- 8.2 In respect of Goods, the Supplier shall invoice the Council on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Council on completion of the Services. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant Order number.
- 8.3 The Council's standard payment terms are 30 days from the receipt of a valid invoice. However, under its Premier Supplier Programme, ("the **Programme**") the Council will automatically pay invoices after seven (7) days once it is satisfied that the Goods or Services have been provided for that particular invoicing period. This early payment attracts a rebate which is automatically calculated on the payment date and then deducted from each invoice value at the point of payment. The rebate is based upon the exact number of days by which payment is accelerated. The maximum amount deducted from the invoice value is 1.25% for payment on day 7, then operates on a reducing scale, to a nil deduction on day 30. For the avoidance of doubt the payment date is the date the payment leaves the Council's bank account and not the date on which it arrives in the Supplier's bank account. Details of the Programme can be found at http://response.oxygen-finance.com/BarnsleyCouncilPSP_Homepage
- 8.4 All amounts payable by the Council under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time ('**VAT**'). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.5 If a party fails to make any payment due to the other party under the Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 8% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.
- 8.7 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement.

- 8.8 Where the Supplier enters into a Sub-Contract:
- 8.8.1 the Supplier will consider and verify a submitted invoice in a timely fashion.
 - 8.8.2 the Supplier shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Supplier has determined that the invoice is valid and undisputed.
 - 8.8.3 the Supplier shall include in that Sub-Contract a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 8.8 of this Agreement.

9. TITLE AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 In respect of the Goods and any goods that are transferred to the Council under this Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.
- 9.2 The Supplier grants to the Council, a non-exclusive, non-transferable licence to all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

10. INDEMNITY

- 10.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered incurred by the Council as a result of or in connection with:
- 10.1.1 any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 10.1.2 any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 10.1.3 any claim made against the Council by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its employees, agents or subcontractors; and
 - 10.1.4 any claim made against the Council by a third party 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 breaches of clause 11 (Anti-Slavery and Human Trafficking Laws, Counter Terrorism and Security).
- 10.2 This clause 10 shall survive termination of the Agreement.

11. LIABILITY

- 11.1 Neither Party excludes or limits its liability for:
- 11.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 11.1.2 bribery or fraud by it or its employees; or
 - 11.1.3 any liability to the extent it cannot be excluded or limited by Law.

- 11.2 The Supplier does not exclude or limit its liability in respect of the indemnity in clause 10.1 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 11.3 Subject to clauses 11.1 and 11.2, each Party's total aggregate liability in respect of all losses incurred under or in connection with this Agreement as a result of Default shall in no event exceed in relation to any Default occurring from the Commencement Date and during the contract period, a sum equal to one hundred and twenty five percent (125%) of the charges of all sums paid by the Council and all sums payable under this Agreement in respect of Goods and Services actually supplied by the Supplier, whether or not invoiced to the Council. ("**Total Charge**")
- 11.4 Subject to clause 11.1, neither Party shall be liable to the other Party for any:
- 11.4.1 indirect, special or consequential Loss;
 - 11.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 11.5 Subject to clause 11.3, and notwithstanding clause 11.4, the Supplier acknowledges that the Council may, amongst other things, recover from the Supplier the following Losses incurred by the Council to the extent that they arise as a result of a Default by the Supplier:
- 11.5.1 any charges arising out of Default which are due and payable to the Council;
 - 11.5.2 any additional operational and/or administrative costs and expenses incurred by the Council, including costs relating to time spent by or on behalf of the Council in dealing with the consequences of the Default;
 - 11.5.3 any wasted expenditure or charges;
 - 11.5.4 the additional cost of procuring replacement Goods and/or Services for the remainder of the contract period, which shall include any incremental costs associated with such replacement Goods and/or Services above those which would have been payable under this Agreement;
 - 11.5.5 any compensation or interest paid to a third party by the Council;
 - 11.5.6 any fine, penalty or costs incurred by the Council pursuant to Law.
- 11.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.
- 11.7 Any charge arising out of Default shall not be taken into consideration when calculating the Supplier's liability under Clause 11.3.

12. ANTI-SLAVERY, HUMAN TRAFFICKING, COUNTER TERRORISM AND SECURITY

- 12.1 In performing its obligations under the agreement, the Supplier shall:
- 12.1.1 comply with all applicable anti-slavery and human trafficking law, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - 12.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1,2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK, and
 - 12.1.3 ensure that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- 12.2 The Supplier shall notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- 12.3 Under the Counter Terrorism and Security Act 2015 the Council has a duty to have due regard to the need to prevent people from being drawn into terrorism. The Supplier will be required to take

appropriate measures in relation to their staff and the provision of the Services to assist the Council in their compliance with this duty to the extent that it is applicable to the Services.

13. INSURANCE

13.1 The Supplier shall maintain in force, with a reputable insurance company, product liability, employer's liability, public liability and professional indemnity insurance during the term of the Agreement and (in the case of professional indemnity insurance) for a period of six years thereafter, as appropriate, to cover the liabilities that may arise under or in connection with the Agreement, and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. CONFIDENTIALITY

14.1 The Supplier (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the Council (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

14.2 This clause 14 shall survive termination/expiry of the Agreement.

15. TERMINATION

15.1 Without limiting its other rights or remedies, the Council may terminate the Agreement:

15.1.1 in respect of the supply of Services, by giving the Supplier 30 days' written notice; and

15.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Agreement. The Council shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 Without limiting its other rights or remedies, the Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if:

15.2.1 The Supplier commits a material breach of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;

15.2.2 the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to give effect to the terms of this Agreement;

15.2.3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

15.2.4 the Supplier 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 Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- 15.2.5 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 15.2.6 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- 15.2.7 a creditor or encumbrancer of the Supplier 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;
- 15.2.8 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 Supplier (being a company);
- 15.2.9 the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 15.2.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 15.2.11 the Agreement has been subject to substantial modification;
- 15.2.12 where the Supplier was, at the time of the contact award, subject to grounds of mandatory exclusion; or
- 15.2.13 where the Court of Justice of the European Union has declared that the Agreement award involved a serious infringement of the public procurement rules (Under Article 258 of the Treaty on the Functioning of the European Union).

15.3 For the purposes of clause 15.2.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

15.3.1 a substantial portion of this agreement; or

15.3.2 any of the obligations set out in clauses 10, 11, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26.

during the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

15.4 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

15.5 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Agreement for any reason, if required by the Council the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.

17. CONFLICTS OF INTEREST

17.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its employees or any person that is utilised to assist in the delivery of the Goods and/or Services, 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 Supplier or its employees or any person that is utilised to assist in the delivery of the Goods and/or Services and the duties owed to the Council under the provisions of this Agreement.

- 17.2 The Supplier shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 16.1 above arises or is reasonably foreseeable.
- 17.3 The Council reserves the right to terminate the Agreement immediately by giving notice in writing to the Supplier 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 Supplier, its employees or any other person utilised in the delivery of the Goods and/or Services and the duties owed to the Council under the provisions of the Agreement. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the other party.
- 17.4 This clause shall apply during the term of the Agreement.

18. FORCE MAJEURE

- 18.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- 18.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 18.1.2 epidemic or pandemic;
 - 18.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 18.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 18.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 18.1.6 collapse of buildings, fire, explosion or accident;
 - 18.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - 18.1.8 non-performance by Suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - 18.1.9 interruption or failure of utility service.
- 18.2 Provided it has complied with Clause 18.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 18.4 The Affected Party shall:
- 18.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
 - 18.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.5 If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

19. EQUALITY AND DIVERSITY

- 19.1 The Supplier shall:

19.1.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, marriage and civil partnership, pregnancy, and maternity);
- (ii) the Council's equality and diversity policy as provided to the Supplier from time to time; and
- (iii) 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

19.1.2 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).

20. WHISTLE BLOWING

20.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, employees of the Council, its partners or Suppliers with concerns about wrongdoing within the Council have a duty to come forward and voice those concerns. The Council's whistleblowing policy exists to assist and guide how to come forward and speak out.

20.2 The Supplier shall comply with the Council's [whistle blowing procedure](#) which ensures that employees of the Supplier are able to bring to the attention of the Council, malpractice, fraud and breach of Laws on the part of the Supplier, any Sub-Contractor or supplier without fear of disciplinary and other retribution or discriminatory action.

20.3 Suppliers and their employees may wish to acquaint themselves with the implications of the Code for them. Supplier's employees may wish, for example, to report any breaches in the way in which the Agreement is being performed or any unacceptable behaviour by either a fellow employee or a Council employee.

20.4 Any concerns should be raised with a line manager or client officer, or if inappropriate communicated to one of the Council's Whistleblowing Officers in confidence:

Rob Winter
Head of Internal Audit and Corporate Anti-Fraud
Tel: 01226 773241
E-mail: wbo1rwinter@barnsley.gov.uk

Andrew Frosdick
Executive Director Core Services and Solicitor to the Council
Tel: 01226 773001
E-mail: wbo2afrosdick@barnsley.gov.uk

Messages can be left on the above telephone numbers or on a 24 hour voicemail facility, 0800 138 2939 Messages can if preferred be sent to a secure postal address: PO Box 320, Barnsley, S70 2YL.

21. DATA PROTECTION

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only processing that the Processor is authorised to do is listed in Schedule 5 (Processing Personal Data and Data Subjects) by the Controller and may not be determined by the Processor.

- 21.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 21.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 21.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 21.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 21.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 21.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 21.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 21.4.1 process that Personal Data only in accordance with Schedule 5, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 21.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), 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;
 - 21.4.3 ensure that :
 - (i) the Processor/Supplier's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 5);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor/Supplier's Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 21.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - 21.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

- 21.5 Subject to clause 21.6, the Processor shall notify the Controller immediately if it:
- 21.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 21.5.2 receives a request to rectify, block or erase any Personal Data;
 - 21.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 21.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 21.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 21.5.6 becomes aware of a Data Loss Event.
- 21.6 The Processor's obligation to notify under clause 21.5 shall include the provision of further information to the Controller in phases, as details become available.
- 21.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 21.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 21.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 21.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 21.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 21.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 21.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 21.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 21.8.1 the Controller determines that the processing is not occasional;
 - 21.8.2 the Controller 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; or
 - 21.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 21.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 21.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 21.11.2 obtain the written consent of the Controller;
 - 21.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 21.11 such that they apply to the Sub-processor; and
 - 21.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 21.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

- 21.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 21.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

22. PREVENTION OF FRAUD AND BRIBERY

- 22.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

22.1.1 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

22.1.2 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 agreements on the grounds of a Prohibited Act.

The Supplier shall not during the term of this Agreement:

22.1.3 commit a Prohibited Act; and/or

22.1.4 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.

- 22.2 The Supplier shall during the term of this Agreement:

22.2.1 establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

22.2.2 keep appropriate records of its compliance with its obligations under Clause 21.3.1 and make such records available to the Council on request.

- 22.3 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of Clause 22.1 and/or 22.2, or has reason to believe that it has or any of the Supplier's Personnel have:

22.3.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

22.3.2 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 agreements on the grounds of a Prohibited Act; and/or

22.3.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

- 22.4 If the Supplier makes a notification to the Council pursuant to Clause 22.3, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation.

- 22.5 If the Supplier is in Default under Clauses 22.1 and/or 22.2, the Council may by notice:

22.5.1 require the Supplier to remove from performance of this Agreement any Supplier's Personnel whose acts or omissions have caused the Default; or

22.5.2 immediately terminate this Agreement.

22.6 Any notice served by the Council under Clause 22.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

23 PREVENTION OF THE FACILITATION OF TAX EVASION

23.1 Where applicable, the Supplier shall:

23.1.1 not engage in any activity, practice or conduct which would constitute either:

- i. a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act; or
- ii. a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

23.1.2 have and shall maintain in place throughout the term of this Agreement such policies and procedures as are reasonable in all the circumstances to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier), in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017;

23.1.3 promptly report to the Council any request or demand received by the Supplier or from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Agreement;

23.1.4 ensure that all persons associated with the Supplier or other persons who are performing services in connection with this Agreement comply with this Clause 23; and

23.1.5 within one month of the date of this Agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Supplier compliance with this Clause 23 by the Supplier and all persons associated with it, including the individual, and all other persons for whom the Supplier is responsible under Clause 23.1.4. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

23.1.6 Failure to comply with this clause 23 may result in the immediate termination of this Agreement.

24. ADVERTISING SUBCONTRACTING OPPORTUNITIES

24.1 The Supplier shall:

24.1.1 subject to clause 24.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the life of this Agreement;

24.1.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;

24.1.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the life of the Agreement;

24.1.4 provide reports on the information at clause 24.1.3 to the Council in the format and frequency as reasonably specified by the Council; and

4.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

24.2. Each advert referred to at clause 24.1.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on the Contract Finder by the Supplier.

24.3. The obligation at Clause 24.1.1 shall only apply in respect of subcontract opportunities arising after the contract award date.

24.4. Notwithstanding clause 24.1, the Council may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

25. SUPPLY CHAIN SPEND WITH SME'S

25.1 In addition to any other management information requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Council which incorporate the data described in the MI Reporting template which is:

25.1.1 the total contract revenue received directly on a specific contract;

25.1.2 the total value of sub-contracted revenues under the Agreement (including revenues for non-SMEs/non-VCSEs); and

25.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.

25.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Council from time to time. The Supplier shall use the initial MI Reporting Template which may be changed from time to time (including the data required and/or format) by the Council by issuing a replacement version. The Council shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

25.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Council.

26. BREXIT TRIGGER, RENEGOTIATION AND TERMINATION CLAUSE

26.1 **Right to renegotiate or terminate.** If at any time after Brexit a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact on the Council, the Council may:

26.1.1 require the Supplier to negotiate an amendment to this Agreement to alleviate the Adverse Impact, in accordance with Clause 26.5; and

26.1.2 if renegotiation fails, terminate this Agreement in accordance with Clause 26.6.

26.2 Brexit means the UK ceasing to be a member state of the European Union, regardless of which countries comprise the UK at such date.

26.3 **Brexit Trigger Events.** A Brexit Trigger Event means any of the following events if directly or solely caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

26.3.1 **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;

26.3.2 **Trade tariff:** in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of any raw materials or components used by the Supplier to manufacture the Goods or any products which are to be incorporated or in conjunction with which the Goods are to be commercially exploited provided that such a change or imposition is not applied equally in respect of the whole of the EU for so long as the UK remains a member of the EU;

26.3.3 **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement or to commercially exploit the Goods;

26.3.4 **Currency Fluctuation:** a change of more than 15% to the rate of exchange of sterling against Euro, since the price for the Goods or Services was last agreed. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;

26.3.5 **Other change:** change to the business or economic environment in which a party operates which is not caused by Clause 26.3.1 to Clause 26.3.3 above or by any fluctuation in currency exchange rates.

26.4 **Adverse Impact.** An Adverse Impact means any one of the following:

26.4.1 an adverse impact on the Supplier's ability to substantially perform the Agreement in accordance with its terms and the Law;

26.4.2 an increase in the costs incurred by the Supplier in performing the Agreement of at least 15% since the price for the Goods or Services was last agreed;

26.4.3 the price of the Goods or Services under this Agreement is at least 15% lower than the market value for similar products or services;

26.4.4 the price of the Goods or Services under this Agreement exceeds the market value for similar products or services before the Brexit Trigger Event by at least 15%;

26.5 **Renegotiation.** The Council may initiate a negotiation under Clause 26.1.1 by a notice (**Brexit Notice**) giving reasonable details of the relevant Brexit Trigger Event and Adverse Impact. The Council may, at any time, serve a new Brexit Notice, but the Council cannot serve more than one Brexit Notice for the same impact. On delivery of a Brexit Notice:

25.5.1 the parties shall meet within 7 days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to this Agreement;

25.5.2 the Supplier shall promptly comply with all reasonable requests made by the Council for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, always provided that information so disclosed shall be a party's confidential information for the purposes of clause 13 (Confidentiality); and

25.5.3 any amendments to this Agreement shall be recorded in accordance with clause 28.4 (Variation).

26.6 **Termination.** If the parties fail to agree a variation in accordance with Clause 25.5 within 28 days of the date of the Brexit Notice, the Council serving the Brexit Notice may, without affecting any other right or remedy available to it, terminate this Agreement by giving the Supplier not less than 7 days and not more than 21 days written notice. The Council may not give notice to terminate under this clause more than 28 days from the date of the relevant Brexit Notice. On termination under this clause, clause 16 (Consequences of termination) shall apply.

26.7 **Performance after a Brexit Notice.** After delivery of a Brexit Notice, until this Agreement is varied under Clause 26.5 or terminated, the parties shall, unless prohibited by law, continue to comply with the terms of this Agreement, save that the Council needs only use reasonable endeavours to comply with its obligations insofar as they are affected by the relevant Adverse Impact.

26.8 **Overlap with other rights and obligations.** Save as expressly provided in this clause 25.8, neither a Brexit Trigger Event nor an Adverse Impact shall terminate or alter (or give any party a right to terminate or alter) this Agreement, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this Agreement, the provisions of this clause shall prevail.

27 CYBER-SECURITY

27.1 The purpose of clauses 27.1, 27.2 and 27.3 is to set out the Supplier's obligations in respect of Council Materials:

(a) in respect of which the Supplier has custody or control for purposes connected with this Agreement; or

- (b) which are accessed, transmitted or stored using or on the Supplier's IT Systems or equipment under this Agreement

27.2 The Supplier has identified and taken:

- 27.2.1 appropriate and proportionate technical and organisational measures, including all measures referred to in international security standards ISO/IEC 27001:2013 (Information security management systems: Requirements) and ISO/IEC 27002:2013 (Code of practice for information security controls), (**Measures**) to manage the risks posed to the security of the IT Systems and confidentiality and integrity of the data processed by them and, having regard to the state of the art, the Measures ensure a level of security of the IT Systems and such data appropriate to the risk posed.
- 27.2.2 appropriate and proportionate Measures to prevent and minimise the impact of security incidents affecting the security of the IT Systems, with a view to ensuring the continuity of the Services.

27.3 The Supplier must:

- (a) do all things that a reasonable and prudent entity would do to ensure that all Council Materials is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (b) provide protective measures for the Council Materials that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Council Materials;
- (c) All appropriate data security breach, business continuity and disaster recovery plans in accordance with all applicable Cybersecurity Requirements and best industry practice are in place with regard to use of the IT Systems for the purposes of the Services.
- (d) without limiting clauses 27.3(a) or 27.3(b), comply with all applicable security law regulations procedures or directions as are specified in the Agreement or given by the Council from time to time regarding any aspect of security of, or access to, the Council's IT Systems, Council Materials or premises; and
- (e) unless the Agreement or the Council in writing expressly states that it is not required, develop for acceptance by the Council a Data Protection Impact Assessment (DPIA) that sets out how the Supplier and the Council will deal with and discharge their obligations in respect of Council Materials (including personal information) during the provision of the Services. The DPIA must:
 - (i) be consistent with the requirements of the Agreement (including clauses 27.3(a) and 27.3(b));
 - (ii) be consistent with the requirements of Data Protection Legislation, the Cybersecurity Requirements and any other applicable laws relating to the security of the IT Systems as amended and updated from time to time;
 - (iii) specifically deal with cybercrime risks, including unauthorised access;
 - (iv) be consistent with the [HMG Security Policy Framework](#) (SPF) as amended or updated from time to time; and
 - (v) set out the steps and processes that the Supplier and the Council will follow to protect the Council Materials from unauthorised access, use, misuse, destruction or loss,

and once accepted, the DPIA will form part of the Agreement and the Supplier must comply with it unless the Council otherwise agrees in writing.

27.4 During the seven-year period up to and including the date of this Agreement, the Supplier has not been in breach of any data security breach or breach notification requirement under the Cybersecurity Requirements or has not been the subject of any security incident which has a significant impact on the continuity of the Services and the Supplier and its subcontractors have passed all regulatory inspections to which they have been subject.

27.5 All IT Systems comply with all applicable Cybersecurity Requirements on the date of

this Agreement and were developed in accordance with them.

- 27.6 The processing of any data, whether personal or not, by any IT Systems on or after completion for the purposes of the Services will not result in breach of any applicable Cybersecurity Requirements.
- 27.7 If the Supplier becomes aware of any actual or suspected:
- (a) action taken through the use of IT Systems that result in an actual or potentially adverse effect on the Supplier's IT system and/or Council Materials residing on that system (**Cyber Incident**); or
 - (b) any other unauthorised access or use by a third party or misuse, damage or destruction by any person (**Other Incident**),

the Supplier must:

- (c) notify the Council in writing immediately (and no longer than 6 hours after becoming aware of the Cyber Incident or Other Incident); and
 - (d) comply with any directions issued by the Council in connection with the Cyber Incident or Other Incident, including in relation to:
 - (A) notifying the National Cyber Security Centre, or any other relevant body, as required by the Council;
 - (B) obtaining evidence about how, when and by whom the Supplier's IT Systems and/or the Council Materials has or may have been compromised, providing it to the Council on request, and preserving and protecting that evidence for a period of up to 12 months;
 - (C) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
 - (D) preserving and protecting Council Materials (including as necessary reverting to any backup or alternative site or taking other action to recover Council Materials).
- 27.8 The Supplier must, if specified in the Agreement, take out and maintain insurance to protect against the risks of a Cyber Incident.
- 27.9 The Supplier must ensure that:
- (a) all Sub-Contracts and other supply chain arrangements, which may allow or cause access to Council Materials, contain no provisions that are inconsistent with clauses 26; and
 - (b) all Supplier's Personnel and any subcontractors who have access to Council Materials comply with clauses 27.2 and 27.3.

28 GENERAL

28.1 ASSIGNMENT AND OTHER DEALINGS.

- 28.1.1 The Council may at any time assign, transfer or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 28.1.2 The Supplier may not assign, transfer, mortgage, charge, Sub-Contract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the Council.
- 28.1.3 The Supplier shall remain responsible for all acts and omissions of its subcontractors and the acts and omissions of those employed or engaged by the subcontractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation on the Supplier to procure that its employees, staff and agents and Sub-Contract employees, staff and agents also do, or refrain from doing, such act or thing.

- 28.1.4 Any failure on the part of the Supplier subcontractor to meet the Council's requirements of the Agreement may lead to the Council taking action for breach of this Agreement against the Supplier and this clause shall accordingly entitle the Council to instigate proceedings against the Supplier.
- 28.1.5 If the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Supplier to the subcontractor within the same specified period the Council will pay the Supplier as per clause 8.8.

28.2 NOTICES.

28.2.1 Any notice or other communication given:

- 28.2.1.1 by the Council to a party under or in connection with the Agreement shall be in writing, addressed to the party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the Council in writing in accordance with this clause;
- 28.2.1.2 to the Council by a party under or in connection with the Agreement shall be in writing and addressed to the **Director of Finance, Assets and Information Services, PO Box 609, Barnsley, S70 9FH.**

and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service.

- 28.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 0; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, one Business Day after transmission.
- 28.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

28.3 **SEVERANCE** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

28.4 VARIATION

- 28.4.1 This Agreement shall not be varied unless such variation is made in writing and agreed by the Council.
- 28.4.2 The Council may at any time notify the Supplier (and such notification shall be confirmed in writing) to modify or change its requirements as detailed in the Specification. The Supplier shall not unreasonably withhold its consent to any variations that the Council may require.
- 28.4.3 Where there is an increase in the price paid by the Supplier for the delivery of the Services or Goods under the Agreement or where the Supplier is put to additional cost in the delivery of the Services or Goods as specified in the Agreement owing to an increase in wages or the price of materials or owing to any other causes outside the control or beyond the jurisdiction of the Supplier the Supplier shall nevertheless continue to provide the Services or Goods at the contract price for a period of twelve (12) months. After the expiry of twelve (12) months the Supplier shall be at liberty to give notice to the Council of any increase in price (which notice shall contain details of how such increase is made up) and make application to continue the Services or Goods at such increased price.
- 28.4.4 Within 28 days of the receipt of such notice and application the Council may by notice in writing to the Supplier either:

- 28.4.4.1 to refuse the increased price and forthwith to terminate the Agreement in which event the Agreement shall forthwith be determined, or
- 28.4.4.2 to accept the increased price in which case the Agreement shall continue to subsist as if such increased price had been substituted in the Agreement for the original contract price.

28.4.5 The Supplier shall in the event of the Council accepting such increased price continue to supply the Services or Goods for a period of twelve (12) months from the date of the acceptance by the Council of such increased price.

28.4.6 The Council reserves the right to terminate the Agreement in accordance with notice period (clause 14 refers) if negotiation does not in its opinion represent continued value for money, or where demand character or scope for the provision of Service or Goods is materially or substantially changed.

28.4.7 Where the Council initiates a change(s) to this Agreement, the Council Officer will discuss with the Supplier any change proposed. If the parties agree the changes and any financial implications of such change then the change shall be recorded as detailed in clause 28.4.11 below.

28.4.8 Where the Council and the Supplier are unable to agree the proposed change in accordance with clause 28.4.7 above the Council Officer shall, if the Council wish to proceed with a change, issue a change control notice ("CCN") to the Supplier in the form set out in Schedule 6 (Change Control Notice).

28.4.9 The Supplier shall give proper consideration to the CCN and if agreed shall sign the same. If the Supplier does not accept the CCN it shall within five (5) Working Days of its receipt respond in writing to the Council to that effect setting out the reasons.

28.4.10 If the CCN is not agreed then the parties shall use all reasonable endeavours to meet within five (5) Working Days of receipt of the Supplier response under clause 28.4.9 to discuss the proposed change and the reasons for non-acceptance. If agreement is not reached at the meeting then the Council may at its sole discretion at any time thereafter refer the matter for consideration in accordance with the provisions of clause 28.7 (Dispute Resolution Procedure). The decision of the mediator shall be binding upon the parties except that the Council do not have to proceed with the change in any event.

28.4.11 When any change is agreed with the Supplier, the Council shall agree the date from which the change will become effective and shall be incorporated into this Agreement.

28.5 **WAIVER.** A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

28.6 **FREEDOM OF INFORMATION.** The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

The Supplier shall:

28.6.4 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 EIRs;

28.6.5 transfer to the Council all requests for information relating to the Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;

28.6.6 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 5 Business Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

28.6.7 not respond directly to a request for information unless authorised in writing to do so by the Council.

The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without consulting or obtaining

consent from the Supplier. The Council shall take reasonable steps to notify the Supplier 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 the Agreement) the Council shall be responsible for determining in its absolute discretion whether any such information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

28.7 DISPUTE RESOLUTION PROCEDURE.

28.7.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Council's Officer and the Supplier's Personnel shall attempt in good faith to resolve the Dispute;
- (b) if the Council's Officer and Supplier's Personnel are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the appropriate senior officer of the Council and senior authorising officer of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the senior officer of the Council and senior authorising officer of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 21 days after the date of the ADR notice.

28.7.2 No party may commence any court or arbitration proceedings under clause 28.12 (Jurisdiction) in relation to the whole or part of the Dispute until 21 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

28.7.3 If the Dispute is not resolved within 21 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 21 day period, or the mediation terminates before the expiry of that 21 day period, the Dispute shall be finally resolved by the courts of England in accordance with clause 28.12 (Jurisdiction) in this Agreement.

28.8 TRANSPARENCY. The Supplier and Council acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the contents of this Agreement and any supporting documentation is not classified as confidential information.

28.9 NO PARTNERSHIP OR AGENCY. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

28.10 THIRD PARTIES. This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Agreements (Rights of Third Parties) Act 1999.

28.11 GOVERNING LAW. The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England.

- 28.12 JURISDICTION.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 28.13** For the purposes of clause 28.12, each party waives any objection to the courts of England on the ground that they are an inconvenient or inappropriate forum to settle any Dispute.
- 28.14** The parties each:
- 28.14.1 agree that this clause 28.12 (including, without limitation, the parties' agreement in respect of English governing law and their submission to the exclusive jurisdiction of the English courts) shall remain in full force and effect notwithstanding any future full or partial departure of the United Kingdom from the European Union (Clause 26 (Brexit refers));
 - 28.14.2 irrevocably waive any objection which they have or may at any time have to the courts of England on the ground that they are inconvenient or inappropriate forum to settle any Dispute (including, without limitation, on the grounds of Brexit or a Brexit related issue or circumstance); and
 - 28.14.3 agree that they shall not object to, contest, or appeal in any jurisdiction the choice in this Agreement of English law as the governing law and/or the exclusive jurisdiction of the English courts and/or the enforcement of any judgement made by the English courts thereafter (including, without limitation, on the grounds of Brexit or a Brexit related issue or circumstance)

SCHEDULE 3

SPECIFICATION

**INSERT SPECIFIC DETAILS OF TENDER SPECIFICATION AND SUCCESSFUL TENDER
SUBMISSION**

SCHEDULE 4

SCHEDULE OF FEES

**INSERT SPECIFIC DETAILS OF TENDER SPECIFICATION AND SUCCESSFUL TENDER
SUBMISSION**

SCHEDULE 5

PROCESSING PERSONAL DATA AND DATA SUBJECTS

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

1. The contact details of the Controller's Data Protection Officer are: Rob Winter, E-mail: DPO@barnsley.gov.uk
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor in accordance with Clause 20.1.
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the Agreement.]</i> <i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the Agreement to provide a service to members of the public.]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i> <i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i> <i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

SCHEDULE 6

CHANGE CONTROL NOTICE

Contract Number:	
Service:	
Supplier:	
Details of Change Required:	
Reasons for Change:	
Impact of Change:	
Implementation Date Required:	
Financial Implications:	

Signed:	
Name of Council's Officer:	
Post holder of Council's Officer:	

Date Issued:	
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Supplier:

Response:	Accept
	Reject
Reason for Rejection:	

Signed:	
Name of Supplier's Personnel:	
Post holder of Supplier's Personnel	

Date Issued:	
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