

THE PLACING AUTHORITY

and

SERVICE PROVIDER

Call-off Terms and Conditions for a
Contract for the
Provision of Grounds Maintenance Services

Contents

Clauses

1. Definitions and interpretation
2. Term and extending the Term
3. Consents
4. Service Provider's warranty and due diligence
5. Supply of services and good faith
6. Service Levels
7. Service standards
8. Health and safety
9. Authority's Assets
10. Price
11. Payment
12. Authority self-help remedy
13. Key personnel and representatives
14. Other personnel used to provide the Services
15. Safeguarding
16. Employees: TUPE and equal opportunities
17. Reporting, meeting and complaints
18. Monitoring
19. Change control, benchmarking and continuous improvement
20. Dispute resolution and assistance in legal proceedings
21. Sub-contracting and assignment
22. Indemnities
23. Limitation of liability
24. Insurance
25. Freedom of information
26. Data protection
27. Confidentiality
28. Audit
29. Intellectual property
30. Termination for breach
31. Termination on notice
32. Force majeure
33. Prevention of bribery and modern slavery
34. Consequences of termination
35. Non-solicitation
36. Waiver
37. Cumulation of remedies
38. Severability
39. Partnership or agency
40. Third party rights
41. Publicity
42. Notices
43. Entire agreement
44. Counterparts
45. Governing law and jurisdiction
46. Assistance in legal proceedings

Schedule 1: General Specification

Schedule 2: Bill of Quantities

Schedule 3: Contract Management and Authorised Representatives

Schedule 4: Change Control

Schedule 5: TUPE

Appendix 1: TUPE drafting

Appendix 2: Employee Liability Information

Schedule 6: Commercially Sensitive Information

Schedule 7: Service Provider's Request to Participate

THIS AGREEMENT is made

BETWEEN

- (1) the entity which is set out as the Placing Authority in the Contract Acceptance Form issued to the Service Provider by the Lead Authority (the “**Placing Authority**”); and
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in the Contract Acceptance Form issued to the Service Provider by the Lead Authority (the “**Service Provider**”).

Background

- (A) The Services shall include grounds maintenance services at schools in Lancashire.
- (B) The Contract has been awarded to the Service Provider following the establishment by the Lead Authority for eligible service providers to be appointed to the Lead Authority’s DPS for grounds maintenance services.
- (C) Where the Service Provider is selected to deliver the Services, the Lead Authority will issue a Contract Acceptance Form to the Service Provider. The Contract Acceptance Form and these Call-off Terms shall describe the terms and conditions applicable to the Service Provider.
- (D) These Call-off Terms do not contain pricing information. Each Contract shall be awarded to an eligible service provider at the Price set out in its tendered pricing schedule.

NOW IT IS AGREED AS FOLLOWS:

1 Definitions and interpretation

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

Applicable Laws: means any statutes, statutory instruments or other legislative provisions (including, without limitation any successor, replacement or amendment statute, statutory instrument or other legislative provision) governing or otherwise relevant to the provision of the Services.

Area Officer: means the site specific contact of the Placing Authority;

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

Authorised Representatives: shall be the Contract Manager for the Placing Authority and for the Service Provider, the first such persons being set out in Schedule 3 (Contract Management and Authorised Representatives).

Best Industry Practice: means the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the Parties, the service levels, the term, the pricing structure and any other relevant factors.

Bill of Quantities: refers to that part of the Specification set out in Schedule 2 (Bill of Quantities) which is incorporated by agreement in writing between the Parties upon the Service Provider successfully bidding for that element of the Services pursuant to a mini-competition.

Bribery Act: means 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.

Call-off Terms: means these terms and conditions.

Catastrophic Failure: means any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Placing Authority's Representative has or may cause significant harm to the reputation of the Placing Authority.

CEDR: means the Centre for Effective Dispute Resolution.

Change: means any change to this agreement agreed between the Parties in accordance with the Change Control Procedure.

Change Control Procedure: means the procedure for changing this agreement, as set out in Schedule 4 (Change Control).

Commencement Date: means the date set out in the Contract Acceptance Form.

Commercially Sensitive Information: means the information listed in Schedule 5 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Placing Authority that, if disclosed by the Placing Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

Confidential Information: means all data and information supplied by the Placing Authority (or the Lead Authority on the Placing Authority's behalf) to the Service Provider and/or the Personnel (or any of them) or the supply of which is procured by the Placing Authority, whether in the form of written and/or printed documents (including facsimile transmissions), oral communication, data stored on magnetic or electronic media or data communicated over communication lines, but does not include:

- (a) information which is or which subsequently becomes within the public domain other than by reason of a breach of this agreement by the Service Provider;
- (b) information which the Service Provider can reasonably demonstrate was known by it, under no obligation of confidence, prior to its receipt of such information; or
- (c) information which becomes otherwise lawfully available to the Service Provider other than as a result of a breach of any duty of confidence owed to the Placing Authority.

Consistent Failure: shall mean:

- (a) a failure rate of three (3) or more instances of failure to deliver the Services in a manner that is consistent with the Specification and/or the Schedule of Visits) in every rolling six (6) month period for this agreement;
- (b) the Placing Authority serving two (2) Remediation Notices in a rolling six (6) month period; or
- (c) the Placing Authority serving three (3) or more Default Notices for instances of failure to deliver the Services in a manner that is consistent with the Specification or Schedule of Visits in a rolling six (6) month period.

Contract: means these call-off terms and conditions including any schedules and/or appendices thereto and in particular, the Specification (as amended or re-issued from time to time) and the Service Provider's response to any mini-competition for Services awarded under the DPS.

Contract Acceptance Form: means a document setting out details of the Services, as set out in the DPS Agreement;

Contract Price: means the respective sums of money set out by the Service Provider in the Tender or such variation of these sums as may be provided for or agreed in accordance with these Call-off Terms.

Contract Schedules: means the schedules specifying details of the Service to be provided under this agreement, including timetables and other information submitted by the Service Provider and supplied by the Lead Authority as part of the Tender.

Contract Manager: means the contract manager of the Lead Authority;

Contract Year: means a period of a calendar year, commencing on the Commencement Date.

Data Protection Legislation: shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the DPA (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

DBS: means the Disclosure and Barring Service.

Default Notice: has the meaning given to it in Clause 0 (Supply of services and good faith).

Dispute Resolution Procedure: means the procedure set out in Clause 20 (Dispute resolution and assistance in legal proceedings).

Discrimination Acts: has the meaning given to it in Clause 0 (Employees: TUPE and equal opportunities).

DPA: means the Data Protection Act 2018.

DPS: means a dynamic purchasing system awarded in accordance with regulation 34 of the Procurement Regulations.

DPS Agreement: means the terms of the agreement made between the Lead Authority and the Service Provider and accepted by the Service Provider as a condition of the appointment of the Service Provider by the Lead Authority as an eligible service provider to join the Lead Authority's DPS for grounds maintenance services (following the Service Provider's submission of the standard selection questionnaire submitted to the Lead Authority).

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

Expiry Date: means the date of expiry of this agreement as set out in the Contract Acceptance Form.

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

Force Majeure: means, in relation to either Party, any event or circumstance which is beyond the reasonable control of such Party and which results in or causes the failure of that Party to perform any of its obligations under this agreement including act of God, strike, lockout or other industrial disturbance (but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain), act of the public enemy, war (declared or undeclared), threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and equipment (which could not have been prevented by good industry practice), governmental restraint, Act of Parliament, other legislation, bye-law and or Directive provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party.

General Specification: refers to that part of the Specification set out in Schedule 1 (General Specification).

Information: has the meaning given under section 84 of FOIA.

Initial Term: means the period commencing on the Commencement Date to the Expiry Date or such earlier date of termination of the agreement in accordance with the law or the provisions of this agreement.

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

Intellectual Property Rights: means patents, patent applications, know-how, trademarks, trade mark applications, trade names, registered designs, copyright or other similar intellectual or commercial rights.

Job Card: shall be a document provided to the Placing Authority by the Service Provider at the end of each visit to the site setting out the work carried out by the Service Provider at that visit.

Key Personnel: means those personnel identified in Schedule 3 (Contract Management and Authorised Representatives) for the roles attributed to such personnel, as modified pursuant to Clause 13 (Key personnel and representatives).

Lead Authority: means Lancashire County Council, being the contracting authority that established the DPS.

Loss: means losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Placing Authority for the time spent by its officers in terminating this agreement and in making alternative arrangements for the provision of the Services.

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

Necessary Consents: means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service as set out in the General Specification and/or Bill of Quantities.

Party or Parties: means the Placing Authority and the Service Provider.

Personnel: means all persons engaged by the Service Provider from time to time in connection with the provision of the Services in any manner employed by the Service Provider or by other contractors of the Service Provider or are employed on their own account as independent contractors or the Service Provider's sub-contractors, servants or agents.

Placing Authority Assets: means any materials, plant or equipment owned or held by the Placing Authority and provided by the Placing Authority for use in providing the Services.

Price: means the annual sum specified in (or calculated by reference to) the Tender.

Procurement Regulations: means the Public Contracts Regulations 2015 (SI 2015/102).

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Placing Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;

- (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;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Placing Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Placing Authority.

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

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

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

Remediation Notice: means a notice served by the Placing Authority in accordance with Clause 0 (Termination for breach).

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

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

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

Review Meeting: has the meaning given to it in Clause 17.2 (Reporting, meeting and complaints).

Schedule of Visits: is the document agreed between the Placing Authority and the Service Provider at the start of the Contract and amended by agreement by the parties each quarter setting out the frequency of visits and the specifics of the tasks to be completed by the Service Provider at each visit to ensure that on each anniversary of this Contract, the requirements of the Specification have been met.

Service Provider Representative: means the person appointed by the Service Provider, in accordance with Clause 13 (Key personnel and representatives), to be its prime contact point for managing and monitoring the provision of the Services under this agreement and having the authority to contractually bind the Service Provider on all matters relating to the Services.

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

Service Provider's Request to Participate: the standard selection questionnaire submitted by the Service Provider and other associated documentation set out in Schedule 7 (Service Provider's Request to Participate) and accepted by the Lead Authority to enable the Service Provider to join the Lead Authority's DPS for grounds maintenance services as an eligible service provider.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 1 (General Specification) and Schedule 2 (Bill of Quantities).

Specification: means the detailed specification (including both the General Specification and the Bill of Quantities) prepared on the Placing Authority's behalf and attached to this agreement at Schedule 1 (General Specification) and Schedule 2 (Bill of Quantities).

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

Sub-Contractor: means any contractor or service provider that enters into a Sub-Contract with the Service Provider.

Tender: means the Service Provider's submission including its Price in response to a request for Services.

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

- (a) any extensions to a Contract which are agreed pursuant to Clause 2 (Term and extending the Term); or
- (b) the earlier termination of a Contract in accordance with its terms.

Termination Date: means the date of expiry or termination of this agreement.

Termination Payment Default: means the Placing Authority's failure to pay the Service Provider (following receipt of a valid, undisputed VAT invoice submitted by the Service Provider) where the Service Provider has also issued a notice requesting payment after thirty (30) days from the date of the invoice and where payment has not been made by the Placing Authority within the following thirty (30) days of a sum exceeding seventy-five per cent (75%) of such invoiced amount.

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

TUPE Event: means the transfer of an identifiable economic unit for the purposes of TUPE.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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

1.2 In this agreement, unless the context otherwise requires:

- 1.2.1 Clause, schedule and paragraph headings are for convenience of reference only and shall not affect the interpretation or construction of this agreement;
- 1.2.2 a person includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality);
- 1.2.3 the schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules;
- 1.2.4 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 a references to any person include references to any human being, company, body corporate, association, joint venture, partnership, trust and any legal entity capable of suing and being sued;
- 1.2.6 words in the singular shall include the plural and vice versa;
- 1.2.7 a reference to one gender shall include a reference to the other genders;
- 1.2.8 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.2.9 a reference to writing or written includes email but not faxes;

- 1.2.10 any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done;
- 1.2.11 a reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time;
- 1.2.12 references to Clauses and schedules are to the Clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule;
- 1.2.13 where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
 - 1.2.13.1 the Clauses of the agreement;
 - 1.2.13.2 Schedule 2 (Bill of Quantities) to this agreement;
 - 1.2.13.3 Schedule 1 (General Specification) to this agreement;
 - 1.2.13.4 the remaining schedules to this agreement other than Schedule 7 (Service Provider's Request to Participate); and
 - 1.2.13.5 Schedule 7 (Service Provider's Request to Participate) to this agreement.
- 1.2.14 Any words following the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.15 Reference to the Service Provider shall include the Service Provider's sub-contractors unless expressly excluded.
- 1.2.16 Reference to "this agreement" is to the Call-off Terms as part of the Contract.

2 Term and extending the Initial Term

- 2.1 Each Contract shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Lead Authority may (on a Placing Authority's behalf) extend a Contract beyond the Initial Term by a further period or periods up to a maximum of twenty-four (24) months in addition to the Initial Term (the "**Extension Period**"). The Lead Authority shall use reasonable endeavours to give the Service Provider at least two (2) weeks' written notice of a Placing Authority's intention to extend the Contract before the expiry of the Initial Term or Extension Period.
- 2.3 If notice is provided in accordance with clause 2.2 then the Term shall be extended by the period set out in the notice on the same terms and conditions as set out in this agreement.
- 2.4 Where notice is not provided in accordance with clause 2.2, the Contract shall expire on the expiry of the Initial Term and the provisions of Clause 34 (Consequences of termination) shall apply.

3 Consents

- 3.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Placing Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Service Provider shall at its own expense obtain and keep in force any licence necessary to provide the Service and shall ensure that the requirements of that licence are observed at all times. Failure to comply may result in the Placing Authority terminating this agreement in accordance with Clause 30.1.1 (Termination for breach).

4 Service Provider's warranty and due diligence

- 4.1 The Service Provider acknowledges and confirms that:
- 4.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Placing Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - 4.1.2 it has received all information requested by it from the Placing Authority pursuant to Clause 0 to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - 4.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Placing Authority pursuant to Clause 0;
 - 4.1.4 it has raised all relevant due diligence questions with the Placing Authority before the Commencement Date; and
 - 4.1.5 it has entered into this agreement in reliance on its own due diligence.
- 4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Placing Authority in respect of any information which is provided to the Service Provider by the Placing Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Service Provider warrants and undertakes to the Placing Authority that:
- 4.3.1 it has full capacity and authority to perform the Services;
 - 4.3.2 the Services shall be provided with all reasonable skill and care and that it shall ensure that the Personnel shall have the necessary skills and competencies, experience, equipment and other resources to enable them properly and expeditiously to perform the Services;
 - 4.3.3 the Services and any materials and equipment supplied in the performance of the Services shall be provided in accordance with best industry practice and the highest professional standards and shall conform to any and all codes of practice, performance ratings and quality standards as are laid down in the Specification, the Service Provider's Request to Participate and or elsewhere within this agreement;
 - 4.3.4 the Services shall at all times conform to the Specification;
 - 4.3.5 it shall not without the written permission of the Placing Authority advertise the fact that it is providing the Services to the Placing Authority;
 - 4.3.6 neither it nor any person engaged by it to provide the Services shall solicit any gratuity, tip or other form of reward or charge for performing the Services other than the Price set out in this agreement; and
 - 4.3.7 any and all Intellectual Property Rights developed under this agreement or arising by virtue of the performance of the Services shall belong to the Placing Authority. The Service Provider agrees that it shall execute or cause to be executed (by its Personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Authority; and
 - 4.3.8 It shall promptly notify the Placing Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Placing Authority during such due diligence which materially and adversely affects its ability to perform the Services.

- 4.4 The Service Provider shall not be entitled to recover any additional costs from the Placing Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Placing Authority by the Service Provider in accordance with Clause 0 save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Placing Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Placing Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this Clause 4 shall limit or exclude the liability of the Placing Authority for fraud or fraudulent misrepresentation.

5 Supply of services and good faith

- 5.1 The Service Provider shall provide the Services to the Placing Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Service Provider does not comply with the provisions of Clause 0 in any way, the Placing Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a "**Default Notice**").
- 5.3 Both Parties shall co-operate with, and act in good faith towards each other in relation to all matters arising under this agreement to enable the Placing Authority to derive the full benefit of this agreement and in particular each Party shall inform the other fully and as soon as possible of any circumstance which might alter the burden of the obligations of each Party under this agreement.
- 5.4 Both Parties shall do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this agreement and its fundamental purpose.
- 5.5 Any act, omission, decision, requirement, agreement or any other step of any kind taken by either Party shall be taken reasonably and in good faith. Any reference (express or implied) to any period, time, occasion, or any other similar matter shall be subject to the qualification or reasonableness, unless the context otherwise requires.
- 5.6 Where the Placing Authority's consent is required to do anything under this agreement there shall not be implied (unless expressly stated) any presumption that such consent shall not be unreasonably withheld or delayed.
- 5.7 The Parties acknowledge that, without prejudice to the Lead Authority's rights to terminate the DPS Agreement in accordance with clause 17 of the DPS Agreement, if a right to terminate the DPS Agreement arises in accordance with clause 17 of the DPS Agreement, the Lead Authority may suspend the Service Provider's right to Contracts from the Placing Authority by giving notice in writing to the Service Provider. If the Lead Authority provides notice to the Service Provider in accordance with clause 18 of the DPS Agreement, the Service Provider's appointment shall be suspended immediately for the period set out in the notice or such other period notified to the Service Provider by the Lead Authority in writing from time to time.

6 Service Levels

- 6.1 The Service Provider shall at all times ensure that the requirements of the Specification and the Schedule of Visits are met or exceeded at all times.
- 6.2 It is a condition of this Contract that the Service Provider supplies a completed Job Card to the Placing Authority at the end of each visit to the Placing Authority's site to confirm that the requirements set out in the Schedule of Visits have been met.
- 6.3 In the event that the Service Provider fails to provide a Job Card to the Placing Authority, or the Services delivered fall short of the requirements set out in the Schedule of Visits, without prejudice to any other

rights the Placing Authority may have, the provisions of Clause **Error! Reference source not found.** (Placing Authority self-help remedy) shall apply.

7. Service standards

- 7.1 The Service Provider warrants that it shall provide the Services, or procure that they are provided:
- 7.1.1 diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent provider or contractor experienced in performing the same services and will perform the Services at all times in compliance with the Placing Authority's requirements set out in this agreement including, but not limited to, the Specification and the Schedule of Visits;
 - 7.1.2 promptly (and in any event within any time targets as may be set out in the Specification), strictly in accordance with this agreement and the Specification;
 - 7.1.3 (except with the Placing Authority's prior written approval) continuously during the periods set out in the Specification;
 - 7.1.4 in a professional and courteous manner so as to reflect and promote the image of the Placing Authority;
 - 7.15 in accordance with best industry practice;
 - 7.16 to the Placing Authority's reasonable satisfaction and in accordance with the standards of service and quality assurance set out in the Specification, the Schedule of Visits or any revisions or additions thereto from time to time agreed by Change between the Placing Authority and the Service Provider; and
 - 7.17 ensuring that the conduct and operation of the Services does not in any way interrupt or interfere with the provision by the Placing Authority of other services or any other activities carried on elsewhere.
- 7.2 The Service Provider shall use as appropriate first class quality materials, skills and workmanship of their respective kinds and undertakes that the design workmanship and materials used will be fit to achieve the purpose for which the Services are required either as specified by the Placing Authority expressly in this agreement or as may be implied from this agreement and the Service Provider further acknowledges that in performing the Services the Placing Authority is reliant at all times on the Service Provider's skill and judgement.
- 7.3 Without limiting the general obligation set out in Clause 0, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):
- 7.3.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Placing Authority requests so as to enable the Placing Authority to comply with its obligations under the Human Rights Act 1998; and
 - 7.3.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

8 Health and safety

- 8.1 The Service Provider shall satisfy itself that no product shall be supplied or used in the supply of the Services to the Placing Authority which shall endanger the health of the pupils, staff or others or is derived from threatened species or environments.
- 8.2 The Service Provider shall promptly notify the Placing Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Placing Authority shall promptly notify

the Service Provider of any health and safety hazards that may exist or arise at the Placing Authority's premises and that may affect the Service Provider in the performance of the Contract.

- 8.3 While on the Placing Authority's premises, the Service Provider shall comply with any health and safety measures Placing Authority's premises.
- 8.4 The Service Provider shall notify the Placing Authority immediately in the event of any incident occurring in the performance of the Contract on the Placing Authority's premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.5 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Placing Authority's premises in the performance of the agreement.
- 8.6 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Placing Authority on request.
- 8.7 The Placing Authority is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment.
- 8.8 As part of this commitment to the environment, the Placing Authority's policies shall, wherever practicable, focus on specifying less environmentally damaging products, promoting greater use of renewable sources and encouraging suppliers to use environmentally friendly practices throughout the production process.
- 8.9 The Service Provider shall provide on request evidence of practices and procedures as they relate to the protection of the environment.

9 Authority's Assets

- 9.1 The Service Provider shall ensure that:
 - 9.1.1 where using any Placing Authority Assets they are kept properly secure and it will comply and cooperate with the Placing Authority's Authorised Representative's reasonable directions regarding the security of the same;
 - 9.1.2 any Placing Authority Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed unless expressly permitted under this agreement or by the Placing Authority's Authorised Representative.
- 9.2 The Placing Authority shall maintain and repair the Placing Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Placing Authority in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.
- 9.3 The Service Provider shall notify the Placing Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Placing Authority or to any property of any other recipient of the Services in the course of providing the Services.

10 Price

- 10.1 The Price shall for each Contract shall remain fixed. The Service Provider may, request a Price increase annually on each anniversary of the Commencement Date. Such Price increase shall be limited to any increase in the National Living Wage and all requests for an increase to the Price must be supported by evidence in respect of the increase in the cost to the Service Provider.
- 10.2 No increases to the Contract Price shall take effect unless confirmed in writing by the Customer.

11 Payment

- 11.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Placing Authority shall pay the Price to the Service Provider in accordance with any provisions set out in this Clause 11. The Placing Authority will make no payment to the Service Provider in respect of this agreement other than this agreement Price, as varied from time to time in accordance with this agreement.
- 11.2 The Placing Authority will, subject to satisfactory provision of the Services make payment of the Price as specified in the Contract and as set out in the Tender.
- 11.3 The Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Placing Authority within 30 days following delivery of a valid VAT invoice.
- 11.4 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Placing Authority pursuant to this agreement. Such records shall be retained for inspection by the Placing Authority for seven (7) years from the end of the Contract Year to which the records relate.
- 11.5 The Price set out in the Tender is an annual sum but 1/12 of the Price shall be paid monthly in arrears. The Service Provider shall invoice the Placing Authority 1/12 of the Price at the end of each month.
- 11.6 Any invoices for payment submitted by the Service Provider will be considered and verified by the Placing Authority in a timely fashion and that undue delay in doing so will not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 11.7 The Placing Authority shall pay within thirty (30) days' of receipt of an undisputed invoice from the Service Provider.
- 11.8 Where any Party disputes any sum to be paid by it then no payment shall be paid (for the avoidance of doubt no payment equal to the sum not in dispute shall be paid) and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 20 (Dispute resolution and assistance in legal proceedings). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the Parties.
- 11.9 Subject to Clause 11.8, interest shall be payable on the late payment of any undisputed Price properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 11.10 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.11 The Placing Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Placing Authority.

12 Authority self-help remedy

- 12.1 Where the Service Provider fails to perform the Services in whole or in part, the Placing Authority may issue a Default Notice or Remediation Notice as a written warning to the Service Provider and in the event of subsequent unreasonable failures to perform the Service the Placing Authority may be able to terminate this agreement in accordance with the termination events set out in Clause 30 (Termination for Breach). This is without prejudice to the Placing Authority's rights, under Clause 0 (Termination for Breach), to terminate this agreement in the event of Consistent Failure for substantial or persistent breach.

- 12.2 If the Service Provider is unable to make alternative arrangements satisfactory to the Placing Authority to fulfil its obligations under this agreement then the Placing Authority will make alternative arrangements and invoice the Service Provider for the full cost of providing the alternative arrangement plus administrative costs based on Placing Authority staff costs and time taken to put the arrangements in place.
- 12.3 If the Service Provider fails to perform the Services in whole or in part strictly in accordance with the terms of this agreement (in a manner that complies with the Specification and in accordance with the Schedule of Visits) or gives the Placing Authority insufficient notice of the Service Provider's inability to perform the Services or a Service Provider termination then, without prejudice to any other remedy available to the Placing Authority, the Placing Authority may make arrangements to provide and perform, by its own staff or the staff of another service provider, such Services or any part of them which the Service Provider fails to perform.
- 12.4 For the avoidance of doubt, the arrangements made by the Placing Authority pursuant to Clause 12.3 may include:
- 12.4.1 arranging for the provision of appropriate management or supervisory staff to enable the provision of the Services; or
 - 12.4.2 the provision of adequate equipment, materials and consumables to be used in the performance of the Services.
- 12.5 In the circumstances described in Clause 12.4.2, the Placing Authority may use all or any part of the Service Provider's equipment that was allocated for the performance of the Services.
- 12.6 The operation of this Clause 12 shall not relieve the Service Provider of any obligations under this agreement in respect of the Services as a whole, nor restrict the Placing Authority's right to terminate this agreement under Clause 30 (Termination for Breach). The Placing Authority shall be under no obligation whatsoever to effect a substituted service in accordance with these provisions.

13 Key personnel and representatives

- 13.1 Each Party shall appoint the persons named as such in Schedule 3 (Contract Management and Authorised Representatives) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each Party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on the matters for which they are expressed to be responsible.
- 13.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- 13.2.1 requested to do so by the Placing Authority;
 - 13.2.2 the person is on long-term sick leave or is deceased;
 - 13.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Placing Authority's satisfaction;
 - 13.2.4 the person resigns from their employment with the Service Provider; or
 - 13.2.5 the Service Provider obtains the prior written consent of the Placing Authority.
- 13.3 The Service Provider shall inform the Placing Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Placing Authority shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

- 13.4 The Placing Authority may at its discretion appoint an Area Officer to exercise its functions, rights and powers conferred by this agreement.
- 13.5 The Service Provider shall not question the existence or extent of the Placing Authority of the Area Officer or any nominee or person appointed by them.
- 13.6 The Service Provider shall, subject to the prior written approval of the Placing Authority, appoint, or at the written request of the Placing Authority, remove and/or replace without delay a Service Provider Representative for the management of this agreement.
- 13.7 The Service Provider shall ensure that the Service Provider Representative (or subject to Clause 13.9 a competent deputy duly authorised to act on his behalf) is available to the Placing Authority at all reasonable times when the Services are being provided. During the performance of this agreement, the Service Provider must be contactable by telephone as a minimum during normal workday normal office hours between the hours of 0730hrs and 1730hrs from Monday to Friday for members of the public and officers of the Placing Authority to contact the Service Provider.
- 13.9 Prior to such person acting in such capacity, the Service Provider shall inform the Area Officer in writing of the identity of any person authorised to act for any period as deputy for the nominated Service Provider Representative as soon as practicable.
- 13.10 Each Party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days (or such other reasonable period as may be agreed between the Parties). Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Placing Authority becoming aware of the role becoming vacant.
- 13.11 The Placing Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.12 If the Service Provider replaces the Key Personnel as a consequence of this Clause 13, the cost of effecting such replacement shall be borne by the Service Provider.
- 14 Other personnel used to provide the Services**
- 14.1 At all times, the Service Provider shall ensure that:
- 14.1.1 each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- 14.1.2 there is an adequate number of Service Provider's Personnel to provide the Services properly; and
- 14.1.3 only those people who are authorised by the Service Provider (having regard to any authorisation procedure agreed in writing between the Parties, in the event that such exists) are involved in providing the Services.
- 14.2 In particular, the Service Provider shall provide management or supervisory personnel approved from time to time by the Placing Authority to supervise and inspect the delivery of the Services. Without prejudice to the generality of the foregoing, the Service Provider shall ensure that a sufficient reserve of Personnel is available to provide the Services in accordance with this agreement during staff holidays or absence through sickness, whether paid or unpaid.
- 14.3 The Placing Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who present a security threat.
- 14.4 The Service Provider shall replace, as soon as is reasonably practicable to do so, any of the Service Provider's Personnel who the Placing Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any

reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services and at no extra cost to the Placing Authority.

14.5 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Placing Authority on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

14.6 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

15 **Safeguarding**

15.1 The Parties acknowledge that, in the event that the Service Provider in the delivery of the Services is a Regulated Activity Provider, then they shall have ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

15.1 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

15.1.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and

15.1.2 the Service Provider shall monitor the level and validity of the checks under this Clause 15.1 for each member of staff.

15.2 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

15.3 The Service Provider shall immediately notify the Placing Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 15 have been met.

15.4 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any pupils, service users, children or vulnerable adults.

15.5 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to pupils.

16 **Employees: TUPE and equal opportunities**

16.1 As at the date of this agreement the Placing Authority and the Service Provider do not envisage that a Relevant Transfer under TUPE will apply in relation to the provision of the Services under any Contract. However, where a Relevant Transfer does apply the Parties agree that the provisions of Appendix 1 (TUPE drafting) to Schedule 5 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.

16.2 The Service Provider shall comply with its responsibilities and duties under the Equality Act 2010 and take all reasonable steps to secure the observance of these provisions by all employees, or agents of the Service Provider and all sub-contractors employed in the delivery of this agreement.

16.3 The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as the protected characteristics set out in the Equality Act 2010 and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation or any statutory modification or re-enactment thereof (the "**Discrimination Acts**").

- 16.4 The Service Provider shall notify the Placing Authority immediately of any investigation of or proceedings against the Service Provider in relation to the Discrimination Acts and shall co-operate fully and promptly with any requests of the person or body conducting such investigation conducted or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 16.5 The Service Provider shall indemnify the Placing Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Placing Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly to any act or omission by the Service Provider, its agents, employees or sub-contractors.
- 16.6 The Service Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Service Provider by this Clause 16.
- 16.7 The Service Provider shall observe as far as possible the codes of practice issued by the Equality and Human Rights Commission (including the statutory codes of practice dated 26 January 2011 on employment, equal pay and services/public functions/associations which replaced codes of practice under previous discrimination legislation), as approved by Parliament from time to time, and the Placing Authority's policies (including on disability and sexual orientation). The Service Provider shall provide such information as the Placing Authority may reasonably require enabling it to assess the Service Provider's compliance with these codes of practice.
- 16.8 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider, then the Service Provider shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Placing Authority may require the Service Provider to provide full details of the steps taken to prevent such reoccurrence.
- 16.9 The Service Provider's equal opportunities policy shall be set out in any instructions circulated to those members of the Personnel concerned with recruitment, training and promotion, in relevant documentation available to its Personnel and others and in its recruitment advertisements and other relevant literature. The Service Provider shall provide to the Placing Authority on request copies of such instructions, documents, advertisements and other literature.

17 Reporting, meetings and complaints

- 17.1 The Service Provider Representative and the Area Officer shall be the respective prime contact points between the Parties and shall have responsibility for monitoring the provision of the Services by the Service Provider under this agreement.
- 17.2 The terms of this agreement shall be reviewed in accordance with the provisions of this Clause 17. Such reviews shall be carried out by way of a meeting between the Area Officer and the Service Provider Representative (the "**Review Meeting**") who shall be obliged to attend such meeting.
- 17.3 Review Meetings shall be carried out when required by a Party on the provision of reasonable written notice to the other.
- 17.4 Each Party must submit to the other details of those matters that it requires to be discussed at the appropriate Review Meeting in writing at least fourteen (14) days prior to the date of such meeting. Such meetings shall be minuted by the Placing Authority and copies of such minutes circulated to the Service Provider. Any complaints or problems relating to the provision of the Services shall be referred by the Area Officer to the Service Provider Representative and shall be discussed at such meeting and appropriate action shall be taken. Any unresolved problems emerging from such meetings (which are not classified by either Party as a dispute to be resolved by the process set out in Clause 20 (Dispute resolution and assistance in legal proceedings)) shall be referred immediately to a more senior representative who shall attempt to resolve the issue.
- 17.5 If, as a result of a Review Meeting, changes are proposed to be made to this agreement, such changes shall be made in accordance with the provisions of Clause 19.1 (Change control, benchmarking and continuous improvement) and Schedule 4 (Change Control).

- 17.6 If any outstanding matters referred to in a Review Meeting cannot be settled to the satisfaction of both Parties, either Party may refer such outstanding matter for dispute resolution in accordance with the terms of Clause 20 (Dispute resolution and assistance in legal proceedings)
- 17.7 The Service Provider shall provide the Authority with details of all complaints received in connection with the performance of this agreement, together with copies or details of the Service Provider's responses thereto, within five (5) Working Days of the complaint being received by the Service Provider.
- 17.8 The Service Provider shall keep a record of all suggestions received from customers and Personnel regarding this agreement, and shall forward relevant suggestions to the Placing Authority for consideration.
- 17.9 If it becomes impossible to operate any part of the Service, the Service Provider shall immediately notify the Area Officer.

18 **Monitoring**

- 18.1 The Placing Authority may monitor the performance of the Services by the Service Provider.
- 18.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Placing Authority in carrying out the monitoring referred to in Clause 0 at no additional charge to the Placing Authority.
- 18.3 The Placing Authority shall carry out checks to ensure that the Service is being provided in accordance with this agreement. The Service Provider shall allow the Placing Authority to carry out those checks.
- 18.4 The Service Provider shall allow the Area Officer and their nominated auditors, to have access and right to inspect the premises and records of the Service Provider in relation to the operation of this agreement, with prior arrangement.
- 18.5 The Service Provider shall at his or her own expense co-operate with the Placing Authority in providing information or documentation should the Placing Authority receive a request pursuant to Data Protection Legislation, FOIA or EIR.
- 18.6 The Placing Authority reserves the right to carry out any other checks that may reasonably be required to ensure that the Service is carried out in accordance with this agreement.
- 18.7 The Service Provider shall notify the Authority immediately of any breach of this agreement setting out the details and reasons for such a breach.

19 **Change control, benchmarking and continuous improvement**

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 19.2 If the Placing Authority requests the Service Provider to make a change or addition to the Services, the Parties shall discuss in good faith the detail of any Changes to be made.
- 19.3 If the Parties agree to make such Change:
- 19.3.1 the Placing Authority shall, so far as it is able and to the extent agreed with the Service Provider, provide reasonable assistance in relation to the developing, testing and introduction of such Change or addition as part of the Services by the Service Provider; and
- 19.3.2 the description of the Services, the Price and any other aspects of this agreement identified shall be amended or supplemented as appropriate to reflect the Change.
- 19.4 The Placing Authority shall notify the Service Provider in writing the detail of any Changes to be made as soon as practicably possible.

- 19.5 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.
- 19.6 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with Clause 19.5 shall be addressed by the Parties using the Change Control Procedure.
- 19.7 Any Change that may be agreed between the Parties shall be sent electronically to the Service Provider by the Placing Authority's Area Officer (in accordance with Clause 19.1 and Schedule 4 (Change Control)) specifying the reference, nature and terms of the Change and the date from which it is to be operative. If the Service Provider does not agree with the proposed Change, then it must give notice to the Placing Authority within seven (7) Working Days of the date of issue. Otherwise the Change shall be deemed to be effective from the date of issue of the proposed Change or as otherwise agreed.
- 19.8 If the Parties cannot reach agreement on a proposed Change to this agreement requested by the Placing Authority, acting reasonably, then the Placing Authority may terminate this agreement by giving four (4) weeks' notice or the relevant contract notice period if shorter, unless a shorter termination period is mutually agreed.
- 19.9 Without prejudice to Clause 19.7 and Schedule 4 (Change Control) the Placing Authority may vary this agreement, acting reasonably, by issuing a letter of amendment or re-issuing this agreement in its entirety. Where any amendment or re-issue would substantially affect this agreement, the Placing Authority will first consult with the Service Provider. Any amendment or re-issue shall be effective immediately after notice has been given to the Service Provider.
- 20 Dispute resolution and assistance in legal proceedings**
- 20.1 Either Party may call an extraordinary meeting of the Parties by service of not less than five (5) Working Days' written notice (or such other period as may be agreed in writing) and each Party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Placing Authority (if any) shall attend all extraordinary meetings called in accordance with this Clause 20.1.
- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to the Service Provider's Managing Director or the Placing Authority's Contract Manager (or other senior officers of the Parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within ten (10) Working Days of service of such notice. If the officers referred to in this Clause 20.2 fail to resolve the dispute in the allotted time, then the Parties shall, within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the Parties or, in default of such agreement within five (5) Working Days of receipt of such request, appointed, at the request of either Party, by the CEDR or such other similar body as is agreed.
- 20.3 The Parties shall then submit to the supervision of the mediation by the CEDR for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly, all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until fifteen (15) Working Days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the Parties, shall remain binding on the Parties.
- 20.6 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.

- 20.7 While the Dispute Resolution Procedure referred to in this Clause 20 is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.
- 20.8 Both Parties agree to continue in good faith with the performance of this agreement during any dispute process.
- 20.9 Where requested by the Area Officer, the Service Provider shall promptly provide to the Placing Authority any relevant information (including, but not limited to, documentation and statements from Personnel) in connection with:
- 20.9.1 any legal inquiry, arbitration, court proceedings or hearings in which the Placing Authority may become involved (and the Service Provider shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings); or
- 20.9.2 any disciplinary hearing internal to the Placing Authority.
- 20.10 Where the Service Provider or any of its Personnel become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, the Service Provider shall notify the Area Officer immediately in writing. Such notification shall include all relevant information to enable the Area Officer to investigate the matter fully.
- 20.11 Information provided or assistance rendered pursuant to the obligation in Clause 20.9 and/or Clause 20.10 respectively, in whatever form, shall be at no cost to the Placing Authority.

Sub-contracting and assignment

- 21.1. Subject to Clause 0, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other Party (and in the event of such consent being granted by the Placing Authority any transfer, novation or assignment shall be subject to such conditions as the Placing Authority may think fit but such consent, if given, shall not relieve the Service Provider from any liability or obligation under this agreement), neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Placing Authority.
- 21.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:
- 21.2.1 remain responsible to the Placing Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- 21.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- 21.2.3 provide a copy, at no charge to the Placing Authority, of any such Sub-Contract on receipt of a request for such by the Placing Authority's Authorised Representative.
- 21.3 The Placing Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Placing Authority.

22 Indemnities

The Service Provider shall indemnify and keep indemnified the Placing Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort

(including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the act, omission, breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors arising out of or in connection with this agreement and the performance of it, with the exception of death or personal injury resulting from negligence by the Placing Authority, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Placing Authority or its Representatives (excluding any Service Provider's Personnel).

23 Limitation of liability

- 23.1 Subject to Clause 0, neither Party shall be liable to the other Party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this agreement.
- 23.3 Subject to Clause 0, the Placing Authority's total aggregate liability:
- 23.3.1 in respect of the indemnities given by the Placing Authority in Schedule 5 (TUPE) is unlimited; and
- 23.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Price that is properly due and payable and for which the Placing Authority shall remain fully liable), shall in no event exceed one million pounds (£1,000,000) in each Contract Year or, if lower, one hundred and twenty-five per cent (125%) of the aggregate Price paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.4 Subject to Clause 0, the Service Provider's total aggregate liability:
- 23.4.1 in respect of the indemnities given by the Service Provider in Clause 22 (Indemnities), Clause 0 (Intellectual property) and Schedule 5 (TUPE) is unlimited; and
- 23.4.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed one million pounds (£1,000,000) in each Contract Year.
- 23.5 Notwithstanding any other provision of this agreement neither Party limits or excludes its liability for:
- 23.5.1 fraud or fraudulent misrepresentation;
- 23.5.2 death or personal injury caused by its negligence;
- 23.5.3 breach of any obligation as to title implied by statute; or
- 23.5.4 any other act or omission, liability for which may not be limited under any applicable law.

24 Insurance

- 24.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company such policies of insurance as are reasonably required for the delivery of the Services including but not limited to the following:
- 24.1.1 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;
- 24.1.2 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;

- 24.1.3 professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS STERLING) in relation to any one claim or series of claims without limit on the number of claims in any one year and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- 24.1.4 product liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS STERLING) in relation to any one claim or series of claims.

(the "**Required Insurances**") in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

- 24.2 The Service Provider shall give the Placing Authority, on request, copies of all insurance policies referred to in this Clause 24 or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. The Placing Authority may approach the Service Provider's insurers to verify any information regarding insurance submitted to the Placing Authority and the Service Provider must authorise any such approach.
- 24.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Placing Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 24.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the agreement.
- 24.6 The Service Provider shall give immediate notice by letter or e-mail to the Placing Authority if for any reason whatsoever any Required Insurance required to meet the requirements of Clauses 24.1 to 24.3 is cancelled or becomes inoperative. Failure to have the correct insurance at any time during this agreement may result in the Authority terminating this agreement in accordance with Clause 30.1.1 (Termination for breach).

25 Freedom of information

- 25.1 The Service Provider acknowledges that the Placing Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Placing Authority (at the Service Provider's expense) to enable the Placing Authority to comply with these information disclosure requirements.
- 25.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
 - 25.2.1 transfer the Request for Information to the Placing Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - 25.2.2 provide the Placing Authority with a copy of all Information in its possession or power in the form that the Placing Authority requires in a timely manner but in any event within five (5) Working Days (or such other period as the Placing Authority may specify) of the Placing Authority requesting that Information; and
 - 25.2.3 provide all necessary assistance as reasonably requested by the Placing Authority to enable the Placing Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 25.3 The Placing Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

25.3.2 is to be disclosed in response to a Request for Information.

25.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Placing Authority.

25.5 The Service Provider acknowledges that the Placing Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

25.5.1 without consulting with the Service Provider; or

25.5.2 following consultation with the Service Provider and having taken its views into account,

provided always that where Clause 0 applies the Placing Authority shall, in accordance with any recommendations of the Code referred to in Clause 0, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

25.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Placing Authority to inspect such records as requested from time to time.

25.7 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Placing Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 0.

26 Data protection

The Parties agree to ensure that they shall at all times comply with the provisions and obligations imposed by Data Protection Legislation in relation to the storing and processing of personal data and all personal data acquired by either Party from the other shall be returned to the disclosing Party on request. Both Parties agree to indemnify each other in respect of any unauthorised disclosure or processing of personal data or breach of Data Protection Legislation to the extent it applies to this Agreement.

27 Confidentiality

27.1 Subject to Clause 0, the Parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR, the content of this agreement is not Confidential Information. The Service Provider and the Service Provider's staff shall regard as confidential and shall not disclose to any person other than a person authorised by the Placing Authority or the Lead Authority any information acquired by the Service Provider or the Service Provider's staff in or in connection with the provision of the Service under this agreement concerning the Placing Authority or its staff or its procedures.

27.2 Clause 0 shall not apply to any disclosure of information:

27.2.1 required by any applicable law, provided that Clause 0 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

27.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this agreement;

27.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 0;

- 27.2.4 by the Placing Authority of any document to which it is a Party and which the Parties to this agreement have agreed contains no commercially sensitive information;
 - 27.2.5 to enable a determination to be made under Clause 20 (Dispute resolution and assistance in legal proceedings);
 - 27.2.6 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
 - 27.2.7 by the Placing Authority to any other department, office or agency of the Government; and
 - 27.2.8 by the Placing Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.
- 27.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Placing Authority's employees or rate-payers, are delivered up to the Placing Authority or securely destroyed.

Audit

- 28.1 During the Term and for a period of seven (7) years after the Termination Date, the Placing Authority may conduct or be subject to an audit for the following purposes:
- 28.1.1 to verify the accuracy of the Contract Price and Price (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
 - 28.1.2 to review the integrity, confidentiality and security of any data relating to the Placing Authority or any pupils;
 - 28.1.3 to review the Service Provider's compliance with the DPA, the FOIA, in accordance with Clause 26 (Data protection) and Clause 25 (Freedom of information) and any other legislation applicable to the Services;
 - 28.1.4 to review any records created during the provision of the Services;
 - 28.1.5 to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - 28.1.6 to carry out the audit and certification of the Placing Authority's accounts;
 - 28.1.7 to carry out an examination of the economy, efficiency and effectiveness with which the Placing Authority has used its resources;
 - 28.1.8 to verify the accuracy and completeness of the Job Cards delivered or required by this agreement.
- 28.2 Except where an audit is imposed on the Placing Authority by a regulatory body, the Placing Authority may not conduct an audit under this Clause 28 more than twice in any calendar year.
- 28.3 The Placing Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 28.4 Subject to the Placing Authority's obligations of confidentiality, the Service Provider shall on demand provide the Placing Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 28.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 28.4.2 reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

28.4.3 access to the Service Provider's Personnel.

28.5 The Placing Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

28.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Placing Authority for all the Placing Authority's reasonable costs incurred in the course of the audit.

28.7 If an audit identifies that:

28.7.1 the Service Provider has failed to perform its obligations under this agreement in any material manner: the Parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Placing Authority about the Contract Price or Price, proposed Price or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

28.7.2 the Placing Authority has overpaid any Price: the Service Provider shall pay to the Placing Authority the amount overpaid within twenty (20) Working Days. The Placing Authority may deduct the relevant amount from the Price if the Service Provider fails to make this payment; and

28.7.3 the Placing Authority has underpaid any Price: the Placing Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Placing Authority if this was due to a default by the Service Provider in relation to invoicing within twenty (20) Working Days.

28.8 The Service Provider shall allow the Placing Authority and its Authorised Representative access to, and permission to take copies of, all records relevant to this agreement and its performance at the Service Provider's premises at any reasonable time and shall give such explanations of records as may be required. Failure to provide the information will be considered as a breach counting towards a Consistent Failure for the purposes of Clause 30.1.4 (Termination for breach).

29 Intellectual property

29.1 In the absence of prior written agreement by the Placing Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or Sub-Contractor of the Service Provider:

29.1.1 in the course of performing the Services; or

29.1.2 exclusively for the purpose of performing the Services,

shall vest in the Placing Authority on creation.

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

30 Termination for breach

30.1 The Placing Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

30.1.1 if the Service Provider is in breach of any material obligation under this agreement it may terminate the Contract forthwith:

30.1.1.1 (subject to Clauses **Error! Reference source not found.** and 0) provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this Clause 0 if the Service Provider has failed to remedy such breach within fourteen (14) days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a "**Remediation Notice**") to do so;

30.1.1.2 where the Authority has specified in this agreement such a breach as an irremediable material breach for the purposes of this Clause 0;

30.1.2 if the Service Provider is in default of any duty or care or any fiduciary duty or statutory duty owed to the Authority, employees or agents of the Placing Authority;

30.1.3 if the Service Provider purports to assign or sub-contract this agreement in breach of the terms of this agreement;

30.1.4 if a Consistent Failure has occurred;

30.1.5 if a Catastrophic Failure has occurred;

30.1.6 if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment (or has anything similar or analogous happen in relation to it in any jurisdiction outside England and Wales);

30.1.7 if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;

30.1.8 (unless previously approved in writing by the Placing Authority) if there is a change of control (where the Service Provider is a company as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Placing Authority reasonably objects;

30.1.9 notwithstanding the occurrence of any Consistent Failure the Service Provider persistently, and without reasonable cause, fails to operate the Services in accordance with this agreement and to the entire satisfaction of the Placing Authority; or

30.1.10 the Service Provider has, at the time of award of the agreement, been subject to a conviction as proscribed by regulation 57(1), including as a result of the application of regulation 57(2) of the Procurement Regulations, and should therefore have been excluded from the procurement procedure.

30.2 The Placing Authority may terminate this agreement in accordance with the provisions of Clause 33 (Prevention of bribery and modern slavery).

30.3 The Service Provider may terminate this agreement in the event that the Placing Authority commits a Termination Payment Default by giving thirty (30) days' written notice to the Placing Authority. In the event that the Placing Authority remedies the Termination Payment Default in the thirty (30) day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

31 Termination on notice

31.1. The Placing Authority may terminate this agreement at any time by giving not less than four (4) weeks' written notice to the Service Provider.

31.2 The Service Provider may terminate this agreement at any time by giving not less than four (4) weeks' written notice to the Placing Authority.

31.3 This agreement shall terminate at any time by mutual consent.

- 31.4 The Placing Authority may terminate this agreement following a Force Majeure Event in accordance with the provisions of Clause 32 (Force majeure).
- 31.5 The Placing Authority may terminate this agreement if:
- 31.5.1 this agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Procurement Regulations; or
 - 31.5.2 this agreement should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive (both as defined in the Procurement Regulations) that has been declared as such by the Court of Justice of the European Union pursuant to Article 258 of TFEU (as defined in the Procurement Regulations).

32 Force majeure

- 32.1 Subject to the remaining provisions of this Clause 32, neither Party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
- 32.2. In the event that either Party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such Party shall:
- 32.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - 32.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - 32.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3. A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 32.7 The Placing Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than thirty (30) Working Days.

33 Prevention of bribery and modern slavery

- 33.1 The Service Provider:
- 33.3.1 shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this agreement commit a Prohibited Act;

- 33.3.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Placing Authority, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the Placing Authority before execution of this agreement.
- 33.2 The Service Provider shall:
- 33.2.1 if requested, provide the Placing Authority with any reasonable assistance, at the Placing Authority's reasonable cost, to enable the Placing Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 33.2.2 within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Placing Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this Clause 33 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The Service Provider shall provide such supporting evidence of compliance as the Placing Authority may reasonably request.
- 33.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Placing Authority) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of Clause 0 is suspected or known, the Service Provider must notify the Placing Authority immediately.
- 33.5 If the Service Provider notifies the Placing Authority that it suspects or knows that there may be a breach of Clause 0, the Service Provider must respond promptly to the Placing Authority's enquiries, co-operate with any investigation, and allow the Placing Authority to audit books, records and any other relevant documentation. This obligation shall continue for seven (7) years following the expiry or termination of this agreement.
- 33.6 The Placing Authority may terminate this agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches Clause 0. In determining whether to exercise the right of termination under this Clause 0, the Placing Authority shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:
- 33.6.1 with the authority; or
- 33.6.2 with the actual knowledge;
- of any one (1) or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or
- 33.6.3 in circumstances where any one (1) or more of the directors of the Service Provider ought reasonably to have had knowledge.
- 33.7 Any notice of termination under Clause 0 must specify:
- 33.7.1 the nature of the Prohibited Act;
- 33.7.2 the identity of the Party whom the Placing Authority believes has committed the Prohibited Act; and

- 33.7.3 the date on which this agreement will terminate.
- 33.8 Notwithstanding the provisions of Clause 20 (Dispute resolution and assistance in legal proceedings), any dispute relating to:
- 33.8.1 the interpretation of Clause 33; or
- 33.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Placing Authority and its decision shall be final and conclusive.
- 33.9 Any termination under Clause 0 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Placing Authority.
- 33.10 The Placing Authority may, following termination of this agreement pursuant to Clause 0 (including for committing a Prohibited Act) recover from the Service Provider any resulting loss.
- 33.11 The Service Provider undertakes to the Placing Authority that:
- 33.11.1 it has not and its current and former directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;
- 33.11.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Placing Authority in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;
- 33.11.3 it has and shall maintain and implement:
- 33.11.3.1 procedures to ensure compliance with the Modern Slavery Legislation; and
- 33.11.3.2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;
- 33.11.4 it shall include undertakings similar to those contained in these Clauses 0 and 0 in any contract it may enter into with sub-consultants and/or sub-contractors and provisions similar to those contained in Clauses 0 and 0; and
- 33.11.5 from time to time, at the reasonable request of the Placing Authority, it will confirm in writing that it has complied with its undertakings under Clause 0 and will provide any information reasonably requested by the Placing Authority in support of such compliance.
- 33.12 The Service Provider shall maintain adequate records to assist in verifying its compliance with the provisions of this Clause 0 and shall permit the Placing Authority and its third party representatives, immediately upon request during normal business hours to access and take copies of such records and to meet with the Service Provider's personnel to audit the Service Provider's compliance with its obligations under this Clause 0. The Service Provider shall give all necessary assistance to the conduct of such audits.
- 33.13 Audit access by any third party representative of the Placing Authority in accordance with Clause 0 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those in this Contract in respect of the information obtained provided that all information obtained may be disclosed to the Placing Authority.
- 33.14 In the event of breach of Clauses 33.8, 33.11.2 or 33.11.2 by the Service Provider and/or breach by any sub-consultant or sub-contractor of equivalent clauses required under Clause 33.11.4 and/or if the Service Provider, sub-consultant or sub-contractor is convicted of an offence under the Modern Slavery Legislation in relation to this Contract or any other Contract (whether or not the Placing Authority is a

Party to that Contract), the Parties agree that the Placing Authority may at its sole discretion terminate the Service Provider's employment under:

33.14.1 this Contract and the provisions of Clause 0 shall apply; and

33.14.2 (if applicable) any other contract between the Parties (whether in relation to the Services or otherwise) and any such termination shall be deemed to be termination for default by the Service Provider.

33.15 The Service Provider further undertakes to the Placing Authority that:

33.15.1 if required by law to do so, it shall, for each and every financial year of the Service Provider, comply with its obligations under section 54 of the Modern Slavery Act 2015 by publishing a Human Trafficking Statement; and

33.15.2 it shall include an undertaking similar to that contained in this Clause 0 in any contract it may enter into with sub-consultants, sub-contractors and/or suppliers.

33.16 In the event of breach of Clause 33.11.4, 33.11.4, 0, 0 and/or 0, the Parties agree that the Placing Authority may by notice in writing to the Service Provider require that such breaches will be rectified within seven (7) days of receipt. If the Service Provider fails to rectify such breaches in accordance with the notice the Placing Authority may in its sole discretion terminate the Service Provider's employment under:

33.16.1 this Contract and the provisions of Clause 0 shall apply; and

33.16.2 (if applicable) any other contract between the Parties (whether in relation to the Services or otherwise) and any such termination shall be deemed to be termination for Service Provider default.

33.17 The Service Provider shall indemnify the Placing Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Placing Authority as a result of:

33.17.1 any breach of Clauses 0, 0, 0, 0, or 0 by the Service Provider or;

33.17.2 any breach of provisions equivalent to Clauses 0, 0, 0, 0, or 0 in any contract with a sub-consultant or sub-contractor; and

33.17.3 any act or omission by a sub-consultant or sub-contractor which would have amounted to a breach of the relevant sub contract had the Service Provider complied with its undertaking set out in Clause 33.11.4.

34 **Consequences of termination**

34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Service Provider shall co-operate fully with the Placing Authority to ensure an orderly migration of the Services to the Placing Authority or, at the Placing Authority's request, a Replacement Service Provider.

34.2 On termination of this agreement the Service Provider shall:

34.2.1 procure that all data and other material belonging to the Placing Authority (and all media of any nature containing information and data belonging to the Placing Authority or relating to the Services), shall be delivered to the Placing Authority forthwith and the Service Provider's Authorised Representative or Chief Executive Officer (or equivalent) shall certify full compliance with this Clause 34;

34.2.2 return all documentation, manuals, statements and other materials (and all copies thereof) supplied under or in connection with performance or receipt of the Services which contains Confidential Information. If requested the Service Provider shall certify in writing that it has fully complied in all respects with this provision after the return of such documentation;

- 34.2.3 agree that upon termination of this agreement for any reason or expiry of this agreement it shall not be entitled to make a claim against the Placing Authority in relation to costs incurred by the Service Provider in providing the Services or in engaging third parties in connection with the Services (whether or not such costs were amortised in the calculation of the Price payable by the Placing Authority under this agreement). For the avoidance of doubt, the Service Provider shall not be restricted from making any claim in respect of such Price to the extent it is outstanding, due and payable; and
- 34.2.4 (subject to Clause 26 (Data protection), Clause 27 (Confidentiality) and Clause 28 (Audit)) retain all papers, files and records relating to the provision of the Services for the period of seven (7) years after the date of the termination of this agreement and thereafter shall not destroy them but where requested by the Placing Authority deliver them to the Placing Authority.
- 34.3 Where any notice of termination has been served under this agreement, the Service Provider undertakes to continue to provide the Services to the Placing Authority in accordance with this agreement until expiry of the period of notice and the Placing Authority undertakes to continue to pay the Service Provider for the Services in accordance with the terms of this agreement.
- 34.4 Termination or variation of this agreement shall not prejudice the rights, duties or liabilities of either Party that have arisen on or before the date of termination or the date of the Change.
- 34.5 If this agreement is terminated, the Placing Authority shall:
 - 34.5.1 cease to make use of the Services (and the Service Provider shall cease to provide the Services);
 - 34.5.2 cease to be under any obligation to make payment in respect of any period after the date of termination;
 - 34.5.3 cease to be under any obligation to make payment in respect of any period prior to the date of termination until the costs, loss and/or damage resulting from or arising out of the termination have been calculated and provided such calculation shows a sum or sums due to the Service Provider;
 - 34.5.4 be entitled to exercise a lien over any of the materials, clothing, equipment or other goods belonging to the Service Provider for any sum due hereunder or otherwise from the Service Provider to the Placing Authority;
 - 34.5.5 be entitled to employ and pay other persons to provide the Services or any part thereof; and
 - 34.5.6 be entitled to recover from the Service Provider any losses arising as a result of any antecedent breach of this agreement by the Service Provider.
- 34.6 If this agreement is terminated by the Placing Authority for Service Provider breach in accordance with Clauses 0 (Termination for breach) or 0 (Termination for breach) such termination shall be at no loss or cost to the Placing Authority and the Service Provider hereby indemnifies the Placing Authority against any such losses or costs resulting from or arising out of the termination which the Placing Authority may suffer (and which the Placing Authority shall be entitled to deduct from any sums which would have been due from the Placing Authority to the Service Provider under this agreement or any other contract or recover from the Service Provider as a debt) including.
 - 34.6.1 the reasonable cost to the Placing Authority of the time spent by its officers in terminating this agreement and in making alternative arrangements for the provision of the Services or any part thereof; and
 - 34.6.2 the additional cost to the Placing Authority of providing a replacement service or any alternative arrangements provided under Clause 0 above for a maximum period of four (4) calendar weeks following the date on which the termination takes effect.

34.7 The provisions of Clause **Error! Reference source not found.** (provision of records), Clause 22 (Indemnities), Clause 24 (Insurance), Clause 25 (Freedom of Information), Clause 26 (Data Protection), Clause 28 (Audit), Clause 30 (Termination for Breach) and this Clause 34 (Consequences of termination) and any other clauses in this agreement which expressly or impliedly have effect after termination or expiry shall survive termination or expiry of this agreement.

35 **Non-solicitation**

Neither Party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one (1) year thereafter, solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

36 **Waiver**

36.1 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

36.2 Failure by the Placing Authority at any time to enforce the provisions of this agreement or to require performance strictly or otherwise by the Service Provider of any provisions of this agreement or any failure or delay by the Service Provider to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such provisions and shall not affect the validity of this agreement or any part thereof or the right of the Service Provider to enforce any provision.

36.3 In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Placing Authority to the Service Provider in respect of the Services or any omission on the part of the Placing Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

37 **Cumulation of remedies**

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38 **Severability**

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39 **Partnership or agency**

39.1 Nothing contained in this agreement shall constitute a partnership or joint venture or employment or agency with or between either of the Parties and no Party shall hold itself out as an agent or an employee of the other Party. Neither the Service Provider nor its Personnel shall in any circumstances hold itself or themselves out as:

39.1.1 being the servant or agent of the Placing Authority otherwise than in circumstances expressly permitted by this agreement;

39.1.2 being authorised to enter into any contract on behalf of the Placing Authority or in any other way to bind the Placing Authority to the performance, variation, release or discharge of any obligation; or

39.1.3 having the power to make, vary, discharge or waive any by-law or any regulation of any kind.

40 Third party rights

- 40.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this agreement.
- 40.2 The Placing Authority and the Service Provider agree that they do not intend that any third party which may benefit from this agreement or any part of it shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

41 Publicity

- 41.1 The Service Provider shall not:
- 41.1.1 make any press announcements or publicise this agreement or its contents in any way; or
 - 41.1.2 use the Placing Authority's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Placing Authority.

42 Notices

- 42.1 Any notice, which expression includes any other communication whatsoever which is made in accordance with this agreement, shall without prejudice to any other method of giving it, be sufficiently given if it is sent by registered or recorded delivery first class post, delivered by hand (for which a receipt has been obtained) or by e-mail (with a hard copy confirmation letter to follow):
- 42.1.1 in the case of the Service Provider to the address stated at the head of this agreement and by e-mail to the address stated by the Service Provider in its response to the invitation to participate in the Lead Authority's DPS for grounds maintenance services (as amended by Service Provider notification to the Lead Authority from time to time); and
 - 42.1.2 in the case of the Placing Authority to Contracts Manager, Design and Construction Service, Lancashire County Council, County Hall, Preston, Lancashire PR1 8XJ and by e-mail to designandconstruction@lancashire.gov.uk.

Any e-mail notice shall be deemed to have been properly given by a Party after four (4) hours or sooner where the e-mail receipt has been acknowledged by the other Party. Notices posted shall be deemed to have been properly given after five (5) days in the case of notices sent inland and ten (10) days in the case of notices sent overseas.

43 Entire agreement

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

44 Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each Party has executed at least one (1) counterpart.

45 Governing law and jurisdiction

- 45.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 45.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

46 Assistance in legal proceedings

- 46.1 Where requested by the Area Officer, the Service Provider shall promptly provide to the Placing Authority any relevant information (including, but not limited to, documentation and statements from Personnel) in connection with:
- 46.1.1 any legal inquiry, arbitration, court proceedings or hearings in which the Placing Authority may become involved (and the Service Provider shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings); or
 - 46.1.2 any disciplinary hearing internal to the Placing Authority.
- 46.2 Where the Service Provider or any of its Personnel become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, the Service Provider shall notify the Area Officer immediately in writing. Such notification shall include all relevant information to enable the Area Officer to investigate the matter fully.
- 46.3 Information provided or assistance rendered pursuant to the obligation in Clause 46.1 and/or Clause 46.2 respectively, in whatever form, shall be at no cost to the Placing Authority.

Schedule 1: General Specification

(Schedule 1 (General Specification) is a separate document to be incorporated by reference from the DPS Agreement).

Schedule 2: Bill of Quantities

(Schedule 2 (Bill of Quantities) is a separate document to be incorporated by reference from the Contract Acceptance Form).

Schedule 3: Contract Management and Authorised Representatives

The Placing Authority's initial Authorised Representative shall at first instance be the Area Officer with any escalations to be referred to the Contract Manager.

The Service Provider's initial Authorised Representative is the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the standard selection questionnaire (which was submitted by the Service Provider to the Lead Authority leading to selection of the Service Provider by the Lead Authority to be an eligible service provider to join the Lead Authority's DPS for grounds maintenance services).

Schedule 4: Change Control

1. GENERAL PRINCIPLES

- 1.1 (Subject to the Price variation procedure set out in Clause 10 (Price) and Clause 19 (Change control, benchmarking and continuous improvement)), where the Placing Authority or the Service Provider sees a need to vary this agreement, the Placing Authority may at any time request, and the Service Provider may at any time recommend to the Placing Authority, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 4. For the avoidance of doubt, the Placing Authority is not obliged to pursue any Service Provider recommendation for a Change.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Placing Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Placing Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 4, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the Placing Authority and the Service Provider concerning a Change requested by the Placing Authority or for a Change recommended by the Service Provider which the Placing Authority agrees to consider as a Change shall result in any one of the following:
- (a) no further action being taken;
 - (b) a request to change this agreement by the Placing Authority; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where an electronic written request for an amendment is received from the Placing Authority, the Service Provider shall, unless otherwise agreed, submit a Change Control Note electronically signed by the Service Provider to the Placing Authority within three (3) Working Days of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly as an electronic written request to the Placing Authority in the form of a Change Control Note electronically signed by the Service Provider at the time of such recommendation. The Placing Authority shall give its response electronically in writing to the Change Control Note within three (3) Working Days.
- 2.4 Each Change Control Note shall contain:
- (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;

- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Price;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Placing Authority and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the Placing Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for the Change Control Note to be electronically signed by or on behalf of the Placing Authority and returned to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note electronically signed by both the Placing Authority and by the Service Provider shall constitute an amendment to this agreement.

Schedule 5: TUPE

Appendix 1: TUPE drafting

- 1 Upon the expiry or termination of this agreement for any reason whatsoever, it is expressly agreed between the Parties that such expiry or termination shall not be a TUPE Event for the purposes of transferring the contracts of employment from the Service Provider to the Placing Authority in respect of any employees of the Service Provider, save for in the event that services equivalent to the Services:
 - a. continue to be provided by the Placing Authority acting in its own capacity; or
 - b. are to be provided by another service provider following a public procurement exercise, in which case it is accepted that contracts of employment in respect of any employees of the Service Provider shall not transfer to the Placing Authority but may transfer to any new service provider for the services equivalent to the Services.
- 2 It is further agreed that the Service Provider shall be responsible for any employees of the Service Provider at the date of such termination and that the Placing Authority shall have no responsibility either to facilitate the provision of reasonable alternative employment to such individuals or to contribute to any redundancy or other costs associated with such employees upon the expiry or termination of this agreement.
- 3 For the avoidance of doubt, it is expressly agreed that the Service Provider shall use its best endeavours to redeploy any relevant employees of the Service Provider in relation to the provision of the services equivalent to the Services and shall have sole responsibility for the termination of employment of such staff by way of redundancy (if appropriate) and shall indemnify the Placing Authority and/or any successor service provider of the services equivalent to the Services in respect of all costs (including legal and other professional fees) expenses, awards, loss or damages which the Placing Authority may suffer, incur or pay as a result of the expiry or termination of this agreement.
- 4 The Service Provider shall indemnify the Placing Authority and/or any successor service provider of services equivalent to the Services against all costs, claims, liabilities and expenses (including legal expenses) incurred by the Placing Authority and/or any successor provider of services equivalent to the Services in connection with or as a result of:
 - a. any claim or demand by any employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of the protected characteristics listed in the Equality Act 2010 or a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Service Provider in respect of any employee in the period on and before the date of expiry or termination of this agreement;
 - b. any failure by the Service Provider to comply with its obligations under Regulation 13 of TUPE, or any award of compensation under Regulation 15 of TUPE (save where such failure arises from the failure of the Placing Authority and any successor provider of services equivalent to the Services to comply with its or their duties under Regulation 13 of TUPE); or
 - c. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the employees of the Service Provider arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, body or person.
- 5 The Placing Authority may request from the Service Provider such details relating to the Service Provider's method of service delivery and staff, and of their terms and conditions of service, as the Placing Authority may reasonably require as being necessary to disclose to other tenderers in connection with any future tender of these Services to enable them to prepare and make a bid for such Services. The Service Provider shall comply with such request as soon as reasonably practicable and, in any event within twenty-one (21) days of being so requested, and at no cost to the Placing Authority. The Service Provider covenants with the Placing Authority that the information provided shall be complete and accurate and up to date and that it shall notify the Placing Authority promptly of any

changes occurring between the date of submission of the information and the end of the agreement.

- 6 The Service Provider shall enable and assist the Placing Authority along with any future tenderer for the services equivalent to the Services to communicate with and meet the Service Provider's employees and relevant trade unions and/or elected employee representatives.
- 7 The Service Provider shall indemnify and keep the Placing Authority indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information or the failure to provide information under paragraphs 5 and 6.
- 8 The Service Provider shall provide by e-mail to the Placing Authority, within ten (10) days of any request, the workforce information set out at Appendix 2 (Employee Liability Information) to this Schedule 5 (TUPE) below and any additional information reasonable required by the Placing Authority, in connection with any re-tender of the Services (or a tender for Services similar to those set out in this agreement) to which TUPE may apply.

Schedule 5: TUPE

Appendix 2: Employee Liability Information

The workforce information required is, in relation to the Service Provider's employees used in the provision of the Services, the following:

- Job title
- Work location
- Age
- Gender
- Continuous service date (dd/mm/yy)
- Date employment started with existing employer
- Contractual weekly hours
- Regular overtime hours per week
- Salary (or hourly rate of pay)
- Payment interval
- Bonus payments
- Pay review method
- Frequency of pay reviews
- Agreed pay increases
- Next pay review date
- Any existing or future commitment to training that has a time-off or financial implication
- Car allowance (£ per year)
- Lease or company car details
- Any other allowances paid
- Any other benefits in kind
- Type of pension provision
- Current employer contribution rate
- Private health insurance
- Annual leave entitlement (excluding bank holidays)
- Bank holiday entitlement
- Mobility or flexibility Clause in contract (if appropriate)
- Contract end date (if fixed term contract or temporary contract)
- Maternity or paternity leave
- Sick leave entitlement
- Sick pay entitlement
- Notice
- Any collective agreements
- Employment status (for example, employee, self-employed, agency worker)
- % of working time dedicated to the provision of services under this agreement.

Schedule 6: Commercially Sensitive Information

Schedule 7: Service Provider's Request to Participate

(Schedule 7 (Service Provider's Request to Participate) is a separate document to be incorporated by reference from the standard selection questionnaire submitted to the Lead Authority and selected by the Lead Authority to be an eligible service provider to join the Lead Authority's DPS for grounds maintenance services).