Dated

[Insert Date 2021]

**GOODS & SERVICE AGREEMENT**

between

**Oxford City Council**

**AND**

**[Insert Name of Service Provider]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**[Service Agreement for the Provision of [insert type of Services]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Head of Law and Governance**

**Oxford City Council**

**Town Hall**

**St. Aldates Street**

**Oxford**

**OX1 1BX**

**Oxford City Council Low value Goods & Service Agreement (Less than £186K)**

1. **Contract Particulars**

|  |
| --- |
| **Parties** |
| **Oxford City Council**  | **Oxford City Council** of Town Hall, St Aldate's, Oxford, OX1 1BX |
| **Service Provider/Supplier** | [**Insert Name**] (a company registered in England and Wales with number [**Insert Number**]) whose registered office is at [**Insert Address**] |
| **Term** |
| **Commencement Date** | [insert date] |
| **Initial Term** | An initial period of [x years] |
| **Extended Term (if applicable)** | A period of no more than [x years]  |
| **Termination** | In accordance with clause 36, Oxford City Council may terminate this agreement by giving the Service Provider thirty (30) days written notice. |
| **Services** |
| **Services**  | All, or as the context requires, any of the obligations of the Service Provider under this Agreement including those services particularly described in Schedule 1. |
| **Appointment** | [Exclusive / Sole / Non-exclusive] |
| **Charges** | The sums payable by Oxford City Council to the Service Provider under this Agreement as set out in Schedule 2. |
| **Current Disaster Recovery Plan** | [Insert if applicable] |
| **Additional Terms & Conditions** |
| **Terms & Conditions** | As attached to these Contract Particulars. |
| **Special Terms** | [Insert if applicable] |
| **Notices** |
| **For Oxford City Council** | Address: [insert address]For the attention of: [insert representative and title]Tel: [insert number]E-mail: [insert name@oxford.gov.uk] |
| **For the Service Provider** | Address: [insert address]For the attention of: [insert representative and title]Tel: [insert number]E-mail: [insert email address]  |

**2. Basis of Agreement**

2.1 [On [**INSERT**] **Oxford City Council** issued an Invitation to Tender [under Open/Restricted Procedure] in respect of the provision of the Services (the “**Invitation**”).] **OR** [On [**INSERT**] **Oxford City Council** issued an Invitation to Quote in respect of the provision of the Services (the “**Invitation**”).]

2.2 The Service Provider is an expert in providing services to pre-agreed service levels to organisations of the size and type of Oxford City Council and has particular expertise in providing the Services and was therefore invited to respond to the Invitation.

2.3 Oxford City Council has, through a competitive process, selected the Service Provider to provide the Services and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.

2.4 This Agreement comprises these Contract Particulars, the attached Terms & Conditions and Schedules the Invitation, the Service Provider’s Response and any other documents (or parts thereof) specified by Oxford City Council (collectively, the “**Agreement**”).

2.5 The Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations, undertakings, agreements, understandings and arrangements between the parties whether written or oral in relation to such matters. Except in relation to fraudulent misrepresentation (in respect of which neither party's liability is limited or excluded), neither party shall have any right or liability in respect of any statement, representation or promise made prior to the date of this Agreement. The Service Provider acknowledges and accepts that, in entering into this Agreement, it has not relied upon any statement, representation or promise, except as set out in this Agreement.

2.6 In the event of and only to the extent of any conflict or inconsistency between any clause in these Contract Particulars and Basis of Agreement, any clause of the Terms & Conditions, any paragraph of a Schedule to this Agreement, any paragraph of the Invitation or any paragraph of the Service Provider’s Response, such conflict or inconsistency shall be resolved according to the following order of priority:

(a) the clause of these Contract Particulars and Basis of Agreement shall prevail, then;

(b) the clause of the Terms & Conditions, then;

(c) the paragraph of a Schedule, then;

(d) the paragraph of the Invitation, then;

(e) the paragraph of the Service Provider’s Response.

For this purpose, an omission (whether deliberate or inadvertent) is not, by itself, to be construed as giving rise to a conflict or inconsistency.

**THIS AGREEMENT** has been signed by the duly authorised representatives of the parties on the day and year first before written.

|  |
| --- |
| **Signed** for and on behalf of **Oxford City Council**: |
| Signature: |  |
| Name: |  |
| Title: | Director/ Head of Service/ or Authorised Officer \*     (\*delete as appropriate)   |

|  |  |
| --- | --- |
| Signature: |  |
| Name: |  |
| Title: | Director/ Head of Service/ or Authorised Officer \*     (\*delete as appropriate)   |

|  |
| --- |
| **Signed** for and on behalf of  **[INSERT Company Name]**: |
| Signature: |  |
| Name: |  |
| Title: | Director/Company Secretary |

**IN WITNESS** of which this Agreement has been executed by the parties as a Deed and is intended to be and is delivered on the date first above written.

|  |  |  |
| --- | --- | --- |
|      |   |   |
| The Common Seal of **Oxford City Council**  affixed to this Deed was authenticated by:  | ) ) )  |   |
|   |   |                   Authorised Signatory  |

|  |  |  |
| --- | --- | --- |
| EXECUTED (but not delivered until the date hereof) as a DEED by [insert registered company name] acting by a registered director or company secretary in the presence of:  | ) ) ) )  |   |
|        | Registered Company Director / Company Secretary\* *(\*delete as appropriate)*   |

|  |  |
| --- | --- |
| Signature of Witness:  | …………………………………………………  |
| Witness Name: Witness Address    | ………………………………………………... ………………………………………………… ………………………………………………… …………………………………………………  |

 [TO BE USED IF THE AGREEMENT IS TO BE SEALED]

**Terms & Conditions**

# Definitions and Interpretation

## In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

## In the Agreement except where the context otherwise requires:

 “**Appointment**” means the basis of the appointment of the Service Provider as set out in the Contract Particulars;

## “**Applicable Law**” means all applicable rules, regulations, statutory requirements, instruments and provisions in force from time to time which relate to or impact on the Services including, without limitation, (a) the DPA; (b) the FOIA; (c) the Human Rights Act 1998; (d) the Equality Act 2010; (e) the Bribery Act 2010; (f) the Health and Safety at Work etc. Act 1974; (g) the Safeguarding Vulnerable Groups Act 2006; (h) the Environmental Information Regulations 2004; (i) the Public Services (Social Value) Act 2012, together with any bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives, requirements or accreditation terms of any Regulatory Body of which the Service Provider is bound to comply and any rules, codes of conduct or codes of practice to which the Service Provider or Oxford City Council is subject from time to time;

“**Approval**” and “**Approved**” means the prior written consent of the Contract Manager;

“**Approved Sub-Contractor**” means those sub-contractors engaged by the Service Provider in the provision of part of the performance of the Services as such sub-contractors are Approved from time to time;

“**Catastrophic Failure**” means (a) a failure by the Service Provider for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster; or (b) any action by the Service Provider, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Contract Manager has or may cause significant harm to the reputation of Oxford City Council;

“**Change**” means any change after the Commencement Date to any of the Services, Service Levels, Charges or Management Information;

“**Change Control Procedure**” means the procedure for implementing Changes, as set out in Schedule 3;

“**Charges**” means the charges payable to the Service Provider by Oxford City Council under this Agreement, as set out in Schedule 2, for the full and proper performance of the Services;

“**Comparable Services**” means in relation to the Services, services provided by third parties which are the same as or similar to the Services;

“**Confidential Information**” means any and all information disclosed by one party to the other in connection with this Agreement, whether oral, written, graphic, electronic or in any other format and including, without limit, know-how, ideas, solutions, techniques, specifications, reports, test results, formulations, formulae, instructions, designs, blueprints, drawings, statistics, programs, source code and other technical information, and information about a party's past, present, future, planned and potential business operations such as information about costs, prices, margins, investments, acquisitions, accruals, performance, results, disputes, litigation, products, services, marketing, promotions, product development, service development, research, Service Providers, customers, business partners, collaborations, personnel, business and investment opportunities, forecasts, predictions and plans;

“**Consents**” means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including, without limitation, any Specific Consents outlined in the Contract Particulars;

“**Contract Manager**” means the person for the time being appointed by Oxford City Council as being authorised to administer the Agreement on behalf of Oxford City Council or such person as may be nominated by the Contract Manager to act on its behalf;

“**Criminal Records Bureau**” means the bureau established pursuant to Part V of the Police Act 1997;

“**Data Protection Legislation**” means the Data Protection Act 2018 (“**DPA**”), the EU Data Protection Directive 95/46/EC, the General Data Protection Regulations (GDPR) EU 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner(as amended or re-enacted from time to time;

“**Developed IPR**” has the meaning given to it in clause 29.1(b);

“**Disaster**” means an event defined as a disaster in the Disaster Recovery Plan;

“**Disaster Recovery Plan**” means a plan which sets out the procedures to be adopted by the Service Provider in the event of a Disaster affecting all of part of the performance of the Services, the current Disaster Recovery Plan in place as at the date of signature of this Agreement being that document referred to in the Contract Particulars as the Current Disaster Recovery Plan;

“**Dispute**” has the meaning given to it at clause 48;

“**Dispute Resolution Procedure**” means the procedure for resolving Disputes detailed at Schedule 5;

“**Equipment**” means the Service Provider’s equipment, plant, materials, and such other items supplied and used by the Service Provider in the performance of its obligations under the Agreement;

 “**Exit Management Plan**” the plan (as the same is prepared, maintained and agreed pursuant to clause 39) setting out the obligations of the Service Provider and any Successor Service Provider to facilitate:

(a) the orderly transfer of the Services (or their equivalent or any part thereof) to Oxford City Council or (as the case may be) a Successor Provider; and/or

(b) the termination of the provision of the Services on expiry or termination of this Contract;

and, without limitation, including those matters and complying with those provisions set out in Schedule 4;

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“**Force Majeure**” has the meaning set out in clause 43;

“**Good Industry Practice**” means using standards, practices, methods and procedures conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

“**Goods**” means the goods (including any instalment of the goods or any parts for them) which are set out in the Order;

“**Information**” has the meaning given under section 84 of the FOIA;

“**Initial Term**” means the period set out in the Contract Particulars;

“**Intellectual Property Rights**” means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“**Invitation**” has the meaning given to it in the Basis of Agreement;

“**Key Personnel**” means those persons named in Schedule 1 as being key personnel responsible for those tasks allocated to them;

“**Order**” is an order for Goods and/or Services placed with the Supplier by Oxford City Council;

“**Oxford City Council Premises**” means those premises and places with Oxford City Council ordinarily carries on business from time to time, those premises and places Oxford City Council owns and/or controls and any other premises of Oxford City Council from which the Services will be performed by the Service Provider;

“**Oxford City Council Environmental Policy**” means Oxford City Council’s current environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

“**Oxford City Council IPR**” has the meaning given to it in clause 29.1(a);

“**Oxford City Council Policies**” means, collectively or individually as the context so requires any policies notified by Oxford City Council from time to time requiring compliance by the Service Provider, the Service Provider Parties and/or the Service Provider Staff;

“**Oxford City Council Property**” means any property, other than real property, issued or made available to the Service Provider by Oxford City Council in connection with this Agreement and the performance of the Services by the Service Provider;

“**Oxford Living Wage**” means the basic hourly wage of **£10.31** (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Oxford City Council, or any successor body carrying out the relevant calculation;

“**Management Information**” means the management information and reports to be prepared and presented by the Service Provider in accordance with clause 10 as further defined in Schedule 1;

“**Material Breach**” means a breach of any material obligation under this Agreement;

**Modern Slavery Act (MSA):** means the Modern Slavery Act 2015 together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**MSA Offence:** means any activity, conduct, or practice constituting an offence under the MSA;

 “**Nominated Bank Account**” means the Nominated Bank Account of the Service Provider, details of which are set out in the Contract Particulars;

“**Party**” means a party to the Agreement and “**Parties**” shall be construed accordingly;

“**Performance Default**” means a failure or delay (whether by act or omission) with the method or manner of execution of the obligations or responsibilities of the Service Provider under this Agreement (but shall not include any Service Level Defaults which shall be dealt with separately) whether or not the same is, or is suspected to be, minor or significant and whether or not the same could constitute a Material Breach or Persistent Breach of this Agreement or a breach of any Applicable Law;

“**Persistent Breach**” means any breach of the same obligation of the Service Provider which occurs on more than 3 (three) occasions in any Year (or part thereof in the case of the first and final Years of this Agreement) or on more than 2 (two) occasions during a period of 4 (four) consecutive months or which has continued for a period of 3 (three) consecutive months;

“**Premises**” means the location where the Services are to be performed, as specified in the Schedule 1;

“**Prohibited Acts**” the following constitute Prohibited Acts:

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

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence, (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with Oxford City Council; or (iv) defrauding, attempting to defraud or conspiring to defraud Oxford City Council;

 “**Regulatory Bodies**” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of Oxford City Council including, without limitation, the Audit Committee and “**Regulatory Body**” shall be construed accordingly;

“**Replacement Service Provider**” means any third party service provider appointed by Oxford City Council from time to time, to provide any services which are substantially similar to any of the Services, and which Oxford City Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by Oxford City Council internally and/or by any third party;

“**Request for Information**” shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

“**Schedule**” means a schedule attached to the Agreement;

“**Senior Offices**” has the meaning given to it in paragraph (b) of Schedule 5;

“**Service Levels**” means the standards for the delivery and performance of the Services by the Service Provider set out in Schedule 1;

“**Service Level Default**” means, in relation to any Service Level, any failure by the Service Provider to achieve the level of performance for that Service Level as specified in Schedule 1, measured during each Service Level Period;

“**Service Level Period**” mean the time period for measuring the Service Provider’s performance against Service Levels, such time period being specified in Schedule 1;

“**Service Provider/Supplier**” means the provider of the Goods/Services whose details appear in the Contract Particulars;

“**Service Provider Party**” means the Service Provider’s agents, contractors and, where applicable, Approved Sub-Contractors;

“**Service Provider Staff**” means all employees, staff, servants, agents and consultants of the Service Provider or any Approved Sub-Contractor who are engaged in the provision of the Services from time to time including any Key Personnel;

“**Service Provider’s Representative**” means the individual authorised to act on behalf of the Service Provider for the purposes of the Agreement;

“**Service Provider’s Response**” means the Service Provider’s response to the Invitation;

“**Term**” means the Initial Term and Extended Term collectively;

“**TUPE**” the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time);

 “**VAT**” means value added tax and/or similar or replacement tax;

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

“**Year**” means a period of 12 (twelve) months commencing on the Commencement Date and each anniversary thereof.

## In the Agreement except where the context otherwise requires:

### words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;

### words importing the masculine include the feminine and the neuter;

### reference to clauses and schedules are to the clauses and schedules of this Agreement, references to paragraphs are to paragraphs of the relevant schedule;

### references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted and includes any subordinate legislation for the time being in force made under it;

### references to any person shall include natural persons and partnerships, firms, corporate or incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

### the words “**include**”, “**includes**” and “**including**” are to be construed as if they were immediately followed by the words “**without limitation**”;

### headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement;

### 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;

### 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.

# Term

## This Agreement shall take effect on the Commencement Date and shall, unless terminated earlier in accordance herewith, end on the expiry of the Initial Term or the Extended Term, as applicable.

##

# Extension

## Subject to satisfactory performance of the Services by the Service Provider during the Initial Term and full compliance with the Service Provider’s obligations and responsibilities hereunder, Oxford City Council may serve notice of its wish to extend this Agreement for the Extended Term in accordance with clause 3.2, such Extended Term to take effect immediately following the expiry of the Initial Term.

## If Oxford City Council wishes to extend the Initial Term, it shall give the Service Provider at least one (1) months' prior written notice of such intention before the expiry of the Initial Term.

## If Oxford City Council does not wish to extend this Agreement beyond the Initial Term there is no requirement on Oxford City Council to notify the Service Provider and this Agreement will simply expire automatically on the date of expiry of the Initial Term.

## Any agreement for the Extended Term will be evidenced in writing and signed by the parties in accordance with clause 47.4.

## Unless otherwise stated to the contrary within the written extension document referred to in clause 3.4, the clauses in this Agreement will apply throughout the Extended Term.

# Service Provider’s Status, Consents and Due Diligence

## The Service Provider is hereby appointed as the provider of the Services to Oxford City Council during the Term on the basis of the Appointment referred to in the Contract Particulars.

## In carrying out the Services the Service Provider shall be acting as principal and not as the agent of Oxford City Council. Accordingly:

### the Service Provider shall not (and shall procure that the Service Provider Parties and Service Provider Staff do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of Oxford City Council and, unless this Agreement expressly states otherwise, the Service Provider will not incur any expenses or negotiate on behalf of Oxford City Council or commit Oxford City Council or hold itself out as agent of Oxford City Council in any way to any person; and

### nothing in the Agreement shall impose any liability on Oxford City Council in respect of any liability incurred by the Service Provider to any other person.

## The Service Provider shall ensure that all Consents are in place to provide the Services and Oxford City Council shall not (unless otherwise agreed in writing in advance) incur any additional costs associated with obtaining, maintaining or complying with the same.

## Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Consent, then the latter shall prevail provided that the Service Provider has made all reasonable attempts to obtain a Consent in line with the requirements of the Services, this Agreement and Oxford City Council.

## The Service Provider:

### as at the Commencement Date, warrants and represents that all information contained in the Service Provider’s Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to Oxford City Council prior to the execution of this Agreement; and

### shall promptly notify Oxford City Council in writing if it becomes aware during the Term of any changes affecting the truth and/or accuracy of any information contained in the Service Provider’s Response.

## The Service Provider acknowledges and confirms that:

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

### it has received all information requested by it from Oxford City Council pursuant to clause 4.6(a) to enable it to determine whether it is able to provide the Services in accordance with the terms and conditions of this Agreement;

### 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 Oxford City Council pursuant to clause 4.6(b);

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

### it has entered into this Agreement in reliance on its own due diligence.

## Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by Oxford City Council in respect of any information which is provided to the Service Provider by Oxford City Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## Nothing in this clause 4 shall limit or exclude the liability of Oxford City Council for fraud or fraudulent misrepresentations.

# Oxford City Council’s Obligations

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

# Conflicts of Interest

## The Service Provider shall take appropriate steps to ensure that the Service Provider, the Service Provider Parties and Service Provider Staff are not placed in a position where, in the reasonable opinion of Oxford City Council, there is or may be an actual or potential conflict between the pecuniary or personal interests of the Service Provider, the Service Provider Parties or Service Provider Staff and the duties owed to Oxford City Council under the provisions of this Agreement. The Service Provider will disclose to Oxford City Council full particulars of any such conflict of interest which may arise immediately. The provisions of this clause shall apply during the Term and for a period of one year after its termination.

## The Service Provider shall not, during the Term, provide any services the same as or similar to the Services for any third party which would adversely affect their delivery or the achievement of any of the Service Levels hereunder.

# The Services

## The Service Provider shall provide the Services during the Term in accordance with the Service Levels and the other terms and conditions of the Agreement in consideration of the payment of the Charges.

## Oxford City Council shall have the power to inspect and examine the performance of the Services at Oxford City Council Premises at any reasonable time or, provided that Oxford City Council gives reasonable notice to the Service Provider, at any other premises where any part of the Services are being performed.

# Standards of Performance

## Without prejudice to the other provisions of this Agreement, the Service Provider shall at all times deliver the Services and perform its obligations and responsibilities under this Agreement:

### in accordance with all Applicable Laws;

### in compliance with the Service Levels; and

### in accordance with Good Industry Practice.

## In providing the Services, the Service Provider shall comply at all times with Oxford City Council Policies.

## Without limiting the general obligations set out in clauses 8.1 and 8.2, the Service Provider shall:

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Services and its obligations and responsibilities under this Agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as Oxford City Council requests so as to enable Oxford City Council to comply with its obligations under the Human Rights Act 1998; and

### not unlawfully discriminate either directly or indirectly on such grounds as disability, race, ethnic or national origin, gender, sexual orientation, religion or belief, or age or within the meaning and scope of any Applicable Law.

## For the avoidance of doubt, the Service Provider shall procure the compliance of the Service Provider Parties and Service Provider Staff with the provisions of this clause 8 at all times.

# Service Levels

## Where any Service is stated in Schedule 1 to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Service Levels are achieved. On and with effect from the Commencement Date, the Service Provider shall perform the Services in compliance with the Service Levels.

## Compliance with the Service Levels will be measured in accordance with Schedule 1 during each Service Level Period and the Service Provider shall provide records of and Management Information summarising the Service Level performance.

## Without prejudice to the Service Provider’s notification obligations under clause 11.1 below in respect of Performance Defaults, if the Service Provider commits a Service Level Default at any time or has reasonable grounds to believe or suspect that it may commit a Service Level Default, it shall notify Oxford City Council in writing within the relevant Management Information and shall specify within such Management Information how it intends to remedy the Service Level Default (if such Service Level Default is capable of remedy) having regard to the nature and impact (or potential impact) of such Service Level Default.

## In the event that the Service Provider sets out details of any Service Level Default, the Contract Manager and Service Provider’s Representative shall promptly hold a meeting (by telephone or otherwise) in order to agree whether the timetable for remedying the Service Level Default specified by the Service Provider in the Management Information is reasonable. If:

### the parties, acting reasonably, fail to agree the details given in the Management Information are satisfactory and represent a reasonable proposal for remedying the Service Level Default; or

### the Service Provider fails to remedy the Service Level Default within any time period specified in the relevant Management Information;

### then Oxford City Council may, after providing notice in writing to the Service Provider, itself provide or procure (in each case at the expense of the Service Provider) the provision of any Services which are the subject of the Service Level Default for as long as the Service Level Default is not remedied to Oxford City Council’s reasonable satisfaction or until the expiry of any notice given to terminate this Agreement by either party.

###

# Performance Monitoring

## The Service Provider shall provide the Management Information to Oxford City Council in accordance with Schedule 1 including, without limitation, within the timescales set out therein and in a format to be agreed by the parties in good faith.

## Whenever the Service Provider provides to Oxford City Council any documents including, without limitation, the Management Information, in connection with this Agreement, they shall be in an agreed format which is useable and readily updateable by both the Service Provider and Oxford City Council.

## The signing by the Contract Manager (or his representative) of any Management Information, time sheets or other similar documents shall not be construed as implying the Service Provider’s compliance with the Agreement.

# Performance Defaults

## If any Performance Default occurs or if the Service Provider has reasonable grounds to believe or suspect that a Performance Default will or may occur, the Service Provider will immediately notify the Contract Manager in writing.

## The written notification referred to in clause 11.1 will detail all relevant information in relation to the Performance Default including, without limitation, the following (if known at the time of the production of the written notification):

* + 1. the nature and extent of the Performance Default;
		2. the date or dates the Performance Default occurred;
		3. the causes of and circumstances surrounding the Performance Default;
		4. the expected impact of the Performance Default including, without limitation, whether it will have or may have any detrimental effect on the Services, the Service Levels, the efficiency or cost of the Services or the performance by the Service Provider of its obligations or responsibilities under this Agreement, whether any Regulatory Body will need to be notified of the Performance Default (and if so, by which party) and whether the Performance Default constitutes a Material Breach or Persistent Breach of this Agreement;
		5. the time period within which the Service Provider intends to remedy and rectify the Performance Default (having regard to the nature and impact (or potential impact) of such Performance Default and whether it is capable of remedy) or confirmation that the Performance Default has already been remedied;
		6. any changes proposed by the Service Provider to ensure that such Performance Default does not reoccur; and
		7. any future impact on the Service Provider's ability to fulfil any of its obligations or responsibilities under this Agreement once the Performance Default has been rectified and remedied.

## In the event that a Performance Default is also a Material Breach or Persistent Breach of this Agreement, the provisions of clause 35 shall apply.

## All costs associated with any actual or suspected Performance Default including, without limitation, identifying a Performance Default and remedying and rectifying it, will be met solely by the Service Provider.

## The Service Provider’s Representative shall promptly hold a meeting (by telephone or otherwise) in order to discuss the Performance Default with the Contract Manager and the contents of the written notification provided by the Service Provider in accordance with clause 11.2. In any event, the Service Provider will do all such things as are necessary to remedy and rectify a Performance Default promptly and efficiently in accordance with clause 1.1(e) (where capable of remedy) having first obtained Approval in relation to the remedy or rectification proposed and will use reasonable endeavours to avoid, minimise and mitigate the consequences and impact of the Performance Default in question.

## In the event that:

### Oxford City Council, acting reasonably, fails to agree that the details given further to clause 11.2(e) are satisfactory and represent a reasonable proposal for remedying the Performance Default; or

### the Service Provider fails to remedy the Performance Default within the agreed time period;

then such Performance Default shall automatically constitute a Material Breach of this Agreement which is incapable of remedy and Oxford City Council shall be entitled to terminate this Agreement with immediate effect in accordance with clause 35.1.

## The Service Provider will do all such things as are necessary and/or reasonably practicable to perform the Services and otherwise carry out its obligations and duties under this Agreement notwithstanding the Performance Default including, without limitation, by way of alternative sources, workarounds and/or re-scheduling, and shall to the best of its ability and in strict accordance with the terms and conditions of this Agreement, continue to perform the remainder of its obligations and responsibilities hereunder.

## Notwithstanding the remaining provisions of this clause 11, any Performance Default by the Service Provider shall be excused if and to the extent that the Service Provider proves to Oxford City Council’s reasonable satisfaction that such Performance Default resulted directly from a failure of Oxford City Council to perform any of its relevant obligations under this Agreement.

## The rights conferred to Oxford City Council pursuant to this clause 11 shall be without prejudice to any other right or remedy of Oxford City Council pursuant to this Agreement or otherwise.

## Without prejudice to any other rights and remedies Oxford City Council may have pursuant to this Agreement, the Service Provider shall reimburse Oxford City Council for all reasonable costs incurred by Oxford City Council which have arisen as a consequence of the Performance Default.

## Where a complaint is received or a problem indicated about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Services or this Agreement by the Service Provider, the Service Provider Parties or Service Provider Staff, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, and the provisions of this Agreement in respect of Service Level Defaults, Performance Defaults, Material Breaches and/or Persistent Breaches shall apply where relevant in respect of that complaint.

## In the event that Oxford City Council is of the reasonable opinion that there has been a Material Breach or Persistent Breach of this Agreement by the Service Provider, the Service Provider Parties or Service Provider Staff, then Oxford City Council may, without prejudice to its rights under clause 35 of this Agreement, do any of the following:

### make such deduction from the Charges to be paid to the Service Provider as Oxford City Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of those Services as the Service Provider has failed to provide or performed inadequately;

### without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of Oxford City Council that the Service Provider will be able to perform such part of the Services in accordance with the Agreement;

### without terminating the whole of the Agreement, terminate theAgreement in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

### terminate, in accordance with clause 35, the whole of the Agreement.

## Oxford City Council may charge the Service Provider any cost reasonably incurred by Oxford City Council and any reasonable administration costs in respect of the provision of such part of the Services by Oxford City Council or by a third party to the extent that such costs exceed the Charges which would otherwise have been payable to the Service Provider for such Services and provided that Oxford City Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining such replacement Services. Such charges shall be payable by the Service Provider within thirty (30) days of the date of Service Provider’s invoice.

# Equipment

## The Service Provider shall provide all the Equipment necessary for the provision of the Services.

## The Service Provider shall make no delivery of Equipment nor commence any work on Oxford City Council Premises without obtaining Approval.

## All Equipment brought onto Oxford City Council Premises shall be at the Service Provider’s own risk. The Service Provider shall provide for the haulage or carriage thereof to Oxford City Council Premises and the removal of Equipment when no longer required at its sole cost and expense. Unless otherwise agreed, Equipment brought onto Oxford City Council Premises will remain the property of the Service Provider.

## The Service Provider shall maintain all items of Equipment within Oxford City Council Premises in a safe, serviceable and clean condition.

## All Equipment shall be at the risk of the Service Provider and Oxford City Council shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was directly caused or contributed to by the negligence or default of Oxford City Council.

## Oxford City Council shall have the power at any time during the performance of the Services to order in writing that the Service Provider:

### remove from Oxford City Council Premises any Equipment which in the opinion of Oxford City Council is either hazardous, noxious or not in accordance with the Agreement; and

### if Oxford City Council has ordered the Service Provider to remove any item of Equipment in accordance with clause 12.6 (a), to replace such item with a suitable substitute item of Equipment.

## On completion of the Services the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to provide the Services in order to leave Oxford City Council Premises in a clean, safe and tidy condition. For the avoidance of doubt the Service Provider is solely responsible for making good any damage to Oxford City Council’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider, the Service Provider Party or the Service Provider Staff.

## Access to Oxford City Council Premises shall not be exclusive to the Service Provider but shall be limited to such Service Provider Staff and Service Provider Parties as are necessary to perform the Services concurrently with the execution of work by others. The Service Provider shall co-operate free of charge with such other persons on Oxford City Council Premises as Oxford City Council may reasonably require.

## The Service Provider shall be responsible for insuring the Equipment and Oxford City Council shall have no liability or responsibility in respect of the same.

# Oxford City Council Premises

## Oxford City Council shall be responsible for maintaining the security of Oxford City Council Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of Oxford City Council (notified to it from time to time) while on Oxford City Council Premises, and shall procure that the Service Provider Parties and Service Provider Staff shall likewise comply with such requirements.

## The Service Provider is deemed to have inspected any applicable Oxford City Council Premises before tendering for the Services so as to have understood the nature and extent of the Services to be carried out and so as to be satisfied in relation to all matters connected with the performance of the Services and its obligations and responsibilities under this Agreement.

## Any Oxford City Council Premises (including temporary buildings) made available to the Service Provider by Oxford City Council in connection with this Agreement, shall be made available to the Service Provider free of charge and shall be used by the Service Provider solely for the purpose of performing the Services and its obligations under this Agreement. The Service Provider shall have the use of such Oxford City Council Premises as licensee and shall vacate the same on expiry or termination of this Agreement.

## The Service Provider shall not use Oxford City Council Premises for any purpose or activity other than the provision of the Services during the Term.

## Should the Service Provider require modifications to Oxford City Council Premises, such modifications shall be subject to Approval and shall be carried out by Oxford City Council at the Service Provider’s expense. Ownership of such modifications shall rest with Oxford City Council.

## The Service Provider shall (and shall ensure that the Service Provider Parties and Service Provider Staff) observe and comply with such rules and regulations as may be in force at any time for the use of Oxford City Council Premises as determined by Oxford City Council, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider, the Service Provider Parties and Service Provider Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

## The parties agree that there is no intention on the part of Oxford City Council to create a tenancy of whatsoever nature in favour of the Service Provider, the Service Provider Parties or Service Provider Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, Oxford City Council retains the right at any time to use in any manner Oxford City Council sees fit any premises owned or occupied by it.

# Oxford City Council Property

## Where Oxford City Council for the purpose of the Agreement makes Oxford City Council Property available to the Service Provider, such property shall be and remain the property of Oxford City Council. The Service Provider shall not in any circumstances have a lien on Oxford City Council Property and the Service Provider shall take all reasonable steps to ensure that the title of Oxford City Council to such Oxford City Council Property and the exclusion of any such lien are brought to the notice of all Service Provider Parties, Service Provider Staff and other persons dealing with this Agreement.

## Any Oxford City Council Property made available or otherwise received by the Service Provider shall be deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies Oxford City Council otherwise within 5 Working Days of receipt.

## The Service Provider shall maintain all Oxford City Council Property in good order and condition, excluding fair wear and tear, and shall use Oxford City Council Property solely in connection with the performance of the Services and for no other purpose without Approval.

## The Service Provider shall ensure the security of all Oxford City Council Property, whilst in the Service Provider’s possession, either on its premises or elsewhere during the performance of this Agreement, in accordance with Oxford City Council’s reasonable security requirements as required from time to time.

## The Service Provider shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Oxford City Council Property, unless the Service Provider is able to demonstrate that such loss or damage was caused by the negligence or default of Oxford City Council. The Service Provider’s liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of Oxford City Council. The Service Provider shall inform the Contract Manager within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to Oxford City Council Property made available for the purposes of this Agreement.

# Key Personnel

## The Service Provider shall appoint the persons named as Key Personnel to perform the matters allocated to them. The Key Personnel shall be those people who are identified by Oxford City Council 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 authority to act on behalf of the Service Provider on the matters for which they are expressed to be responsible.

## The Service Provider shall not remove or replace any of the Key Personnel unless:

### requested to do so by Oxford City Council;

### the person is on long term sick leave, maternity leave or paternity leave;

### the element of the Services in respect of which the individual was engaged has been completed to Oxford City Council’s satisfaction;

### the person resigns from their employment with the Service Provider; or

### the Service Provider obtains Approval.

## The Service Provider shall inform Oxford City Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. Oxford City Council shall be entitled to interview any such person and may object to such proposed appointment within 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.

## The Service Provider shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent replacement) for more than 15 Working Days (or such other time period as Approved by Oxford City Council). Any replacement shall be as, or more, qualified or 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 Oxford City Council becoming aware of the role becoming vacant. Oxford City Council 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.

## If the Service Provider replaces the Key Personnel as a consequence of this clause 15, the cost of effecting such replacement shall be borne by the Service Provider.

# Service Provider’s Staff

## At all times, the Service Provider shall ensure that:

### all Service Provider Staff are suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

### there is an adequate number of Service Provider Staff to provide the Services properly;

### only those persons who are authorised by the Service Provider (under the authorisation procedures set out herein or otherwise agreed by the parties) are involved in providing the Services;

### all of the Service Provider Staff comply with Oxford City Council Policies including those that apply to persons who are allowed access to the applicable Oxford City Council Premises.

## The Service Provider shall take all reasonable steps to ensure that all Service Provider Staff are entitled to obtain employment in the United Kingdom and are not claiming unemployment benefit or any other benefits payable to persons registered as unemployed. Oxford City Council reserves the right to refuse to grant access to, and/or remove, any Service Provider Staff who are allowed access from, any premises occupied by or on behalf of Oxford City Council who do not comply with such policies, if they present a security threat or whose admission or continued presence would be, in the reasonable opinion of Oxford City Council, undesirable. The decision of Oxford City Council as to whether any person is to be refused access to any premises occupied by or on behalf of Oxford City Council shall be final and conclusive.

## The Service Provider shall:

### provide a list of the names and addresses of all Service Provider Staff who it is expected may require admission in connection with this Agreement to any Oxford City Council Premises, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as Oxford City Council may reasonably require, if and when directed by Oxford City Council; and

### maintain up-to-date personnel records in relation to the Staff engaged in the provision of the Services and, on request, provide reasonable information to Oxford City Council in relation to such Service Provider Staff.

### In order to comply with its obligations under this clause 16.3 Oxford City Council shall ensure at all times that it has the right to provide any details relating to the Service Provider Staff requested by Oxford City Council in compliance with the DPA.

## The Service Provider Staff, engaged within the boundaries of any of Oxford City Council Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

## The Service Provider shall use its best endeavours to ensure continuity of Service Provider Staff and to ensure that the turnover rate of Service Provider Staff is at least as good as the prevailing industry norm for similar services, locations and environments.

# TUPE

## The parties envisage that, subsequent to the commencement of the Agreement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of the Agreement or part, or otherwise) resulting in a transfer of the Services in whole or in part (“**Service Transfer**”). The parties do not envisage that any Service Transfer will be a relevant transfer for the purposes of TUPE.

## In the event of any Service Transfer, the Service Provider shall indemnify and keep indemnified Oxford City Council and any Replacement Service Provider fully against all claims, proceedings, actions, damages, demands, legal costs, losses, expenses and any liabilities whatsoever arising from or connected with

## (a) any claim by or in connection with any employee or former employee of the Service Provider or any Service Provider Party where it is alleged that liability in respect of the claim has transferred to Oxford City Council and/or the Replacement Service Provider as a result of the application of TUPE to the Service Transfer

## (b) any claim by any person (including any claim by any appropriate representatives (as defined in Regulation 13(3) of TUPE) of any person) alleging any breach of regulations 13 and/or 14 of TUPE, whether by the Service Provider, Oxford City Council, the Replacement Service Provider or otherwise.

## If any contract of employment has effect as if originally made between Oxford City Council and any person, or a Replacement Service Provider and any person, as a result of the application of TUPE to a Service Transfer;

## (a) Oxford City Council or, as the case may be, any Replacement Service Provider may terminate such contract (provided that it does so within 28 days of becoming aware of the application of TUPE to such contract); and

## (b) the Service Provider shall indemnify and keep indemnified Oxford City Council and the Replacement Service Provider fully against all claims, proceedings, actions, damages, demands, legal costs, losses, expenses and any other liabilities whatsoever that Oxford City Council and/or the Replacement Service Provider may suffer, incur, sustain, pay or be put to:

## (i) by reason of or on account of or arising out of or connected with such termination; or

## (ii) arising from or connected with such contract, whether before on or after the Service Transfer.

# Health and Safety

## The Service Provider shall promptly notify Oxford City Council of any health and safety hazards which may arise in connection with the performance of the Services or this Agreement. Oxford City Council shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at Oxford City Council Premises and which may affect the Service Provider in the performance of the Agreement.

## The Service Provider shall notify Oxford City Council immediately in the event of any incident occurring in the performance of the Agreement on Oxford City Council Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

## 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 Oxford City Council on request.

#  Disaster Recovery

## The Service Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

## Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:

### implement the Disaster Recovery Plan;

### continue to provide the affected Services to Oxford City Council in accordance with the Disaster Recovery Plan; and

### restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

## Notwithstanding any other provision of this Agreement but save as in relation to a Force Majeure event, the Service Provider will not be excused from any obligations or liability under this Agreement if the breach or liability would have been avoided:

### if the Service Provider had complied with this clause 19; or

### by the Service Provider taking such steps as it might reasonably be expected to have taken with reasonable foresight to ensure that the premises, systems, facilities and staff of the Service Provider are and remain fit for the purposes of providing the Services in accordance with this Agreement.

# Charges

## In consideration of the performance of the Service Provider’s obligations and responsibilities under this Agreement and the Services, Oxford City Council shall pay the Charges in accordance with clause 21.

## The Charges payable by Oxford City Council are stated to be exclusive of VAT.

## The Charges shall remain fixed for the Initial Term and, where applicable, during any Extended Term.

# Invoicing and Payment

## The Service Provider shall submit invoices for payment of the Charges to Oxford City Council monthly in arrears unless otherwise stated to the contrary in Schedule 2.

## Each invoice shall be addressed to the Contract Manager and shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.

## Where any taxable supply for VAT purposes is made under this Agreement by the Service Provider to Oxford City Council, Oxford City Council shall, on receipt of a valid VAT invoice from the Service Provider, pay the Service Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

## Unless otherwise agreed to the contrary and without prejudice to clause 20.2, the Charges are stated to be inclusive of all applicable taxes, duties and charges including, without limitation, any import duties or withholding taxes.

## Oxford City Council shall pay the Charges which have become payable within 30 (thirty) days of date of receipt of an undisputed invoice from the Service Provider, subject to Oxford City Council deciding to take advantage of any discounts for early payment offered by the Service Provider.

## Payment of the Charges shall be made to the Nominated Bank Account of the Service Provider.

## Without prejudice to any of its other rights or remedies, Oxford City Council may suspend payment of the Charges payable or reduce payment in respect of any Services in each instance where the Service Provider has committed a Performance Default, Material Breach or Persistent Breach of this Agreement.

## Wherever under the Agreement any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to Oxford City Council in respect of any breach of the Agreement), Oxford City Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Agreement or under any other agreement or contract with Oxford City Council.

## Any overpayment by Oxford City Council, whether of the Charges or of VAT, shall be a sum of money recoverable from the Service Provider or the same can be deducted by Oxford City Council from any sums due or which may become due to the Service Provider.

## The Service Provider shall make any payments due to Oxford City Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by Oxford City Council to the Service Provider.

## The Charges for the Services shall be the full and exclusive remuneration of the Service Provider in respect of the performance of the Services. Unless otherwise agreed in writing by Oxford City Council, the Charges shall include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.

## In the event that the amount of an invoice is subject to a bona fide dispute, Oxford City Council will advise the Service Provider of the same prior to the relevant payment due date. With regard to such disputed invoice, Oxford City Council shall pay the undisputed part of that invoice (if any) by the relevant payment due date and the parties will resolve the issue in relation to the disputed part of the invoice in accordance with clause 48 and the Dispute Resolution Procedure.

## If Oxford City Council fails to make any payment due to the Service Provider by the relevant payment due date, the Service Provider shall have the right to charge interest on the overdue amount at the a rate of 2% per annum above the Bank of England’s base rate from time to time. Such interest will accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement. This clause shall not apply to payments Oxford City Council disputes in accordance with clause 21.12.

# Euro

## Any legislative requirement to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to British Pounds Sterling, shall be implemented by the Service Provider at nil charge to Oxford City Council.

## Oxford City Council shall provide all reasonable assistance to facilitate compliance by the Service Provider with clause 22.1.

# Continuous Improvement

## The Service Provider shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation, the Service Provider shall identify and report to Oxford City Council annually during the Term on:

### the emergence of new and evolving relevant technologies which could improve the Services;

### new or potential improvements to the Services including the quality, responsiveness, procedures and performance mechanisms in relation to the Services;

### new or potential improvements to the interfaces and integration of the Services with other services provided by third parties of Oxford City Council which might result in efficiency or productivity gains or in reduction of operational risk; and

### changes in ways of working that would enable the Services to be delivered at lower cost and/or greater benefits to Oxford City Council.

## Any potential Changes highlighted as a result of the Service Provider’s reporting in accordance with clause 23.1 shall be addressed by the parties using the Change Control Procedure.

# Change Control Procedure

## Any requirement for a Change shall be subject to the Change Control Procedure.

# Data Protection Legislation

## The Service Provider shall (and shall procure that any of the Service Provider Staff involved in the provision of the Agreement) comply with any notification requirements under the DPA and both parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

## The Service Provider shall comply with any notification requirements under the Data Protection Legislation and shall observe all of its obligations under the Data Protection Legislation which arise during the Term of the Agreement.

## The Service Provider acknowledges that they shall not hold or process any personal data unless such data applies for the performance of the Contract a process shall be agreed between the Service Provider and Oxford City Council as to how the personal data shall be managed.

## If a breach does occur by the Service Provider of its obligations under the Data Protection Legislation then Oxford City Council may terminate the Contract .

## If the Contract is terminated by Oxford City Council the Provider shall comply with Oxford City Council’s requirements which may include :

### the delivery of the originals of such information, records and papers to Oxford City Council’s offices or such other address as specified by Oxford City Council, and/or;

### immediately destroy all original and copies of such information, records and papers;

## The Service Provider shall not cause or permit personal data to be transferred outside the European Economic Area (as defined in the DPA) without the prior written consent of Oxford City Council.

## The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

# Confidentiality

## Each party shall treat as confidential any Confidential Information of the other party..

## Each party agrees not to use during the Term or thereafter the Confidential Information of the other party other than for the purpose of exercising its rights and/or performing its obligations under this Agreement and shall not disclose during the Term or thereafter the same to any third party except for any purpose authorised under this Agreement.

## Each party further agrees in relation to the Confidential Information of the other party:

### only to disclose such Confidential Information to those responsible individual employees required to have knowledge of the same for the purpose of performing its obligations and/or exercising its rights pursuant to this Agreement. To this end, and where considered necessary in the opinion of Oxford City Council, the Service Provider shall ensure that the Service Provider Staff or the Service Provider Parties sign a confidentiality undertaking (on terms no less stringent than those set out in this clause 26) before commencing work in connection with this Agreement;

### to ensure that each of its employees to whom any part of such Confidential Information is disclosed is bound by a like obligation of confidentiality and will draw the confidential nature of the Confidential Information to the attention of such employees; and

### to undertake in writing to the other party at any time upon its demand that it has complied with its obligations under this clause 26.

## The obligations of confidentiality and restrictions on use contained in this clause 26 shall not extend to information to the extent that:

### the receiving party can prove that such information was lawfully in its possession (to the extent that such information was in its possession without restriction on disclosure or use) prior to disclosure by the other party; or

### such information is now or hereafter comes into the public domain other than by a default of the receiving party; or

### such information is hereafter received or obtained without restriction on disclosure or use from a third party acting in good faith who did not derive the same unlawfully; or

### any disclosure required by any Applicable Law, Regulatory Body, court of competent jurisdiction or to be made to any governmental, supra-national or other regulatory authority or any recognised investment exchange provided that, so far as practicable, the disclosure shall be made only after consultation with the other party and after taking into account the other party's reasonable requirements as to timing, content and the manner of communication; or

### the information must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations 2004 in accordance with clause 27.

## Confidential Information shall not be exempted under clause 26.4 (a), (b) or (c) from restriction under this Agreement by reason only that:

### some or all of its features (but not the combination and principle thereof) are or enter into the public domain or are in the possession of or are subsequently disclosed to the receiving party as mentioned therein; or

### such information could be derived or obtained from information or materials which are or enter into the public domain or are in the possession of or are subsequently disclosed to the receiving party as mentioned therein if so to obtain or derive them would require substantial skill, labour or expense.

## A party may disclose Confidential Information of the other party if and to the extent that:

### it is required to be disclosed in order to enable a determination to be made under clause 48 and the Dispute Resolution Procedure; or

### the disclosing party has given its prior written consent to the receiving party allowing the disclosure; or

### .

### the information is disclosed on a confidential basis to a bona fide prospective assignee to the extent necessary for the purpose of the proposed assignment; or

### the information is disclosed on a confidential basis to that party's professional advisers for the purpose of advising that party in connection with this Agreement; or

### the information is disclosed on a confidential basis to any third party for the purpose of such third party tendering for or proposing to provide any of the Services to Oxford City Council; or

# Freedom of Information

## The Service Provider acknowledges that Oxford City Council is, a local authority, and is therefore subject to the requirements of the FOIA and the Environmental Information Regulations 2004. The Service Provider shall assist and cooperate with Oxford City Council (at the Service Provider’s expense) to enable Oxford City Council to comply with its Information disclosure requirements.

## The Service Provider shall and shall procure that the Service Provider Staff and Service Provider Parties shall:

### transfer any Request for Information to Oxford City Council as soon as practicable after receipt and in any event within two (2) Working Days (or such other period as Oxford City Council may specify) of receiving a Request for Information;

### provide Oxford City Council with a copy of all Information in its possession or power in the form that Oxford City Council requires within 5 (five) Working Days (or such other period as Oxford City Council may specify) of Oxford City Council requesting that Information; and

### provide all necessary assistance as reasonably requested by Oxford City Council to enable Oxford City Council 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 2004.

## Oxford City Council shall be responsible for determining at its absolute discretion whether the Confidential Information:

### is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;

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

## In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by Oxford City Council.

## The Service Provider acknowledges that Oxford City Council 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 itself under the FOIA or the Environmental Information Regulations 2004 to disclose Information:

### without consulting with the Service Provider, or

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

## 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 Oxford City Council to inspect such information as requested from time to time.

# Information Security

## In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement (including any Personal Data), the Service Provider undertakes to maintain security systems approved by Oxford City Council.

## The Service Provider will immediately notify Oxford City Council of any breach of security in relation to Confidential Information or any data obtained in the performance of the Agreement and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Service Provider’s obligations under clause 11 in respect of the reporting of Performance Defaults. The Service Provider will co-operate with Oxford City Council in any investigation that Oxford City Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

# Intellectual Property Rights

## All right, title and interest in the Intellectual Property Rights and all goodwill associated therewith:

### furnished to or made available to the Service Provider by Oxford City Council (the “**Oxford City Council IPR**”) shall vest and remain vested in Oxford City Council and Oxford City Council hereby grants the Service Provider a revocable, conditional, non-exclusive, royalty-free licence to use Oxford City Council IPR during the Term solely for the purposes of performing the Services;

### prepared by or on behalf of the Service Provider for use, or intended use, in relation to the performance of the Agreement and/or the Services (the “**Developed IPR**”) shall belong to Oxford City Council and the Service Provider hereby agrees to assign to Oxford City Council with full title guarantee by way of future assignment all such Developed IPR created on or after the Commencement Date forthwith upon coming into existence free from all liens, charges and encumbrances.

## It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Service Provider shall during and after the Term on written demand indemnify and keep indemnified Oxford City Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses (including legal costs) and other liabilities which Oxford City Council may suffer or incur as a result of any infringement or alleged infringement (including the defence of an alleged infringement) of any Intellectual Property Rights of a third party, except to the extent that they have been caused by or contributed to by Oxford City Council’s acts or omissions.

## If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider may at its own expense and subject to the consent of Oxford City Council (not to be unreasonably withheld or delayed) either:

### modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

### procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to Oxford City Council.

## The provisions of this clause 29 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

# Audits and Records

## The Service Provider shall keep and maintain during the Term and for a period of (a) six (6) years after the expiry or termination of this Agreement (for whatever reason); or (b) such longer period as may be prescribed by Oxford City Council or as may be relevant according to Applicable Laws, full and accurate records and a complete audit trail of all financial and non-financial transactions and information relating to this Agreement including, without limitation, the Services provided under it, all expenditure reimbursed by Oxford City Council, and all payments made by Oxford City Council (the “**Records**”).

## During the Term and for a period of 6 years after the date of expiry or termination of this Agreement (for whatever reason), Oxford City Council and its internal and external audit representatives shall have the right to perform audits and inspections of the Service Provider and its Approved Sub-contractors for the following purposes:

### to verify the make-up and accuracy of the Charges and invoices of the Service Provider;

### to review the integrity, confidentiality and security of any data relating to Oxford City Council or any service users;

### to review the Service Provider’s compliance with the DPA and FOIA in accordance with clauses 25 and 27and any other Applicable Law relevant to the Services;

### to review any Records;

### to verify the accuracy and completeness of the Management Information delivered and required by this Agreement; and

### to otherwise examine the Service Provider’s performance of the Services and its obligations and responsibilities under this Agreement.

## Except where an audit is imposed on Oxford City Council by a Regulatory Body, Oxford City Council may not conduct an audit under this clause 30 more than twice in any calendar year.

## Subject to clause 30.3, Oxford City Council will endeavour (but is not obliged) to provide at least 5 (five) Working Days’ notice of its intention to conduct an audit save where a Material Breach or Persistent Breach of this Agreement or Applicable Law so requires.

## The Service Provider shall on demand provide Oxford City Council and its internal and external audit representatives with all reasonable co-operation and assistance in relation to each audit including:

### all information requested within the scope of the audit including the Records;

### reasonable access to any Premises controlled by the Service Provider and any Equipment used (whether exclusively or non-exclusively) in the performance of the Services;

### access to the Service Provider Staff.

## The Service Provider shall co-operate fully with any audit and shall promptly and efficiently give any assistance and facilities reasonably required in connection with any audit.

## The parties agree that they shall bear their own costs and expenses incurred in respect of compliance with their obligations under this **clause 30**, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Service Provider or its Approved Sub-contractors in which case the Service Provider shall reimburse Oxford City Council for all Oxford City Council’s reasonable costs incurred in the course of the audit.

## If the audit identifies that:

### the Service Provider has failed committed a Performance Default, the provisions of clause 11 shall apply and shall be implemented;

### Oxford City Council has overpaid any Charges, the Service Provider shall pay Oxford City Council the amount overpaid within 10 Working Days. Oxford City Council may deduct and off-set the relevant amount from the Charges if the Service Provider fails to make this payment within this timeframe;

### Oxford City Council has underpaid any Charges, Oxford City Council shall pay to the Service Provider the amount of the under-payment less the cost of the audit incurred by Oxford City Council if this underpayment was due to a default by the Service Provider in relation to invoicing, within 10 Working Days.

## The Service Provider shall take all steps necessary and possible to procure that any Approved Sub-contractor engaged in connection with the Services shall comply in full the provisions of this clause 30 and shall grant and allow the same rights of access hereunder.

## The Service Provider shall grant the Audit Commission, and any other Relevant Regulatory Body, the same audit rights as those granted to Oxford City Council and/or its internal and external audit representatives hereunder save that:

### no prior notice of intention to audit by such parties shall be required;

### the scope of the audit that can be carried out by such parties shall not be limited to that described in clause 30.2.

# Indemnity

## The Service Provider shall indemnify and keep indemnified Oxford City Council fully against all claims, proceedings, actions, damages, demands, legal costs, losses, expenses and any other liabilities whatsoever whether arising in tort (including negligence) default or breach of this Agreement including, without limitation, in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider, the Service Provider party or Service Provider Staff. This clause 31.1 shall not apply to the extent that the same is due to any act or neglect of Oxford City Council, its employees or agents.

## The Service Provider shall in respect of Oxford City Council’s computer systems or network, indemnify Oxford City Council against any cost, liability, loss, damage, or default in the operation of any of Oxford City Council’s computer systems and/or network caused by any act, neglect or omission of the Service Provider, the Service Provider party or Service Provider Staff. This will include the reimbursement of Oxford City Council’s costs in commissioning any third party contractor appointed by Oxford City Council to take corrective action to restore Oxford City Council’s computer systems and/or network to be fully operational and for any damages resulting from the corruption or loss of data.

# Limitations on Liability

## Notwithstanding any other provision of this Agreement, neither party excludes or limits its liability for:

### death or personal injury caused by its negligence;

### fraud or fraudulent misrepresentation;

### breach of clauses 25, 26, 27 or 29 by the Service Provider;

### a proven wilful act of gross misconduct;

### wilful abandonment of this Agreement;

### breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or

### any other act or omission, liability for which may not be limited or excluded under any Applicable Law.

## Subject to clause 32.1, neither party shall be liable to the other party (as far as is permitted by law) for any of the following losses whether caused by reason of any breach of this Agreement or any implied warranty, condition or other term, or any representation of any duty of any kind imposed by operation of law including negligence:

### loss of profits, loss of revenue, loss of business, loss of goodwill (in each case whether direct, special, indirect or consequential); or

### loss of savings (whether anticipated or otherwise); and/ or

### indirect, special or consequential loss or damage of any kind whatsoever.

## Subject always to clauses 32.1 and 32.2, the total aggregate liability of Oxford City Council under or in connection with this Agreement for all claims, whether in contract, tort (including negligence or breach of statutory or regulatory duty) or otherwise, during any Year shall be, (a) of **200**% of the Charges paid by Oxford City Council to the Service Provider in such Year when the claim arose; or (b) or **£1,000,000.00 (one million pounds)** whichever is higher).

## Subject always to clauses 32.1 and 35.2, the total aggregate liability of the Service Provider under or in connection with this Agreement for all claims, whether in contract, tort (including negligence or breach of statutory or regulatory duty) or otherwise, resulting in loss of or damage to the property of Oxford City Council shall in no event exceed the greater of **£5,000,000** (**five million pounds** Sterling) or twice the aggregate total Charges payable to the Service Provider under this Agreement.

## Subject always to clauses 32.1 and 32.2, the total aggregate liability of the Service Provider under or in connection with this Agreement for all claims, whether in contract, tort (including negligence or breach of statutory or regulatory duty) or otherwise, resulting in loss of or damage to Oxford City Council not already covered under clause 32.4 above shall in no event exceed the greater of **£1,000,000** (**one million pounds** Sterling) or twice the aggregate total Charges payable to the Service Provider under this Agreement.

# Insurance

## The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider, arising out of performance of the Agreement. This will include, without limitation, insurance cover for death or personal injury, loss of or damage to property, employer’s liability insurance, public liability insurance and any other insurance covers appropriate to the Service Provider’s business or where required by Applicable Law. 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. The Service Provider shall be responsible for determining the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability under this Agreement.

## To comply with its obligations under this clause 33.2, and as a minimum, the Service Provider shall hold and maintain the following insurance cover and shall ensure that all professional consultants or Approved Sub-contractors involved in the provision of the Services hold and maintain appropriate cover: i) **Public liability** insurance with a limit of indemnity of not less than **ten million pounds** Sterling **(£10,000,000**) for any occurrences arising out of each and every event and unlimited in the aggregate in any one period of insurance; ii) **Employer’s (Compulsory) liability** insurance with a limit of indemnity of not less than **five million pounds** Sterling **(£5,000,000**) for any occurrences arising out of each and every event, and unlimited in the aggregate in any one period of insurance; iii) Where relevant **\*Professional indemnity** insurance with a limit of not less than **one million pounds** Sterling **(£1,000,000**) for any occurrences arising out of each and every event; and iv) Where relevant, **product liability** insurance with a limit of not less than **two million pounds** Sterling **(£2,000,000**) for any occurrences arising out of each and every event. **\*Professional indemnity insurance shall be maintained for a period of 6 years following the end of the contract or service delivery thereafter** **professional indemnity**.

## The Service Provider shall provide the Contract Manager, on request, copies of all insurance policies referred to in this clause 33 or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Agreement Oxford City Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

## The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement.

## The Service Provider shall hold and maintain the insurance covers referred to in this clause 33 during the Term and for a minimum of 6 (six) years following the expiry or termination of this Agreement.

# Warranties and Representations

## The Service Provider warrants and represents that:

### the Service Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Service Provider;

### the Service Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;

### all obligations of the Service Provider pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Service Provider Staff with all due skill, care and diligence;

### the Service Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

# Termination for Breach

## Oxford City Council may terminate this Agreement in whole or in part with immediate effect by notice in writing to the Service Provider at any time if:

### the Service Provider is in Material Breach or Persistent Breach of this Agreement and (where capable of remedy) fails to remedy such breach within 10 (ten) Working Days after notification of the same from Oxford City Council (or such other period as Oxford City Council may in its absolute discretion determine); or

### the Service Provider commits or is deemed to have committed a Material Breach or Persistent Breach which is incapable of remedy; or

### a Catastrophic Failure has occurred.

# Termination for Convenience

## Oxford City Council may terminate this Agreement at any time following the Commencement Date for convenience in accordance with the provisions relating to Termination for Convenience set out in the Contract Particulars, where relevant.

# Termination for Insolvency Events and Change of Control

## Oxford City Council may terminate the Agreement with immediate effect by notice in writing where the Service Provider:

### goes into liquidation either compulsory or voluntary (other than for the purpose of a solvent reconstruction or amalgamation or other reorganisation conducted in such manner that the company resulting from this effectively agrees to be bound by or assume the obligations imposed under this Agreement on the Service Provider); or

### has an order is made, petition presented (other than a petition or proceeding which is vexatious and is dismissed or withdrawn within 14 (fourteen) days), resolution passed or meeting convened for its winding-up, whether or not voluntary; or

### has a receiver or an administrative receiver appointed of all or part of its assets or undertaking or has a petition presented (other than a petition or proceeding which is vexatious and is dismissed or withdrawn within 14 days) for an administration order to be made in relation to it or has a notice of intention to appoint an administrator served in respect of it; or

### calls a meeting of, or enters into any composition or arrangement with its creditors or any class of its creditors; or

### ceases to carry on business or suspends all or substantially all of its operations (other than temporarily by reason of a strike) or suspends payment of its debts or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or

### disposes of or agrees to dispose of the whole or substantially all of its assets or undertakings; or

### anything analogous to the above; or

### undergoes a change of control (as defined in section 574 of the Capital Allowances Act 2001) to which Oxford City Council reasonably objects.

# Consequences of Termination

## Where Oxford City Council terminates this Agreement in accordance with its rights under clause 35, such termination shall be at no loss or cost to Oxford City Council and the Service Provider hereby indemnifies Oxford City Council against any such losses or costs which Oxford City Council may suffer as a result of exercising such termination rights.

## Termination of this Agreement and/or the Services in whole or in part for any reason shall be without prejudice to any rights which may have accrued up to the date of such termination.

## Upon termination or expiry of this Agreement for whatever reason and except as otherwise expressly provided herein:

### subject to any rights or obligations that have accrued prior to termination, no party shall have any further obligation to any other party in respect of this Agreement;

### any licences granted under clauses 13 or 29 shall terminate with immediate effect; and

### Oxford City Council shall be entitled to cease to permit access to Oxford City Council Premises and disconnect access to any systems, as the same may be accessed by the Service Provider Staff or the Service Provider Parties in accordance herewith.

## In the event that this Agreement or the obligation to perform all or some of the Services terminates for any reason after the Commencement Date, then the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with Oxford City Council to ensure the orderly transfer of the Services.

## If, for any reason, some but not all of the Services are to be terminated, the provisions of this clause 38 and the Exit Management Plan shall apply in relation to the Services to be terminated in so far as practicable, but the Service Provider shall continue to provide all the non-terminated Services in accordance with the provisions of this Agreement.

# Exit Management Plan

## The Service Provider shall, within 1 (one) month of the Commencement Date, prepare the draft the Exit Management Plan (which shall be consistent with the principles set out in Schedule 4) and will deliver it to Oxford City Council for Approval.

## Following receipt of the draft Exit Management Plan, Oxford City Council shall consider its provisions and notify the Service Provider in writing of any comments that Oxford City Council may have.

## If the parties fail to agree the provisions of the draft Exit Management Plan within 30 (thirty) days of Oxford City Council providing its comments in accordance with clause 39.2 then any dispute in relation to the Exit Management Plan shall be resolved in accordance with Dispute Resolution Procedure.

## Once the draft Exit Management Plan is agreed by the parties in accordance with this clause 39, the plan shall be adopted as the Exit Management Plan.

# Prevention of Bribery

## The Service Provider,:

### shall comply with Oxford City Council’s Prevention of Fraud and Bribery Policy (if available and as amended from time to time) ;

### shall not, in connection with this Agreement, commit a Prohibited Act;

### warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working or engaged by Oxford City Council, 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 Oxford City Council before execution of this Agreement;

### and the Service Provider shall procure that the Service Provider Parties and Service Provider Staff and anyone acting on the Service Provider’s behalf also comply in all respects with this clause 40.1.

## The Service Provider shall:

### if requested, provide Oxford City Council with any reasonable assistance, to enable Oxford City Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

### within ten (10) Working Days of any request made by Oxford City Council, certify to Oxford City Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 40 by the Service Provider and all persons associated with it (including, without limitation, the Service Provider Parties and Service Provider Staff) or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall also provide such supporting evidence of compliance as Oxford City Council may reasonably request.

## The Service Provider shall have an anti-bribery policy (which shall be disclosed to Oxford City Council within a reasonable time of request) to prevent the Service Provider, the Service Provider Parties or the Service Provider Staff from committing a Prohibited Act and shall enforce it where appropriate.

## If a breach of this clause 40 is suspected or known, the Service Provider will notify Oxford City Council in writing immediately.

## If the Service Provider notifies Oxford City Council that it suspects or knows that there may be a breach of this clause 40, the Service Provider must respond promptly to Oxford City Council’s enquiries, co-operate with any investigation, and allow Oxford City Council to audit books, records and any other relevant documentation. This obligation shall continue for 6 (six) years following the expiry or termination of this Agreement.

## Where the Service Provider, the Service Provider Party, Service Provider Staff or anyone acting on the Service Provider’s behalf, commits or, in the reasonable opinion of Oxford City Council is likely to commit a Prohibited Act in relation to this or any other contract or arrangement with Oxford City Council, Oxford City Council has the right to:

### terminate the Agreement and recover from the Service Provider the amount of any loss suffered by Oxford City Council resulting from the termination, including the cost reasonably incurred by Oxford City Council of making other arrangements for the provision of the Services (including, where relevant, any goods) and any additional expenditure incurred by Oxford City Council throughout the remainder of the Term; or

### recover in full from the Service Provider any other loss sustained by Oxford City Council in consequence of any breach of this clause 40, whether or not the Agreement has been terminated.

# Prevention of Fraud

## The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Service Provider Staff (including its shareholders, members, directors), Service Provider Parties and the Service Provider in connection with the receipt of monies from Oxford City Council.

## The Service Provider shall notify Oxford City Council in writing immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## Where the Service Provider, the Service Provider Party, Service Provider Staff or anyone acting on the Service Provider’s behalf, commits or, in the reasonable opinion of Oxford City Council is likely to commit a fraud in relation to this or any other contract or arrangement with Oxford City Council, Oxford City Council has the right to:

### terminate the Agreement and recover from the Service Provider the amount of any loss suffered by Oxford City Council resulting from the termination, including the cost reasonably incurred by Oxford City Council of making other arrangements for the provision of the Services (including, where relevant, any goods) and any additional expenditure incurred by Oxford City Council throughout the remainder of the Term; or

### recover in full from the Service Provider any other loss sustained by Oxford City Council in consequence of any breach of this clause 41, whether or not the Agreement has been terminated.

# Publicity and Media

## Without prejudice to Oxford City Council’s obligations under the FOIA or as otherwise required by Applicable Law, neither party shall make any press announcements or publicise the Agreement or any part thereof in any way nor shall the Service Provider be entitled to use Oxford City Council’s name or brand in the promotion or marking or announcement, except with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

## Both parties shall take all reasonable steps to ensure the observance of the provisions of clause 42 by all their servants, employees, agents, professional advisors and consultants. The Service Provider shall take all reasonable steps to ensure the observance of the provisions of clause 42 by the Service Provider Parties and Service Provider Staff.

# Force Majeure and Disruption

## Force Majeure" means the occurrence of an event or circumstance (a "**Force Majeure Event**") that prevents a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment (the "**Affected Party**") proves:

1. that such impediment is beyond its reasonable control;
2. that such impediment could not reasonably have been foreseen at the time of the conclusion of the contract; and
3. that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party [acting in a commercially reasonable manner].

##

## In the absence of proof to the contrary, the following events affecting a Party to the Agreement shall be presumed to fulfil conditions (a) and (b) under clause 43.1 of this Agreement, and the Affected Party only needs to prove that condition (c) of clause 43.1 is satisfied.

## For the purposes of clause 43.1 and 43.2 above a Force Majeure Event shall be one of more of the following:

1. war (whether declared or not), hostilities, invasion, acts of foreign enemies, extensive military mobilisation;
2. civil war, riot, rebellion and revolution, military or usurped power, insurrection, acts of terrorism, sabotage or piracy;
3. currency and trade restriction, blockade, embargo, sanction;
4. act of [government] authority whether lawful or unlawful, compliance with any Law or governmental order, expropriation, seizure of works, requisition, or nationalisation;
5. plague, epidemic, pandemic, natural disaster, extreme natural event, extreme weather event, nuclear, chemical or biological contamination;
6. explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
7. general labour disturbances such as boycotts, strikes and lock-outs, go-slow, occupation of factories and premises

## Provided it has complied with clause 43.5, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

##  The Affected Party shall:

* + 1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) Working Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement. 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 accepted industry practice; and
		2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## 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 .

## 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.

## Oxford City Council 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 twenty (20) Working Days, for the avoidance of doubt, Oxford City Council shall not be subject to any financial penalty whatsoever.

## For the avoidance of doubt, a Force Majeure Event shall not include any labour dispute between the Service Provider and its employees or failure to provide the Services by any of its agents, contractors or sub-contractors.

# Assignment, Sub-Contracting and Novation

## The Service Provider shall not assign, sub-contract, transfer, delegate or in any other way dispose of its rights or obligations under this Agreement or the benefit of this Agreement, in each case whether in whole or in part, at any time without Approval. Sub-contracting all or any part of the Agreement shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under this Agreement.

## The Service Provider shall remain responsible for the performance of its obligations and responsibilities under this Agreement notwithstanding the appointment of any Approved Sub-contractor and accepts liability and responsibility for the acts, omissions and neglects of its Approved Sub-contractors as though they are its own. In addition, if (in the reasonable opinion of Oxford City Council) the performance of any Approved Sub-contractor of any of the Service Provider’s rights or obligations under this Agreement is not in accordance with this Agreement, Oxford City Council may require the Service Provider to terminate the sub-contract with such Approved Sub-contractor (but Oxford City Council shall not have any liability as a result of such termination).

## Where Oxford City Council has consented to the appointment of an Approved Sub-contractor the Service Provider shall impose obligations on its Approved Sub-contractor in the same terms as those imposed on it pursuant to this Agreement, shall procure that the Approved Sub-contractor complies with the same and shall provide Oxford City Council with copies of each sub-contract (at no cost to Oxford City Council) within 5 (five) Working Days of Oxford City Council’s request.

## Oxford City Council shall be entitled to assign, sub-contract, transfer, delegate, novate or otherwise dispose of its rights and/or obligations under this Agreement or any part thereof to any third party.

# Third party Rights

## Subject to clause 45.2 below:

### a person who is not a party to this Agreement has no right to enforce any of its terms under the Contracts (Rights of Third parties) Act 1999; and

### if a person who is not a party to this Agreement is stated to have a right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the parties may rescind or vary this Agreement (and any documents entered into pursuant to it or in connection with it) without the consent of that person.

## In relation to the indemnity under clause 17 only, the Replacement Service Provider shall, if applicable, be entitled to enforce this Agreement.

# Notices

## All notices to be given by one party to the other under this Agreement shall be in writing in English and shall be marked for the attention of the person at the address set out in the Contract Particulars.

## Notices may be delivered by hand, sent by first class recorded delivery mail or sent by facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first class recorded delivery mail confirmation of a copy.

## Correctly addressed notices shall be treated as having been received:

### if delivered by hand between 9.00am and 5.00pm on a Business Day (which time period shall be referred to as **Business Hours**), when so delivered and if delivered outside Business Hours, at the next start of Business Hours;

### if sent by first class recorded delivery mail, at 9.00am on the second Business Day after posting if posted on a Business Day and at 9.00am on the third Business Day after posting if not posted on a Business Day;

### if sent by facsimile transmission (confirmed by a copy sent via first class recorded delivery mail within 24 hours), upon transmission if transmitted within Business Hours and if delivered outside Business Hours, at the next start of Business Hours. or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

## Email notices are not valid for the purposes of this Agreement but this clause 46.4 shall not invalidate any other lawful mode of service.

## Either party may change the details recorded for it in the Contract Particulars by notice to the other in accordance with this clause 46.

# General Provisions

## **No Implied Terms:** Except as expressly stated in this Agreement, all conditions, warranties, stipulations and other statements whatsoever (except as to title in goods) that would otherwise be implied or imposed by statute, at common law, by a course of dealing or otherwise howsoever are excluded to the fullest extent permitted by law.

## **Further Assurance:** Each party shall do or execute or arrange for the doing or executing of any other act or document reasonably requested of it by any other party to implement and give full effect to the terms of this Agreement.

## **Survival of Rights:** Termination of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to termination or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination.

## **Variation:** No variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each party.

## **Waiver:** Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing, refers expressly to this clause 47.5, is duly signed by or on behalf of the party granting it and is communicated to the other party in accordance with clause 46. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by Oxford City Council to the Service Provider in respect of the Services or any omission on the part of Oxford City Council 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.

## **Rights Cumulative:** The rights and remedies of the parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by law or equity or otherwise. Except as expressly stated in this Agreement (or at law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised (wholly or partly), concurrently or separately from time to time and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **Costs:** Except as otherwise stated in this Agreement each party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Agreement and all ancillary documents.

## **Severability:** The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

## **No Partnership or Agency:** Nothing in this Agreement shall be construed as creating a partnership or joint venture between the parties or as constituting either party as agent of the other for any purpose whatsoever or as creating a contract of employment between Oxford City Council and the Service Provider.

## **Counterparts:** This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

## **Modern Slavery Act**: The Service Provider shall comply in all respects with its obligations under the MSA, including the requirement to publish a statement under section 54 thereof to the extent that the Service Provider qualify as a commercial organisation within the meaning of such section. The Service Provider warrants to Oxford City Council that, so far as the Service Provider is aware, no MSA Offence is occurring within the Service Provider’s business or within the business of the Provider’s permitted sub-contractors and supply chain and the Service Provider shall not (and shall require that the Service Provider’s staff, agents, representatives, and permitted sub-contractors shall not) commit any MSA Offence. The Service Provider acknowledges, understands, and accepts that Oxford City Council is subject to the requirements of section 52 of the MSA and, where so requested by Oxford City Council, The Service Provider shall assist and co-operate with Oxford City Council at the Service Provider’s own expense in order to enable Oxford City Council’s compliance with such requirements.

##

# Dispute Resolution

## All disputes and differences between the parties arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the Dispute Resolution Procedure set out at Schedule 5.

# Oxford Living Wage

## It is a condition of this Agreement that for the duration of the Agreement and any extensions thereof the Service Provider:

1.1         pays all Service Provider Staff who are employed by the Service Provider to perform the Services not less than the Oxford Living Wage (unless otherwise directed by the Client) as set annually by the Oxford City Council (OCC);

## 1.2         agrees to increase the amount which it pays to Service Provider Staff by the same amount as any increase to the Oxford Living Wage within twelve (12) months of the date on which any increase in the Oxford Living Wage is announced by the OCC (unless otherwise directed by the Council); and

## 1.3 co-operate and provide all reasonable assistance to the Council in monitoring the effect of the Oxford Living Wage on the quality of the Services provided under this Agreement.

## If the Service Provider sub-contracts all or part of the provision of the Services to a sub-contractor, the Service Provider shall procure that the terms contained in Clause 1.1 to 1.3 shall apply to all Service Provider Staff who are employed by the sub-contractor to perform the Services (or part of them) provided the employment is based within the geographical limits of Oxford.

**Clauses 50 to 52 additionally apply to Contracts in respect of the supply of Goods only.**

# DELIVERY

50.1 The Supplier shall deliver the Goods, properly packed and secured at its own risk, on the date or between the dates (as the case may be) specified in the Order. Delivery of the Goods shall take place at such location as the Oxford City Council may specify in the Order.

50.2 Time of delivery is of the essence. If the Supplier fails to deliver the Goods or make them available for collection at the time specified in the Order, the Oxford City Council may:

1. refuse to accept any subsequent attempts to deliver the Goods and terminate this Contract immediately and at no cost to the Oxford City Council by serving notice in writing on the Supplier;
2. procure similar goods from an alternative supplier; and
3. recover from the Supplier all losses, damages, costs and expenses incurred by the Oxford City Council arising from the Supplier’s default.
	1. If the Oxford City Council fails to take delivery of any one or more instalments of Goods delivered in accordance with a Contract, the Supplier shall store the Goods at its own premises or at another suitable location at its own expense for a reasonable period and arrange with the Oxford City Council an alternative delivery time.
	2. The Supplier shall notify the Oxford City Council immediately after receipt of an Order if the delivery dates for the Goods cannot be met.
	3. A packing note quoting the Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.
	4. If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and is not severable.
	5. The Goods shall:
4. be free from defects in materials and workmanship, be of satisfactory quality and conform to and in all respects with the specifications set out in the Order and any other specifications, standards, procedures and requirements agreed in writing between the parties from time to time;
5. comply with all Applicable Laws; and
6. not be the subject of any security interest, lien, encumbrance, charge or adverse title.
	1. The Oxford City Council may reject any Goods which do not comply with Clause 50.7.
	2. The Oxford City Council shall not be deemed to have accepted the Goods (in whole or in part) until the Oxford City Council has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Any inspection or testing of the Goods by the Oxford City Council shall not prejudice the Oxford City Council’s right to reject defective Goods at a later date and make a claim in respect of them.

# TITLE AND RISK

51.1 Risk in the Goods shall pass to the Oxford City Council once they are delivered to the Oxford City Council. Title in the Goods shall pass to the Oxford City Council on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Oxford City Council once payment has been made and received by Supplier.

51.2 The Supplier shall at its own cost collect any Goods rejected under Clause 50 or Clause 34. Risk and title in the rejected Goods shall pass back to Supplier at the point at which the Goods are collected or, if earlier, ten days from the date on which the Oxford City Council notifies the Supplier of the rejection.

51.3 Should the Goods have already been paid for by the Oxford City Council at the time they are rejected title in the rejected Goods shall pass back to the Supplier when the Oxford City Council has received a refund of all payment made to the Supplier for the rejected Goods.

# INSTALLATION AND COMMISSIONING

52.1 If required in the Order, the Supplier will install and commission the Goods at no additional cost unless such cost is stated in the Order, by the date in the Order and such installation and commissioning will be regarded as Services.

52.2 Without prejudice to Clause 5.9, the Oxford City Council will receipt the Order when it is satisfied the successful installation and commissioning of the Goods has taken place and when the Supplier has provided the Oxford City Council all documents needed to operate and maintain the Goods.

52.3 If Goods are not installed by the Supplier, the Supplier will (on or before delivery) provide the Oxford City Council with all documents needed to install, operate and maintain the Goods.

52.4 Where reasonably practicable (or required in an Order) the Supplier will on the later of delivery of the Goods or technical handover transfer any manufacturer's warranty in relation to the Goods to the Oxford City Council.

# Governing Law & Jurisdiction

## The Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of England and Wales.

## The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in relation to all matters arising out of or in connection with this Agreement.

**SCHEDULE 1: SERVICES & SERVICE LEVELS**

# Background

# \*\*\**This is an opportunity for you to give the Supplier background information which he needs but does not have.*\*\*\*

# Aim

# The Supplier shall use all reasonable endeavours to achieve the following aims:

# \*\*\**aim one*\*\*\*

# \*\*\**aim two - etc.*\*\*\*

#  \*\*\**This is an opportunity for you to state the specific aims of the Agreement.*\*\*\*

# Objectives

# The Supplier shall use all reasonable endeavours to achieve the following objectives:

# \*\*\**objective one*\*\*\*

# \*\*\**objective two - etc.*\*\*\*

# \*\*\**This is an opportunity for you to state specific objectives of the Agreement, which will not appear as tasks below.*\*\*\*

# Methodology

# The Supplier shall perform the tasks detailed in the Schedule of Work.

#  SCHEDULE OF WORK

|  |  |  |
| --- | --- | --- |
| Task | Output | Date Required |
|  |  |  |
|  |  |  |
|  |  |  |

Schedule 1 Part 2 – Supplier Documents and Proposal

Supplier proposals in response to tender opportunity and specification to be inserted here.

**SCHEDULE 2: Pricing Schedule – Charges and Payments**

1. Charges based on a fixed price

|  |  |
| --- | --- |
| **Service** | **Monthly cost (£)** |
| [INSERT RELEVANT PART OF SERVICES] | [INSERT FIGURE TO BE CHARGED TO COUNCIL] |
| [INSERT RELEVANT PART OF SERVICES] | [INSERT FIGURE TO BE CHARGED TO COUNCIL] |
| [INSERT RELEVANT PART OF SERVICES] | [INSERT FIGURE TO BE CHARGED TO COUNCIL] |
| **TOTAL** | [INSERT FIGURE TO BE CHARGED TO COUNCIL] |

1. Charges based on hourly rates

|  |  |
| --- | --- |
| **Hours of service in invoice period** | **Hourly rate (£)** |
| [Up to 100] | [INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL] |
| [101-200] | [INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL] |
| [201-300] | [INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL] |

1. Payment triggered by meeting milestones

|  |  |  |  |
| --- | --- | --- | --- |
| **Workstream** | **Milestone** | **Date completion expected** | **Charge payable on completion (£)** |
| [INSERT] | [INSERT DETAILS] | [INSERT DATE] | [INSERT FIGURE] |
| [INSERT] | [INSERT DETAILS] | [INSERT DATE] | [INSERT FIGURE] |
| [INSERT] | [INSERT DETAILS] | [INSERT DATE] | [INSERT FIGURE] |

1. Menu pricing

|  |  |
| --- | --- |
| **Type of Fixed Cost** | **Charges (£)** |
| [INSERT TYPE OF SERVICE TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |

1. Payment Plan

[INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE SERVICE PROVIDER AND WHEN THEY WILL BE DUE FOR PAYMENT]

1. Termination Payment Default

In the event that at any time undisputed Charges of £[AMOUNT] have been overdue for payment for a period of [60] days or more, the Council will have committed a Termination Payment Default.

**SCHEDULE 3: CHANGE CONTROL PROCEDURE**

**1. General Principles**

1.1 Where Oxford City Council or the Service Provider sees a need to implement a Change, Oxford City Council may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with this Change Control Procedure.

1.2 Until such time as a Change is made in accordance with this Change Control Procedure, Oxford City Council 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 Oxford City Council 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, the Service Provider Parties and the Service Provider's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Change Control Procedure, shall be undertaken entirely at the expense and liability of the Service Provider.

**2. Procedure**

2.1 Discussion between Oxford City Council and the Service Provider concerning a Change shall result in any one of the following:

(a) no further action being taken; or

(b) a request to change this Agreement by Oxford City Council; or

(c) a recommendation to change this Agreement by the Service Provider.

2.2 Where a written request for an amendment is received from Oxford City Council, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to Oxford City Council within 2 (two) weeks of the date of the request.

2.3 A recommendation to amend this Agreement by the Service Provider shall be submitted directly to Oxford City Council in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. Oxford City Council shall give its response to the Change Control Note within 2 (two) weeks.

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 Charges; (iv) the documentation to be provided; (v) the training to be provided; (vi) working arrangements; and (vii) any other contractual issues;

(i) the date of expiry of validity of the Change Control Note; and

(j) provision for signature by Oxford City Council and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider, Oxford City Council 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 two copies of the Change Control Note to be signed by or on behalf of Oxford City Council and return one of the copies to the Service Provider; or

(iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this Agreement.

**1. Change Control Note**

|  |
| --- |
| **Change Control Note** |
| **Agreement No:** |  |
| **Change Control Note No:** | **Date:** |
| **Raised by [                     ]:** |
| **Title of Change:** |
| **Reason for Change Control Note:** |
| **Outline Description of Change:** |
| **Implementation Timetable:** |
| **Acceptance Criteria (if applicable):** |
| **Signed** |

**2. Change Control Note Evaluation Response**

|  |
| --- |
| **Change Control Note** |
| **Agreement No:** |  |
| **Change Control Note No:** | **Date:** |
| **Raised by [                     ]:** |
| **Title of Change:** |
| **Evaluation Response to Request:** |
| **Implementation Timetable:** |
| **Proposed Fee relating to the Change:** |
| **Signed** |

**3. Contract Amendment**

**AMENDMENT NUMBER [                ]**

**to the Agreement dated [ ] between Oxford City Council and [*the Supplier*] (**the **“Original Agreement”)**

This **AMENDMENT** is made the [ ] day of [ ]

**BETWEEN**

(1) **Oxford City Council** and

(2) **[*Supplier*]** whose registered office is at [●]

**INTRODUCTION**

1. The Council entered into an agreement with the Supplier on [**date of original agreement**] for the provision of Goods and/or Services relating to [**description of original agreement**] (the “Agreement”).
2. The parties now wish to amend the Agreement as set out in this Amendment (the “Amendment”).

IT IS AGREED as follows

1. Words, phrases and expressions defined in the Agreement have the same meaning in this Amendment. In this Amendment, references to clauses are references to the clauses of the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Amendment then the terms of this Amendment shall prevail.

2. With effect from **[insert date]** the Original Agreement shall be amended as follows

 **INSERT DETAIL OF CHANGES**

3. Save as otherwise provided in this Amendment the terms of the Agreement shall remain in full force and effect.

4. Any disputes arising under or in connection with this Amendment shall be settled in the manner specified in the Agreement.

5. This Amendment is governed by English law and is subject to the exclusive jurisdiction of the English Courts.

**SIGNED** on behalf of the parties.

Signed for and on behalf of [ ]

|  |  |
| --- | --- |
| Full name (capitals):Position:Date:FOR AND ON BEHALF OF**Oxford City Council** | …………………………………………………………………………………………………………………………………………………… |
| Full name (capitals):Position:Date:FOR AND ON BEHALF OF**[INSERT COMPANY NAME]** | …………………………………………………………………………………………………………………………………………………… |

**SCHEDULE 4: EXIT MANAGEMENT PLAN (if applicable)**

1. **Termination Assistance**
	1. The Service Provider shall:
		1. ensure that transition of responsibility for the Services to the Service Receiver and/or a [New Provider], as the case may be, does not have any detrimental effect on the Services;
		2. within 5 (five) Business Days following receipt of a request from the Service Receiver and/or the [New Provider], provide all information reasonably requested by the same and relating to the Services;
		3. co-operate fully with the Service Receiver including, without limitation, permitting access upon reasonable notice to the Service Provider personnel in order to prepare for the transfer of the responsibility for the Services concerned to the Service Receiver or the [New Provider] (as the case may be); and
		4. promptly return to the Service Receiver all the [Service Receiver Materials], and Confidential Information belonging to the Service Receiver in its possession or under its control (including, without limitation, all of the images of scanned documents the subject of the Services (in an industry standard format or such other format agreed between the parties at the relevant time such agreement not to be unreasonably withheld, delayed or made subject to unreasonable conditions)
		5. the Service Receiver shall promptly return to the Service Provider all documents and other tangible items owned by the Service Provider and in the Service Receiver's possession or under its control.
2. **Support**
	1. The Service Receiver may require the Service Provider to co-operate fully and to provide all such support and assistance to it (or any third party that it shall nominate) as it may reasonably require for the transfer of the provision of the Services from the Service Provider to the Service Receiver and/or the [New Provider]. Such support and assistance shall include, without limitation, during the Termination Assistance Period:
		1. the services of such [Service Provider Personnel] as the Service Receiver shall reasonably request;
		2. the provision of services from any equipment, computer system or tangible property (including the Service Provider Systems) which is owned by the Service Provider or leased or otherwise available to the Service Provider and used in connection with the provision of any of the Services at the date of termination of such Services; and
		3. the provision of data and information relating to the Services, or the provision thereof.
	2. During the Termination Assistance Period the Service Provider shall give any person the Service Receiver proposes to appoint as a [New Provider] reasonable access to:
		1. such information relating to the Services as remains in the possession or control of the Service Provider; and

b) such members as have been involved in the design, development and provision of the Services.

**SCHEDULE 5: DISPUTE RESOLUTION PROCEDURE**

### In the event of a Dispute, either party may call a meeting of the parties by service of not less than five (5) days written notice. The Contract Manager and the Service Provider’s Representative shall attend such meeting together with any Key Personnel requested to attend by Oxford City Council (if any).

### The parties shall attempt to resolve the Dispute in good faith. If the Dispute referred is not resolved at the meeting referred to paragraph (a) above, either party, by notice in writing to the other, may refer the Dispute to the senior officers of both parties appointed by each party and notified to the other party from time to time (the “**Senior Officers**”).

### The Senior Officers shall co-operate in good faith to resolve the Dispute as amicably as possible within fourteen (14) days of service of the written notice referred to in paragraph (b) above. If the Senior Officers 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 7 (seven) days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

### The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

### 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 21 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).

### If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the Senior Officers of each of the parties, shall remain binding on the parties.

### 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.

Appendix [1]: Schedule of Processing, Personal Data and Data Subjects

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

**Processing, Personal Data and Data Subjects**

1. The contact details of the Controller’s Data Protection Officer are: **[insert officer]@oxford.gov.uk**
2. The contact details of the Processor’s Data Protection Officer are: **[Insert** Contact details]
3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

[Where instructions given in Specification or agreed instructions included as part of the bid, they either need to be pulled across to this Schedule or cross referenced.]

|  |  |
| --- | --- |
| **Description**  | **Details**  |
| Identity of the Controller and Processor  | *[Complete for all Contracts]*  The Parties acknowledge that for the purposes of the Data Protection Legislation, Oxford City Council is the Controller and the Contractor is the Processor.  [***Guidance:****You may need to vary this section where the Customer and Contractor have a different relationship.*  *For example where the Parties are Joint Controller of some or all of the Personal Data:*   *“the Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:* ***[Insert****the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]*  *In respect of Personal Data under Joint Control, the Parties agree to put in place a Joint Controller Agreement instead”*  *For example where each party is a separate Data Controller of some or all of the Personal Data*  *“the Parties acknowledge that that are each Data Controllers for the purpose of the Data Protection Legislation”* *[Insert the scope of Personal Data to be shared  where the Agreement involves sharing Personal Data]*  *Where Oxford City Council is sharing data with a Contractor as a separate Data Controller:*  *“ the Parties agree to enter into a data sharing agreement in respect of the shared Personal Data”*  |
| Subject matter of the processing  | *[Only complete where Contractor is a Data Processor]*   *[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.*  *Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]*   |
| Duration of the processing  | *[Only complete where Contractor is a Data Processor]*  *[Clearly set out the duration of the processing including dates]*  |
| Nature and purposes of the processing  | *[Only complete where Contractor is a Data Processor]*  *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]*   |
| Type of Personal Data being Processed  | *[Only complete where Contractor is a Data Processor]*  *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]*  |
| Categories of Data Subject  | *[Only complete where Contractor is a Data Processor]*  *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular* *website etc]*  |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data  | *[Only complete where Contractor is a Data Processor]*  *[Describe how long the data will be retained for, how it be returned or destroyed]*  |