

(1)

Huntingdonshire District Council

- and -

(2)

[insert Contractor's name]

Contract for [INSERT description] Services

This Contract is dated the [insert]

Between

1.1. **Huntingdonshire District Council**, Pathfinder House, St Marys Street, Huntingdon, PE29
("Council"); and

(1) **INSERT** (Company No. [INSERT]) whose address for all purposes of the Contract (including Services of documents and proceedings) is [INSERT address] ("**Contractor**");

together the "**Parties**"

2. The Contract

2.1. The **Contract** is the contract between the Parties for the provision of the Services by the Contractor to the Council and incorporates the following documents. The order of precedence shall be as follows:

1.1.1 these Terms and Conditions, including Appendices I, II, III and IV; then

1.1.2 the Schedules to these Terms and Conditions; then

1.1.3 the Specification and any Purchase Orders issued by the Council; and then

1.1.4 the Contractor's Tender (provided that its' terms do not conflict with any of the above terms in 1.1.1, 1.1.2 and 1.1.3) collectively (the "**Contract**").

1.2 The **Specification** is the description of the Council's requirements for the Services. The Specification is appended at Schedule 1.

1.3 The **Contractor's Tender** is the Contractor's offer to provide the Services in accordance with the Specification and appended at Schedule 2.

1.4 This Contract prevails against any other terms including those of the Contractor.

1.5 This Contract has been entered into on the date stated at the beginning of it (the "Start Date").

1.6 By entering into this Contract:

1.6.1 the Contractor confirms and represents that the Contractor's Tender is accurate and includes everything necessary for the Contractor to meet its obligations under the Contract; and,

1.6.2 the Council accepts the Contractor's Tender in reliance upon the Contractor's Tender.

1.7 The Contract is the sole and entire agreement between the Parties for the provision of the Services and supersedes all negotiations, submissions, representations and/or undertakings in respect of the Services that took place before it was signed.

1.8 These terms and conditions of Contract take precedence over the Specification and the Specification takes precedence over the Contractor's Tender in accordance with clause 1.1 above.

3. Definitions

2.1 In this Contract the following words and phrases have the meanings given in this clause:

Council's Manager	means the Contract Manager authorised by the Council to manage the Contract on its behalf at a day-to-day operational level;
Confidential Information	means any information which has been designated as confidential by either Party in writing or ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data within the meaning of the DPA and DPL;
Contractor's Manager	means the Contract Manager appointed by the Contractor to manage the Services on its behalf;
Disclosure and Barring Service	means the body of that name or any organisation with the same function, whatever its name, by which it may be replaced;
DPA	means Data Protection Act 2018;
DPL	means all applicable data protection legislation in force from time to time in the UK including the UK General Data Protection Regulation, the Data protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including without limitation, the privacy of electronic communications);
EIR	means the Environmental Information Regulations 2004;
ELI	means Employee Liability Information as defined in TUPE;
End Date	means the date on which the Contract will end which is the [INSERT DATE] and in accordance with clause 3, or as changed if the Contract is extended;
FOIA	means the Freedom of Information Act 2000;

Force Majeure Event	means: a) war, civil war, armed conflict or terrorism; b) nuclear, radioactive, sonic damage, chemical or biological explosion or contamination unless this is the result of an action by the Contractor; or, c) fire, explosion, storm, riot, pandemic, epidemic, civil commotion, tempest, flood, volcanic eruption or earthquake which directly causes a Party to be unable to meet all or a material part of its obligations under this Contract;
Goods	means any item or product or materials supplied with the Services;
Intellectual Property Rights	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, Services marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
Law	means any UK law, sub-ordinate legislation within the meaning of Section 21(1) Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, (or subsequent legislation) regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or directives or requirements with which the Contractor is bound to comply either at the Start Date or subsequently in force;
Living Wage	means the real living wage as defined by the Living Wage Foundation and any incremental increases applied during the Term of the Contract;
Month	means a calendar month;
Normal Working Hours	means between 09:00 to 17:30 on all Working Days;

Parties	means the Council and the Contractor;
Performance Indicator	means any measure of the Contractor's performance of the Services that may affect payment which are set out in the Specification or Contractor's Tender;
Personnel	means the employees, agency personnel or sub-contractors of an organisation;
Prohibited Act	means: (i) defrauding, attempting to defraud or conspiring to defraud the Council; (ii) directly or indirectly offering, promising or giving a an advantage of any kind to an elected member of the Council or Council Personnel to induce that person to improperly perform a function or activity or rewarding that person for improper performance of a function or activity; (iii) directly or indirectly requesting, agreeing to receive or accepting an advantage of any kind for improper performance of a function or activity in connection with the Contract; (iv) committing an offence under the Bribery Act 2010; (v) committing any offence under section 117(2) of the Local Government Act 1972; or, (vi) committing an offence of fraud;
Price	means the sums payable by the Council to the Contractor for the Services as set out in the Contractor's Tender or as otherwise varied in accordance with the Contract;
Purchase Order	means any order for Services raised by the Council and placed with the Contractor pursuant to the Contract;
Regulatory Body	means any of those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, are legally entitled to regulate the matters dealt with in the Contract or any other affairs of the Council;
Request for Information	means a request or information made under the FOIA and/or the EIR;

Services	means the Services set out in the Specification and includes any ancillary Goods and other Services that are provided by the Contractor;
Service Transfer	means the transfer of the Services under the Contract to another Contractor or the Council following termination;
Specification	means the description of the Council's requirements for the Services and includes the details set out in the Council's Specification document and Request for Quotation document/ Invitation to Tender;
Start Date	means the date on which the Contract began as set out above at the beginning of these terms;
Term	means the length of this Contract which is from the Start Date to the End Date, unless extended and as set out in clause 3 below;
TUPE	means Transfer of Undertakings (Protection of Employment) Regulation 2006;
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for general business in England and Wales.

2.2 The interpretation and construction of these terms and conditions will be subject to the following provisions:

- 2.2.1 words meaning the singular include where the context allows the plural and vice versa and masculine words include the feminine and the neuter;
- 2.2.2 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 2.2.3 reference to any statute, enactment, order, regulation or other similar instrument will 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 along with any subsidiary statutory provisions made from time to time together with any guidance or codes of practice issued by a regulatory body or relevant government department in relation to the regulations or legislation;
- 2.2.4 reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 2.2.5 the words "include", "includes" and "including" are to be read as if they were immediately followed by the words "without limitation"; and

- 2.2.6 headings are included for ease of reference only and will not affect the interpretation or construction of these terms and conditions of contract.

4. Term

- 3.1 The Contract begins on the Start Date and ends on the End Date unless it is terminated as laid out elsewhere in this Contract or in another lawful way.
- 3.2 In the case of a Contract for Services to be supplied on a defined number of occasions, the Term of the Contract ends upon the final performance of the Services and the Council shall not be under any obligation to continue to engage any further Services.
- 3.3 In the case of continuing Services the Council may extend the Contract for any further periods including as indicated in the Specification if it gives the Contractor at least one (1) month's written notice prior to the End Date.

5. Provision and Quality of Services

- 5.1. The Contractor will provide the Services:
- 4.1.1. to the standards laid out in the Specification and any relevant Purchase Order and in accordance with the Contractor's Tender;
 - 4.1.2. to all applicable standards and codes of practice or conduct of any appropriate professional bodies, trade associations or regulators; and,
 - 4.1.3. with all due skill, care and diligence to be expected of a competent contractor experienced in providing services of the type, size and scope of the Services.
- 4.2. The Contractor will comply with these terms and conditions of Contract and with all the requirements and provisions of the Specification when providing the Services.
- 4.3. This is not an exclusive contract and the Council is entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.
- 4.4. The Council does not promise or guarantee the total quantity or value of the Services and the Contractor agrees that it has not entered into the Contract on the basis of any such promise or guarantee.
- 4.5. The quantity or value of the Services or of the Contract in any year does not give any right to a particular quantity or value of the Services or of the Contract in any subsequent year.
- 4.6. The Contractor will provide all premises, facilities, equipment, materials, personnel and anything else required for the proper performance of the Contract at its own cost.
- 4.7. The Contractor will be responsible for the activities of its Personnel engaged in the provision of the Services.

- 4.8. The Contractor will engage sufficient competent, qualified and experienced Personnel to ensure that the Services are provided at all times and in all respects in accordance with this Contract.
- 4.9. The Contractor will ensure that its Personnel engaged in the provision of the Services will comply with all applicable laws, statutes, regulations and codes from time to time in force whether or not they are detailed in this Contract.
- 4.10. The Contractor warrants that the Intellectual Property in any Goods supplied with the Services or associated with the Services does not infringe the rights of any third party.
- 4.11. The Contractor shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Council may suffer or incur as a result of, or in connection with, the Intellectual Property.

6. Contract Management

- 6.1. The Council will appoint a Council's Manager and the Contractor will appoint a competent, qualified and experienced person to act as a Contractor's Manager and the Parties will inform the other immediately of any change in appointment.
- 6.2. The Contractor's Manager will be authorised to act on behalf of the Contractor for all purposes connected with the Contract and any statement or direction given to the Contractor's Manager will be deemed to have been given to the Contractor.
- 6.3. If the Contractor requires an explanation or clarification of part of the Contract Requirements it will contact the Council's Manager and will accept and comply with the Council's Manager's explanation or direction.
- 6.4. From time to time the Council's Manager may appoint one or more other persons to act as their deputy and will notify the Contractor of any appointments.
- 6.5. The Contractor's Manager must be available during Normal Working Hours; if the Contractor's Manager is unavailable because of holiday, sickness or statutory daily breaks, they must nominate a deputy to perform their duties.
- 6.6. The Council's Manager, acting reasonably, may because of the nature of the Services or the locations at which it is to be provided or by virtue of the behaviour of any of the Contractor's Personnel, require the Contractor to remove certain Personnel from the provision of the Services by giving the Contractor's Manager written notice to that effect, stating the reasons.
- 6.7. The Contractor will remove the Personnel referred to in 5.6 immediately and will, as soon as practicable, provide replacement Personnel of appropriate skills and experience.
- 6.8. For the avoidance of doubt, removal of any Contractor's Personnel from the provision of the Services does not mean dismissal from the employment or cessation of Services for the Contractor and the Council will not be liable either to the Contractor or to any of its Personnel in respect of any liability, loss or damage as a result of that removal.

- 6.9. The Contractor's Manager and Council's Manager will meet, as laid out in the Specification, or as otherwise agreed from time to time by the Parties, in order to monitor the Contractor's performance under the Contract.

7. Price

- 7.1. The Price will be the maximum or total price to be paid and is calculated as laid out in the Contractor's Tender.
- 7.2. The Price will remain unchanged during the Term of the Contract unless it is varied under clause 24.
- 7.3. If the Parties agree to alter the Specification, duration or Price as described in clause 24, the altered Specification, duration or Price will be confirmed in writing by the Council.

8. Payment

- 8.1. The Contractor will submit invoices to the Council as follows [INSERT DETAILS] and this clause.
- 8.2. All invoices must contain:
- 8.2.1. the correct Council Purchase Order number;
 - 8.2.2. all appropriate references;
 - 8.2.3. a detailed breakdown of the Services supplied;
 - 8.2.4. any other documentation stipulated in the Specification; and,
 - 8.2.5. any other documentation that is reasonably required by the Council to substantiate the invoice.
- 8.3. The Contractor will add VAT to the Price at the prevailing rate as applicable.
- 8.4. The Council will pay each agreed, correct and valid invoice within thirty (30) days of receipt together with a sum equal to the VAT chargeable on the amount payable.
- 8.5. If the Council does not pay an undisputed amount by the due date then the Council will pay the Contractor interest at the Statutory Interest rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.6. If the Parties have a dispute about an invoice:
- 8.6.1. the Council will pay any undisputed part of the invoice;
 - 8.6.2. the Contractor will continue to supply the Services; a dispute about an invoice does not allow it to suspend or terminate the supply of the Services; and,
 - 8.6.3. the Parties will resolve the dispute using the dispute resolution procedure laid out in clause 22.

- 8.7. The Contractor will indemnify the Council on a continuing basis against any liability, losses and including any interest, penalties or costs, which the Council is required to pay at any time in respect of the Contractor's failure to account for or to pay any VAT connected to payments made to the Contractor under the Contract; the Contractor will pay any amounts due under this clause to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.
- 8.8. If the Contractor owes money to the Council then the Council may deduct (set-off) that money from any sum owed by the Council to the Contractor, whether owed for a reason connected with this Contract or not, without the Contractor needing to agree. The Contractor cannot make any claim against the Council in order to withhold payment and/or set-off of any such amount in whole or in part.

9. Intellectual Property

- 9.1. The Contractor assigns to the Council all existing and future IPR in any Goods, products of the Services and all materials embodying these rights to the fullest extent permitted by law. If for any reason they do not transfer, the Contractor will hold legal title in these rights on trust for the Council and will transfer them to the Council promptly and at their own expense.
- 9.2. The Contractor warrants that the IPR in the products of the Services does not infringe the rights of any third party.
- 9.3. The Contractor shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Council may suffer or incur as a result of, or in connection with, the Intellectual Property.

10. Bribery and Corruption

- 10.1. The Contractor:
- 10.1.1. will not ask for or accept any gratuity, tip or any other form of money-taking or reward in connection with the Contract other than the Price;
 - 10.1.2. will not commit a Prohibited Act; and
 - 10.1.3. warrants that it is not aware of any financial or other advantage being given or any agreement reached with any elected member of the Council or the Council's Personnel in connection with the execution of the Contract.
- 10.2. The Contractor will:
- 10.2.1. ensure that neither the Contractor nor its Personnel are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual or potential conflict between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract; and,
 - 10.2.2. disclose to the Council full particulars of any such conflict of interest which arises.

- 10.3. If the Contractor breaches any part of Clause 9.1 and/ or 9.2 the Council may:
- 10.3.1. take such steps it considers necessary to prevent, stop or remedy any breach; and,
 - 10.3.2. terminate the Contract immediately;
 - 10.3.3. the actions of the Council under this clause will not prejudice or affect any rights of action or remedy which the Council may have.

11. Compliance with Laws and Policies

- 11.1. The Contractor will at all times comply:
- 11.1.1. with all applicable laws, statutes, regulations and codes from time to time in force; and,
 - 11.1.2. the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended) and all other statutory provisions relating to health and safety.
- 11.2. The Contractor will ensure it complies with the requirements of the Equality Act 2010 and in particular will:
- 11.2.1. use its best endeavours to eliminate all conduct prohibited by the Act and will seek to promote equality among its Personnel and generally;
 - 11.2.2. set out its equal opportunities policy to those concerned with recruitment, training or promotion, in documents available to its Personnel and recognised trade unions or other representative groups of its Personnel and in its advertisements and literature.
- 11.3. The Contractor will:
- 11.3.1. pay at least the Living Wage to all Personnel who work on Huntingdonshire District Council premises, or land maintained by Huntingdonshire District Council for two hours or more on any day of the week for eight or more consecutive weeks;
 - 11.3.2. ensure that its sub-contractors pay the Living Wage;
 - 11.3.3. promptly provide evidence of its compliance with this clause 10.3 on written request by the Council's Manager.
- 11.4. The Contractor will comply with all applicable anti-slavery and human trafficking laws, statutes and regulations including the Modern Slavery Act 2015.

12. Data Protection and Freedom of Information

- 12.1. Both Parties will fulfil their obligations under the DPA and DPL connected with the Contract and will comply with the terms contained in Appendix I.

- 12.2. The Contractor will assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations under the FOIA and the EIR and shall comply with the terms contained in Appendix II.
- 12.3. This clause 11 will continue to apply indefinitely after the Contract ends.

13. Safeguarding

- 13.1. The Contractor will ensure that where its Personnel work directly with, or have access to children or vulnerable adults, they will comply with the conditions laid out in Appendix III.

14. Access

- 14.1. The Contractor will allow the Council and its auditors access at all reasonable times and on reasonable notice to all premises of the Contractor:
 - 14.1.1. to inspect work being done as part of the provision of Services under this Contract;
 - 14.1.2. to all records and information relating to the Contract;
 - 14.1.3. to any of the Contractor's Personnel; and,
 - 14.1.4. to all resources and systems used by the Contractor in connection with the Contract.
- 14.2. For a period of six (6) years, or such other period as the Parties may agree, following the expiry or termination of the Contract, the Contractor will allow the Council and its auditors reasonable access from time to time as may be reasonably required for the purposes of examining records and information relating to the Contract.
- 14.3. The Council will allow the Contractor to have such access as is reasonable in the circumstances to the Council's premises, officers, members or information for the purpose of providing the Services only to the extent it is necessary to deliver the Services.

15. Management Information and Audit

- 15.1. The Contractor will provide the Council with:
 - 15.1.1. the reports and information as set out in the Specification; and,
 - 15.1.2. such other information as the Council may reasonably require from time to time or as a consequence of the Contract ending; and
 - 15.1.3. agrees that the costs of so doing are included in the Price.
- 15.2. The Contractor will co-operate fully with any enquiry or investigation made by the Council's internal or external auditors or any other quality or performance inspectors that in any way concerns the Contract or the Services.

- 15.3. The Council may use information given by the Contractor under the Contract to prevent and detect fraud and money-laundering and may share such information with other organisations that handle public funds for the same purpose.

16. Insurance

- 16.1. The Contractor shall maintain adequate insurance levels, and as a minimum [INSERT DETAILS] throughout the Term of the Contract and commensurate with the level of risk associated with the Services.
- 16.2. On each policy renewal date, the Contractor will provide the Council with written evidence that it has complied with this condition.

17. Confidentiality

- 17.1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party will:
- 17.1.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 17.2. Clause 16.1 will not apply to the extent that:
- 17.2.1. such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA and/or EIR;
 - 17.2.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 17.2.3. such information was obtained from a third party without obligation of confidentiality;
 - 17.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 17.2.5. it is independently developed without access to the other Party's Confidential Information.
- 17.3. The Contractor may only disclose the Council's Confidential Information to:
- 17.3.1. the Personnel who are directly involved in the provision of the Services and who need to know the information and
 - 17.3.2. will ensure that such Personnel are aware of and will comply with these obligations as to confidentiality.

- 17.4. The Contractor will not, and will procure that the Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of the Contract.
- 17.5. In discharging its obligations under this clause 16, the Contractor will observe all further or particularised requirements in respect of confidentiality as may be set out in the Specification and/ or any relevant Purchase Order.

18. Liability

- 18.1. The Contractor acknowledges that it is liable for any loss and damage suffered by the Council and its service users or others arising out of the Services in the Contract.
- 18.2. As a separate and independent obligation, the Contractor will indemnify and keep indemnified the Council against all liabilities, actions, damages, damage or injury to a person (whether fatal or otherwise) costs, losses, claims, expenses, demands, amounts payable to another Contractor and proceedings whatsoever in connection with the Goods and Services. This indemnity includes the failure to provide the Services, the installation of any Goods, the Intellectual Property of the Services and any Goods or products supplied, the quality and provision of the Goods, and any of the Contractor's obligations under the Contract including its obligations under all of the applicable laws and policies that apply to the Contract. This indemnity applies to any act or omission of the Contractor or any of the Contractor's sub-contractors.
- 18.3. The Contractor will not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

19. Status and Publicity

- 19.1. At all times during the term of the Contract, the Contractor will be an independent contractor and nothing in the Contract will create a contract of employment, a relationship of agency, a partnership or a joint venture between the Parties.
- 19.2. A Party is not authorised to act in the name of, or on behalf of, or otherwise bind the other Party unless it is authorised to do so under the terms of the Contract.
- 19.3. The Contractor will not communicate by any means with the press or broadcasting media about any matters connected with the Contract, except with the prior consent of the Council's Manager.
- 19.4. The Contractor will not advertise its provision of the Services to the Council or use the Council's corporate logo, coat of arms or name without the prior written consent of the Council's Manager.

20. Business Continuity

- 20.1. The Contractor will have business continuity arrangements in place so that in the event of a failure of or disruption of the Services the Contractor will:
 - 20.1.1. ensure that the Council can continue to provide its functions;
 - 20.1.2. prevent loss of data;
 - 20.1.3. prevent or as far as possible minimise any impact on any service levels set out in the Contract; and
 - 20.1.4. ensure that normal provision of the Services begins as soon as possible.
- 20.2. The Contractor must continue to meet its obligations under the Contract and the Price will not be increased where any failure or disruption of the Services occurs because of any breach of Contract by the Contractor.

21. Termination

- 21.1. The Council may without liability terminate the Contract for any reason by giving the Contractor not less than one (1) Months' notice in writing.
- 21.2. If the Contractor materially breaches any of the terms of the Contract, the Council may give the Contractor five (5) Working Days' notice to remedy the breach. If the breach is not remedied within those five (5) days or in the opinion of the Council is not capable of remedy the Council may end the Contract by giving the Contractor five (5) Working Days' notice in writing.
- 21.3. Within six (6) months before the date of termination, the Contractor shall undertake any handover obligations reasonably imposed by the Council and shall use its best endeavours to facilitate the continuity of the Services by any subsequent contractor, including, where necessary, the extension of the date of termination.
- 21.4. Where the Council notifies or contacts the Contractor concerning its obligations under the Transfer of Undertakings (Protection of Employees) Regulations (TUPE), the Employment Exit Provisions in Appendix IV shall apply.
- 21.5. The Council may end this Contract immediately by giving the Contractor notice in writing if the Contractor:
 - 21.5.1. becomes bankrupt or insolvent, in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver, manager or administrative receiver,
 - 21.5.2. has a provisional liquidator appointed or has a winding-up order made;
 - 21.5.3. breaches Clause 10; or,
 - 21.5.4. repeatedly (more than three times) breaches (and remedies) the Contract which the Council, acting reasonably, considers sufficiently material to terminate the Contract including where breaches are of the same or different obligations, or if the breaches have not been cured.

22. Force Majeure

- 22.1. No Party will be considered in breach of its obligations under this Contract or be responsible for any delay in their performance if this is prevented or delayed as a direct or indirect consequence of a Force Majeure Event.
- 22.2. If a Party reasonably considers that its obligations are delayed or affected by a Force Majeure Event, then that Party will promptly notify the other Party in writing providing full details of the Force Majeure Event and how long they estimate the delay will be.
- 22.3. The Party affected must use all reasonable endeavours to continue with the performance of its obligations under the Contract during the Force Majeure Event.

23. Dispute Resolution

- 23.1. If there is a dispute connected with the Contract the Parties will negotiate a settlement to the dispute following the dispute resolution process laid out in this clause 22.
- 23.2. Firstly, the Council's Manager and the Contractor's Manager will undertake to resolve any dispute between them.
- 23.3. If the Council's Manager and the Contractor's Manager are unable to reach agreement within five (5) Working Days, the dispute will be referred to a Director of the Council and a person of equivalent status with the Contractor.
- 23.4. If the Council's Manager and the Contractor's Manager are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties agree to enter into mediation in good faith to settle the Dispute in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 23.5. No Party may commence any court proceedings in relation to the whole or part of the Dispute until 30 days after service of the Alternative Dispute Resolution (ADR) notice, provided that the right to issue interim or other urgent proceedings is not prejudiced by such delay.
- 23.6. If the Dispute is not resolved within thirty (30) days after service of the ADR notice, or either Party fails to participate or ceases to participate in the mediation before the end of that 30 day period, or the mediation terminates before the end of that 30 day period, the Dispute shall be resolved by the courts of England and Wales in accordance with clause 25.6 of this Contract.
- 23.7. Nothing in this dispute resolution procedure will prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

24. Assignment and Sub-contracting

- 24.1. The Council can assign the Contract to another public body.

- 24.2. The Contractor cannot transfer or assign the Contract, including to a purchaser of the Contractor's business without the written consent of the Council before doing so.
- 24.3. The Contractor cannot sub-contract any of its obligations under the Contract or use the Contract as security without obtaining the written consent of the Council before doing so.
- 24.4. The Contractor will be liable for any failure of a sub-contractor to perform the Services or for its failure to meet any of the Contractor's obligations under the Contract.
- 24.5. If a Contractor sub-contracts its obligations under the Contract, it will ensure that its contract with the sub-contractor shall:
 - 24.5.1. require payment to be made of all sums due from the Contractor to the sub-contractor within 30 days from the receipt of a valid invoice; and,
 - 24.5.2. require that the sub-contractor will have insurance at the same levels as the Contractor's insurance under this Contract.

25. Contract Changes

- 25.1. Either Party may propose a change to the Specification or these terms and conditions of contract which may include a change to the Price.
- 25.2. The Parties may negotiate the proposal and if they agree a change they will record the change in writing and this will be signed by an authorised representative of the Council and an authorised representative of the Contractor.
- 25.3. A Contract change will not take effect if a proposal is not agreed by an authorised representative of both Parties in writing.
- 25.4. Any extension to the Term of the Contract or another change to the information contained in the Specification will be recorded by the Council and confirmed in writing.

26. General

- 26.1. No third party shall have the right to enforce any term of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 26.2. Each Party acknowledges that it has not entered into this agreement in reliance wholly or partly on any representation or warranty made by or on behalf of the other Party (whether orally or in writing) other than as expressly set out in this Contract. Nothing shall prevent the Parties from bringing a claim in fraudulent misrepresentation.
- 26.3. If any provision of the Contract or if any court of competent jurisdiction declares any provision of the Contract to be invalid or unenforceable in any way, this will not affect the other provisions of the Contract which will remain in full effect.

- 26.4. Where any of the rights and obligations of the Parties in the Contract will or may be exercised after the end of the Contract, the Contract's Clauses conferring these rights and powers will survive and remain in full force and effect despite the Contract ending.
- 26.5. Any formal demand, notice or other communication required to be given under the Contract will be sufficiently served if sent by recorded delivery post (or equivalent), to the address of the Party to be served recorded in this Contract and, if so sent, will (subject to proof to the contrary) be deemed to have been received by the addressee (in the case of transmission by post) on the second working day after the date of posting or (in the case of electronic mail) on the first working day after confirmed transmission, as the case may be.
- 26.6. Where a Party signs this Contract by electronic signature (whatever form the electronic signature takes) this method of signature shall be conclusive of the Party's intention to be bound by this Contract as if signed by the Party by manuscript signature.
- 26.7. Transmission of an executed counterpart of this Contract by email shall take effect as the transmission of an executed wet-ink counterpart of this Contract.
- 26.8. This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 26.9. The Contract will be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.

Signed for and on behalf of Huntingdonshire District Council by:	Signature:..... Name (IN CAPITALS):..... Director for :.....
Signed for and on behalf of <i>[insert name]</i> by: Note : <i>The Contract must be signed personally by someone authorised to commit the Contractor to the Contract.</i> <i>This will usually be a director (if the Contractor is a company), a partner (if the Contractor is a partnership) or the sole owner of a firm.</i>	Signature : Name (IN CAPITALS):..... Designation :

Appendix I - Data Protection

In this Appendix the following definitions shall apply:

Data Protection Legislation: means all applicable data protection legislation in force from time to time in the UK including the UK General Data Protection Regulation, the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including without limitation, the privacy of electronic communications);

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

Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Contractor and or any sub-contractor engaged in the performance of its obligations under this Contract;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the DPL;

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

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

DPA: Data Protection Act 2018;

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

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

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

DATA PROTECTION

- 1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in schedule 1A below by the Council and may not be determined by the Contractor.

- 2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance, at the discretion of the Council, include:
 - (a) systematic description of the envisage processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures, and mechanisms to ensure the protection of Personal Data.
- 4 The Contractor shall, in relation to Personal Data processed in connection with its obligations under this Contract:
 - (a) process that Personal Data only in accordance with schedule 1A below unless the Contractor is to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular schedule 1A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the DPL by providing an adequate level of protection to any Personal Data that is transferred or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations; and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - (e) at the written direction of the Council, delete or return Personal Data and any copies of it to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 5 The Contractor shall notify the Council immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third party for disclosure of Personal data where compliance with such request is required or purported to be required by Law;
- or
- (f) becomes aware of a Data Loss Event.
- 6 The Contractor's obligation to notify under clause 5 shall include the provision of further information to the Council in phases as details become available.
- 7 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Parties obligations under the Data Protection Legislation and any complaint, communication or request made under clause 5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the information Commissioner's Office.
- 8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 10 The Contractor shall designate a data protection officer if required by Data Protection Legislation.
- 11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Appendix I such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 12 The Contractor shall remain fully liable for all such acts or omissions of any Sub-processor.
- 13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure it complies with any guidance issued by the Information Commissioner's Office.
- 15 The provisions of this Appendix I shall apply during the term of the Contract and indefinitely after its expiry.

Schedule 1A – Table of Processing Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such instructions shall be incorporated into this Schedule.
3. The Contractor's Data protection Officer's contact details: [INSERT]
The Council's Data protection Officer's contact details: [INSERT]

Description	Details
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	The nature and purposes of the processing by the Contractor is
Type of Personal Data	
Categories of Data Subject	
Plan for Return/ destruction	

Appendix II - Freedom of Information

1. The Contractor will, and will ensure that any sub-contractors will, transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information:
 - 1.1. provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within 5 (five) Working Days (or such other period as the Council may specify) of the Council's request; and
 - 1.2. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
2. The Contractor will transfer to the Council any requests for information under the FOIA or the EIR that it receives as soon as practicable.
3. The Council will be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
4. In no event will the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
5. The Contractor acknowledges that the Council may be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services in certain circumstances:
 - 5.1. without consulting the Contractor; or
 - 5.2. following consultation with the Contractor and having taken their views into account;provided always that where this applies the Council will take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
6. The Contractor will ensure that all information pertaining to the Contract is retained until six (6) years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council and will permit the Council or its auditors to inspect such records as requested from time to time.

Appendix III - Safeguarding

1. The Contractor will:
 - 1.1. ensure that where its Personnel work directly with or have access to children or vulnerable adults that they have a valid enhanced disclosure check through the Disclosure and Barring Service against both the adults' barred list and the children's barred list;
 - 1.2. ensure that no Personnel are permitted to work directly with children or vulnerable adults until they have had a disclosure check and its results have been notified to and evaluated by the Contractor; and,
 - 1.3. monitor the level and validity of these checks for each of the Personnel concerned.
2. Where a disclosure check for Personnel is invalid or deficient the Contractor will immediately:
 - 2.1. remove that Personnel from provision of any parts of the Service requiring direct working with children and vulnerable adults; and,
 - 2.2. advise the Council's Manager in writing of any such removal.
 - 2.3. The Contractor will at all times comply with the obligations of a Regulated Activity Provider under the Safeguarding and Vulnerable Groups Act 2006 when it meets the criteria to do so.

Appendix IV – Employment Exit Provisions

1. The Contractor agrees that within 20 Working Days of:
 - 1.1. receipt of a notification from the Council of an intended Service Transfer;
 - 1.2. receipt of the giving of notice of early termination; and/ or
 - 1.3. receipt of a written request of the Council at any time,it shall provide in a suitably anonymised format so as to comply with the data protection legal obligations, all staffing information as reasonably requested by the Council, including but not limited to anonymised ELI.
2. At least 20 Working Days prior to the Service Transfer Date, the Contractor shall provide details to the Council or to any replacement contractor and/or any replacement Sub-contractor:
 - 2.1. which of the Contractor Personnel are transferring; and
 - 2.2. staffing information in relation to all of the Contractor's staff including payroll and other financial information about them; and
 - 2.3. the ELI.
3. The Council shall be permitted to use and disclose information provided by the Contractor under paragraphs 1 and 2 for the purpose of informing any prospective replacement contractor and/or sub-contractor.
4. The Contractor warrants, for the benefit of the Council, any replacement Contractor, and any sub-contractor that all information provided pursuant to paragraphs 1 and 2 shall be true and accurate in all material respects at the time of providing the information.
5. The Contractor shall indemnify the Council against any liabilities, claims or losses arising from or as a result of:
 - 5.1. any act or omission of the Contractor or its sub-contractor in respect of any employee to be transferred or any appropriate employee representative, whether occurring before, on or after the Service Transfer date;
 - 5.2. the breach or non-observance by the Contractor or any sub-contractor occurring on or before the Service Transfer Date of any collective agreement applicable to the Service Transfer or any other custom or practice with a trade union or staff which the Contractor or its sub-contractor is contractually or legally bound to honour arising on or before the Service Transfer Date;
 - 5.3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;
 - 5.4. a failure by the Contractor to discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transfer;
 - 5.5. any inaccuracy in the ELI and/ or staffing information provided to the Council;

5.6. any failure by the Contractor to comply with its obligations to inform and consult its workforce and their representatives.

Schedule 1 - Specification

Schedule 2 - Contractor's Tender