**Dated 202**

**Cyngor Sir Ceredigion County Council**

**and**

**COMPANY NAME**

**CONTRACT FOR SERVICES**

In respect of

**XXXXXXXXXXXXXXXXXXXXX**

Legal Services

Cyngor Sir Ceredigion County Council

Penmorfa

Aberaeron

Sa46 Opa

Ref: **XXXXXX**

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**THIS CONTRACT** is made the of 201

**BETWEEN**:

**Cyngor Sir Ceredigion County Council** of Penmorfa, Aberaeron, SA46 0PA **(“the Council”)**; and

**COMPANY NAME** (Company Registration Number XXXXX**)** whose [registered office/principal place of business] is at **ADDRESS** (“**the Service Provider**”)

Together also referred to as “the Parties” or each separately as “Party”

# 1. PREAMBLE

1.1 The Council has engaged the Service Provider to provide certain services **(the “Services”)** and the Service Provider having sufficient skills and expertise, has agreed to accept such engagement or engagements as the Council may from time to time require it to perform on the terms and conditions hereinafter contained.

# 2. DEFINITIONS & INTERPRETATION

2.1 In this Contract the following words shall have the following meanings:-

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

“**Commencement Date**” means the **XX** day of **MONTH 201X**.

“**Charges**” means the Service Provider’s costs as set out at Schedule 3

“**Commercially Sensitive Information**” means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 5 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 5

“**Confidential Information**” means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how, of either Party and all ‘personal data’ and ‘sensitive personal data’ within the meaning of the Data Protection Legislation and Commercially Sensitive Information

“**Completion of the Services**” means the date on which the Contract Officer confirms in writing to the Service Provider that the Services are complete

“**Contract Documents**” means this Contract, the Special Conditions of Contract (as set out in Schedule 4), if any, the Specification (Schedule 1), the tender response (Schedule 2), the Charges (Schedule 3), the Official Order of the Council, any other documents provided by the Council and intended by it to form a part of the Contract Documents and the Tender Documentation together with all other appendices, plans, pricing material and other documentation issued by the Council with its invitation to tender

“**Contract Officer**” means [to be inserted] for the Council or such representative appointed by the Council to act in the name of the Council for the purposes of this Contract

**“Service Provider** **Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under this Agreement

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

“**Fees Regulations**” means the Freedom of Information and the Data Protection (Appropriate Limit and Fees) Regulations 2004

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

“**Force Majeure**” means any cause affecting the performance by a Party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider’s personnel or any other failure in the Service Provider’s supply chain

“**Information**” has the same meaning given under Section 84 of the Freedom of Information Act 2000 or Section 2 of the Environmental Information Regulations 2004 as relevant

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

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

**“Official Order”** means an order placed on behalf of the Council detailing the quantity, description and specification of the Services including all other information relating to the order

“**Performance Bond**” means a written guarantee from a third party guarantor submitted to the Council by the Service Provider

“**Project Materials**” means any and all works of authorship and materials developed, written or prepared by the Service Provider, its employees, agents or sub-contractors in relation to the Services including without limitation, all maps, plans photographs, drawings, tapes, statistical data, published and unpublished results and reports, whether stored electronically or otherwise on whatever media

“**Request for Information**” has the same meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term ‘request’ shall apply)

“**Services**” means all of the services to be provided by the Service Provider as described in this Contract and in particular the Specification together with any variations or additions thereto

“**Service Provider**” means the person, firm or organisation referred to above and those employees, permitted contractors and sub-contractors and agents of the Service Provider engaged from time to time in providing the Services and any employee of any such sub-contractors who are so engaged

“**Specification**” means the document attached in Schedule 1

“**Tender Documentation**” means all documents submitted by both the Council and the Service Provider during the tender process

“**Term**” means the period from the Commencement Date to **DATE 201X** (or until Completion of the Services)

“**VAT**” means value added tax

“**Working Day**” means a day other than a bank holiday, a Saturday or Sunday in England and Wales but shall exclude the period between 24 December to 1st January (inclusive). The term “Working Days” shall be similarly construed

**GDPR CLAUSE DEFINITIONS:**

**“Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy

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

**“Controller**, **Processor** , **Data Subject** , **Personal Data** , **Personal Data Breach** , **Data Protection Officer”** take the meaning given in the GDPR

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

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

**“DPA 2018”** means the Data Protection Act 2018

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

**“LED”** means Law Enforcement Directive *(Directive (EU) 2016/680)*

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

**“Sub-processor”** means any third Party appointed to process Personal Data on behalf of the Service Provider related to this Agreement

2.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

2.3 References to “Contract” shall mean this contract and include all schedules and appendices and all documents referred to herein. Unless specifically stated to the contrary, any reference to any clause, sub-clause, schedule or appendix shall be to a clause, sub-clause, schedule or appendix of this Contract.

2.3 References in this Contract to statutory provisions include all subsequent enactments, amendments and regulations relating to that provision and to any subordinate legislation or regulation made thereunder.

2.4 References to the singular include the plural and vice versa and references to one gender include the other gender. References to a person include any individual, firm, unincorporated association or body corporate. The headings in this Contract are for ease of reference only and shall not affect the construction or interpretation of this Contract.

2.5 Where the Service Provider is more than one person but not a limited company, those persons shall be jointly and severally liable under this Contract.

2.6 References to employees, personnel, staff and managers of the Service Provider shall include references to all persons engaged by the Service Provider in the performance of the Services and shall, (if the context so admits) include references to employees, personnel, staff and managers of any contractor or sub-contractor of the Service Provider.

2.7 Any obligation in this agreement on a person no to do something includes an obligation not to agree or allow that thing to be done.

2.8 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 Contract) at any time.

2.9 Where there is any conflict or inconsistency between the provisions of the contract such conflict or inconsistency shall be resolved according to the following order of priority:

(a) the clauses of this Contract;

(b) Schedule 1 to this Contract;

(c) the remaining schedules to this Contract other than Schedule 2

(d) Schedule 2 to this Contract.

**3. CONTRACT OFFICER**

3.1 The Council shall as soon as practicable give notice in writing to the Service Provider of the identity of or the replacement of the Contract Officer or if any person ceases to be the Contract Officer.

3.2 The Contract Officer shall have full power and authority to issue instructions and directions on any matter in connection with the proper and adequate performance of this Contract.

3.3 The Contract Officer shall, where appropriate, provide written confirmation of Completion of the Services to the Service Provider.

# 4. CONTRACT DOCUMENTS

4.1 The Service Provider shall be deemed to have satisfied itself as to the accuracy and sufficiency of the rates and prices stated by it which shall (except in so far as it is otherwise provided in this Contract) cover all its obligations hereunder and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its ability to comply with the provisions of this Contract.

4.2 The Service Provider shall not be excused from any liability under this Contract as a consequence of any misinterpretation by the Service Provider of any matter or fact relating to the Contract Documents and in particular, the Specification (Schedule 1).

4.3 Except as otherwise expressly provided, the several documents comprising this Contract are to be taken as mutually explanatory of one another and in case of ambiguities or discrepancies, the same shall be explained and adjusted by the Contract Officer who shall thereupon issue to the Service Provider reasonable instructions in writing and the Service Provider shall carry out and be bound by such instructions. Any material adjustment to this Contract shall be subject to **Clause 27** (Variations).

4.4 The Intellectual Property Rights in the documents emanating from the Council comprising this Contract shall vest in the Council but the Service Provider may obtain or make at its own expense any further copies required for use by it in performing this Contract.

4.5 The parties shall, where necessary, comply with the Contract Procedure Rules and Financial Regulations and accompanying Financial Procedures of the Council, which can be found in the Council’s Constitution on the Council’s website, for the duration of this Contract.

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# 5. ENGAGEMENT

5.1 The Service Provider shall provide the Service to the Council with effect from the Commencement Date for the Term in accordance with the provisions of this agreement.

5.2 The Service Provider represents and warrants to the Council that by virtue of entering into this Contract it is not and shall not be in breach of any express or implied obligation to any third party binding upon it.

# 6. CARRYING OUT AND COMPLETION OF CONTRACT WORKS AND EXTENSIONS OF CONTRACT TIME

6.1 This Contract shall commence on the Commencement Date and shall continue in force for the Term in accordance with such timetables as may be specified in this Contract or elsewhere in the Contract Documents or otherwise agreed in writing until Completion of the Services but shall be subject to the provisions for early termination and variation set out in this Contract.

6.2 The Service Provider shall carry out and complete the Services in accordance with the schedule or timetable for the carrying out and completion of the Services or in the absence of the same reasonably, by any completion date stated in the Contract Documents, or any revision or revisions to the same.

6.3 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Services or any part thereof is being or is likely to be delayed, the Service Provider shall forthwith give **written notice** to the Council of the material circumstances surrounding the delay, the cause or causes of the delay, particulars of the expected effects thereof and estimate the extent, if any, of the expected delay.

6.4 Where the Service Provider has been required to provide estimates of time for the completion of certain tasks, the Council accepts and relies upon the expert assurances of the Service Provider that such estimates are reasonable estimates only.

6.5 Where the Service Provider has specified a maximum number of days as being sufficient to enable the Service Provider to provide the Services and the delay cannot be attributed either in whole or part to the Council, then, the Council shall at its option only be required to pay additional sums if it is reasonable in the circumstances of the matter so to do. The exercise by the Council of this option shall not relieve the Service Provider of its obligations.

# 7. SERVICE PROVIDER’S GENERAL OBLIGATIONS

7.1 The Service Provider shall in order to enable it to properly perform its obligations under and in connection with this Contract and in particular, the Specification:

7.1.1 provide all necessary staff having sufficient abilities, expertise and skills for the proper performance of the Services;

7.1.2 devote to its obligations hereunder such of its time, attention and skills as may be necessary for the proper professional performance of those obligations and ensure availability and timely and prompt attendance at all meetings including but not limited to all progress meetings and discussions in relation to the Services;

7.1.3 as a minimum conform to the standards generally observed in the industry for similar services and comply with all statutory and other provisions to be observed and performed in connection with the Services;

7.1.4 ensure that all information, advice and documentation provided conform to the latest relevant European specification, UK standard or specification, relevant professional or industry standard;

7.1.5 design, construct and complete the Services and plan, co-ordinate and manage the same with regard to all relevant and foreseeable health and safety issues;

7.1.6 provide all design services, labour, materials, equipment and tools, transport to and from or at the location where the Services are to be performed and everything whether of a temporary or permanent nature required to facilitate the safe and timely completion of the Services;

7.1.7 appoint a contract manager empowered to act on behalf of the Service Provider for all purposes connected with the Contract Documents;

7.1.8 create a health and safety plan or, if one is presented to it, comply with the health and safety plan, actively promote its development and in any event, provide to the Council all relevant information on the health and safety risks created by the Service Provider and promptly inform the Council of the manner in which the Service Provider will control such risks.

7.1.9 maintain an inventory of any and all materials supplied by the Council and, where requested, provide the Council with a copy of the same;

7.1.10 make available at any time any document or work in progress relating to all or any part of the Services;

7.1.11 if consorting with members of the general public on behalf of the Council or providing the Services from the premises of the Council, ensure that the Service Provider and all representatives of the Service Provider (excluding employees of the Council) shall carry at all times identity cards, in a format approved by the Contract Officer, which shall be available for inspection upon demand by any Officer of the Council or member of the general public;

7.1.12 promote and enhance the image, good name and reputation of the Council;

7.1.13 perform such other duties in relation to the Services as the Contract Officer may reasonably consider appropriate for the proper performance of the Services.

7.1.14 at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance in accordance with clause 14.

7.2 Without limiting the general obligations set out in clause 7.1, the Service Provider shall:

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

7.2.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

**8. DATA PROTECTION**

8.1 The Service Provider shall comply with all Data Protection Legislation.

8.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in Schedule 6 by the Council and may not be determined by the Service Provider.

8.3 The Service Provider shall notify the Council immediately if it considers that any of the Council’s instructions infringe the Data Protection Legislation.

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

8.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

8.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

8.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

8.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

8.5.1 process that Personal Data only in accordance with Schedule 6, unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

8.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

8.5.3 ensure that :

(i) the Service Provider Personnel do not process Personal Data except in

accordance with this Agreement (and in particular Schedule 6);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Service Provider’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the

Service Provider or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and

do not publish, disclose or divulge any of the Personal Data to any

third Party unless directed in writing to do so by the Council or

as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and

handling of Personal Data; and

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

(i) the Service Provider or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

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

8.5.4 at the written direction of the Council, delete or return Personal

Data (and any copies of it) to the Council on termination of the Agreement unless the Service Provider is required by Law to retain the Personal Data.

8.6 Subject to clause 8.7, the Service Provider shall notify the Council immediately if it:

8.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

8.6.2 receives a request to rectify, block or erase any Personal Data;

8.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

8.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

8.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

8.6.6 becomes aware of a Data Loss Event.

8.7 The Service Provider’s obligation to notify under clause 8.6 shall include the provision of further information to the Council in phases, as details become available.

8.8 Taking into account the nature of the processing, the Service Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 8.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

8.8.1 the Council with full details and copies of the complaint, communication or request;

8.8.2 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;

8.8.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;

8.8.4 assistance as requested by the Council following any Data Loss Event;

8.8.5 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.

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

8.9.1 the Council determines that the processing is not occasional;

8.9.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

8.9.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

8.10 The Service Provider shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.

8.11 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.

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

8.12.1 notify the Council in writing of the intended Sub-processor and processing;

8.12.2 obtain the written consent of the Council;

8.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 8.12 such that they apply to the Sub-processor; and

8.12.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

8.13 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.

8.14 The Council may, at any time on not less than thirty (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).

8.15 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than thirty (30) Working Days’ notice to the Service Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

# 9. PROJECT MATERIALS

9.1 The Service Provider shall afford the Council access to the Services or the Project Materials or any part thereof including all preparatory matters and work in progress and to all documents, (including, in particular, documents, recordings, methodology and results, field observations and analysis of data produced in connection with the Services).

9.2 The Council as commissioner of the Services shall be deemed to hold the Intellectual Property Rights in and shall be entitled to all Project Materials produced as a result of or in connection with this Contract and title to the same shall vest in the Council.

9.3 The Council may use any aspect of the Services and/or the Project Materials and may publish any aspect of the Services and/or the Project Materials and/or exploit commercially the same.

9.4 The Service Provider shall waive all moral rights it may have to the Project Materials and/or the Services and shall at its own expense do all such things and sign or execute all such documents or instruments and/or take all steps required to ensure that any copyright or other Intellectual Property Rights (including the right to defend or enforce the same), in relation to the Services, shall vest exclusively in the Council.

9.5 Upon the request of the Council and in any event upon the termination of this Contract for whatever reason, the Service Provider shall at its own expense promptly deliver to the Council all property, original documentation and copies of all Project Materials then in the Service Provider’s custody, control or possession.

9.6 The provisions of this **Clause 9** [Project Materials] shall survive the expiration or termination of this Contract.

# 10. COUNCIL’S GENERAL OBLIGATIONS

10.1 The Council shall:

10.1.1 ensure its employees co-operate fully with the Service Provider in relation to the provision of the Services; and

10.1.2 promptly furnish the Service Provider with such information and documentation as it may reasonably request and be entitled to sight of for the proper performance of its obligations under this Contract.

# 11. FEES AND EXPENSES

11.1 Unless otherwise stated in the Contract Documents, the Charges shall include all costs of completing the Services howsoever incurred including, without limitation the costs of all labour, equipment, accommodation, fuels, materials, travelling and all other costs, charges, expenses and outgoings of whatever nature incurred by the Service Provider in performing its obligations under this Contract.

11.2 The Council shall pay the Service Provider for the time properly spent and actually worked by the Service Provider in providing the Services.

11.3 The Service Provider shall maintain full and accurate records of all time actually spent in providing the Services and shall produce such records to the Council for inspection at all reasonable times on request.

11.4 The Service Provider shall render an itemised invoice which may not be raised until such time as the Contract Officer has signed off a phase of the Services as being complete in accordance with the provisions of this Contract. The Council shall not account to the Service Provider for any Charges save on receipt of a valid invoice.

11.5 The charges shall be exclusive of VAT which shall, if properly chargeable by the Service Provider, be shown separately on such tax invoice and which shall be paid by the Council at the then prevailing rates.

11.6 In the event that a Performance Bond is to be provided by the Service Provider the Council may deduct the amount of the premium from the first invoice submitted by the Service Provider.

11.7 In the event that the Services do not accord with the provisions of this Contract, the Council may in its sole discretion suspend payment of the whole or any part of the Charges which would otherwise be properly payable.

11.8 The Service Provider shall be entitled to be reimbursed by the Council the amount of the items of expenditure identified in the Contract Documents and reasonably and properly incurred by it in the performance of the Services. These items of expenditure shall be paid at the rates specified in the Contract Documents. The Service Provider shall produce evidence of such expenditure as may be required by the Contract Officer.

11.9 In the event of any expenses arising which could not have been reasonably foreseen by a reasonably competent person providing similar services, the Council shall only be obliged to pay the same if expressly approved in writing by the Contract Officer and if appropriate evidence of the expenditure is produced, most usually a tax receipt.

11.10 Responsibility by the Council for any expenses of the Service Provider, including without limitation travel, petrol, accommodation or other subsistence, must be previously approved by the Council, the expenditure must be reasonable and properly incurred by the Service Provider in the performance of the Services, evidence of all such expenditure must be obtained by the Service Provider and produced to the Council and any claims for expenditure must be made in accordance with the policies of the Council current at the date of signing this Contract.

11.11 All charges properly payable by the Council shall, subject as aforesaid, be paid within thirty (30) days of the date of receipt of the Service Provider’s invoice.

# 12. ACCESS TO COUNCIL PREMISES

12.1 If the Service Provider requires access to the Council’s premises for the particular purposes set out in this Contract, the Council shall allow the Service Provider (and its employees, contractors and sub-contractors) reasonable access to the premises of the Council during normal working hours and with the prior consent of the Contract Officer.

12.2 The Service Provider shall ensure that its employees and contractors and sub-contractors observe Council rules and policies when working at the Council's premises.

12.3 Without relieving the Service Provider of its obligations under this Contract the Contract Officer may require the Service Provider to remove any of its employees, contractors or sub-contractors from the premises of the Council and the Service Provider shall forthwith comply with such instructions. Any such requirement on the part of the Contract Officer shall be confirmed in writing to the Service Provider. The Council shall not in any event be liable to the Service Provider or its employees, contractors or sub-contractors in relation to any such removal and the Service Provider shall fully and promptly indemnify the Council in respect of any claims arising therefrom.

# 13. STANDARDS AND LEGISLATION

13.1 In performing its obligations hereunder, the Service Provider shall comply with all relevant legislation affecting the performance of its obligations under this Contract and in accordance with the requirements where appropriate of:-

13.1.1. the Equality Act 2010;

13.1.2 The Human Rights Act 1998;

13.1.3 European Community State Aid Rules;

13.1.4 Public Procurement Directives and Regulations;

13.1.5 Environmental Legislation;

13.1.6 The Welsh Language (Wales) Measure 2011;

13.1.7 The Bribery Act 2010;

13.1.8 The FOIA;

13.1.9 The Environmental Information Regulations;

13.1.10 Data Protection Legislation;

13.1.11 The Modern Slavery Act 2015;

13.1.12 the requirements of any relevant EC standard or specification or code of practice or in the absence of the same any British EC standard or specification or code of practice incorporating a European standard, specification or code of practice or in the absence of the same any British standard, specification or code of practice and/or any standards common to the industry.

# 14. INDEMNITY AND INSURANCE

14.1 The Service Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its officers, employees, agents and other contractors against all liabilities, losses, actions, claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever and howsoever arising in respect of or in any way arising whether in contract, tort or otherwise, directly or indirectly, out of or in consequence of or in connection with this Contract or anything omitted to be done under this Contract, or the use or occupation by the Service Provider or the Service Providers employees of the Council’s premises and/or the use of the equipment located at those premises.

14.2 For the avoidance of doubt the Service Provider’s liability to indemnify the Council on account of loss or damage to any premises or equipment or other property of any nature whatsoever, includes a liability to reimburse the Council all costs and expenses reasonably incurred by the Council in the reinstatement or replacement of such premises or equipment or other property, whether or not such reinstatement or replacement results in an improvement of or to the property so lost or damaged.

14.3 The Service Provider (if an individual or partnership) represents that he or she is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Council against any tax, value added tax, national insurance contributions or similar tax for which the Council may be liable in respect of the Service Provider by reason of this Contract.

14.4 The Service Provider shall maintain such public liability, professional indemnity and other insurance’s as are necessary to cover any liability arising under clauses 14.1, 14.2 or 14.3above

14.5 Without thereby limiting the Service Provider's responsibilities under Clauses 14.1to 14.4inclusive above, the Service Provider shall maintain with a reputable insurance company approved by the Council public liability insurance with a level of indemnity of at least **£5,000,000** for any one occurrence and employers' liability insurance and, where a product is being provided, product liability cover with a level of indemnity of at least [ ]which must comply with the requirements specified in any legislation from time to time. The Service Provider shall not do or permit to be done anything which would make such insurance cover void or voidable. The Service Provider shall maintain professional indemnity insurance which shall have a level of indemnity of **£5,000,000**.

14.6 The Service Provider shall prior to the commencement of the Service and for the Term keep in full force and effect the policies of insurance referred to above, (save for the professional indemnity insurance which shall also be maintained for a period of twelve years from the date of completion of the Services) and upon request produce to the Council a copy of the policies effecting the insurances referred to in Clause 14.5above, together with documentary evidence that such insurances are properly maintained.

14.7 Save as provided by Clause 14.8below the Council shall not under any circumstances be liable to the Service Provider whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, or in the course of or in connection with the Services or the use or occupation by the Service Provider or the Service Provider’s employees of the Council’s premises, services, plant, machinery, equipment, systems, materials, consumables and vehicles

14.8 Clause 14.7shall not apply to:

14.8.1 any failure by the Council to make proper payment to the Service Provider in accordance with the terms of this Contract; and

14.8.2 any negligent act or omission of the Council or any of its employees.

14.9 The Council shall not in any event be liable to the Service Provider for any indirect or consequential loss whatever and however caused.

14.10 The Service Provider’s liability to indemnify the Council in accordance with the provisions of this Clause 14shall be without prejudice to any other right or remedy available to the Council.

14.11 If, for whatever reason, the Service Provider fails to give effect to and maintain the above mentioned insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

14.12 The terms of any insurance policy or the amount of cover shall not relieve the Service Provider of any liabilities under this agreement.

# 15. COPYRIGHT INDEMNITY

15.1 The Service Provider warrants that all royalties and fees on patented articles, processes and registered designs have been paid and shall indemnify the Council against all loss, costs, damages and expenses howsoever incurred arising from any infringement or alleged infringement of the Intellectual Property Rights of any third party relating to or arising from the Project Materials.

# 16. CONFIDENTIALITY AND PUBLICITY

* 1. The Service Provider shall not make any communication to the press or other media in relation to the Services, this Contract or any matter arising from or connected to the same without the prior written consent of the Council.
  2. The Parties agree that the provisions of this Contract and each and any sub-contract shall, subject to Clause 16.3 below, not be treated as Confidential Information and may be disclosed without restriction.
  3. Clause 16.2 above shall not apply to provisions of this Contract or a sub-contract designated as Commercially Sensitive Information and listed in Part 1 and Part 2 of Schedule 5 (Commercially Sensitive Information) which shall, subject to Clause 16.5 below, be kept confidential for the periods specified in Part 1 and Part 2 of Schedule 5.
  4. The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and/or any sub-contracts or the Services and shall use reasonable endeavours to prevent their employees, agents and sub-contractors from making any disclosure to any person of any such Confidential Information.
  5. Clauses 16.3 and 16.4 shall not apply to:
     1. any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;
     2. any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 16;
     3. any disclosure to enable a determination to be made in connection with a dispute between the Contractor and the Council and/or any of the Contractor’s sub-contractors in accordance with Clause 28 of this Contract;
     4. any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
     5. any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
     6. any provision of information to the Parties’ own professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Service Provider to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Service Provider in accordance with the provisions of this Contract to that person or their respective professional advisers, but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
     7. any disclosure by the Council of information relating to the design, construction, operation and maintenance of the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new Service Provider, its advisers and lenders, should the Council decide to retender the Contract;
     8. any registration or recording of any required consents/permissions/licences/approvals and property registration required;
     9. any disclosure of information by the Council to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Contract; or
     10. any disclosure for the purpose of:
         1. the examination and certification of the Council’s or the Service Provider’s accounts;
         2. any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has used its resources;
         3. complying with a proper request from either Party’s insurance adviser, or insurer on placing or renewing any insurance policies; or
         4. (without prejudice to the generality of Clause 16.5.4 above) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither Clause 16.5.2 nor Clause 16.5.10.4 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 16.4 above where that information is exempt from disclosure under section 41 of the FOIA;

* + 1. where disclosure is permitted under Clause 16.5, other than Clauses 16.5.2, 16.5.4, 16.5.5, 16.5.8 and 16.5.10, the Party providing the Information shall procure that the recipient of the Information shall be subject to the same obligation of confidentiality as that contained in this Contract;
    2. any disclosure by the Council to any other authority receiving Services pursuant to this Contract.

# 17. FAILURE TO PROVIDE SERVICE

17.1 The Service Provider shall use best endeavours and utilise best professional practice to comply in full with any timetable agreed between the parties from time to time. However in the event of delay, which in the sole opinion of the Contract Officer is attributable to wilful or unnecessary delay, consistent failure, omissions or incompetence of the Service Provider, the Council reserves the right:

17.1.1 to provide the Service Provider with written notice identifying the area of work which the Contract Officer genuinely believes has been the subject of wilful or unnecessary delay, consistent failure or incompetence on the part of the Service Provider and requiring that such defect be corrected within a period of **fifteen (15)** Working Days from the date of despatch of notice by the Council;

17.1.2 if such defect is not cured within the **fifteen day** period or such other period as the parties may agree in writing, the Council may, in its absolute discretion either:

17.1.2.1 extend the period of time to enable the Service Provider to cure the defect; and/or

17.1.2.2 engage the services of a third party to cure the defect, whereupon the Service Provider shall pay to the Council promptly within **20 Working Days** from the date of written request by the Council, a sum equal to the costs incurred by the Council in engaging the services of a third party. The Service Provider further agrees that it shall not be entitled to make any charge to the Council in respect of the wasted costs associated with the Services which have not been performed due to the circumstances referred to in Clause 17.1above; and/or

17.1.3 to terminate the whole or any part of this Contract, and the Service Provider shall be liable to the Council for all losses, costs and expenses occasioned to the Council as a result of the Service Provider having failed to provide the Services either properly or at all.

# 18. TERMINATION BY THE COUNCIL

18.1 The Council may terminate this Contract wholly or in part at any time subject to one month's written notice to the Service Provider.

18.2 Notwithstanding the provisions of Clause 18.1, the Council may be entitled to terminate this Contract (in whole or in part) with immediate effect by giving written notice to the Service Provider in the following circumstances:

18.2.1 if the Service Provider is in breach of any of its obligations under this Contract and if such breach is capable of remedy fails to remedy the breach within 5 Working Days (or such other time as agreed in writing between the parties) of a written request by the Council to remedy the same;

18.2.2 if the Service Provider shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other Party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business;

18.2.3 if a meeting is convened for the purposes of considering a resolution or other steps are taken for the winding up of the Service Provider or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

18.2.4 if the Service Provider has offered or given or agreed to give any person any gift or a consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Council or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Service Provider) or if in relation to any contract with the Council the Service Provider or any person employed by him or acting on his behalf has committed any offence under the Prevention of Corruption Acts 1889 and 1916 or shall have given any fee or reward the receipt of which is an offence under sub section (2) or (3) of Section 117 of the Local Government Act 1972;

18.2.5 if there is a change of control of the Service Provider or (where the Service Provider is a subsidiary company) of its ultimate holding company.

18.3 In the event of termination of this Contract (in whole or in part) for any of the reasons specified in Clause 18.2the Council may exercise any or all of the following rights:

18.3.1 the Council may require the Service Provider to perform any of its obligations existing at the date of termination;

18.3.2 the Council shall cease to be under any obligation to make any further payments under this Contract;

18.3.3 the Council shall be entitled to recover from the Service Provider any loss, damages, costs or expenses to the Council resulting from or arising out of the termination of this Contract (in whole or in part) including the reasonable cost to the Council of time spent by its officers in terminating this Contract (in whole or in part) and, without limitation, the costs of procuring suitable alternative Services in accordance with the procedures laid down by the Council's Contract Procedure Rules (as set out in the Council’s Constitution and available on the Council’s website) and relevant legislation.

18.4 The termination (in whole or in part) or expiration of this Contract shall be without prejudice to the rights and remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination or expiration.

18.5 On expiry or termination of this Contract, the following clauses shall continue in force: 2, 8, 9, 14.1, 14.2, 14.7, 14.8, 14.9, 14.10, 16, 20, 25, 30, 31, 33.1, 33.2, 33.7, 33.9 and 33.10.

# 19. TERMINATION BY THE SERVICE PROVIDER

19.1 The Service Provider may terminate this Contract (in whole or in part) forthwith by written notice having immediate effect in the following circumstances:

19.1.1 if the Council is in breach of any of its obligations under this Contract and if such breach is capable of remedy fails to remedy the breach within 15 Working Days (or such other time as agreed in writing between the parties) of a written request by the Service Provider to remedy the same;

19.1.2 if the Council is unable or fails to repay its borrowing/s and/or an application is made by any Party to a court for the appointment of a receiver and/or such a receiver is appointed, all pursuant to section 47 Local Government & Housing Act 1989 (and/or any amendment or replacement thereof from time to time.)

# 20. AUDIT

20.1 For the purposes of the Council conducting an audit investigation of this Contract, the Service Provider shall until the expiry of six years from the completion of the Services, provide all facilities and allow full access to the Council or its auditors to:

20.1.1 all offices and premises of the Service Provider for the purpose of inspecting records and documents in the possession, custody or control of the Service Provider in connection with the Services;

20.1.2 all technology, resources, systems and procedures used in connection with the Services;

20.1.3 interview the Service Provider’s staff and officers.

20.2 The Service Provider shall by a term in any authorised sub- contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Services or part thereof.

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

# 21. HEALTH AND SAFETY

21.1 The Service Provider and the Council shall take all reasonable precautions to ensure the health and safety of each other's employees, agents and other personnel while the same are at the premises of the other Party and shall ensure that their personnel observe the other Party's safety rules and procedures while their employees and others aforesaid are on the other Party's premises.

21.2 Both parties shall observe the provisions of the Health & Safety at Work etc. Act 1974 and any amendments thereto and other relevant legislation, regulations and codes of practice relating to health and safety, insofar as they are applicable to this agreement.

21.3 The Service Provider shall ensure that its employees and agents while on the Council's premises observe such safety policies and safety code of practice as are adopted from time to time by the Council and notified to the Service Provider. The Service Provider shall not in the performance of this Contract endanger the safety or unlawfully interfere with the convenience of the public.

21.4 The Service Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of this agreement. The Council shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Council’s premises and that may affect the Service Provider in the performance of this agreement.

21.5 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of this agreement on the Council’s premises where that incident causes any personal injury or damage to property that could give rise to personal injury.

21.6 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

# 22. EQUAL OPPORTUNITIES

22.1 The Service Provider shall at all times comply with the requirements of the Equality Act 2010.

22.2 In so far as is necessary to enable the Council to comply with its duty under the Equality Act 2010, the Service Provider shall give the Council such information as the Contract Officer may reasonably require in order to satisfy himself as to the Service Provider's compliance with the said Act.

# 23. GRATUITIES & BRIBERY ACT 2010

23.1 The Service Provider shall not, under any circumstances, whether by itself or by any other person employed by it to perform the Services, give or agree to give the Council any offer of payment, gift reward, collection, charge or any other form of money taking as an intention to obtain favourable treatment under this Contract or any other contract.

23.2 The Service Provider warrants, represents and undertakes to the Council that it and its employees, consultants, agents or sub-contractors shall at all times comply with the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

23.3 The Service Provider, if requested, will provide the Council with any reasonable assistance to investigate any potential breaches of the Bribery Act 2010.

23.4 If any breach of clause 23 or clause 31.1 is suspected, likely to occur or known, the Service Provider must notify the Council immediately.

23.5 If the Service Provider or any of its employees, consultants, agents or sub-contractors, engages in conduct which breaches the Bribery Act 2010 or Clause 23, the Council may:

23.5.1 terminate this Contract with immediate effect by notice in writing; and

23.5.2 recover, in full, from the Service Provider any losses sustained by the Council as a result of the breaches.

# 24. FORCE MAJEURE

24.1 Subject to the remaining provisions of this clause 24, neither Party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure event.

24.2 In the event that either Party is delayed or prevented from performing its obligations under this agreement by a Force Majeure event, such Party shall:

24.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

24.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

24.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

24.3 A Party cannot claim relief if the Force Majeure event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event.

24.4 The Service Provider cannot claim relief if the Force Majeure event is one where a reasonable service provider should have foreseen and provided for the cause in question.

24.5 As soon as practicable following the affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure event in accordance with Best Industry Practice.

24.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure event ceases or no longer causes the affected Party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure event unless agreed otherwise by the parties.

24.7 The 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 20 Working Days.

# 25. WAIVER

25.1 Failure by either Party at any time to enforce the provisions of this Contract or to require performance by the other Party of any of the provisions of this Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the first mentioned Party to enforce any provision in accordance with its terms. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Service Provider in respect of the Services or any omission on the part of the 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.

# 26. NOTICES

26.1 Any notice to be given under this Contract shall be in writing and shall be deemed duly given:

26.1.1 If left at or sent by first-class post or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy:

26.1.2 if to the Council to its address stated in this Contract marked for the attention of the Contract Officer;

26.1.3 if to the Service Provider to its principal place of business address shown in this Contract;

26.1.4 or, in either case to such other person at such other address as is notified in writing to the other for this purpose.

26.2 Any notice delivered by hand shall be deemed to have been duly given at the time of delivery by hand. Any notice sent by post shall be deemed to have been duly given two Working Days after posting. Any notice sent by facsimile transmission shall be deemed to have been duly given at the time of transmission except if received after 4pm when it shall be deemed to have been duly given the next Working Day.

# 27. VARIATIONS

27.1 Any variation to these terms and conditions must be agreed in writing and signed by the authorised representative of each Party. In the event of any variation, all terms and conditions of this Contract shall apply to such variation except as may otherwise be expressly provided therein.

27.2 In the event of a variation in accordance with this clause the amount properly payable may also be varied and the amount of any such variation shall be calculated by the Council by reference to the Charges payable hereunder.

27.3 This Contract as it relates to the existing subject matter of this Contract, may be varied either on a temporary or permanent basis at any time by mutual consent in writing between the parties. Before any such variation is brought into effect both parties shall agree whether it is to be on a temporary or permanent basis, and if on a temporary basis, the relevant period for which the variation is to take effect.

27.4 Where the variation results in a decrease in value, the Charges payable hereunder shall, where appropriate be used as the basis of devaluation in so far as may be reasonable and otherwise a fair devaluation shall be made by the Contract Officer.

27.5 Any dispute between the parties as to whether any variation should give rise to any decrease in the amount properly payable, may be dealt with in accordance with the provisions of Clause 28(Remediation Procedure and Alternative Dispute Resolution).

# 28. REMEDIATION PROCEDURE AND ALTERNATIVE DISPUTE RESOLUTION

28.1 Where either Party's performance is not meeting its contractual requirements, and the lack of performance can be remedied, the Contract Officer and/or the contract manager may agree on any remedial action which needs to be taken by the offending Party in order to improve the performance of that Party within a specified time limit. The Party affected by the complaint or the breach may serve a notice on the offending Party setting out the required remedial action to be effected within a time limit that shall be specified following consultation with the offending Party.

28.2 Where the Party affected by the complaint or the breach finds that the offending Party has failed to take the required remedial action, then the parties may agree further remedial action to be taken by the offending Party.

28.3 If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the Council and the Service Provider, the dispute may if mutually agreed and without prejudice to any other rights or remedies available, be referred for alternative dispute resolution or to such other body as the parties may mutually consider appropriate for final determination.

28.4 Each Party shall bear its own costs incurred in the mediation proceedings and one half of the fees and expenses of the mediator unless a different agreement is reached as part of any decision or settlement arrived at as a result of the relevant mediation proceedings.

28.5 The rights of either Party under this Clause 28shall be without prejudice to any other rights that Party may have under this Contract or otherwise in relation to the Service Provider's failure to perform its obligations.

28.6 For the avoidance of doubt the provisions of this Clause 28shall not be construed as ousting the jurisdiction of the Court.

# 29. Council’s Welsh Language STANDARDS

29.1 In relation to the performance of the Services, the Service Provider shall comply with the requirements of the Welsh Language (Wales) Measure 2011 and shall further adhere to the principles set out in the Council’s Welsh Language Standards (or any subsequent policy or scheme in compliance with relevant legislation), a full copy of the Standards may be found on the Council’s website. The Service Provider is encouraged to have in place and operate an up to date Welsh Language Policy in line with the Welsh Language (Wales) Measure 2011. Guidance and template may be found on the Welsh Language Commissioners website:

[www.comisiynyddygymraeg.cymru/hybu](http://www.comisiynyddygymraeg.cymru/hybu)

29.2For Services delivered in Ceredigion, the Service Provider is required to comply with Ceredigion Welsh Language Standards by providing a bilingual service as follows:

29.2.1 Ensure that the Service is delivered in the preferred language of a service user.

29.2.2 Record the language preference of a service user for (a) verbal contact; and (b) written communications, and use that language for all subsequent communications.

29.2.3 Ensure that information, literature, standard letters and forms that provide for the public are bilingual.

29.2.4 Ensure that internal and external signage is bilingual, including any advertisements.

29.2.5 Ensure that arrangements are in place to translate any written material.

29.2.6 Ensure that appropriate staff is available to deal promptly with the public or the Council either in person or on the telephone or by any other means of telecommunications who have sufficient Welsh Language skills to provide good standard of service.

29.2.7 Ensure that Welsh language skills have been specifically set out in job descriptions, person specifications and development plans.

29.3The Service Provider shall be responsible for promoting the delivery of the Services in Welsh or English as requested and shall use all reasonable steps to achieve this.

* 1. The Service Provider shall be responsible for monitoring the level of take-up for the Service through the medium of Welsh and English and if required to do so, shall report to the Council on an annual basis by providing the following information in writing:
     1. the number of users requiring the Service in Welsh and English.

29.4.2 the allocation of staff to deliver the Services in Welsh and English.

29.4.3 any changes in service delivery made or anticipated by the Service Provider as a consequence of the above, and, if relevant, the timescale of their implementation.

29.4.4 any complaints or difficulties indicated by service users or staff of the Service Provider in delivering the Services in compliance with Welsh language obligations during the report period (and any advice or guidance that is required by the Service Provider in delivering such Service).

29.5The Council is committed to offering support and guidance to the Service Provider on the planning and provision of bilingual services. The Service Provider may contact the Council’s Welsh Language & Equality Policy Officer [carys.morgan@ceredigion.gov.uk](mailto:carys.morgan@ceredigion.gov.uk) or the language initiative Cered, [cered@ceredigion.gov.uk](mailto:cered@ceredigion.gov.uk) ( a community based organisation which works with individuals, organisations and local business to promote and facilitate the use of Welsh in Ceredigion) in this regard.

# 30. FREEDOM OF INFORMATION

* 1. The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 30.2 to 30.7 inclusive below.
  2. Where the Council receives a Request for Information in relation to Information that the Service Provider is holding on its behalf and which the Council does not hold itself the Council shall refer to the Service Provider such Request for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information and the Service Provider shall:
     1. provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within ten (10) Working Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
     2. provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the 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.
  3. Following notification under Clause 30.2, and up until such time as the Service Provider has provided the Council with all the Information specified in Clause 30.2.1, the Service Provider may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining at its absolute discretion:
     1. whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
     2. whether Information is to be disclosed in response to a Request for Information, and in no event shall the Service Provider respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Council.
  4. The Service Provider shall ensure that all Information held on behalf of the Council is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Council to inspect such Information as requested from time to time.
  5. The Service Provider shall transfer to the Council any Request for Information received by the Service Provider as soon as practicable and in any event within two (2) Working Days of receiving it.
  6. The Service Provider acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
  7. In the event of a request from the Council pursuant to Clause 30.2.2 above, the Service Provider shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform the Council of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Council shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with the request and where it does require the Service Provider to comply with the request, the ten (10) Working Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under Section 10 of the FOIA. In such case, the Council shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the request to the extent the Council is itself entitled to reimbursement of such costs in accordance with the Council’s own FOIA policy from time to time.
  8. The Service Provider acknowledges that (notwithstanding the provisions of Clause 16 (Confidentiality)) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Service:
     1. in certain circumstances without consulting with the Service Provider;
     2. following consultation with the Service Provider and having taken their views into account, provided always that where Clause 30.8.1 above applies the Council shall, in accordance with the recommendations of the Code, draw this to the attention of the Service Provider prior to any disclosure.

**31. Compliance with Anti-Slavery and Human Trafficking Laws**

* 1. In performing its obligations under the Contract, the Service Provider shall:

31.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

* + 1. have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance;
    2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
    3. require that each of its direct subcontractors and suppliers shall comply with the anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
  1. The Service Provider represents and warrants that at the date of this Contract:

31.2.1 neither the Service Provider nor any of its officers, employees or other persons associated with it:

1. has been convicted of any offence involving slavery and human trafficking; and
2. having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

31.3 The Service Provider shall implement due diligence procedures for its direct subcontractors and suppliers to ensure that there is no slavery or human trafficking it its supply chains.

31.4 The Service Provider shall implement an appropriate system of audit and training as necessary for its subcontractors that is designed to ensure compliance with the Modern Slavery Act 2015.

* 1. The Service Provider shall notify the Council as soon as it becomes aware of:

31.5.1 any breach, or potential breach of the Modern Slavery Act 2015; and/or

31.5.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

31.6 The Service Provider shall prepare and deliver to the Council an annual basis on a date to be advised by the Council a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

* 1. The Service Provider shall:

31.7.1 maintain a complete set of records to trace the supply chain of all works, goods and services provided to the Council in connection with this Contract; and

* + 1. permit the Council on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 31, to have access to and take copies of the Service Provider’s records and any other information and to meet with the Service Provider’s Personnel to audit the Service Provider’s compliance with its obligations under this clause.

31.8 The Service Provider shall implement and keep a record of all training offered and completed by its employees, suppliers and subcontractors to ensure compliance with the Modern Slavery Act 2015 and shall make a copy of the record available to the Council on request.

31.9 The Service Provider shall indemnify the Council against any losses, liabilities, damages, costs (but not limited to legal fees) and expenses incurred by, or awarded against the Council as a result of any breach of the Modern Slavery Act 2015 resulting from any action or omission by the Service Provider and its sub-contractors and/or suppliers.

31.10 The Council may terminate the Contract with immediate effect by giving written notice to the Contractor if the Service Provider commits a breach of the Modern Slavery Act 2015.

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# 32. PreventiON OF FRAUD

32.1 The Service Provider shall take all reasonable steps, in accordance with Best Industry Practice, to prevent fraud by its employees, consultants, agents or sub-contractors in connection with any monies received from the Council.

32.2 The Service Provider, if requested, will provide the Council with any reasonable assistance to investigate any potential breaches of fraud.

32.3 If the Service Provider suspects fraud is likely to occur or is known then it must notify the Council in writing immediately.

32.4 If the Service Provider or any of its employees, consultants, agents or sub-contractors, commit fraud, the Council may:

32.4.1 terminate the Contract with immediate effect by notice in writing to the Service Provider; and

32.4.2 recover, in full, from the Service Provider any losses sustained by the Council as a result of the fraud.

# 33. INTELLECTUAL PROPERTY RIGHTS

33.1 Subject to any pre-existing Intellectual Property Rights of the Service Provider or any third party, the Service Provider assigns to the Council with full title guarantee and free from all third party rights the Intellectual Property Rights comprised in all reports, assessments, data, databases, plans, drawings, patents, patterns, models or other material prepared for the Council in the provision of the Services.

33.2 If the Service Provider, in providing the Services, uses any materials in which there are pre-existing Intellectual Property Rights owned by itself or its agents, sub-contractors or third parties:

33.2.1 the Service Provider shall itself provide, or procure from such agent, sub-contractor or third party a non-exclusive licence (or sub-licence) allowing the Council to use, reproduce, modify, adapt and enhance those materials as the Council sees fit. Such licence (or sub-licence) shall be perpetual, irrevocable and granted at no cost to the Council;

33.2.2 the Service Provider shall ensure that all royalties, licence fee(s) or similar expenses in respect of such pre-existing Intellectual Property Rights are paid and included in the Charges.

33.3 The Service Provider indemnifies the Council against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the performance of the Contract by the Service Provider save where such infringement or alleged infringement is caused by or contributed to by any act or omission on the part of the Council.

33.4 Nothing in the Contract or done under the Contract shall be taken to diminish Intellectual Property Rights which would, apart from the Contract, vest in the Council.

33.5 If the Council reimburses the Service Provider for the cost of any equipment acquired by the Service Provider for providing any of the Services such equipment shall become the property of the Council. The Service Provider will deliver such equipment to the Council on request. The Service Provider shall keep a proper inventory of such equipment and shall ensure that whilst it remains in the Service Provider’s possession or control it is securely stored when not in use and is insured for its full replacement value in the event of theft, loss or damage and is maintained in good working order.

34. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Contract agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded**.**

35. **RECOVERY OF SUMS DUE FROM THE SERVICE PROVIDER**

Whenever under this Contract any sum of money shall be recoverable from or payable by the Service Provider such sums may be deducted from the amount of any sum or sums then due or which at any time thereafter may become due to the Service Provider under this Contract or any other contract with the Council.

36. **ASSIGNMENT AND SUB-CONTRACTING**

The Council or Service Provider shall not without the prior written consent of the other Party (not to be reasonably withheld or delayed) assign, sub-contract transfer or deal in any other manner with all or any of its rights or obligations under this Contract. If the use of sub-contractors is approved by the Council the Service Provider shall be responsible for the acts and omissions of its sub-contractors as if they were its own.

37. **INVALIDITY AND SEVERABILITY**

If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

38. **CONFLICT OF DOCUMENTS**

Save as may be expressly stated herein to the contrary or as may otherwise be agreed in writing and signed by both parties, in the event of any conflict among or between the provisions of this Contract and those of any other contract between the parties, including the contents of the Schedules to this Contract and the Service Provider's standard terms and conditions of business whether expressly implied or otherwise, the provisions of this Contract shall prevail.

39. **CUMULATION OF REMEDIES**

All remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

40. **NO AGENCY**

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

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

41. **ENTIRE CONTRACT**

This Contract constitutes the entire Contract and understanding of the Parties as to its subject matter and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Contract. The Service Provider acknowledges that it has not entered into this Contract on the basis of and does not rely on any warranty or representation made by the Council or any of its officers.

42. **LAW**

This Contract shall be governed by and construed in accordance with the laws of England and Wales, as applicable in Wales.

Signed on behalf of )

**Cyngor Sir Ceredigion**

**County Council** )

)

Signed:- )

Authorised signatory

Signed on behalf of

**XXXXXXXXXXXXXXX**  )

by:- )

Signature:

Name:

Title:

Signature:

Name:

Title:

**Schedule 1 – Specification**

**Schedule 2 – Tender Response**

**Schedule 3 – Costs**

**Schedule 4 – Special Conditions of Contract**

SCHEDULE 5

COMMERCIALLY SENSITIVE INFORMATION



1. COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS

|  |  |
| --- | --- |
| **Column 1** | **Column 2** |
| *Commercially Sensitive Contractual Provisions* | *For period ending on date below* |
| [Clause number & title] | [Date] |
|  |  |
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|  |  |

**SCHEDULE 5**

**COMMERCIALLY SENSITIVE INFORMATION**



1. commercially sensitive material

|  |  |
| --- | --- |
| **Column 1** | **Column 2** |
| *Commercially Sensitive Material* | *For period ending on date below* |
| [Document name & location in Contract] | [Date] |
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**SCHEDULE 6**

**Processing, Personal Data and Data Subjects**

1. The Service Provider shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | *[This should be a high level, short description of what the processing is about ie. Its subject matter]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[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 | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[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 | *[Describe how long the data will be retained for, how it will be returned or destroyed]* |