

DATED

2023

(1) BOLSOVER DISTRICT COUNCIL

AND

(2) DRAGONFLY MANAGEMENT (BOLSOVER) LIMITED

AGREEMENT

IN RELATION TO THE PROVISION OF CERTAIN SERVICES UNDER REGULATION 12 OF THE
PUBLIC CONTRACTS REGULATIONS 2015

SHARPE PRITCHARD

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THIS AGREEMENT is made on

2023

BETWEEN

- (1) **BOLSOVER DISTRICT COUNCIL** of the Arc, High Street, Clowne, Derbyshire, S43 4JY (the Authority)
- (2) **DRAGONFLY MANAGEMENT (BOLSOVER) LIMITED** (company number 14767220) whose registered office is at the Arc, High Street, Clowne, Derbyshire, S43 4JY (the **Supplier**).

RECITALS

- (A) On 29 March 2023, the Supplier was incorporated as a new company within the Dragonfly group of companies, which consists of Dragonfly Development Limited (**DDL**) and the Supplier. The Authority is the sole member of DDL and DDL is the sole member of the Supplier.
- (B) The Supplier was incorporated to provide the Services (as defined below) to the Authority within the meaning of Regulation 12 of the Public Contracts Regulations 2015 and accordingly, the parties have agreed to enter into a contract for the provision of those Services on the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions

Achieved KPIs	in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).
Authorised Representatives	the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 2.
Authority Assets	any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services.
Authority Premises	such sections or floors of the Arc, High Street, Clowne, Derbyshire, S43 4JY or the Riverside Depot, Mansfield Road, Doe Lea, Chesterfield, S44 5NY as agreed by the Authority and the Supplier from time to time, used by the Supplier in providing the Services, or at such other locations as are otherwise reasonably required for the purposes of carrying out the Services.
Business Growth Services	means the services to be provided by the Supplier as set out in Schedule 1.
Business Plan	means the Business Plan as defined in the group shareholder agreement dated 2 May 2023.

Change	any change to this Agreement including to any of the Services.
Change Control Note	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
Change Control Procedure	the procedure for changing this Agreement, as set out in Schedule 5.
Change in Law	any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.
Charges	the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in Schedule 3.
Commencement Date	the date of this Agreement.
Confidential Information	<p>means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including but not limited to:</p> <ul style="list-style-type: none"> (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; and (b) any information developed by the parties in the course of carrying out this Agreement;
Consistent Failure	shall have the meaning set out in Schedule 2.
Consumer Prices Index	the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles such index.
Contract Year	any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.
Controller	as defined in the Data Protection Legislation.
Data Subject	as defined in the Data Protection Legislation.
Dispute Resolution Procedure	the procedure set out in clause 14.

Domestic law	the law of the United Kingdom or part of the United Kingdom.
EIRs	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.
Equality and Diversity Policy	the equality and diversity policy of the Authority being one of the Policies.
Exit Management Plan	the plan set out in Schedule 7.
FOIA	the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Force Majeure	<p>any circumstance not within a party's reasonable control including, without limitation:</p> <ul style="list-style-type: none"> (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (f) collapse of buildings, fire, explosion or accident; and <p>but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-Contractor's supply chain.</p>
Health and Safety Policy	the health and safety policy of the Authority being one of the Policies.
Property Services	means the Property Services and the Repairs and Management Services to be provided by the Supplier as detailed within Schedule 1.
General Change in Law	a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

Information	has, for the purposes of clause 18, the meaning given under section 84 of FOIA.
Initial Term	means the duration of the agreement starting at 00.01 am on the Commencement Date and ending at 11.59 pm on the day before the fifth anniversary of the Commencement Date.
Insolvency Event	<p>where:</p> <ul style="list-style-type: none"> (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party; (c) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership); (f) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; (g) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

KPIs the key performance indicators for all and each part of the Services as specified in Schedule 2.

Key Personnel those personnel identified Schedule 2 for the roles attributed to such personnel, as modified pursuant to clause 9.

Law the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

Necessary Consents all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

Personal Data as defined in the Data Protection Legislation.

Policies the Supplier's corporate policies or ,in the absence of a particular policy, the policy of the Authority covering the relevant area..

Processor as defined in the Data Protection Legislation.

Prohibited Act the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Relevant Requirements	all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Relevant Transfer	a relevant transfer for the purposes of TUPE.
Remediation Notice	a written notice given by the Authority to the Supplier pursuant to clause 23 to initiate the Remediation Plan Process.
Remediation Plan	the plan agreed in accordance with clause 23 for the resolution of a Supplier's default in complying with its obligations under this Agreement.
Remediation Plan Process	the process for resolving certain of the Supplier's defaults as set out in clause 23.
Replacement Supplier	any third party supplier, , appointed by the Authority from time to time as part of any Exit Management Plan.
Representatives	means, in relation to party, its employees, officers, contractors, subcontractors, representatives and advisors.
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
Repairs and Maintenance Services	means those repairs and maintenance services to be provided by the Supplier as detailed in Part 2 of Schedule 1
Services	the services to be delivered by or on behalf of the Supplier under this Agreement, including (at the date of this Agreement) the Property Services, Repairs and

Maintenance Services and the Business Growth Services

Supplier Personnel all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Sub-Contract any contract or agreement (or proposed contract or agreement) between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor a person with whom the Supplier enters into a Sub-Contract, and any third party with whom that third party enters into a subcontract or its servants or agents.

Target KPI the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 2.

Term the period of the Initial Term as may be varied by:

- (a) any extension pursuant to clause 2.2; or
- (b) the earlier termination of this Agreement in accordance with its terms.

Termination Date the date of expiry or termination of this Agreement.

Termination Notice any notice to terminate this Agreement which is given by either party in accordance with clause 24 or clause 25.

Termination Payment Default is defined in Schedule 3.

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

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

Working Hours the period from 9.00am to 5.00pm on any Working Day.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** excludes fax but not e-mail.
- 1.10 A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document as varied from time to time.
- 1.11 References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13 If there is any conflict or ambiguity between any of the provisions in the main body of this Agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
- 1.13.1 the clauses of the agreement;
 - 1.13.2 Schedule 1 to this Agreement;
 - 1.13.3 the remaining schedules to this Agreement

Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Authority may, by giving the Supplier not less than six months' written notice prior to expiry of the Initial Term, request the extension of this Agreement in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period of up to five further years from the day following expiry of the Initial Term.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date for the duration of the Term in accordance with the provisions of this Agreement, including without limitation Schedule 1 and Schedule 2.
- 3.2 In providing the Services, the Supplier shall at all times:
- 3.2.1 without prejudice to clause 4, provide the Services with reasonable care and skill and in furtherance of the Business Plan;

- 3.2.2 ensure that all goods, materials, standards and techniques used in providing the Services are of reasonable quality and are free from defects in workmanship, installation and design;
- 3.2.3 obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Authority);
- 3.2.4 allocate sufficient resources to provide the Services in accordance with the terms of this Agreement (provided always that this may from time to time require agreement for the allocation and funding of additional resources) in accordance with the Change Control Procedure;
- 3.2.5 ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Authority, attend such meetings at the premises of the Authority or elsewhere as may be reasonably required by the Authority; and
- 3.2.6 provide such reasonable co-operation and information in relation to the Services to such of the Authority's other suppliers as the Authority may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Authority.

4. KPIS

- 4.1 Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 4.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within Schedule 2.
- 4.3 The Supplier shall provide quarterly reports to the Authority in such form as the parties shall from time to time agree.

summarising the Achieved KPIs as provided for in clause 12.

5. COMPLIANCE AND CHANGE IN LAWS

- 5.1 In performing its obligations under this Agreement, the Supplier shall at all times comply with:

- 5.1.1 all applicable Law; and
- 5.1.2 all Policies.

The Supplier shall maintain such records as are necessary pursuant to the Laws and Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority (or its authorised representative).

- 5.2 Without limiting the generality of the obligation under clause 5.1, the Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- 5.2.1 all applicable Law regarding health and safety; and
- 5.2.2 the Health and Safety Policy whilst at the Authority Premises.

- 5.3 Without limiting the general obligation set out in clause 5.1, the Supplier shall (and shall procure that the Supplier Personnel shall):
- 5.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Authority's Equality and Diversity policy as provided to the Supplier from time to time;
 - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- 5.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 5.4 The Supplier shall monitor and shall keep the Authority informed in writing of any changes in the Law which may impact the Services and shall provide the Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Supplier shall only implement such changes in accordance with the Change Control Procedure.

6. USE OF AUTHORITY PREMISES AND ASSETS

- 6.1 With effect from the Commencement Date, the Authority shall grant the Supplier a non-exclusive and revocable licence to enter the Authority Premises for the sole purpose of providing the Services to the Authority. The licence shall be subject to the conditions of this Agreement, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties.
- 6.2 The licence granted pursuant to clause 6.1 shall terminate immediately on the Termination Date.
- 6.3 The Supplier shall ensure that visiting or using the Authority Premises, the Supplier Personnel shall:
- 6.3.1 keep the Authority Premises clean, tidy and properly secure;
 - 6.3.2 co-operate as far as may be reasonably necessary with the Authority's employees;
 - 6.3.3 act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Authority; and
 - 6.3.4 comply with all the rules and regulations that the Authority notifies to the Supplier from time to time in writing relating to the use and security of the Authority Premises.
- 6.4 The Supplier shall ensure that the Supplier Personnel shall not:
- 6.4.1 obstruct access to the Authority Premises, or any part of them; or

- 6.4.2 do or permit to be done on the Authority's Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Authority or the occupiers of or visitors to the Authority Premises.
- 6.5 For the avoidance of doubt, the legal and beneficial title of any Authority Assets reside with the Authority.
- 6.6 The Supplier shall ensure that any Authority Assets are:
- 6.6.1 used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions;
- 6.6.2 kept properly secure; and
- 6.6.3 not removed from the Authority Premises unless expressly permitted under this Agreement or agreed in writing with by the Authority's Authorised Representative.
- 6.7 Subject to the requirements of clause 28 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

7. CHARGES, INVOICING AND PAYMENT

- 7.1 The Authority shall pay the Charges to the Supplier in accordance with Schedule 3.
- 7.2 Except as otherwise provided in this Agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.
- 7.3 The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 3. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time.
- 7.4 The Authority shall accept for processing any electronic invoice submitted by the Supplier that complies with the standard on electronic invoicing provided that it is valid and undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 7.5 Where the Supplier submits an invoice to the Authority in accordance with clause 7.3 the Authority will consider and verify that invoice in a timely fashion and shall seek to pay all sums due within 30 days of receipt of an invoice.
- 7.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement.
- 7.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for

up to 12 years in line with the Supplier's Document Retention Policy from the end of the Contract Year to which the records relate.

8. INTEREST

8.1 Each party shall pay interest on any sum due under this Agreement, calculated as follows:

8.1.1 Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.1.2 Period. From when the overdue sum became due, until it is paid.

9. KEY PERSONNEL

9.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

9.2 The Supplier shall not remove or replace any of the Key Personnel unless:

9.2.1 the person is on long-term sick leave;

9.2.2 the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;

9.2.3 the person resigns from their employment with the Supplier; or

9.2.4 the Supplier obtains the prior written consent of the Authority.

9.3 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 180 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

9.4 If the Supplier replaces the Key Personnel as a consequence of this clause 9, the cost of effecting such replacement shall be borne by the Supplier.

10. SUPPLIER PERSONNEL

10.1 At all times, the Supplier shall ensure that:

10.1.1 each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

10.1.2 there is an adequate number of Supplier Personnel to provide the Services properly;

10.1.3 only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

10.1.4 all of the Supplier Personnel comply with the Policies.

11. TUPE

The parties agree that the provisions of Schedule 8 shall apply to any Relevant Transfer of staff under this Agreement.

12. REVIEW AND MONITORING

12.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this Agreement. The first Authorised Representatives are listed in Schedule 4. The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services (including by signing Change Control Notes).

12.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.

12.3 The Authorised Representatives shall meet at not less than monthly intervals to monitor and review the performance of this Agreement, including the achievement of the Target KPIs. Such meetings shall be minuted by the Authority's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.

12.4 Without prejudice to any other reports required under this Agreement, in advance of each meeting to be held in accordance with clause 12.3:

12.4.1 the Supplier shall provide the Authority with a monthly written report detailing its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and

12.4.2 the Authority shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.

12.5 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause 23 shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.

12.6 A review meeting to assess the Supplier's performance of its obligations under this Agreement shall be held at six-monthly intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Authorised Representatives.

12.7 The Authority may increase the extent to which it monitors the performance of the Services if the Supplier fails to meet the Target KPIs or fails to fulfil its other obligations under this Agreement. The Authority shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Authority pursuant to this clause 12.7.

- 12.8 The Supplier shall submit any other management reports to the Authority in the form and at the interval specified in Schedule 4, or as specified elsewhere in this Agreement.

13. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 13.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 13.2 The parties shall comply with the provisions of Schedule 6 (Benchmarking).
- 13.3 The Supplier shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services and use all reasonable endeavours to ensure that the Authority receives the benefit of any such efficiencies.
- 13.4 Where the Supplier identifies a potential efficiency:
- 13.4.1 it shall promptly inform the Authority and shall advise the Authority whether, in the Supplier's professional opinion, the implementation of any change necessary to enable the Authority to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and
 - 13.4.2 if the Authority concludes that the implementation of the necessary change is desirable, the Supplier shall implement the change.
- 13.5 Where the achievement of the benefit by the Authority would necessitate the making of a Change Control Note, the Change Control Procedure shall apply but the Supplier shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this clause 13 (including any consequent reductions in the Charges) shall accrue solely to the Authority.

14. DISPUTE RESOLUTION

- 14.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- 14.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - 14.1.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Authority who shall attempt in good faith to resolve it;
 - 14.1.3 if the CEO of the Authority is for any reason unable to resolve the Dispute within 30 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR as soon as reasonably possible, but in any event, within 30 Working Days of referral of the Dispute Notice. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation;
 - 14.1.4 Unless otherwise agreed between the parties, the mediation will start not later than 30 Working Days after the date of the ADR notice.

- 14.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
- 14.3 If for any reason the Dispute is not resolved within 60 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 40.

15. SUB-CONTRACTING

- 15.1 The Authority agrees that the Supplier may subcontract its obligations under this Agreement provided that the Supplier shall ensure at all times the Sub-Contractor's compliance with the terms of this Agreement.
- 15.2 In the event that the Supplier enters into any Sub-Contract in connection with this Agreement it shall:
- 15.2.1 remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own;
 - 15.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and procure that the Sub-Contractor complies with such terms; and
 - 15.2.3 provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 15.3 The Authority may require the Supplier to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Authority's right of termination of this Agreement pursuant to clause 24.1 or if there is a change of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Insolvency Event.
- 15.4 Without prejudice to the generality of this clause 15, the Supplier shall operate an appropriate procurement policy and comply with the requirements of the Public Contracts Regulations 2015.

16. LIMITATION OF LIABILITY

- 16.1 References to liability in this clause 16 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 16.2 Nothing in this clause 16 shall limit the Authority's payment obligations under this Agreement.
- 16.3 Nothing in this clause 16 shall limit any liability under:
- 16.3.1 Clause 22 (*IPR indemnity*)
 - 16.3.2 the indemnities in Schedule 8 (*TUPE*) and
 - 16.3.3 breach of clause 27 (*Bribery*)
- 16.4 Nothing in this Agreement limits any liability which cannot legally be limited, including for:
- 16.4.1 death or personal injury caused by negligence;

- 16.4.2 fraud or fraudulent misrepresentation; and
- 16.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 16.5 Subject to clause 16.3 and clause 16.4, the Supplier's total aggregate liability to the Authority in respect of all claims, losses or damages arising in each Contract Year, shall not exceed the total sum of the Charges paid by the Authority and all Charges payable under this Agreement in respect of Services actually supplied by the Supplier, whether or not invoiced by the Authority.
- 16.6 Subject to clause 16.2, clause 16.3 and clause 16.4, the Authority's total aggregate liability in respect of all claims, (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), losses or damages arising in each Contract Year shall not exceed total sum of the Charges paid by the Authority and all Charges payable under this Agreement in respect of Services actually supplied by the Supplier, whether or not invoiced by the Authority.
- 16.7 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3.2 and clause 4. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

17. **INSURANCE**

- 17.1 The Authority shall arrange for the activities of the Supplier relating to this agreement to be covered by its insurance policy ("**Insurance Policy**").
- 17.2 The Supplier shall at all times comply with the terms of the Insurance Policy and shall ensure that nothing is done which would entitle any insurer to cancel, rescind or suspend any insurance cover, or to treat any insurance cover or claim as avoided in whole or part, and shall forthwith notify the Authority on becoming aware of any fact, circumstance or matter which has caused, or is reasonably likely to cause, any insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

18. **FREEDOM OF INFORMATION**

- 18.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 18.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- 18.1.2 transfer to the Authority all Requests for Information relating to this Agreement that should be for the Authority to respond to, not the Supplier, as soon as practicable and in any event within 2 Working Days of receipt;
- 18.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 18.1.4 not respond directly to a Request for Information that should be for the Authority to respond to, not the Supplier, unless authorised in writing to do so by the Authority.

- 18.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 18.3 Notwithstanding any other term of this Agreement, the Supplier consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that the Authority considers is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 18.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

19. DATA PROCESSING

- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Schedule 10 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 19.3 Without prejudice to the generality of clause 19.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.
- 19.4 Without prejudice to the generality of clause 19.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- 19.4.1 process that Personal Data only on the documented written instructions of the Authority which are set out in Schedule 10, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- 19.4.2 ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- 19.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 19.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (a) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
 - 19.4.5 notify the Authority immediately if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data;
 - (b) 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 (including any communication from the Information Commissioner);
 - 19.4.6 assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 19.4.7 notify the Authority without undue delay on becoming aware of a Personal Data Breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
 - 19.4.8 at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination or expiry of the Agreement unless required by Domestic Law to store the Personal Data;
 - 19.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 21 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 19.5 Where the Supplier wishes to appoint a subprocessor to process any Personal Data relating to this Agreement, such subprocessor shall constitute a Sub-Contractor and the Supplier shall:

- 19.5.1 notify the Authority in writing of the intended processing by the Sub-Contractor;
- 19.5.2 obtain prior written consent from the Authority;
- 19.5.3 enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 19.

20. CONFIDENTIALITY

- 20.1 The provisions of this clause do not apply to any Confidential information:
 - 20.1.1 is or becomes available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - 20.1.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 20.1.3 was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - 20.1.4 the parties agree in writing is not confidential or may be disclosed;
 - 20.1.5 which is disclosed by the Authority on a confidential basis to any central government or regulatory body.
 - 20.1.6 which is required to be disclosed pursuant to Clause 20.4 below.
- 20.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
 - 20.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
 - 20.2.2 disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 20.
- 20.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 20.3.1 it consults the other party in advance and informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 20.3.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,
 - 20.3.3 and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 20.2.
- 20.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including under the FOIA or EIRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it

gives the other party as much notice of its intent to make such disclosure as possible and provides an opportunity for the other party to make representations before deciding whether to disclose.

20.5 The provisions of this clause 20 shall survive for a period of 12 years from the Termination Date.

21. AUDIT

21.1 During the Term and for a period of 12 years after the Termination Date, the Supplier shall allow the Authority (acting by itself or through its Representatives) to access any of the Supplier's premises, systems, Supplier Personnel and relevant records as may reasonably be required to:

21.1.1 fulfil any legally enforceable request by any regulatory body;

21.1.2 verify the accuracy of Charges or identify suspected fraud;

21.1.3 review the integrity, confidentiality and security of any data relating to the Authority or any service users;

21.1.4 Ensure that the arrangements between the Authority and the Supplier remain in compliance with the requirements of Regulation 12 of the Public Contracts Regulations 2015;

21.1.5 review the Supplier's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 19 (Data Protection) and clause 18 (Freedom of Information), and any other legislation applicable to the Services; or

21.1.6 verify that the Services are being provided and all obligations of the Supplier are being performed in accordance with this Agreement.

21.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

21.3 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

21.3.1 all information requested by the above persons within the permitted scope of the audit;

21.3.2 reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

21.3.3 access to the Supplier Personnel.

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

21.5 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 by the Supplier to perform its obligations under this Agreement in any material manner in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

- 21.6 If an audit identifies that:
- 21.6.1 the Supplier has failed to perform its obligations under this Agreement, the provisions of clause 23 shall apply;
 - 21.6.2 the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 28 days from the date of receipt of an invoice or notice to do so. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
 - 21.6.3 the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the underpayment within 28 days from the date of receipt of an invoice for such amount.

22. INTELLECTUAL PROPERTY

- 22.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:
- 22.1.1 in the course of performing the Services; or
 - 22.1.2 exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 22.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

23. REMEDIATION PLAN PROCESS

- 23.1 Subject to Clause 23.2, if the Supplier is in default in complying with any of its obligations under this Agreement and unless the default is incapable of remedy, the Authority may not terminate this Agreement without first operating the Remediation Plan Process. If the Supplier commits such a default, the Authority shall give a Remediation Notice to the Supplier which shall specify the default in outline and the actions the Supplier needs to take to remedy the default.
- 23.2 The Authority shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in clause 24.1.1, clause 24.1.4, clause 24.1.5 and clause 24.1.6.
- 23.3 Within 30 Business Days of receipt of a Remediation Notice, the Supplier shall:
- 23.3.1 submit a draft Remediation Plan, only if it is responsible for the matters which are the subject of the Remediation Notice; or
 - 23.3.2 inform the Authority that it does not intend to submit a Remediation Plan, in which event the Authority shall be entitled to serve a Termination Notice.
- 23.4 The Authority shall either approve the draft Remediation Plan as soon as reasonably possible but in any event within 30 Business Days of its receipt pursuant to Clause 23.3.1, or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Authority as soon as reasonably possible but in any event within 30 Business Days of its receipt of the

Authority's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.

- 23.5 Once agreed, the Supplier shall promptly start work on the actions set out in the Remediation Plan.
- 23.6 If, despite the measures taken under clause 23.4, a Remediation Plan cannot be agreed within 30 Business Days then the Authority may elect to end the Remediation Plan Process and serve a Termination Notice.
- 23.7 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, the Authority may:
- 23.7.1 terminate this Agreement by serving a Termination Notice;
 - 23.7.2 give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
 - 23.7.3 refer the matter for resolution under the Dispute Resolution Procedure.
- 23.8 If, despite the measures taken under clause 23.7, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Authority may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 23.9 The Authority shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Supplier as had previously been addressed in a Remediation Plan within a period of 3 months following the conclusion of such previous Remediation Plan. In such event, the Authority may serve a Termination Notice.

24. TERMINATION

- 24.1 Without affecting any other right or remedy available to it, and subject to clause 23, the Authority may terminate this Agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:
- 24.1.1 if the Supplier is in material breach of this Agreement, which is irreparable;
 - 24.1.2 the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
 - 24.1.3 the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
 - 24.1.4 the circumstances referred to in clause 23.9 occur;
 - 24.1.5 if there is an Insolvency Event;
 - 24.1.6 if the Authority elects to terminate pursuant to clause 27.6;
 - 24.1.7 the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 24.2 Either party may, during the continuance of a Force Majeure Event, terminate this Agreement if the circumstances in clause 26.6 arise.

24.3 The Supplier may terminate this Agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this Agreement shall be deemed to have been withdrawn.

25. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Authority may terminate this Agreement at any time by giving 12 months' written notice to the Supplier.

26. FORCE MAJEURE

26.1 Subject to the remaining provisions of this clause 26, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

26.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

26.3 The Affected Party shall:

26.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but not later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

26.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

26.4 If the Supplier is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services.

26.5 The Affected Party shall notify the other party in writing 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.

26.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 12 weeks' notice to the Affected Party.

27. PREVENTION OF BRIBERY

27.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:

27.1.1 has committed a Prohibited Act;

27.1.2 to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

- 27.1.3 has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 27.2 The Supplier shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 27.1 at the relevant time.
- 27.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Term:
- 27.3.1 not commit a Prohibited Act;
- 27.3.2 not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
- 27.3.3 have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
- 27.3.4 notify the Authority (in writing) if it becomes aware of any breach of clause 27.3.1 or clause 27.3.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Agreement.
- 27.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Agreement and the steps taken to comply with its obligations under clause 27.3.
- 27.5 The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 21.
- 27.6 If the Supplier is in default under this clause 27 the Authority may by notice:
- 27.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the default; or
- 27.6.2 immediately terminate this Agreement.
- 27.7 Any notice served by the Authority under clause 27.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

28. CONSEQUENCES OF TERMINATION OR EXPIRY

- 28.1 On the expiry of the Term or if this Agreement is terminated for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.
- 28.2 On termination or expiry of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging

to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.

28.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 4.3 (provision of records), clause 2.5 (Indemnities), clause 16 (Limitation of Liability), clause 17 (Insurance), clause 18 (Freedom of Information), clause 19 (Data Processing), clause 20 (Confidentiality), clause 21 (Audit) and this clause 28 (Consequences of termination), shall remain in full force and effect.

28.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

29. WAIVER

29.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

29.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

30. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31. SEVERANCE

31.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

31.2 If any provision or part-provision of this Agreement is deemed deleted under clause 31.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. NO PARTNERSHIP OR AGENCY

32.1 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.

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

33. THIRD PARTY RIGHTS

33.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

34. ASSIGNMENT AND OTHER DEALINGS

- 34.1 The Authority may in the event of local government reorganisation but not further or otherwise transfer or novate its obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that it gives prior written notice of such dealing to the Supplier.
- 34.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

35. PUBLICITY

- 35.1 The Supplier shall not except where agreed with the Authority:
- 35.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
- 35.1.2 use the Authority's name or logo in any promotion or marketing or announcement of orders,
- except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

36. NOTICES

- 36.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
- 36.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 36.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
- (a) Party 1: karen.hanson@bolsover.gov.uk.
- (b) Party 2: grant.galloway@bolsover.gov.uk.
- 36.2 Any notice shall be deemed to have been received:
- 36.2.1 If delivered by hand, at the time the notice is left at the proper address;
- 36.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or.
- 36.2.3 if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.
- 36.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

37. ENTIRE AGREEMENT

37.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

37.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall not avail itself of, any remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

37.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

38. VARIATION

Subject to clause 13, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

39. COUNTERPARTS

39.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this Agreement, but all the counterparts shall together constitute the one agreement.

40. GOVERNING LAW

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

41. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this document has been executed and delivered on the date first stated above.

Executed as a deed by affixing) Seal
the common seal of)
BOLSOVER DISTRICT COUNCIL)
)
)
in the presence of)
)
.....)
Authorised signatory)

Executed as a deed by)
DRAGONFLY MANAGEMENT (BOLSOVER))
LIMITED)
acting by,)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:

Occupation of witness:

SCHEDULE 1 – SPECIFICATION

This schedule comprises of three parts outlining Service to be delivered on behalf of the Authority which covers Property Services, Repairs and Maintenance and Business Growth Services.

PART 1 – PROPERTY SERVICES Property Services delivers construction, maintenance, and repair activities on behalf of the Authority. Capital Projects manages capital programmes for the HRA. Engineering Services is responsible for drainage, engineering services and infrastructure. Facilities Management delivers the maintenance and capital programmes for corporate premises. Each team is assisted by Business Support which provides financial management, customer and contractor interface, job allocation and meeting co-ordination.

The scope of this service includes:

- Managing asset data to inform capital improvement schemes across the Authority's affordable housing properties
- Undertaking capital repairs schemes across Authority's affordable housing properties
- Delivering major housing welfare adaptations to the Authority's affordable housing properties
- Delivering major repairs to the Authority's affordable housing properties
- Inputting into the Authority's HRA business plan
- Undertaking commercial and residential consultancy work for external clients
- Providing corporate buildings that are compliant and meet the needs of the services that use them
- Ensuring corporate assets underpin corporate priorities and provide value for money
- Maintaining Council let assets in accordance with tenant's/customer requirements
- Undertaking capital works projects to corporate assets
- Managing drainage services including drain clearance and repairs
- Inspection and making safe of dangerous structures across Bolsover District when requested by Building Control
- Managing and repairing closed churchyards, bus shelters, roadside seats, streetlights, street nameplates and pedestrian/vehicular bridges and other Council infrastructure
- Civil engineering projects
- Engineering consultation for planning applications

PART 2 - REPAIRS AND MAINTENANCE SERVICES

To deliver a high-quality customer focused repair and maintenance service for customers and maintain properties in a good state of repair. This includes budget management for the Authorities housing stock in respect of repairs and improvement. In providing a high-quality service the following outlines what will be provided;

SCOPE

- Void property refurbishment to the Authority's lettable standard (dated November 2018), within agreed budget and target timescales
- Responsive repairs on a day to day basis, completed within agreed target timescales according to priority and to comply with Right to Repair legislation
- Planned repairs on a day to day basis, completed within agreed target timescales according to priority and comply with Right to Repair legislation.
- Cyclical servicing of heating systems (Gas / Solid Fuel / Heat Interface Units / Air Source & Ground Source systems), fire sprinkler systems, and electrical installations ensuring compliance with current legislation.
- Carry out property inspection surveys for disrepair and building defects.
- Management of Asbestos within the Authority's Housing Stock
- Implementation of the Authority's tenant improvement policy and procedures, and tenant recharge policy.
- Working with the Authority to continually improve service delivery seeking innovation and transformation, including use of technology.
- Provision of out of hours emergency repairs service assisting the Authority's Central Control and community enforcement team to ensure tenants safety.
- Provision of repair diagnostic software to assist tenants when reporting repairs to the Authority's Contact Centres, Central Control, and via the Authority's website.

PART 3 – BUSINESS GROWTH SERVICES

Business Growth is essential for delivering the Authority's vision of becoming a dynamic, self-sufficient and flexible Authority that delivers excellent services, whilst adapting to local aspirations and acting as the economic and environmental driver for Bolsover District.

This service will provide two key functions which aim to stimulate growth and investment: Commercial Property and Business Growth.

COMMERCIAL PROPERTY AND ESTATES SERVICES (“COMMERCIAL PROPERTY”)

SCOPE

The Service delivers asset, tenancy, and financial management activities. It is responsible for the strategic direction and business planning of the Council's commercial assets, including new acquisitions, leases and licences. It delivers a service which directly contributes to the positive financial position of the Council through income generation and reducing the liabilities of the commercial stock through bringing operational efficiencies to the Service. Officers contribute to the drafting of the strategies and policies associated with the effective management of the commercial property portfolio,

and manage the day-to-day activities across the assets to ensure both tenant and landlord compliance with statutory legislation.

The scope of the service includes, but is not limited to:

- Acting as the principal point of contact for all commercial property and asset enquiries on behalf of the Council.
- Ensuring effective implementation of the commercial asset strategies and policies, including the Authority's acquisitions and disposals strategy.
- Delivering an effective and efficient tenancy management service, including statutory compliance, lease management for tenant covenants, debtor account management and periodic inspections.
- Implementing working practices to ensure due diligence / financial checks are undertaken and negotiating best value for the Landlord to best protect the Council when undertaking new property transactions.
- Proactive debt management, including the recharge and recovery of all debtor charges, legal action, forfeiture and recovery through the Courts.
- The feasibility and business planning for new commercial property developments. The feasibility and business planning for strategic investment / improvements to the existing commercial assets.
- The 'Client' lead on behalf of the Council for the capital construction of new commercial developments

BUSINESS GROWTH

The Business Growth Team facilitates the growth and investment in economic, social, and environmental regeneration across the District. It is responsible for the strategic direction of the Growth Strategy, Tourism Strategy and Business Engagement Strategy and their associated action plans to bring about meaningful growth and investment. It represents the Council across local, regional and national committees as lead for economic growth, and works with national partners to facilitate inward investment enquiries, accelerating the delivery of strategic employment sites identified within the Local Plan. The Service delivers a variety of grant funded business support programmes, responsive to the needs of the business community, to facilitate growth and investment in pre-start, start-up, SME and growth industries to boost employment and the economic well-being of residents.

SCOPE

The scope of the service will include, but is not limited to:

- Formulating, delivering, and monitoring the Growth, Tourism, and Business Engagement Strategies on behalf of the Council.
- Delivery of activities and actions as set out in the growth, tourism, and business engagement strategies.
- Promotion of the district as a destination to residents, businesses, and visitors in order to change the perception of the district and encourage more local 'on your doorstep' activities to encourage and promote a pride of place.
- Accelerating economic growth through facilitating inward investment enquiries, engaging with local, regional, and national partners to best support relocation into the district and/or the development of strategic employment sites as identified within the Local Plan.

- Working with developers and businesses, individuals, and education providers (colleges, universities) to improve the skills of the population through formulating Employment and Skills Plans through the planning application process.
- Act as the district's representative for economic development at local, regional, and national committees and groups, including on the MCCA sub-groups / committees, as lead for economic growth, regeneration, place, tourism and visitor economy, economic policy.
- Leading on the formulation of funding applications and securing external funding which deliver the economic, social and environmental ambitions for growth across the district.
- The management, administration, and monitoring of any internal, external or allocated grant funding, where the grant funding will directly / indirectly contribute to a positive economic, social or environmental impact.
- Engagement and working with the further and higher education providers (colleges and universities) to better meet employer demand for a skilled workforce and upskilling the same to meet future demand in new and emerging industries.
- To work with Local Visitor Economy Partnership (Visit Peak District Derbyshire and Derby) and Visit England to promote the offer and raise the profile of the district as an emerging tourist destination.
- The feasibility and business planning for strategic investment in new commercial developments.
- The 'Client' lead on behalf of the Council for the capital construction of new commercial developments.

SCHEDULE 2 - PERFORMANCE REGIME

PART 1 - KPIS

1. THE KPIS

1.1. The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	Comments / Action
Minor voids	Average time taken to complete works (working days) from receiving keys to handing back to Housing Management for reletting	30%	
Major voids	Average time taken to complete works (working days) from receiving keys to handing back to Housing Management for reletting	60%	
Gas and solid fuel appliance servicing	Annual programme	100%	
Repairs - New TSM RP02 - Repairs completed within target timescale provides for. 1. Non-emergency repairs 2. Emergency repairs This is across all works including any contractors, but does not include Planned or Cyclical works	Responsive (emergency) repairs completed to target	1. Emergency 90% 2. Non Emergency 80%	
Tenant satisfaction with repair (%)	Job Completion as produced by total Mobile	80%	
Tenant satisfaction with standard of home improvement (capital programme)	Tenant Form's completed	90% satisfied	Currently being reviewed
% of properties non-decent? (TSM RP01)	Stock Condition Survey	100%	This KPI will be determined once the survey is completed to inform base line and

			inform level of work required.
Number of properties made decent during reporting period?		% of decent and % which have been made decent	This KPI will be determined once the survey is completed to inform base line and inform level of work required.
Domestic Compliance against 1. Fire 2. Asbestos 3. Water Safet 4. Lifts (TSM BS02-05)	As per approved annual programme for that year	100 %	
Asset management	Revenue spend	As per approved programme for that year to include: 1. Welfare including Wet Room Adaptions 2. Decorating Programme 3. Asbestos Management 4. Voids Cleaning 5. Replacement Boilers 6. Gas Services 7. Solid Fuel 8. Emergency Repairs	
Asset management	Capital spend	As per approved programme and budget annually, to include: 1. Welfare Adaptions 2. External Wall Insulation 3. Electrical Upgrades 4. Ext Door Replacements 5. Heating 6. Unforeseen works 7. Kitchen Contract 8. Soffit & Facias 9. Roof Replacement 10. Flat roof replacement 11. Bramley Vale 12. Void wet rooms 13. Safe & Warm scheme	
Domestic Blocked drains cleared	1 working day	90%	

Bolsover Homes	Building programme	Delivery to agreed client specification	
Facilities	Statutory compliance on properties responsible for including Commercial Properties in respect of Asbestos, Fire and Legionella	100% of agreed properties	
Facilities	PAT testing on all equipment available for testing	100%	
Facilities Management	No of working days to respond to matters: 1. 1 day for urgent 2. 3 days non urgent 3. 10 days regular maintenance	100%	
Engineering-	Attend dangerous structures within 1 working day. when requested by DBCP (DBCP are the district lead on dangerous structures)	100%	
New Builds	Attend to defects and tenant operating queries within 2 working days	100%	

The Supplier shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with Schedule 4.

PART 2 - PERFORMANCE MANAGEMENT FRAMEWORK

The Supplier confirms that it will comply with the following performance management process in its provision of Services in accordance with this agreement. Provided that the below is adjusted each year according to the Authority's reasonable approved programme.

Authority Governance

	Attendees	Frequency	Nature	Escalation / Reporting Route
Finance & Corporate Overview Scrutiny Committee	Supplier: Senior Representative Authority:	Quarterly	Scrutiny of the performance of the Authority, limited to the work that Supplier undertakes for the Authority, with	Shareholder Board Authority Referrals to other

	Chief Executive Officer, Statutory Officers with relevant Directors		opportunity to discuss performance challenges with relevant directors (as required)	committees as required.
Dragonfly Shareholder Board	<p>Authority:</p> <p>Chief Executive Officer, Statutory Officers with relevant Directors, Client Programme Manger Client Programme Manager and nominated Portfolio holders</p> <p>Other key Officers when requested including a</p> <p>Senior Representative Dragonfly Developments Limited and Dragonfly Management (Bolsover) Limited</p>	<p>Monthly</p> <p>(Reviewed Frequently)</p>	This group will oversee the delivery of the Authority's wholly owned Group of Companies Dragonfly Developments Limited and Dragonfly Management (Bolsover) Limited	Authority
Growth Scrutiny	<p>Supplier:</p> <p>Chief Executive Officer</p> <p>Authority:</p> <p>Chief Executive Officer</p>	<p>Annually</p> <p>With updates to be received as per the Committee workplan,</p>	Scrutiny of performance	<p>Shareholder Board</p> <p>Authority</p>
Housing Stock Management	<p>Supplier:</p> <p>Operational and Finance Directors</p> <p>Authority:</p> <p>Assistant Director of Housing Management and Enforcement</p>	Monthly	Oversee delivery of the approved Asset Management Capital spend, with opportunity to discuss performance challenges with relevant directors (as required). This also includes compliance on	<p>Shareholder Board</p> <p>Authority Referrals to other committees as required.</p>

			Fire, Asbestos, Water Safety & Lifts.	
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Contract Governance

	Attendees	Frequency	Nature	Escalation / Reporting Route
Joint Working Group	<p>Supplier:</p> <p>CEO, Operational and Finance Directors</p> <p>Authority:</p> <p>Chief Executive Officer, Statutory Officers with relevant Directors and Client Programme Manger</p>	<p>Monthly</p> <p>(Reviewed Frequently)</p>	<p>To deliver the Authority' s ambitions to generate income from its housing, commercial and regeneration activities.</p> <p>Oversee and maintain appropriate management, governance, due diligence, legal, performance monitoring, operations, and reporting of each company in accordance with the Business Case.</p> <p>Contribute to the delivery of the Authority Objectives in accordance with the Business Plans.</p> <p>Support strategic objectives and significant decisions of the Authority by overseeing delivery of the Business case and Business Plans</p>	<p>Shareholder Board</p> <p>Annual Report to Authority</p>

SCHEDULE 3 - CHARGES AND PAYMENT

1. CALCULATION OF THE CHARGES

- 1.1. A budgetary allocation for the Supplier shall be calculated by the parties annually as part of the Authority's annual budget setting process. This budget setting process shall take place in January of each year.
- 1.2. Following the finalisation of the annual budget, the Supplier will then invoice the Authority for Services to be provided on a quarterly basis, in advance.
- 1.3. The Authority will then pay the invoiced amounts from the budgetary allocation for the Services.

2. CHARGES .

Service	Year 1 budget	Future budgets
Property Services	£X plus any in year additional grant funding and associated match funding awarded to/by the Authority for the delivery of the Services as set out in Schedule 1.	Such number as communicated to the Supplier following agreement of the Council's internal budget setting process, together with any additional grant funding awarded to/by the Authority for the delivery of the Services as set out in Schedule 1.
Repairs and Maintenance Services	£X plus any in year additional grant funding and associated match funding awarded to/by the Authority for the delivery of the Services as set out in Schedule 1.	Such number as communicated to the Supplier following agreement of the Council's internal budget setting process, together with any additional grant funding awarded to/by the Authority for the delivery of the Services as set out in Schedule 1.
Business Growth Services	£X plus any in year additional grant funding and associated match funding awarded to/by the Authority for the delivery of the Services as set out in Schedule 1.	Such number as communicated to the Supplier following agreement of the Council's internal budget setting process, together with any additional grant funding awarded to/by the Authority for the delivery of the Services as set out in Schedule 1.

SCHEDULE 4 - CONTRACT MANAGEMENT

1. AUTHORISED REPRESENTATIVES

1.1. The Authority's initial Authorised Representatives

Karen Hanson	(CEO Bolsover District Council)
Theresa Fletcher	(Service Director of Finance and Section 151 Officer)
Jim Fieldsend Officer)	(Service Director Corporate and Legal Services and Monitoring
Victoria Dawson	(Assistant Director of Housing Management and Enforcement)
Jess Clayton	(Client Relationship and Programme Manager)

1.2. The Supplier's initial Authorised Representatives

Grant Galloway	(CEO, Dragonfly Management (Bolsover) Limited)
Ian Barber	(Director, Dragonfly Management (Bolsover) Limited)
Chris Fridlington	(Director, Dragonfly Management (Bolsover) Limited)

2. KEY PERSONNEL

Karen Hanson	(CEO Bolsover District Council and Dragonfly Group Sponsor)
Grant Galloway	(CEO of Dragonfly Management (Bolsover) Limited)

3. SAFEGUARDING – FOLLOWING AUDIT.

Pam Brown	(Lead Officer: BDC Director for Executive, Corporate Services and Partnerships)
Catherine Platts	
Andy Clarke	

4. REPORTS

4.1 Reports to be received at the joint working group.

Frequency	Report
Monthly	<ol style="list-style-type: none"> 1. Reports required within 5 working days of the end of the month <ul style="list-style-type: none"> • Breakdown of cash received as per xxxxx account • Breakdown of rents charged and other debits during the month with cumulative balance outstanding • Aged debtors report consistent with cumulative position advised above. 2. Forecasts of revenue expenditure to contribute to the forecasts submission as per the Authority's monitoring timetable. 3. Actuals & forecasts of capital expenditure to contribute to the forecast submission as per the Authority's monitoring timetable. 4. Invoice for temporary accommodation, capital funding and any other items over the fee to be received with supporting documentation at least 10 working days before the due date. 5. Performance outcomes against the Annual Delivery Plan, Commitments Plan and other contractual and or regulatory requirements (e.g. Care Quality Commission) relating to services commissioned by the Authority. 6. Schedule of intercompany income, expenditure, debtors and creditors with a reconciliation to the Authority's figures by the end of the following month (e.g. transactions and reconciliation to the end of April to be received by end of May)
Quarterly	<ol style="list-style-type: none"> 7. At the end of each quarter within 5 working days at the end of the quarter. <ul style="list-style-type: none"> • Schedule of Right to Buy sales • Narrative for quarterly performance • Schedule of completions • Schedule of bad write off in excess of £5,000 for authorisations 8. Profile of decants within 10 working days of the end of the quarter. 9. Schedule of bad debt write offs in excess of £50 and up to £5,000 together with a draft DPR for authorisation by the CEO by the end of the month following the quarter end.
Annually	<ol style="list-style-type: none"> 10. Financial Plan for all key business activities funded by both HRA and General Fund with clear lines of expenditure.

	<ol style="list-style-type: none"> 11. Stock numbers, average rents and estimated costs to contribute to producing HRA budgets as per the Authority's budgets timetable. 12. Breakdown of capital expenditure for financial year including a detailed listing of accruals as per the Authority's closing timetable. 13. Delivery report and reconciliation against asset management strategy with revised timetable and financial plan if required. 14. Annual Report / Business Plan and any other topics by xxxxx 15. Each Dragonfly Company shall prepare a draft set of accounts in line with the timetable provided by the Authority in March each year, these will then be presented at the next Joint Working Group meeting. 16. Each Dragonfly Company shall provide a set of audited accounts as soon as practicable and at the latest by 3 months after the end of the relevant financial year. Again, these will then be presented at the next Joint Working Group meeting. 17. Capital Bids in line with dates advised in the budget timetable.
Ad hoc	<ol style="list-style-type: none"> 18. Number /value of Right to Buy applications and completions for HRA model forecasting. 19. Provide supporting information in response to audit requests e.g. sample transactions within 24 hours of receiving the request.

CONFIDENTIAL SENSITIVE

SCHEDULE 5 - CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1. Where the Authority or the Supplier sees a need to change this Agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5.
- 1.2. Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3. Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4. Any work undertaken by the Supplier and the Supplier Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 5, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Discussion between the authority and the supplier concerning a change shall result in any one of the following:
 - 2.1.1 No further action being taken; or
 - 2.1.2 A request to change this agreement by the authority; or
 - 2.1.3 A recommendation to change this agreement by the supplier.
- 2.2 Where a written request for a change is received from the authority, the supplier shall, unless otherwise agreed, submit two copies of a change control note signed by the supplier to the authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the supplier shall be submitted directly to the authority in the form of two copies of a change control note signed by the supplier at the time

of such recommendation. The authority shall give its response to the change control note within three weeks.

2.4 Each change control note shall contain:

- 2.4.1 the title of the Change;
- 2.4.2 the originator and date of the request or recommendation for the Change;
- 2.4.3 the reason for the Change;
- 2.4.4 full details of the Change, including any specifications;
- 2.4.5 the price, if any, of the Change;
- 2.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;
- 2.4.7 a schedule of payments if appropriate;
- 2.4.8 details of the likely impact, if any, of the Change on other aspects of this Agreement including:
 - a) the timetable for the provision of the Change;
 - b) the personnel to be provided;
 - c) the Charges;
 - d) the Documentation to be provided;
 - e) the training to be provided;
 - f) working arrangements;
 - g) other contractual issues;
 - h) the date of expiry of validity of the Change Control Note; and
 - i) provision for signature by the Authority and the Supplier.
- 2.4.9 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:
 - a) allocate a sequential number to the Change Control Note; and
 - b) evaluate the Change Control Note and, as appropriate:
 - c) request further information;
 - d) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
 - e) notify the Supplier of the rejection of the Change Control Note.
- 2.4.10 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this Agreement.

SCHEDULE 6 - BENCHMARKING

1. Interpretation

1.1 The definitions in this paragraph apply in this schedule.

1.2 **Benchmark Review:** a review required by the Authority in accordance with this Schedule 6.

Benchmarked Services: the Services taken as a whole.

Best Value: as defined in Section 3 of the Local Government Act 1999.

2. The Authority may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this Schedule 6. The first Benchmark Review may not take place until at least 18 months after the Commencement Date and each subsequent Benchmark Review must be at least 12 months after the previous one.

3. if any Benchmark Review determines that the Charges do not represent Best Value, in line with the Authority's statutory duties, then the Supplier shall, in accordance with Schedule 5 (Change Control) and within three months of completion of the Benchmark Review, make a proposal for a changes to the Services, with Charges representing Best Value, under which there will be a new Initial Term, and modifications may be made to the Services and the KPIs.

4. On receipt of the proposal from the Supplier under paragraph 3 the Authority shall have the option to:

4.1 accept the new proposal in which case the Parties shall record the change

4.2 reject the proposal and elect to continue to receive the Services on the existing basis; or

4.3 reject the proposal and terminate this Agreement on six months' notice in writing to the Supplier without cost other than the Charges up to the date of such termination.

5. The purpose of the Benchmark Review shall be to establish whether the Services as a whole provide for Best Value, in line with the Authority's statutory duties.

SCHEDULE 7 - EXIT MANAGEMENT

1. EXIT MANAGEMENT

- 1.1. In the event of termination of this Agreement for whatever reason the Supplier shall procure the transfer to the Authority of any rights or title it may in assets transferred to the Supplier by the Authority to deliver the Services or used solely for the delivery of the Services. the Supplier shall at the Authority's option procure the novation or assignment to the Authority of the benefit of any contracts entered into with third parties for the delivery of the Services.
- 1.2. During the final six months of the Term or during the notice period specified in clause 26 of this Agreement where a notice has been served, and for the period of three months following end of the term or termination of this Agreement (as the case may be) the Supplier shall fully cooperate with the Authority to ensure a smooth transfer of responsibility to the incoming service provider. In the event of termination of the Agreement, for whatever reason, the Supplier shall comply with the provision of Schedule 8.

CONFIDENTIAL SENSITIVE DRAFT

SCHEDULE 8 - TUPE AND PENSIONS

1. Terms are defined below
Indemnities A breach by the Council of its obligations under paragraph [] above; subject to paragraph [] any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Council in relation to any Relevant Employee prior to the Relevant Transfer Date (save where such act, fault or omission arises as a result of the Contractor's or any relevant Sub-Contractor's failure to comply with Regulation 13 of TUPE) and any such claim is not in connection with the Relevant Transfer. The Contractor shall indemnify and keep indemnified in full the Employer, and at the Council's request each and every service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Contract ("Future Contractor") against: all Direct Losses incurred by the Council or any Future Contractor in connection with or as a result of any claim or demand against the Council or any Future Contractor by any person who is or has been employed or engaged by the Contractor (or any Sub-Contractor) in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after the Commencement Date; all Direct Losses incurred by the Council or any Future Contractor in connection with or as a result of a breach by the Contractor of its obligations under paragraph above; and all Direct Losses incurred by the Council or any Future Contractor in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or any Sub-Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor (and/or any Sub-Contractor) to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Commencement Date. The Contractor shall indemnify and keep indemnified in full the Council, against all Direct Losses incurred by the Council in connection with or as a result of: the change of identity of employer to the Contractor (or any Sub-Contractor) occurring by virtue of TUPE being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of the change in employer, and whether such claim arises before or after the Commencement Date; any proposed or actual change by the Contractor (or any Sub-Contractor) to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Contractor (or the relevant Sub-Contractor) which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of any such proposed changes or measures, and whether such claim arises before or after the Commencement Date; and any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor (or any Sub-Contractor) to the Relevant Employees or their representatives whether before on or after the Commencement Date and whether liability for any such claim arises before on or after the Commencement Date. For the avoidance of doubt, the indemnities in paragraphs 1.5.2 and 1.5.3 shall not apply to the extent that the claim arise from a wrongful act or omission of the Council.
Provision of Details and Indemnity The Contractor shall immediately upon request by the Employer provide to the Employer details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Employer against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.
- 3.1. Dragonfly Management (Bolsover) Limited (and shall procure that any sub-contractor shall) within the period of twelve (12) months immediately preceding the Termination Date or as consequence of the service of notice to terminate the Contract early in accordance with its terms or as a result of the Council notifying Dragonfly Management (Bolsover) Limited of its intention to retender this Agreement:
 - 3.1.1. on receiving a written request from the Council provide in respect of any person engaged or employed by Dragonfly Management (Bolsover) Limited or any sub-contractor in the provision of the Services (the "Assigned Employees") full and

accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of any other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of Dragonfly Management (Bolsover) Limited (or of sub-contractor) until immediately before the Termination Date, would be Returning Employees (the "Retendering Information")

- 3.1.2. provide the Retendering Information promptly and at no cost to the Council;
 - 3.1.3. notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 3.1.4. be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed)
 - 3.1.5. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed) and;
- 3.2. Dragonfly Management (Bolsover) Limited shall, and shall keep indemnified in full, the Council against all Direct Losses arising from any claim by any party as a result of Dragonfly Management (Bolsover) Limited (or sub-contractor) falling to provide or promptly to provide the Council with any Retendering Information and /or employee Liability Information or as a result of any material inaccuracy on, or omission, from the Retendering Information to the extent that such information was originally provided to Dragonfly Management (Bolsover) Limited by the Council and was materially inaccurate or incomplete when provided.
- 4. TERMINATION OF AGREEMENT** On the Termination Date or earlier termination of this Agreement, the parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to any of the Services but the position shall be determined in accordance with the law as the Termination Date or earlier termination date and this paragraph 2.1 is without prejudice of such determination.
- 4.2. For the purpose of this Schedule 8 "Returning Employees" shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the Termination Date whose employment transfers to the Council or a Future Service Provider pursuant to TUPE. Upon termination of this Agreement for whatever reason (such date being termed the "Return Date") the provisions of this paragraph 2.2 will apply;
- 4.2.1. Dragonfly Management (Bolsover) Limited shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of Dragonfly Management (Bolsover) Limited or any sub-contractor who has been engaged in the provision of the Service and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of Dragonfly Management (Bolsover) Limited (or sub-contractor) up to the Return Date are satisfied.
- 4.3. without prejudice to paragraph 2.2.1;
- 4.3.1. Dragonfly Management (Bolsover) Limited shall remain (and procure that any subcontractor shall remain) responsible for all Dragonfly Management (Bolsover) Limited (or sub contractors) employees (other than the Returning Employees) on or after the expiry or termination of this Agreement and shall indemnify the Council and any Future Service Provider against all Direct Losses incurred by the Council or Future Service Provider resulting from any claim whatsoever, whether arising before on or after the Return Date by or on behalf of any Dragonfly Management (Bolsover)

Limited or sub-contractors employees who do not constitute the Returning Employees.

4.3.2. The Council shall ensure or shall procure that all wages, salaries and other benefits of the Returning Employees (who has been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees on and after the Return Date are satisfied;

4.3.3. In respect of those employees who constitute Returning Employees, Dragonfly Management (Bolsover) Limited shall indemnify the Council and any Future Service Provider against all Direct Losses incurred by the Council and any Future Service Provider resulting from any claim whatsoever by or on behalf of any Returning Employee (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by Dragonfly Management (Bolsover) Limited (or sub-contractor) to comply with its or their obligations under Regulation 13 and 14 TUPE and any award of compensation on Regulation 15 of TUPE and / or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Service Provider.

4.4. The Council shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

5. SUB-CONTRACTORS

5.1. In the event that Dragonfly Management (Bolsover) Limited enters into any subcontract in connection with this Agreement, it shall impose obligations on its sub-contractors in the same terms as those imposed on it pursuant to paragraph 2 of this Schedule 8 shall procure that the sub-contractor complies with such terms. Dragonfly Management (Bolsover) Limited shall indemnify and keep the Council indemnified in full against all losses claims, expenses and liabilities, incurred by the Council or any Future Service Provider as a result of, or in connection with, any failure on the part of Dragonfly Management (Bolsover) Limited to comply with such terms.

6. PENSIONS FOR ELIGIBLE EMPLOYEES

6.1. Contractor to become an Admission Body

6.1.1. Where the Contractor or a sub-contract employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Contract shall procure that it and/or each relevant sub-contractor shall become and Admission Body. The Contract shall before the Relevant Transfer Date execute and procure that each relevant sub-contractor executes a Contractor Admission Agreement which will have effect from and include the Relevant Transfer Date

6.2. Contractor Admission Agreement

6.2.1. The Council shall before each Relevant Transfer Date execute Contractor Admission Agreement(s) referred to in paragraph 4.1 (Contractor to become an Admission Body).

6.3. Indemnity for Breach of the Contractor Admission Agreement

6.3.1. Without prejudice to the generality of this section 4, the Contract hereby indemnifies the Council and/or any Future Contractor and, in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Contractor or any sub-contractor of the terms of the Contractor Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused)

6.4. Indemnity or Bond

6.4.1. Without prejudice to the generality of the requirements of this section, the Contractor shall procure that it and each relevant sub-contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the applicable Contractor Admission Agreement.

6.5. Right to Set-Off

6.5.1. In accordance with paragraph 12 (c) of the LGPS Regulations, the Council shall have a right to set off against any payments due to the Contractor under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interested payable under the LGPS Regulations) due from the Contractor or from any relevant sub-contractor (as applicable) under the Contractor Admission Agreement.

6.6. Contractor Ceases to be an Admission Body

6.6.1. If the Contractor or any sub-contractor employs any Eligible Employees from a Relevant Transfer Date and:

- a) The Contractor or any sub-contractor does not wish to offer those Eligible Employees membership of the LGPS; or
- b) The Council, the Contractor or any relevant Sub-Contractor are of the opinion that it is not possible to operate the provisions of paragraph 4.1 (Contractor to become an Admission Body) to 4.5 inclusive; or
- c) If for any reason after the Relevant Transfer Date the Contractor or any relevant sub-contractor ceases to be an Admission Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees,

Then the provisions of paragraph 4.1 (Contractor to become an Admission Body) to 4.5 (Right to Set-Off) inclusive shall not apply (without prejudice to any rights of the Contractor under those paragraphs) and the provisions of paragraph 4.7 (Contractor Scheme) shall apply.

6.6.2. If the Contractor or any sub-contractor ceases to employ any Eligible Employee in delivery of the Services, then the Contractor Admission Agreement shall expire in accordance with its terms and the Contractor (or sub-contractor) shall cease to be an Admission Body

6.7. Contractor Scheme

6.7.1. Where paragraph 4.1 does not apply, the Contractor shall or shall procure that any relevant sub-contractor shall not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be "the Contractor Scheme" for the purposes of this paragraph 2.7. Such pension scheme or schemes must be:

- a) Established within 3 months prior to the Relevant Transfer Date or Cessation Date (as the case may be);
- b) Reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
- c) A registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
- d) Certified by an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are the same as, or broadly comparable to or better than those benefits provided by the LGPS.

6.7.2. The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant sub-contractor shall procure that:

- a) The Eligible Employees shall by 3 months before the Relevant Transfer Date of the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
- b) The Contractor Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation date (as the case may be) which in actually nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to or better than benefits which the eligible employees were entitled to under the LGPS at the Relevant Transfer Date or the Cessation date (as the case may be);
- c) On and from the relevant transfer date organisation date (the case may be) until the earlier of:
 - 6.7.2.c.1. 3 months after the date on which the Eligible Employees are first able to join the Contractor Scheme; and
 - 6.7.2.c.2. The date on which the Eligible Employees joined the Contractor Scheme,

The Contractor shall provide death benefits for and in respect of the eligible employees which are certified by an actuary nominated by the council in accordance with relevant guidance produced by the Government Actuary's Department as being the same as, broadly comparable to or better than those they would otherwise have been provided in respect of those eligible employees by the LGPS;

- d) If the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant sub-contractor. The replacement scheme must comply with this paragraph 4.7 (Contractor Scheme) as if it were the Contractor Scheme; and
- e) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Contractor Scheme shall undertake take by deed to the Council that they shall cooperate with the provisions of paragraph 4.7 (Contracts Scheme), and 4.8 (Undertaking from the Contractor) to the extent applicable to them.
- f) The Contractor shall, and shall procure any relevant sub-contractors shall, comply with any terms for bulk transfers from the LGPS to the Contractor Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this Agreement as shall be reasonably required by the Council and/or the Administrating Authority

6.8. Undertaking from the Contractor

6.8.1. The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

- a) All information which the Council or their respective professional advisers may reasonably requests from the Contractor or any relevant sub- contract for the admission of the LGPS or consenting any other matters raised in paragraph 4.7 (Contractor Scheme), or in this paragraph 4.8 shall be supplied to them as expediently as possible;
- b) It shall not (and shall procure that any relevant sub-contractor shall not), without the consent in writing of the Council (which will only be given subject to the payment by the

Contractor or the relevant sub-contractor of such reasonable costs as the Council may require) consent to instigate, encourage or assist any event which could impose on the council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect that Eligible Employee had that consent, instigation, encouragement or assistance not being given;

- c) Until the Relevant Transfer Date, it shall not (and shall procure that any relevant sub-contractor shall not) issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 4.1 (Contractor to become an Admission Body) to 4.6 (Contractor ceases to be in Admission Body) inclusive without the consent in writing of the council (not to be unreasonably withheld or delayed);
- d) It shall not (and shall procure that any relevant sub-contractor shall not) take or omit to take any action which would materially affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written consent of the Council (not to be unreasonably withheld or delayed) provided that the Contractor and/or such sub-contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- e) It shall (and shall procure that any relevant sub-contractor shall) offer any of its Eligible Employees who ceased to be engaged in the provision of the Services and thereby ceased to be eligible for membership of the LGPS, membership of the Contract Scheme immediately after ceasing to be so engaged (unless such Eligible Employee has voluntarily agreed to the loss of their LGPS membership as part of the change).

6.9. Enforceability by Eligible Employees

6.9.1. This section (Pensions for Eligible Employees) shall be enforceable by the Eligible Employees.

6.10. Claims from Eligible Employees or Trade Unions

6.10.1. The Contractor hereby indemnifies the Council and/or any Future Contractor and, in each case, their sub-contractors from and against all Direct Losses suffered and incurred by it or them which arise from claims by Eligible Employees of the Contractor and/or of any sub-contractor or by any trade unions, elected employee representatives or staff associates in respect of all or any such Eligible Employees which losses:

- a) Relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date, until the date of termination or expiry of this Agreement; or
- b) Arise out of the failure of the Contractor and/or any relevant sub-contractor to comply with the provisions of this paragraph 4 before the date of termination or expiry of this Agreement.

6.11. Liability for Costs

6.11.1. The costs of the Employer necessarily and reasonably incurred in connection with the Contractor Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with paragraph 4.7. (Contractor Scheme) shall be borne by the Contractor.

7. Transfer to another Employer

7.1. Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall (and shall procure that any relevant Sub-Contractor shall):

- 7.1.1. consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- 7.1.2. procure that the employer to which the Eligible Employees are transferred (the “New Employer”) complies with the provisions of this section 2 provided that references to the “Sub-Contractor” will become references to the New Employer, references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.

8. Pension Issues on Expiry or Termination

- 8.1. The Contractor shall (and shall procure that each relevant Sub-Contractor shall):
 - 8.1.1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any outward transfer of any person engaged or employed by the Contractor or any sub-contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
 - 8.1.2. promptly provide to the Employer such documents and information mentioned in paragraph 6.1.1 which the Employer may reasonably request in advance of the expiry or termination of this Agreement; and
 - 8.1.3. fully co-operate (and procure that the trustees of the Contractor’s Scheme shall fully co-operate) with the reasonable requests of the Employer relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

9. Funding of initial valuation shortfalls and exit valuation shortfalls in respect of Eligible Employees

- 9.1. At the Relevant Transfer Date, the Fund will be deemed to be fully funded in respect of the Eligible Employees and the Council will be responsible for any underfunding prior to the Relevant Transfer Date. Any underfunding will be established by the actuarial valuation of the Fund at the date the Contractor or a relevant sub-contractor enters into an Admission Agreement in respect of the Eligible Employees. The arrangements regarding any payment to be made to the Fund for any underfunding up to the Transfer Date will be agreed between the Council and the Fund.
- 9.2. At the date of the expiry or earlier termination of the Agreement, the Contractor will obtain, or procure that the Administering Authority obtains, an actuarial valuation of the Fund (or revision thereto). If the Contractor is required to pay any contributions to the LGPS representing any funding deficit (the “Exit Contribution”) the Council shall reimburse the Contractor the amount of the Exit Contribution save to the extent that the Exit Contribution results from any of the matters set out in the clause 7.2. Any such reimbursement is made without 20 Business Days of the relevant actuarial valuation.
- 9.3. The Contractor accepts responsibility for any Exit Contribution to the extent it results from one or more of the following:
 - 9.3.1. The grant by the Contractor of early retirement requests in relation to Eligible Employees;
 - 9.3.2. Granting of augmentation of benefits in relation to Eligible Employee in relation to the Fund, including, but not limited, to an augmentation under Regulation 31 of the LGPS Regulations, which is an additional to any augmentation that an Eligible Employee is entitled to as a right under the LGPS Regulations;
 - 9.3.3. The reduction or waiver of any contributions due from an Eligible Employee;

- 9.3.4. The award of pay increases to Eligible Employees which in aggregate exceed;
- a) The percentage rate allowed for pay increases in the latest valuation of the Fund prior to the award of the pay increase in question; or
 - b) Any pay increases that the Contractor is required to make by law (including, for these purposes, pursuant to its obligations arising under, or as a consequence of, the TUPE Regulations, any code of practice an/or any National Joint Council for Local Government services arrangements); or
 - c) Any pay increases that the Contractor is obliged to offer pursuant to the terms and conditions of employment in place with the Eligible Employees as at the Relevant Transfer Date (including under any collective agreement);
- 9.3.5. The termination of the employment contract of an Eligible Employee is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds;
- 9.3.6. The termination of the employment contract of an Eligible Employee on the grounds of permanent ill health or infirmity of mind or body which renders the employee permanently incapable of efficiently discharging their duties of their current employment, in accordance with Regulation 35 of the LGPS Regulations;
- 9.3.7. Brining the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after the age of 55;
- 9.3.8. Exercising any discretion to extend the statutory time frames under Regulation 22 of the LGPS Regulations; or
- 9.3.9. Waving any reduction to benefits under Regulation 30(6) of the LGPS Regulations.

10. Payment of contributions to the Fund and any excess/reduction below the Initial Employer Contribution Rate

- 10.1. In respect of contributions to be paid to the Fund by the Contractor or any relevant sub-contractor, subject to paragraph 7 above, the Contractor or relevant sub-contractor shall pursuant to the Contractor Admission Agreement pay to the Administering Authority for the credit of the Fund such contributions as are required under Regulation 67 of the LGPS Regulations in respect of the Eligible Employees.
- 10.2. If the contributions payable under paragraph 8.1 exceed the Initial Employer Contribution Rate, then the amount which exceeds the Initial Employer contribution Rate shall be added as an adjustment to the amount due to the Contractor for each month during the period during which the contributions payable in accordance with the Contractor Admission Agreement exceed the Initial Employer Contribution Rate.
- 10.3. If the contributions payable under paragraph 8.1 decrease below the Initial Contribution Rate, the reduction below the Initial Employer Contribution Rate shall be subtracted as an adjustment to the amount due to the Contractor for each month during the period during which the contributions payable in accordance with Contractor Admission Agreement are less than the Initial Employer Contribution Rate.
- 10.4. For the avoidance of doubt, the provisions of paragraph 8.1 above shall not apply where any such change in Employer Contribution Rate arises from any matters for which the Contractor is responsible pursuant to paragraph 7.3.4 above.

11. Discretionary benefits

- 11.1. Where the Contractor or any relevant sub-contractor is an Admission Body, the Contractor shall and/or shall procure that any relevant sub-contractor shall award benefits

(where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still be employed by the Council.

11.2. Where the award of benefits under paragraph 9.1 is not permitted under the Compensation Regulations and/or the LGPS, or the Contractor and/or a sub-contractor is not an Admission Body, the Contractor shall and/or shall procure that any sub-contractor shall award benefits to the Eligible Employees which are equivalent to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

11.3. Under paragraphs 9.1 and 9.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy or Administering Authority's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any relevant sub-contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

12. DEFINITIONS

12.1. For the purposes of this Schedule, the following terms shall have the meanings given to them below:

PHRASE

MEANING

Admission Agreement

an admission agreement entered into in accordance with Regulation 5 of the LGPS Regulations (as amended from time to time) by the Council and the Contractor or Sub-Contractor (as appropriate);

Admission Body

means a transferee admission body for the purposes of Regulation 5 of the LGPS Regulations

Administering Authority

means [insert the LGPS administrator (likely to be the County Council for Bolsover)] acting in its capacity as the administering authority of the [Name of the Pension Fund] Pension Fund for the purposes of the LGPS Regulations;

Cessation Date

means any date on which the Contractor or relevant Sub-Contractor ceases to be an Admitted Body other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees;

Commencement Date

the date on which this Agreement commences as set out in the definitions above

Compensation Regulations

means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;

Contractor Admission Agreement	an admission agreement entered into in accordance with Schedule 2 Part 3 of the LGPS Regulations (as amended from time to time) by the Council and the Contractor or Sub-Contractor (as appropriate);
Direct Losses	means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs of being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt to avoid Indirect Losses;
Directive	means the EC Acquired Rights Directive 2001/23/EC as amended
Eligible Employees	(a) those Transferring Employees who are active members of or eligible to join the LGPS on the Commencement Date; (b) other Relevant Employees who are active members of or eligible to join the LGPS as at the applicable Relevant Transfer Date;
Employee Liability Information	means the information which a transferor is obliged to notify to a transferee pursuant to regulation 11(1) of TYPE regarding any person employed by them who is assigned to the organised grouping of resources or employees which are the subject of a Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE
Existing Contractor	[insert name]
Exit Contribution	has the meaning set out in paragraph 7.2 above
Final Employee List	
First Employee List	
Fund	means the [insert pension fund name] within the LGPS
Future Contractor	means a service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Contract
Indirect Losses	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature
Initial Employer Contribution Rate	means [xx]% of Pensionable Pay

LGPS Regulations	means the Local Government Pension Scheme Regulations 2013;
Local Government Pension Scheme	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;
Pensionable Pay	has the meaning set out in the LGPS Regulations
Relevant Employees	means the employees who are the subject of a Relevant Transfer, and includes the Transferring Employees
Relevant Transfer	means a relevant transfer for the purposes of the Regulations;
Relevant Transfer Date	the date on which a Relevant Employee transfers to the Contractor and/or one or more Sub-Contractor by virtue of a Relevant Transfer
Retendering Information	has the meaning set out in paragraph
Returning Employees	has the meaning set out in paragraph
Services	is defined in the Agreement
Sub-Contractor	means a person to whom the Contractor sub-contracts any of its obligations to deliver the Services
Transferring Employee	means any employee of the Existing Contractor whose contract of employment transfers to the Contractor under TUPE at the Commencement Date as listed below
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law.

SCHEDULE - 10 DATA PROCESSING

1. PROCESSING BY THE SUPPLIER

- 1.1 Personal data will be processed by the Supplier to provide services to the Authority under this agreement.
- 1.2 The table lists the types of data notably personal and special category data to be shared, the data purposes and how the information will be shared securely.
- 1.3 Aggregated or anonymised data and other non-personal data such as management information, performance information may also be shared between the Parties to support the agreement and facilitate an effective working relationship.
- 1.4 Information shared must be fit for purpose meaning that it must be adequate, relevant, and not contain excessive detail which is beyond that required for the purpose.
- 1.5 The processing of personal data will continue throughout the duration of the agreement.

1. TYPES OF PERSONAL DATA

- 1.1 The table lists the types of personal data.

2. CATEGORIES OF DATA SUBJECT

- 2.1 These are employees, Elected Members, council tenants and leaseholders, residents, customers, tourists, visitors, and business owners and tenants. Any individual in receipt of a service which falls under this agreement.

Types of personal data to be shared – BDC (Authority) and Dragonfly (Supplier)

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
1.	<p>Human Resources</p> <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, date of birth, postcode, Next of Kin) • Medical conditions • Equalities Monitoring 	<p>To provide a HR service to Dragonfly</p> <ul style="list-style-type: none"> • Recruitment & selection • Learning & development • Sickness & welfare • Capability & disciplinary 	<p>Yes</p> <ul style="list-style-type: none"> • Health • Trade Union • Criminal record • Ethnicity • Sexuality 	Two way sharing	<p>Regular</p> <p>Approx. 100 employees</p>	<p>By internal email</p> <p>Direct access to HR21 which has appropriate access controls in place</p>
2.	<p>Payroll system</p> <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, date of birth, postcode) • Salary Information • Bank Details • Tax Information • Deductions • Trade union membership • Pension/ Voluntary contributions for pension • Westfield • Charitable deductions • Professional fees – membership • Car registration details • Childcare vouchers • Next of kin 	<p>To provide a payroll service to Dragonfly</p> <ul style="list-style-type: none"> • Process monthly payroll • Provide Pension Administration 	<p>Yes</p> <ul style="list-style-type: none"> • Medical conditions • Trade union membership 	Two way sharing	<p>Regular</p> <p>Approx. 100 employees</p>	<p>Automatic payroll run.</p> <p>Direct input into HR21 for changes to address/bank/next of kin/equalities monitoring.</p> <p>Payslips for most accessed on HR21, the remainder passed through internal mail or posted.</p>

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
						<p>Monthly pension return through a secure portal, I-Connect, and pension forms sent through secure email to Derbyshire Pension Fund.</p> <p>Full Payment Submission and Employer Payment Summary sent to HMRC monthly using Frontier Software.</p> <p>By Internal Email</p>
3.	Health & Safety <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, date of birth, postcode) • Employee details for training records and accidents reporting 	To provide a health and safety service to Dragonfly	Yes Health data contained within accident reports (EARS)	Two way for all data identified	<ul style="list-style-type: none"> • Regular • Could potentially involve all Dragonfly employees at some point 	Encrypted emails

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
			Sensitive data contained within the employee protection register (EPR)			
4.	Data Protection <ul style="list-style-type: none"> Data subject personal identifiers (including name, address, date of birth, postcode) Employee details for data breaches 	<p>To provide data protection advice and data breach management to Dragonfly</p> <p>To administer data subject access requests and other rights under GDPR exercised by data subjects</p>	Yes (if provided by the data subject / included in the data breach)	Two way sharing	As and when required	By email (which is encrypted between the two organisations)
5.	ICT <ul style="list-style-type: none"> Personal identifiers (name, work email address, staff photos and phone numbers, including personal mobiles numbers (for business continuity only) Access to all systems and data held by Dragonfly. 	To provide an ICT service to Dragonfly including the administration of employee accounts and helpdesk requests.	<p>No.</p> <p>Potentially – may be present in systems being accessed by ICT</p>	Two way sharing	As and when required	<p>By email, Microsoft Teams, or SharePoint (which is encrypted between the two organisations)</p> <p>Over the Telephone.</p>

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
		ICT will require access to Dragonfly systems and data to provide technical administrative support when requested by Dragonfly under the ICT SLA.				Via the Service desk self-service tools or Granicus CRM forms.
6.	<p>Personal data as required to undertake legal actions including:</p> <ul style="list-style-type: none"> • Giving general advice on housing matters • Business centre tenancies • Housing disrepair claims • Debt recovery <p>Possibly</p> <p>Types of data:</p> <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, date of birth, postcode) • Medical information - Found in e.g. tenancy information / witness statements / legal documents • Tenancy information 	<p>To provide legal advice</p> <p>To take legal instruction</p> <p>To carry out legal action</p>	<p><u>Possibly</u></p> <p>Health</p> <p>Racial / ethnic origin</p>	<p><u>Possibly</u></p> <p>Two-way sharing</p>	<p>As and when instructed</p>	<p>By email (which is encrypted between the two organisations)</p> <p>Over the Telephone</p>

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
7.	<p>Open Housing System</p> <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, forwarding/correspondence address, date of birth, postcode) • Language codes (bold print, large letters required etc.) • Flags - PVP (Potentially Violent Person), Equality and Diversity (i.e., disability type or need), Right to Buy, Universal Credit Direct to Landlord • Diary notes (categorised Person, Place and Tenancy) • Informal complaint details • Right to Buy application – status, property details/valuation and details 	To facilitate the undertaking of repairs appointments / planned maintenance schemes / gas servicing etc.	<p>Yes</p> <p>Health/disability information (via flags & codes)</p>	Two way sharing	<p>Ongoing access required by both parties</p> <p>Approx 5000 council properties</p>	<p>Direct system access (Open Housing)</p> <p>System administration undertaken by BDC Housing</p> <p>Personal data such as Rent accounts will be restricted as not required by Dragonfly</p>
8.	<p>Information received by BDC Customer Services from customers requesting services delivered by Dragonfly</p> <p>Examples:</p> <ul style="list-style-type: none"> • Requests for repairs • Gas Service 	To enable Dragonfly to deliver a customer service to council tenants and leaseholders, residents, and the public on behalf of the Authority	Health/disability information (if provided by the tenant and/or resident)	(Usually) One way to Dragonfly	<p>Frequent requests</p> <p>Circa 5000 council properties</p>	<p>By email (which is encrypted between the two organisations)</p> <p>Via the Self online tools or Granicus CRM forms</p>

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
	<ul style="list-style-type: none"> • Drainage enquiries • Dangerous structure reports • New Build property enquiries • Asset management enquiries • Relevant customer change of circumstances • Complaints • Third Party information (relatives/contractors) <p>Data Types:</p> <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, postcode, Age,) • Language codes (bold print, large letters required etc.) • Flags - PVP (Potentially Violent Person), Equality and Diversity • Contact details Tel/email • Medical information 	To enable Dragonfly to undertake work, investigations and provide /responses	Health/disability information (via flags & codes on Open Housing system)			<p>Open Housing system</p> <p>CCC Admin system via email</p>
9.	<p>Information received by Dragonfly requesting services administered by the Authority.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Customer email or letter requesting a service 	Customer Service	Yes if shared by the customer	One way to BDC	No regular frequency, as and when received	<p>By email (which is encrypted between the two organisations)</p> <p>Over the Telephone</p>

	Description of Data Shared / Types of Personal Data Shared	Purpose of sharing	Sensitive (special category) data* included	Two way or one way sharing / access	Approximate volume and frequency	Method of secure transfer
	<ul style="list-style-type: none"> • Customer change of circumstances Data Types: <ul style="list-style-type: none"> • Direct personal identifiers (including name, address, DOB) 					

*race, ethnic, origin, political opinion, religious belief, TU membership, sexual life, alleged criminal activity, criminal record, physical or mental health

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