

EIS Multi-Year Contracts

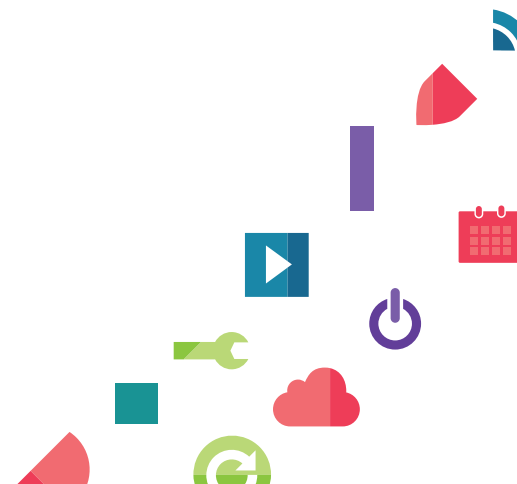
Terms and Conditions

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LET'S KEEP IT SIMPLE



Contents

1. Definitions and Interpretation	3
2. Basis of the Contract	3
3. The Provision of Services	3
4. Customer's Obligations	4
5. Price, Payment and Price Increases	5
6. Limitation of Liability	6
7. Duration of Contract	7
8. Termination	7
9. Force Majeure	7
10. Variations to the Contract	8
11. Waiver	8
12. Dispute Resolution	8
13. Freedom of Information	8
14. Data Protection	10
15. Confidentiality	10
16. Severance Clause	10
17. Governing Law	10
18. Entire Agreement	11
19. Intellectual Property	11
20. Rights of Third Parties	11
21. Assignment and Subcontracting	11
22. Notices	11
23. Appendix 1: Definitions	12
24. Appendix 2: Commercially Sensitive Information List	13

1. Definitions and Interpretation

- 1.1. In this Contract the words and expressions set out in Appendix 1 shall have the meanings indicated unless the context otherwise requires.
- 1.2. Words importing any particular gender shall include masculine, feminine and neuter genders.
- 1.3. Words in the singular include the plural and words in the plural include the singular.
- 1.4. A reference to a party is to a party to this Contract and shall include that party's personal representatives, successors or permitted assignees.
- 1.5. References in this Contract to clauses, sub-clauses, schedules, paragraphs, and appendices are (unless otherwise stated) references to clauses, sub-clauses, schedules, paragraphs, and appendices of this Contract.
- 1.6. Headings are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.7. Reference to any Act of Parliament and to any orders or regulations or rules made pursuant to any Act or to any EC or EU Directive shall include reference to any modification re-enactment or replacement of the same.
- 1.8. The Schedules form an integral part of this Contract and have effect as if set out in full in the body of this Contract. A reference to this Contract includes the Schedules.
- 1.9. In the event of any conflict or inconsistency between the Clauses and the Schedules of this Contract, the Clauses shall prevail.

2. Basis of the Contract

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms and Conditions.
- 2.2. The Order shall be deemed to be accepted on the earlier of
 - 2.2.1. KCC (EIS) issuing written acceptance of the Order; or
 - 2.2.2. Any act by KCC (EIS) consistent with fulfilling the Order.
 - 2.2.3. At which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by KCC (EIS), and any descriptions or illustrations contained in KCC (EIS)'s catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

3. The Provision of Services

- 3.1. With effect from the Commencement Date and throughout the duration of the Contract, KCC (EIS) will provide the Customer with the Services detailed within the individual Service Level Agreement KCC (EIS) warrants that it will perform the Services with reasonable care and skill.
- 3.2. KCC (EIS) shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and KCC (EIS) shall notify the Customer in any such event.

4. Customer's Obligations

4.1. The Customer shall:

- 4.1.1. Ensure that the terms of the Order are complete and accurate.
- 4.1.2. Where applicable co-operate with KCC (EIS) in all matters relating to the Services including ensuring that a representative of the Customer is on site at all times whilst an employee, agent, consultant or sub-contractor is attending the site.
- 4.1.3. Where applicable provide KCC (EIS), its employees, agents, consultants and subcontractors free of charge with access to the Customer's premises, office accommodation and other facilities as reasonably required by KCC (EIS).
- 4.1.4. Provide KCC (EIS) with such information and materials as KCC (EIS) may reasonably require supplying the Services and ensuring that such information is accurate in all material respects.
- 4.1.5. Obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.
- 4.1.6. By or on the Commencement Date provide KCC (EIS) with the name, business telephone number and business e-mail address of the person(s) representing the Customer and located at the Site who shall act as the main contact point and channel of communication for the provision by KCC (EIS) of the Services during the currency of this Agreement and the Customer shall forthwith inform KCC (EIS) of any change in the identity of any such person(s).
- 4.1.7. Make available to KCC (EIS) free of charge all reasonable facilities and services which are reasonably required by KCC (EIS) to enable KCC (EIS) to provide the Services.
- 4.1.8. Keep and maintain all materials, equipment, documents and other property of KCC (EIS) (KCC (EIS)'s Materials) at the Customer's premises in safe custody at its own risk, maintain the Materials in good condition until returned to KCC (EIS), and not dispose of, use, share or provide to any third party KCC (EIS)'s Materials other than in accordance with KCC (EIS)'s written instructions or authorisation.
- 4.1.9. Supply KCC (EIS) with a detailed description of any fault found and the circumstances in which it arose forthwith on becoming aware of the same and if requested by KCC (EIS) to set out in writing the detailed description and to send it to KCC (EIS) as soon as practicable.
- 4.1.10. Where applicable allow KCC (EIS) access to the Site at all reasonable times to enable KCC (EIS) to provide the Services and without prejudice to the generality of this Clause.
- 4.1.11. For the avoidance of doubt, where applicable the Customer will remain responsible for the security of the site at all times including times when KCC (EIS) staff are on site.
- 4.1.12. Where applicable access to the Site will be on working days between 8.30 am to 4.00 pm during term time and any access required outside term time will be agreed between parties and the Customer will be expected to co-operate fully with KCC (EIS) in diagnosing any faults covered by this Contract.
- 4.1.13. Ensure that the Customer's IT system is managed in such a way as to maintain data integrity and to minimise the risk of security breaches or virus infection.
- 4.1.14. Comply with and register in accordance with all data protection and freedom of information legislation and regulations and orders in force from time to time.
- 4.1.15. Be responsible for any costs incurred by KCC (EIS) in relation to the ordering of goods on behalf of the Customer, including but not limited to any administration and cancellation fees (if applicable).
- 4.1.16. Compliance with KCC (EIS) and KLZ security and acceptable use policies and advice. Where confidential or personal data is involved, KCC (EIS) will enforce a strong password regime.
- 4.1.17. The Customer hereby agrees that the availability and capacity of Internet Services is the responsibility of the Customer and/or their Internet Service Provider.

4.2. If KCC (EIS) performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 4.2.1. KCC (EIS) shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays KCC (EIS)'s performance of any of its obligations;
- 4.2.2. KCC (EIS) shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from KCC (EIS)'s failure or delay to perform any of its obligations as set out in this clause and
- 4.2.3. The Customer shall reimburse KCC (EIS) on written demand for any costs or losses sustained or incurred by KCC (EIS) arising directly or indirectly from the Customer Default.
- 4.2.4. Where applicable the Customer hereby agrees to ensure that a representative of the Customer will be available for the signing off of the Site Report for work referred to within the Installation Agreement. If such representative is not available and in the event that KCC (EIS) is required to conduct a subsequent visit to handover the project to the Customer because the Site Report was not signed off during the previous visit, the Customer agrees that KCC (EIS) shall be entitled to charge for this additional visit.

5. Price, Payment and Price Increases

The Price for the Services shall be as set out in the Schedule of Customers and Services of this agreement and this shall not include value added tax which shall be payable in addition by the Customer where appropriate in the manner and at the rate from time to time prescribed by law.

5.1. The Price (together with value added tax) shall be levied by KCC (EIS) with effect from the 1st April 2017 to 31 March 2020 and shall be payable by the Customer by Direct Debit in equal monthly instalments. If a Customer does not wish to pay by Direct Debit, then a request must be made to KCC (EIS) for an annual invoice to be raised and once received payment made within 30 days of receipt of the invoice therefore issued.

5.2. KCC (EIS) shall not be entitled to increase the Price for those services listed in the Schedule of Customers and Services for the duration of the Contract period unless:

- 5.2.1 The customer requests a change in level of service.
- 5.2.2 The school's pupil roll increases taking the Price to the next price band for the service.

In either case the same discount will be applied as agreed at the start of the contract.

5.3. The customer may add additional KCC (EIS) services to the contract during the term of the contract with the same discount being applied that was agreed at the start of the contract.

5.4. Discounted prices do not apply to services provided by KCC (EIS) that are not covered by the contracts listed in the Schedule of Customers and Services.

5.5. If KCC (EIS) should reduce the Price for any of those services listed in the Schedule of Customers and Services during the duration of the Contract period the Customer shall be entitled to have benefit of that lower price with the agreed discount having also been applied.

5.6. KCC (EIS) shall be entitled to any payment arising out of the Customer requiring any goods to be ordered on its behalf in relation to the services including but not limited to administration and cancellation fees, if applicable.

5.7. Additional Charges shall be invoiced monthly in arrears and shall be payable by the Customer (together with the value added tax thereon) within 30 days of the date of an invoice therefore.

5.8. For the avoidance of doubt the invoices may be in the name of KCC (EIS) but payment will be made to KCC unless the Customer is given written notice to the contrary by KCC (EIS).

5.9. Without limiting any other right or remedy of KCC (EIS), if the Customer fails to make any payment due to the KCC (EIS) under the Contract by the due date for payment (Due Date), KCC (EIS) shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the then current Bank of England's base lending rate accruing on a daily basis from the Due Date due until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.10. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against KCC (EIS) in order to justify withholding payment of any such amount in whole or in part. KCC (EIS) may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by KCC (EIS) to the Customer.

6.1 Limitation of Liability

And the customer's attention is in particular drawn to the provisions of this clause.

6.1. The following provision set out KCC (EIS)'s entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- 6.1.1. Any breach of KCC (EIS)'s contractual obligations under this Contract; and
- 6.1.2. Any representation, statement or tortious act or omission including negligence (but this does not include any of the same made fraudulently) arising under or in connection with this Contract.

6.2. Any act or omission on the part of KCC (EIS) or its employed agents or sub- contractors falling within Clause 6.1 above shall for the purposes of this Clause 6 be known as an "Event of Default".

6.3. KCC (EIS)'s liability to the Customer for:

- 6.3.1. Death or personal injury resulting from KCC (EIS)'s own or that of its employees', agents' or sub-contractors' negligence; and
- 6.3.2. Damage suffered by the Customer as a result of any breach of the obligations implied by, as applicable, Section 12 of the Sale of Goods Act 1979, Section 2 of the Supply of Goods and Services Act 1982 or Section 8 of the Supply of Goods (Implied Terms) Act 1973.

Shall not be limited

6.4. Where applicable and subject to the limit set out in Clause 6.5 below KCC (EIS) shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of KCC (EIS) or its employees, agents or sub-contractors.

6.5. Subject to the provisions of Clause 6.3 above KCC (EIS)'s entire liability in respect of any Event of Default shall be limited to damages of an amount not greater than;

- 6.5.1. £5,000 in the case of an Event of Default falling within Clause 6.4 above; and
- 6.5.2. In the case of any other Event of Default 100% of the Price paid in the immediately preceding period of 12 months.

6.6. Subject to Clause 6.3 above KCC (EIS) shall not be liable to the Customer in respect of any Event of Default or for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or KCC (EIS) had been advised of the possibility of the Customer incurring the same.

6.7. If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under this Contract.

6.8. The Customer hereby agrees to afford KCC (EIS) not less than 30 days following notification thereof by the Customer in which to remedy any Event of Default under this Contract.

6.9. Except in the case of an Event of Default arising under Clause 6.3 above KCC (EIS) shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon KCC (EIS) within 3 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware (whichever is the earlier).

6.10. Nothing in this Clause shall confer any right or remedy on the Customer to which it would not otherwise be legally entitled.

6.11. Nothing in this Contract shall exclude or limit the liability of either party arising out of fraud fraudulent misrepresentation or fraudulent concealment.

6.12. The Customer acknowledges that the provisions of this Clause 6 are, taking into account all the circumstances and the ability of the parties to obtain insurance, reasonable in every respect.

6.13. The Customer should hold (and provide documentary evidence of upon request) Public Liability insurance with a minimum indemnity limit of £5 million for any one claim or occurrence.

7. Duration of Contract

7.1. The Contract shall commence on the date agreed between EIS and the Customer as specified in the Schedule of Customers and Services and shall continue until the date agreed between EIS and the Customer as specified in the Schedule of Customers and Services in accordance with the provisions of Clause 8.

8. Termination

8.1. Unless otherwise stated in the individual service level agreement, this Contract may be terminated:

- 8.1.1. Forthwith by KCC (EIS) if the Customer fails to pay any sum due under this Contract within 60 days of the due date for such payment.
- 8.1.2. Forthwith by either party if the other commits any material breach of any term of this Contract (other than one falling within Clause 8.1.1) or in the case of a breach capable of being remedied any breach not remedied within the period set out within the written request to remedy the same.
- 8.1.3. Forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 8.1.4. Forthwith by the Customer if the school/academy is permanently closed by order of the Department for Education for any reason. In this case the closure date will be as defined by the Department for Education on the closure order.

8.2. In the event of this Contract being terminated for any reason whatsoever KCC (EIS) shall be entitled to immediately cease from providing the Services and the Customer shall immediately pay KCC (EIS) all arrears of payments to the date of termination and any other sums due under the terms of this Contract and shall allow KCC (EIS) access to the Site at all reasonable times to remove software licensed to KCC (EIS) and all KCC (EIS) Materials that has been provided as part of the Services and until they have been returned to or recovered by KCC (EIS), the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract and this Clause 8.2 shall survive the termination of this Contract.

8.3. Any termination of this Contract pursuant to this Clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

9. Force Majeure

9.1. Neither party to this Contract shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, strikes (of its own or other employees) insurrection or riots, embargoes, or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "Event of Force Majeure").

9.2. Each of the parties to this Contract agrees to give notice within 14 days to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstance giving rise to the Event of Force Majeure.

9.3. If a default due to an Event of Force Majeure shall continue for more than 8 weeks, then the party not in default shall be entitled to terminate this Contract. Neither party shall have any liability to the other in respect of the termination of this Contract as a result of an Event of Force Majeure.

10. Variations to the Contract

10.1. KCC (EIS) shall not be required to provide any additional services or to carry out variations or amendments to the Services unless agreement has been reached between the parties as to any increase in Price and/or Additional Charges for such additions and/or variations to the Services.

10.2. For the avoidance of doubt, any agreed variation or amendment described in Clause 10.1 shall be in writing, shall be expressed to be a variation to this Contract in accordance with this Clause 10 and shall be signed by both parties.

10.3. Should a maintained school convert to Academy Status, KCC (EIS) will continue to honour the Contract from the date of Academisation until the 31 March 2020.

11. Waiver

11.1. The waiver by either party of a breach or default of any of the provisions of this Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

12. Dispute Resolution

12.1. In the event of a dispute between the parties the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible. The parties' representatives shall endeavour to resolve the dispute within 5 working days of the date of the written notification.

12.2. In the event that the dispute is unresolved within the time period stipulated in Clause 12.1 above the written notification and any additional information arising during the representatives' unsuccessful efforts to resolve the dispute in accordance with Clause 12.1 shall be forwarded to KCC (EIS)'s Head of Unit and the Customer's senior representative (whose name and business address shall be communicated to KCC (EIS) beforehand) within the 5 working days immediately following the period stipulated in Clause 12.1 above.

12.3. KCC (EIS)'s Head of Unit and the Customers' senior representative shall endeavour to resolve the dispute within 5 working days of the date of the written notification and any additional information referred to in Clause 12.2 above.

12.4. If the dispute cannot be resolved in accordance with the procedure set out in Clauses 12.1 to 12.3 above then the dispute shall be referred to arbitration for the decision of a sole arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the British Computer Society and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

13. Freedom of Information

13.1. Either party acknowledges that the other is, as the case may be, subject to the requirements of the Code of Practice on Government Information, the FOIA, the EIR and other statutory requirements, guidance and codes of practice issued by the Information Commissioner or relevant Government departments and either party agrees to assist and co-operate with the other party (at the other party's expense except insofar as otherwise agreed in writing) to enable the other party to comply with its information obligations.

13.2. Either party shall be responsible for determining at its absolute discretion whether any Information:

- 13.2.1. Is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 13.2.2. Is to be disclosed in response to a Request for Information.

13.3. Each party acknowledges that the other party may, acting in accordance with the Secretary of State for Constitutional Affairs' code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under section 45 of the FOIA in November 2004) be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. Either party may at their discretion consult the other party with regard to whether the FOIA applies to the Information and whether an exemption applies.

13.4. The Customer shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit KCC (EIS) to inspect such records as requested from time to time.

13.5. Each party acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercial sensitive are of indicative value only and that the other party may nevertheless be obliged to disclose information which the other party considers confidential in accordance with Clause 13.2 and 13.3.

13.6. In the event that the Customer is not subject to the requirements of the FOIA or EIR, the Customer shall:

13.7. Transfer to KCC (EIS) any Requests for Information, or an apparent request, under the Code of Practice on Access to Government Information, the FOIA or the EIR that it received as soon as practicable after receipt and in any event within two Working Days of receiving such Request for Information.

13.8. Provide KCC (EIS) with a copy of all Information in its possession or power in the form that KCC (EIS) requires within five Working Days (or such other period as KCC (EIS) may specify) of KCC (EIS) requesting that Information; and

13.9. Provide all necessary assistance as reasonably requested by KCC (EIS) to enable KCC (EIS) to respond to a Request for Information within the time for compliance set out in Section 10 of the FIOA or Regulation 5 of the EIR.

13.10. In the event that the Customer is not subject to the requirements of the FOIA or EIR, KCC (EIS) shall be responsible for determining at its absolute discretion and notwithstanding any other provision in the Contract or any other agreement that the Information Is confidential or commercially sensitive whether:

13.11. The Information is exempt from disclosure; or,

13.12. The Information is to be disclosed in response to a Request for Information.

13.13. If the Customer is not subject to FOIA or EIR, the Customer agrees that in no event shall it respond directly to a Request for Information unless expressly authorised in writing by KCC (EIS) to do so.

13.14. The Customer further to 13.8 acknowledges that KCC (EIS) may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA ("the Code") and freedom of information best practice for local authorities:

13.15. Disclose Information under the FOIA or the EIR without consulting the Customer; or,

13.16. Disclosure Information under the FOIA or the EIR following consultation with the Customer and having taken its views into account provided always that where this Clause 13 applies, KCC (EIS) shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Customer advanced notice of the disclosure, or failing that, to draw the disclosure to the Customer's attention after any such disclosure.

13.17. Both parties shall ensure that all Information is retained for disclosure for a minimum of six (6) years after the date of termination or expiry (whichever is the earlier) of this Contract (or as long a period as may be agreed between KCC (EIS) and the Customer) and shall permit KCC (EIS) to inspect such records as requested from time to time.

14. Data Protection And GDPR

The former provisions of this clause have been replaced in their entirety by the provisions set out in our GDPR and Data Protection Schedule annexed as Appendix C to these terms and conditions. This GDPR and Data Protection Schedule is hereby incorporated by reference into any Contract or Agreement which attaches or annexes these terms and conditions. The KCC Privacy Statement (which can be accessed here) should be read in conjunction with this Schedule.

15. Confidentiality

15.1. Subject to the provisions of Clause 13 each party:

- 15.1.1. Shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly;
- 15.1.2. Shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

15.2. The provisions of this Clause shall not apply to Confidential Information which:

- 15.2.1. Is part of the public domain or becomes public knowledge otherwise than by any breach of this Contract by the Customer;
- 15.2.2. Which must be disclosed pursuant to a statutory legal or parliamentary obligation placed upon the Party making the disclosure including any requirements for disclosure under the FOIA or the EIR pursuant to a Request for Information;
- 15.2.3. Is shown by written record to have been known to the Customer at the time of disclosure of it by or on behalf of the Customer; or
- 15.2.4. Is hereafter disclosed to KCC (EIS) by a third party with a lawful right to make such disclosure.

16. Severance Clause

16.1. If any provision of this Contract is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

16.2. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision

16.3. If the parties acting in good faith are unable to achieve the aims expressed in Clause 16.2 above within 28 days from and including the date of any finding referred to in Clause 16.1 above the dispute resolution procedure described in Clause 12 shall not apply but KCC (EIS) shall be entitled to terminate this Contract forthwith and the provisions of Clause 8.2 shall apply.

17. Governing Law

17.1. This Contract shall be governed by, construed and interpreted in accordance with the Law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.

18. Entire Agreement

18.1. Each party acknowledges that this Contract and all the documents referred to in it constitutes the entire agreement between the parties in relation to its subject matter and replaces and extinguishes all prior agreements draft agreements arrangements undertakings or collateral contracts of any nature between the parties whether oral or written in relation to such subject matter.

18.2. Each party acknowledges that, in entering into this Contract it is not relying on and shall have no rights or remedies (whether in tort under statute or otherwise) in respect of any statements collateral or other warranties assurances undertakings or representations (whether innocently or negligently made) by the other party to this Contract.

19. Intellectual Property

19.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by KCC (EIS)

19.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on KCC (EIS) obtaining a written licence from the relevant licensor on such terms as will entitle KCC (EIS) to license such rights to the Customer.

19.3. All KCC (EIS)'s Materials are the exclusive property of KCC (EIS).

20. Rights of Third Parties

20.1 Except as expressly provided elsewhere in this Contract, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

21. Assignment and subcontracting

21.1. KCC (EIS) may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

21.2. The Customer shall not, without the prior written consent of KCC (EIS), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

22. Notices

22.1. Any notice required to be given by one party to the other party shall be served either personally or shall be sent by prepaid letter sent by first class (recorded delivery) post to the last known address or place of business of the other party or such other address as may from time to time be notified for this purpose. Any notice given by such letter shall be deemed to have been delivered in the usual course of post.

23. Appendix 1: Definitions

“Additional Charges”	Means the charges at KCC (EIS)’s rates from time to time for work (in addition to the Services) undertaken on a time and materials basis together with all reasonable expenses reasonably incurred
“Contract”	Means the contract between the Customer and KCC for the supply of Services as set out in the SLA and Order and in accordance with these Terms and Conditions
“Commencement Date”	Has the meaning set out in Clause 2.2
“Commercially Sensitive Information”	Means the subset of Confidential Information in the Commercially Sensitive Information List comprised of information (i) which is provided by the Customer to KCC (EIS) or KCC (EIS) to the Customer in confidence for the period set out in that List and/or (ii) that constitutes a trade secret
“Commercially Sensitive Information List”	Means the list of Commercially Sensitive Information in Appendix 2
“Confidential Information”	Means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and KCC (EIS)’s of either party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information
“Customer”	Means the person, establishment or firm who purchases Services from KCC (EIS)
“Deliverables”	The deliverables set out in the Order produced by KCC (EIS) for the Customer. OR All Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts)
“KCC (EIS) ” or “KCC”	Means the Kent County Council of Sessions House, County Hall, County Road, Maidstone ME14 1XQ
“EIR”	Means the Environmental Information Regulations 2004 Means the Freedom of Information Act 2000
“FOIA”	Means the Freedom of Information Act 2000
“Installation Agreement”	Means the description of specification of the installation being undertaken by KCC (EIS) and agreed by the Customer
“Intellectual Property Rights”	Means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world
“IT”	Means information technology
“KLZ”	Means information technology Means Kent Learning Zone

“Order”	Means the Customer’s order for Services as set out in the Customer’s purchase order form
“Price”	Means the charges payable by the Customer for the supply of the Services in accordance with Clause 5
“Requests for Information”	Shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the EIR
“Services”	Means the services, including the Deliverables, supplied by KCC (EIS) to the Customer as set out in the Service Level Agreement
“Service Level Agreement (SLA)”	The description or specification for the Services produced by the KCC (EIS) and agreed in writing by the Customer
“Site”	Means the address of Customer set out in this Contract
“Site Report”	Means the document used to “sign-off” an installation at the Customer’s Site
“Terms and Conditions”	Means these terms and conditions as amended from time to time by KCC(EIS)

24. Appendix 2: Commercially Sensitive Information List

Information provided in confidence

Information that constitutes a trade secret

Period (from and including Commencement Date) of Confidentiality

Appendix C Contract Addendum GDPR And Data Protection Schedule

Our Terms and conditions are hereby amended as follows:

With effect from the Effective Date, Clause 14 of our terms and conditions and clause 7 of the appended Digital Content and Online Resources agreement (Appendix B Contract) will be replaced in their entirety with the following provisions:

The KCC Privacy Statement should be read in conjunction with this Schedule.

Definitions and Interpretation

1.1 The following definitions are inserted in place of any existing definitions of the same terms (if applicable):

Words and expressions defined in the Contract shall have the same meanings in this Schedule except as set out below whereby the meaning of the following words and expressions shall replace and prevail over the same definitions in the Contract:

“Contract”	means “Contract” as defined in our terms and conditions and “Agreement” as defined in the Digital Content and Online Resource Agreement (Appendix B Contract).
“Data Controller”	has the meaning given to that term (or to the term ‘controller’) in Data Protection Laws; means the Customer for the purpose of the Contract.
“Data Processor”	has the meaning given to that term (or to the term ‘processor’) in Data Protection Laws; the Service Provider for the purpose of the Contract unless otherwise indicated.
“Data Protection Laws”	means as applicable and binding on the Service Provider, the Customer and/or the Services: a) in the United Kingdom: (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or (ii) the GDPR, and/or any corresponding or equivalent national laws or regulations; (b) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;
“Data Protection Losses”	means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses, and damages (including relating to material or non-material damage); and

“Data Subject”	has the meaning given to that term in Data Protection Laws;
“Data Subject Request”	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
“Effective Date”	25 May 2018
“GDPR”	means the General Data Protection Regulation (EU) 2016/679;
“GDPR Date”	means from when the GDPR applies on 25 May 2018;
“Personal Data”	has the meaning given to that term in Data Protection Laws;
“Personal Data Breach”	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
“Processing”	has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
“Processing Instructions”	has the meaning given to that term in clause 2.9;
“Protected Data”	means Personal Data received by the Service Provider from or on behalf of the Customer in connection with the performance of the Service Provider’s obligations in the Contract;
“Sensitive Personal Data”	as defined in the GDPR relates to information concerning a data subject’s racial or ethnic origin, political opinions, religious beliefs, trade union activities, physical or mental health, sexual life, details of criminal offences and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation. For the avoidance of doubt Personal Data relating to criminal convictions and offences or related security measures shall be processed (where required and if necessary) subject to Article 6(1) of the GDPR
“Shared Personal Data”	means the personal data, and Sensitive Personal Data to be shared between the parties in accordance with the project/service requirements.
“Subject Access Request”	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws
“Supervisory Authority”	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.
“Other Data”	means personal customer information obtained pursuant to Appendix A of the Service Provider’s terms and conditions and <ul style="list-style-type: none"> • shared with the service Provider • processed by the Service Provider under the Contract for the provision of the Services.

1.2 The Parties agree that the Contract shall be amended with effect from the Effective Date as set out in paragraph 2 below.

2. DATA PROTECTION

2.1 Each Party shall ensure that any mailing list or Customer database supplied to the other Party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Laws (as replaced, modified, or re-enacted from time to time) and that each Party shall comply with the relevant obligations of the Data Protection Laws.

2.2 The Service Provider shall procure that any person who becomes a data processor (Service Provider's sub-contractors) on its behalf in relation to the services provided under the Contract shall agree to comply with all relevant legislation in force relating to the Data Protection Laws and the Computer Misuse Act 1990 and shall indemnify the Customer for any actions arising from the breach of non-compliance with such legislation.

2.3 In addition to processing the Protected Data, the Service Provider acknowledges that it processes the Other Data relating to the provision of Services set out in Appendix A (Contract Addendum) of the Service Provider's Terms and Conditions.

2.4 The Service Provider shall ensure that the Other Data is processed strictly in accordance with the written instructions received in the form of contract annex setting out the specific scope of processing (Processing Instructions)

2.5 In the event that the Service Provider engages any sub-contractors and/or third party processors (as the case may be) in future and during the term of the Contract, the Service Provider shall not pass Personal Data to new sub-contractors and/or third party processors without the prior consent of the Customer .

2.6 The Service Provider shall, comply with any obligations in relation to the Data Protection Laws (as replaced, modified or re-enacted from time to time).

DATA PROCESSOR AND DATA CONTROLLER

2.6 The Parties agree that, for the Protected Data, the Service Provider shall be the Data Processor and the Customer shall be the Data Controller.

2.7 The Service Provider shall comply with all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its obligations under the Contract and shall not by any act or omission cause the Customer (or any other person) to be in breach of any Data Protection Laws.

2.8 The Customer shall comply with all Data Protection Laws in respect of its obligations under the Contract.

2.9 If during the term of the Contract the Service Provider acts in the capacity of a Data Controller:

2.9.1 as instructed by the Customer and/or

2.9.2 acting as a Data Controller becomes incidental to the provision of the Services the Service Provider as a Data Controller shall comply with the provisions of a Data Controller under the Data Protection Laws and in particular with the responsibilities of a Data Controller as set out in Article 24 of the GDPR

INSTRUCTIONS AND DETAILS OF PROCESSING

2.9 Insofar as the Service Provider processes Protected Data on behalf of the Customer, the Service Provider:

2.9.1 unless required to do otherwise by Applicable Law, shall (and shall ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in the Contract, this clause 2.9 and Annex A (Data Processing Details) of this Schedule, and as updated from time to time by the written agreement of the Parties (Processing Instructions); and

2.9.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, it shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest).

2.9.3 The Service Provider shall immediately inform the Customer in writing if, in the Service Provider's opinion, a Processing Instruction infringes the Data Protection Laws or any other Applicable Laws relating to data protection and explain the reasons for its opinion, provided that this shall be without prejudice to clause 2.2 above.

2.9.4 The processing to be carried out by the Service Provider under this Schedule shall comprise the processing set out in Annex A (Data Processing Details), and such other processing as agreed by the Parties in writing from time to time.

TECHNICAL AND ORGANISATIONAL MEASURES

2.10 The Service Provider shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Protected Data;

2.10.1 such that the processing will meet the requirements of Data Protection Laws and ensure the protection of the rights of Data Subjects;

2.10.2 so as to ensure a level of security in respect of Protected Data processed by it that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed; and

2.10.3 without prejudice to clause 2.15 below, insofar as is possible, to assist the Customer in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data.

2.10.4 Without prejudice to clause 2.10 above, the Service Provider shall, in respect of the Protected Data processed by it under this Schedule comply with the requirements regarding security of processing set out in Data Protection Laws (as applicable to Data Processors), all relevant Service Provider Policies (and Customer's Policies as the case may be) and the provisions of this Schedule.

USING STAFF AND OTHER PROCESSORS

2.11 The Service Provider shall engage a replacement Data Processor for carrying out any processing activities in respect of the Protected Data in the manner set out in clause 2.4 above.

2.12 The Service Provider shall ensure that the its Personnel and all other persons authorised by it , or by any person acting on its behalf (including by any Data Processor pursuant to clause 2.11 above), to process Protected Data are subject to a binding written contractual obligation with the Service Provider or with the Data Processor that has engaged them to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case the Service Provider shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

2.13 Without prejudice to any other provision of this clause 2 within this Schedule, the Service Provider shall ensure that it's Personnel processing Protected Data are reliable and have received adequate training in compliance with this clause 2 and the Data Protection Laws applicable to the processing.

2.14 The Service Provider shall ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Services.

ASSISTANCE WITH THE CUSTOMER'S COMPLIANCE AND DATA SUBJECT RIGHTS

2.15 The Service Provider shall at no cost to the Customer:

2.15.1 promptly record and then refer all Data Subject Requests it receives from the Customer's customers to the Customer I within 3 Working Days of receipt of the request. For the avoidance of doubt the Customer agrees that it shall deal with all Data Subject Requests it receives in the first instance. If applicable and where required the Customer shall contact the Service Provider to assist with such Data Subject Requests.

2.15.2 provide such information and cooperation and take such action as the Customer requests in relation to each Data Subject Request, within 10 Working Days; and

2.15.3 not respond to any Data Subject Request or Complaint without the Customer's prior written approval.

2.16 Without prejudice to clause 2.7 above, the Service Provider shall, at its cost and expense, provide such information, co-operation and other assistance to the Customer as the Customer requires (taking into account the nature of processing and the information available to the Service Provider) to ensure compliance with the Service Providers 's obligations under Data Protection Laws, including with respect to:

2.16.1 security of processing;

2.16.2 data protection impact assessments (as such term is defined in Data Protection Laws);

2.16.3 prior consultation with a Supervisory Authority regarding high risk processing; and

2.16.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or Complaint, including (subject in each case to the Customer's prior written authorisation) regarding any notification of the Personal Data Breach to Supervisory Authorities and/or communication to any affected Data Subjects.

RECORDS, INFORMATION AND AUDIT

2.17 The Service Provider shall maintain and complete accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer, containing such information as the Customer may reasonably require, including:

2.17.1 the name and contact details of the Data Processor(s) and of each Data Controller on behalf of which the Data Processor is acting, and of the Service Provider's representative and data protection officer (if any);

2.17.2 the categories of processing carried out on behalf of each Data Controller;

2.17.3 a general description of the technical and organisational security measures referred to in clause 2.10 above

2.18 The Service Provider shall make available to the Customer on request in a timely manner (and in any event within 3 Working Days:

2.18.1 copies of the records under clause 2.17 above; and

2.18.2 such other information as the Customer reasonably requires to demonstrate the Customers and the Service Provider's compliance with their respective obligations under Data Protection Laws and this Schedule.

2.19 The Service Provider shall at no cost to the Customer:

2.19.1 allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer for the purpose of demonstrating compliance by the Customer and the Service Provider with their respective obligations under Data Protection Laws and under this clause 2 and

2.19.2 provide (and procure) reasonable access for the Customer or such other auditor (where practicable, during normal business hours) to:

2.19.2.1 the facilities, equipment, premises, and sites on which Protected Data and/or the records referred to in clause 2.19 above are held, and to any other equipment or facilities used in the provision of the Services (in each case whether or not owned or controlled by the Service Provider); and

2.19.2.2 to the Service Provider's Personnel, provided that the Customer gives the Service Provider reasonable prior notice of such audit and/or inspection.

2.19.3 If any audit or inspection reveals a material non-compliance by the Service Provider with its obligations under Data Protection Laws or a breach by the Service Provider of any of this clause 2, the Service Provider shall pay the reasonable costs of the Customer or its mandated auditors, of the audit or inspection

2.19.4 The Service Provider shall promptly resolve, at its own cost and expense, all data protection and security issues discovered by the Customer and reported to the Service Provider that reveal a breach or potential breach by the Service Provider of its obligations under any of this clause 2.

2.19.5 If the Service Provider is in breach of any of its obligations under this clause 2 the Customer may suspend the transfer of Protected Data to the Service Provider until the breach is remedied.

2.19.6 The Customer shall be entitled to share any notification, details, records, or information provided by or on behalf of the Service Provider under this clause 2 with the Service Provider, its professional advisors, and/or the Supervisory Authority.

BREACH NOTIFICATION

2.20 In respect of any Personal Data Breach, the Service Provider shall:

2.20.1 notify the Customer of the Personal Data Breach without undue delay (but in any event no later than 72 hours after becoming aware of the Personal Data Breach); and

2.20.2 provide the Customer without undue delay (wherever possible, no later than 24 hours after becoming aware of the Personal Data Breach) with such details as the Customer reasonably requires regarding:

2.20.2.1 the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Protected Data records concerned;

2.20.2.2 any investigations into such Personal Data Breach;

2.20.2.3 the likely consequences of the Personal Data Breach; and

2.20.2.4 any measures taken, or that the Service Provider recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects,

provided that, (without prejudice to the above obligations) if the Service Provider cannot provide all these details within the timeframes set out in this clause 2.20.2 it shall (before the end of such timeframes) provide the Customer with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased), and give the Customer regular updates on these matters.

DELETION OR RETURN OF PROTECTED DATA AND COPIES

2.21 The Service Provider shall (and shall ensure that all persons acting on its behalf and all Service Provider's Personnel shall), at the Customer's written request, either securely delete or securely return all the Protected Data to the Customer in such form as the Customer reasonably requests after the earlier of:

2.21.1 the end of the provision of the relevant Services related to processing of such Protected Data; or

2.21.2 once processing by the Service Provider of any Protected Data is no longer required by the Customer under the Contract, and securely delete existing copies (unless storage of any data is required by Applicable Law and, if so, the Customer shall inform the Service Provider of any such requirement).

2.21.2 The Service Provider shall keep and maintain for a period of six (6) years after the expiration of the Contract, full and accurate records of all Protected Data relating to the Contract. For the avoidance of doubt this clause is in addition to any legislative requirement and does not negate the need for any such retention of records.

LIABILITY AND INDEMNITIES

2.22 The Service Provider shall indemnify and keep indemnified the Customer in respect of all Data Protection Losses suffered or incurred by, awarded against, or agreed to be paid by, the Customer arising from or in connection with:

2.22.1 any breach by the Service Provider of any of its obligations under this clause 2 where such a breach is not subject to the Customer's negligence, errors, mistakes or omissions; or

2.22.2 the Service Provider (or any person acting on its behalf) acting outside or contrary to the lawful Processing Instructions of the Customer in respect of the processing of Protected Data This clause 2.22.2 shall only apply where the Processing Instructions are not subject to the Customer's negligence, errors, mistakes or omissions.

2.22.3 This clause 2.22 is intended to apply to the allocation of liability for Data Protection Losses as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

2.22.4 to the extent not permitted by Applicable Law (including Data Protection Laws; and

2.22.5 that it does not affect the liability of either party to any Data Subject.

CONFLICTS

2.23 Unless otherwise expressly stated in this Schedule:

2.23.1 the Service Provider's obligations and the Customer's rights and remedies under this clause 2 are cumulative with, and additional to, any other provisions of this Schedule;

2.23.2 nothing in this Schedule relieves the Service Provider of any responsibilities or liabilities under any Data Protection Laws

SURVIVAL OF DATA PROTECTION PROVISIONS

2.24 The provisions of this clause 2 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

3 Save as herein amended in this Schedule all other terms and clauses of the Contract shall remain in full force and effect.

4 The Parties acknowledge that the Contract as amended by this Schedule shall be read and construed as if the same appears as set out in full in the Contract.

ANNEX A - Data Processing Details

1. DATA PROCESSING:

The Service Provider will process the Protected Data in order to:

- register the Customer as a customer/complainant
- manage payment, fees and charges
- collect money owed
- deliver services and support to the Customer;
- manage the Services provide to the Customer;
- train and manage the employment of the Service Provider's workers who deliver the Services; help investigate any worries or complaints the Customer may have about the Services;
- keep track of spending on the Services;
- check the quality of the Services; and
- help with research and planning of new Services
- manage the Service Provider's relationship with the Customer
- notify the Customer of changes to the Service Provider's terms and conditions and privacy statement/notice
- request the Customer to leave a review or take a survey
- administer or protect the Service Provider's website(including data analysis, testing, system maintenance and support)
- provide all commercial services both for staff and public access.
- provide all noncommercial activities
- provide internal financial support and corporate functions.

DURATION OF THE PROCESSING:

2. ANNEX A - Data Processing Details

The Protected Data shall be processed during the Contract period and the provisions of paragraph 2.21.2 of this GDPR and Data Protection Schedule shall apply after the expiration of the Contract.

The Service Provider shall ensure that the Protected Data is returned to the Customer in accordance with the recovery and hand-over provisions in the Contract.

3. TYPE OF PERSONAL DATA:

- Name, address and contact details
- Identity (name, date of birth, gender, passport, national insurance number, family details)
- Contact (address, email address, telephone numbers) Commercial Services data (services used)
Financial (bank account, payment card, transaction data)

4. CATEGORIES OF DATA SUBJECTS:

Employees, ex-employees, agency Workers, client employed consultants, Governors, potential employees of the Customer or anyone else engaged in work for or on behalf of the Customer

5. PROCESSING INSTRUCTIONS

The Customer's Protected Data may be processed by an external service provider acting on the Service Provider's behalf in order to provide one or more of our services to you. We may process your personal information using web services hosted outside the European Economic Area, but only where a data processing agreement is in place that complies with obligations equivalent to those required by the Data Protection Laws For the purposes of this section, third parties / organisations are divided into the following categories as set out below:

(a) Internal Third Parties

(i) Other local authority controlled companies wholly owned and controlled by the Kent County Council (acting as joint controllers or processors where applicable)

(ii) Third parties to whom we may choose to sell, transfer, or merge parts of our business or our assets. Alternatively, we may seek to acquire other businesses or merge with them. If a change happens to our business, then the new owners may use your personal data in the same way as set out in this Schedule.

(b) External Third Parties

(i) Service providers (acting as sub-processors)

(ii) Professional advisers (acting as sub-processors or joint controllers) including lawyers and auditors who provide consultancy and legal services to us.

(iii) HM Revenue & Customs, regulators and other authorities (acting as sub-processors or joint controllers) based in the United Kingdom who require reporting of processing activities in certain circumstances. We may have to share your personal data with these Third Parties as defined above for the purposes set out in 1 above.

As part of compliance with Data Protection Laws, the Service Provider requires all third parties / organisations to respect the security of the Protected Data and to treat it in accordance with the law. The Service Provider does not allow third-party service providers to use the Protected Data for their own purposes and only permits them to process the Protected Data for specified purposes and in accordance with clear written instructions.