

APPENDIX E - CONTRACT FOR THE PROVISION OF SERVICES

**For Passenger Transport and related Services
using taxis, minibuses and coaches**

DN181203



**PLEASE READ THESE INSTRUCTIONS CAREFULLY BEFORE PREPARING YOUR
SUBMISSION.**

DATED _____ 2017

BETWEEN

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD

and

(2) [Contractor inserts]

CONTRACT FOR THE PROVISION OF SERVICES

CONTRACT NO. _____

London Borough of Enfield
Civic Centre
PO Box 60
Silver Street
Enfield
Middlesex
EN1 3XA

FORM OF CONTRACT

THIS CONTRACT is made the _____ day of _____ 2017

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD** acting by the Council of the London Borough Enfield, Civic Centre, PO Box 60, Silver Street, Enfield, London EN1 3XA (the "Authority"); and
- (2) [_____], a company registered in England and Wales under number [] and having its registered office at [_____] (the "Contractor")

WHEREAS:-

- (A) The Contractor represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in Schedule 3 and, that it has relevant competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (B) The Authority wishes, in view of the Contractor's relevant skills, knowledge and experience to engage the Contractor to provide the Services to the Authority as set out in Schedule 3.
- (C) The Contractor is willing to provide the Services to the Authority on and subject to the terms and conditions of this Contract.

IT IS HEREBY AGREED AS FOLLOWS:-

- (1) The Authority and the Contractor hereby agree and declare that this Form of Contract and the Appendices listed below and attached to this Form of Contract shall constitute the Contract.

(2) The Schedules are:-	Page
1: Conditions of Contract.....	[5]
2: Special Conditions.....	[40]
3: The Services.....	[40]
4: Charges and Invoices.....	[40]
5A: Contract Programme.....	[42]
5B: Contract Management.....	[42]
6. Insurance.....	[43]
7. Performance Bond/Parent Company Guarantee.....	[43]
8. Novation Agreement	[43]

BY SIGNING AND RETURNING THIS CONTRACT THE CONTRACTOR AGREES to comply with all the terms of this legally binding Contract. The Parties hereby acknowledge and agree that they have read this Contract and its Schedules and by signing below agree to be bound by the terms of this Contract.

IN WITNESS WHEREOF this Contract has been signed for and on behalf of the Parties the day and year first above written

Signed by)

Name:) *Position:*)

for and on behalf of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF ENFIELD)

in the presence of)
Name:) *Position:*)

Signed by)
Name:) *Position:*)

for and on behalf of)
[INSERT CONTRACTOR NAME])

in the presence of)
Name:) *Position:*)

SCHEDULE 1
CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these terms and conditions the words and expressions below will be interpreted to have the meanings adjacent to them:-

"Approval" means the prior written consent of the Authority or the Authority Authorised Officer and "Approve" and "Approved" shall be construed accordingly;

"Authorised Officer" means a person designated as such by the Authority from time to time as notified in writing to the Contractor to act as the representative of the Authority for all purposes connected with the Contract, including any authorised representative of such person;

"Authority" means the Mayor and the Burgesses of the London Borough of Enfield acting by the Council of the London Borough Enfield, Civic Centre, PO Box 60, Silver Street, Enfield, London EN1 3XA;

"Authority Personal Data" means the personal data supplied by the Authority to the Contractor and for the purposes of or in connection with this Contract. "Personal Data" shall have the same meaning as set out in the Data Protection Act 1998;

"Commencement Date" means the date agreed by the Parties in writing and detailed in Clause 8, on which the provision of the Services is to start;

"Confidential Information" means information, data and material of any nature which either Party may receive or obtain in connection with the procurement negotiation and operation of the Contract and:

- (a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998);
- (b) the release of which is likely to prejudice the commercial interests of the Authority or the Contractor respectively; or
- (c) which is a trade secret;

"Contract" means the agreement between the Authority and the Contractor comprising the Order (if applicable), the Form of Contract, these terms and conditions and schedules hereto;

"Contractor" means the provider of the Services pursuant to the Contract;

"Contractor Staff" means all persons employed by the Contractor together with the Contractor's servants, agents, suppliers, consultants and sub-contractors (and all persons employed by any sub-contractor together with the sub-contractors' servants, consultants, agents and suppliers) used in the performance of its obligations under this Contract;

"Contract Manager" means a person designated as such by the Contractor from time to time as notified in writing to the Authority to act as the duly authorised representative of the Contractor for all purposes connected with the Contract, including any authorised representative of such person;

"Contract Period" means (subject to earlier termination in accordance with its terms or by operation of Law) the duration of the Contract, starting on the Commencement Date, as set out in Clause 8;

"Contract Price" means the monies payable by the Authority to the Contractor for the provision of the Services as set out in Schedule 4. In the absence of agreement by the Parties to the contrary, the Contract Price shall be inclusive of all taxes, duties, expenses and disbursements save for VAT (if applicable) and shall include the costs of all equipment and materials supplied by the Contractor, all travelling expenses involved and all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any Intellectual Property or Intellectual Property Rights for the purpose of performance of the Contract;

"Contract Standard" means such standard as complies in each and every respect with all relevant provisions of the Contract;

"Convictions" shall include criminal convictions which are convictions other than in relation to minor traffic offences; any previous or pending prosecutions, convictions, warnings and binding – over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Offenders Act 1974 (Exceptions) Order 1075 (SI 1975/1023 or any replacement to that Order)

"Costs" shall include costs, charges, outgoings and expenses of every description;

"Data Controller" shall have the same meaning as set out in the Data Protection Act 1998;

"Data Processor" shall have the same meaning as set out in the Data Protection Act 1998;

"Data Protection Legislation" or "DPA" means the Data Protection Act (DPA) 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Default" means any breach of the obligations of the Contractor (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Contractor in connection with or in relation to this Contract or the subject matter of this Contract and in respect of which the Contractor is liable to the Authority;

"Deliverable" means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced by or to be produced by or acquired by or to be acquired by the Contractor in the course of the performance of the Services;

"Dispute Resolution Procedure" means the procedure set out in Clause 23;

"Documentation" means any hard or soft copy operating instructions, installation instructions or the technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation including designs relating to the Services and Contractor's software;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any

guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Force Majeure Event" means any event, occurrence or cause affecting the performance by either the Authority or the Contractor of its obligations arising from:

a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party;

b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;

c) fire, flood or any disaster

but excluding:

- any industrial dispute relating to the Contractor, the Contractor Staff or any other failure in the Contractor or the sub-contractor's supply chain; and

- any event or occurrence which is attributable to a wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

"Good Industry Practice" means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations;

"Insolvent" means:

- (a) if the Contractor is an individual, that individual or where the Contractor is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors;
- (b) if the Contractor is a company, the passing by the Contractor of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Contractor or the dissolution of the Contractor, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Contractor's assets, or if the Contractor makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and
- (c) any event in any jurisdiction other than England and Wales which is analogous to any of the above;

"Intellectual Property" means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and, moral rights and other similar rights or obligations;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction.

"Intellectual Property Right" shall include the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

"In writing" shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages;

"Know-How" means all information not publicly known which is used or required to be used in or in connection with the Services existing in any form (including, but not limited to, that comprised in or derived from engineering, chemical and other data, specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and circuit diagrams, brochures, catalogues and other descriptions) and relating to the design, development, manufacture or production of any products; the operation of any process; the provision of any Services; the selection, procurement, construction, installation, maintenance or use of raw materials, plant, machinery or other equipment or processes; the rectification, repair or service or maintenance of products, plant, machinery or other equipment; the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; quality control, testing or certification of any person;

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order or requirements of any regulatory body, delegated or subordinate legislation;

"Loaned Equipment" means equipment owned by the Authority which is loaned to the Contractor for the purposes of the Contract as set out in the Specification;

"Location" means the location for the provision of the Services as set out in the Specification or as otherwise agreed in writing between the Authority and the Contractor;

"Loss" shall include losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss

of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Authority for the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services;

"Month" means a calendar month;

"Order" means any order placed on the Contractor by an Authority for the provision of the Services;

"Party" means the Authority or the Contractor and "Parties" shall be interpreted accordingly;

"Personal Data" means personal data as defined by the Data Protection Act 1998;

"Processing" shall have the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing. "Process" and "Processed" shall be interpreted accordingly;

"Recruits" means any new employees engaged by the Contractor to work on the Services to which this Contract relates (and any amendment to those Services);

"Replacement Contractor" means any contractor engaged to replace the Contractor or any sub-contractor of the Contractor;

"Services" means the services provided by the Contractor pursuant to, and in accordance with this Contract and as set out in Schedule 3;

"Sites" means those areas at the Location for the use of the Contractor and the Contractor Staff in the provision of the Services, as set out in the Specification;

"Specification" means the description of the Services as set out in Schedule 3;

"Use" means the right to use Contractor's Service software and load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that software; and

"Working Day" means any day save for Saturday, Sunday and a public holiday in England and Wales.

- 1.2 In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any clauses attaching thereto.
- 1.3 Any headings within these terms and conditions are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to Clauses and or Schedules shall mean the Clauses and or Schedules of these terms and conditions respectively.
- 1.4 Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning.
- 1.5 Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an

exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 1.6 In these terms and conditions, words importing any particular gender include all other genders.
- 1.7 In these terms and conditions, words importing the singular only shall include the plural and vice versa.
- 1.8 In these terms and conditions "staff" and "employees" shall have the same meaning.
- 1.9 Subject to the contrary being stated expressly in these terms and conditions, all communication between the Parties shall be in writing.
- 1.10 All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.11 Except where an express provision of these terms and conditions states the contrary, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.
- 1.12 Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 1.13 All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.
- 1.14 The Authority reserves the right to invite competitive quotations and/or place orders elsewhere for other or complementing services during the term of the Contract. The Contractor shall co-operate to the fullest extent possible with any other contractors appointed to provide such other or complementing services.

2. APPOINTMENT

- 2.1 The Authority appoints the Contractor to provide the Services:
 - 2.1.1 promptly (and in any event within any time targets as may be set out in the Specification) and in a professional and courteous manner so as to reflect and promote the image of the Authority;
 - 2.1.2 strictly in accordance with the Specification and all provisions of the Contract; and
 - 2.1.3 in accordance with all applicable Laws and Good Industry Practice; and
 - 2.1.4 in accordance with the policies (including, when on any premises of the Authority or on any other premises where it works alongside the Authority's staff, any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Authority as amended from time to time.

2.2 The Contractor accepts the terms of appointment as provided in Clause 2.1 in consideration of the Contract Price.

3. PERFORMANCE OF THE SERVICES

3.1 Subject to Clause 15.1, the Contractor shall provide at its own expense all Contractor Staff, equipment, tools, appliances, materials or items required for the provision of the Services to the Contract Standard.

3.2 To the extent that the Specification includes the date, format and method of delivery of the Services and Deliverables and/or the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Services, the Contractor will abide by the same.

3.3 Time shall be of the essence with regard to the obligations of the Contractor under this Contract.

3.4 If the Specification provides for performance of the Services in stages, the Contractor undertakes to perform the Services in strict compliance with the timetable for stages as provided in the Specification.

3.5 The Authority and the Contractor will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Authority to derive the full benefit of the Contract. At all times in the performance of the Services, the Contractor will co-operate fully with any other contractors appointed by the Authority in connection with other services at the Location.

3.6 Any request by either Party to amend the scope or execution of the Services shall be dealt with by the Parties in accordance with Clause 21 (Variation of the Contract).

3.7 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to notify the Authorised Officer of all significant changes to Contractor Staffing levels or conditions of employment, or hours of work or other technological changes at least one (1) Month prior to the implementation of any such revised arrangements.

3.8 The Contractor shall provide information in a format, medium and at times specified by the Authority, related to the performance of the Services as may be reasonably required.

3.9 In providing the Services, the Contractor shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's computer systems.

3.10 If at any time the Contractor becomes aware of any act or omission or any proposed act or omission by the Authority or by any member, official or employee of the Authority which prevents or hinders or may prevent or hinder the Contractor from providing the Services in accordance with the Contract then the Contractor shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt, the Contractor's compliance with this Clause shall not in any way relieve the Contractor of any of its obligations under this Contract.

3.11 The Authority shall provide the Contractor with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Contractor of any amendments to such documents) subject to the Authority (at its sole discretion) being of the opinion that

such provision will enable the Contractor to comply with its obligations under this Contract.

- 3.12 The Contractor will immediately notify the Authorised Officer of any actual or potential problems relating to the Contractor's own suppliers that affects or might affect its ability to provide the Services.
- 3.13 The Contractor will be responsible for providing and maintaining the Services to the Contract Standard at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with the Specification. The Contractor must, at all times, have in place contingency plans and arrangements which have the Approval of the Authority to ensure continuity of supply of the Services.
- 3.14 The Contractor will be responsible for providing and maintaining the Services to the Contract Standard during industrial action, at no additional cost to the Authority. The Contractor must have in place contingency plans and arrangements which are approved by the Authority.
- 3.15 In the event of the Contractor being unable to maintain the Services to the Contract Standard, the Contractor shall without prejudice to the remedies of the Authority permit the Authorised Officer and its staff, to have access to and unrestricted use of such machinery, equipment and materials which being the property of the Contractor deemed necessary to maintain the Services by the Authorised Officer during industrial action, or any other such occurrence, without additional charge.
- 3.16 Except where otherwise provided in this Contract, the Services shall be provided by the Contractor at the Authority's Location.
- 3.17 The Contractor shall:
 - 3.17.1 observe, and procure that the Contractor's Staff observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises. The Authority reserves the right to refuse the Contractor or the Contractor's Staff access to the Authority's premises, which will only be given to the extent necessary for the performance of the Services;
 - 3.17.2 notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - 3.17.3 prior to the Commencement Date, obtain and at all times maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services.

4. DELIVERABLES

- 4.1 Wherever the Services require the Contractor to provide a Deliverable:
 - 4.1.1 such Deliverable will be delivered in the form prescribed and in accordance with the Specification. If no such form is prescribed in the Specification, the Contractor will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Contractor by the Authorised Officer;
 - 4.1.2 the Authority may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or the requirements otherwise made known to the Contractor by the Authority;

- 4.1.3 the Authority will not reject any Deliverable (wholly or in part) without providing written reasons to the Contractor as to why such Deliverable has been rejected;
- 4.1.4 any dispute as to whether the Authority has correctly exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and
- 4.1.5 any Deliverables which are rejected shall be replaced by the Contractor (at no extra charge to the Authority) by Deliverables which are reasonably satisfactory to the Authorised Officer in accordance with the timescale set out in the Specification.

5. PERFORMANCE MEASUREMENT

- 5.1 In addition to any more specific obligations imposed by the terms of this Contract, it shall be the duty of the Contractor to provide the Services to the Contract Standard which in all respects shall be to the satisfaction of the Authorised Officer.
- 5.2 The Contractor shall institute and maintain a properly documented system of quality control as set out in the Specification and which is to the satisfaction of the Authorised Officer to ensure that the Contract Standard is met.
- 5.3 In addition to any other rights of the Authority under the Contract, the Authorised Officer shall be entitled to inspect the Contractor's quality control system referred to in Clause 5.2 above.
- 5.4 During the Contract Period, the Authorised Officer may inspect and examine the provision of the Services being carried out at the Location without notice at any time. The Contractor shall provide to the Authority all such facilities as the Authority may require for such inspection and examination.
- 5.5 The Contractor shall allow the Authority and any person, firm or organisation authorised by the Authority to have access to and to audit all records maintained by the Contractor in relation to the supply of the Services. The Contractor shall assist the Authority or any party authorised by the Authority (as the case may be) in the conduct of the audit.
- 5.6 If any part of any Service is found to be defective or different in any way from the Specification or otherwise has not been provided to the Contract Standard other than as a result of a default or negligence on the part of the Authority, the Contractor shall at its own expense re-perform the Services in question (without additional remuneration therefore) within such time as the Authority may reasonably specify failing which the Authority shall be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself. If the cost to the Authority of executing or procuring such Services exceeds the amount that would have been payable to the Contractor for such Services, the excess shall be paid by the Contractor to the Authority on demand in addition to any other sums payable by the Contractor to the Authority in respect of the breach of this Contract.
- 5.7 If the performance of the Contract by the Contractor is delayed by reason of any act or default on the part of the Authority or by any other cause that the Contractor could not have reasonably foreseen or prevented and for which it was not responsible, the Contractor shall be allowed a reasonable extension of time (at the sole discretion of the Authority) for completion of the Services so affected.
- 5.8 For each Service, the Authority shall ascertain whether the Contractor's provision of the Service in question meets any performance criteria as specified in the Specification or, if the criteria are not so specified, meets the Good Industry Practice standards. On or

before the fifteenth (15) Working Day of each Month during the Contract Period and within fourteen (14) calendar days after termination of the Contract, the Authority may:

- 5.8.1 in respect of each of the Services during the preceding calendar Month, provide to the Contractor a notice (each called a "Performance Notice") which shall set out a statement of the Authority's dissatisfaction with the Contractor's performance and provision of the Services;
 - 5.8.2 each Performance Notice issued by the Authority shall include a proposed rebate of the Contract Price commensurate to the under-performance of the Contractor as recorded in the Performance Notice;
 - 5.8.3 if the Contractor disputes any matter referred to in any Performance Notice and/or the proposed rebate of the Contract Price, the Contractor may raise this objection with the Authority and if this matter is not resolved within seven (7) Working Days the matter shall be referred to the Dispute Resolution Procedure; and
 - 5.8.4 if the Contractor has not raised any objection to the Performance Notice within seven (7) Working Days of receipt (or such other period as agreed between the Parties) then that Performance Notice shall be deemed to have been accepted by the Contractor and the rebate on the Contract Price referred to therein shall become immediately effective.
- 5.9 The Authority's rights under Clause 5.8 are without prejudice to any other rights or remedies the Authority may be entitled to.
- 5.10 On request, the Contractor shall submit to the Authority progress reports detailing its adherence to the timetable (if any) as set out in the Specification in a format Approved by the Authority. The submission and acceptance of such reports shall not prejudice any other rights or remedies of the Authority under the Contract.
- 5.11 If required by the Authority, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Authority as the case may be.

6. CONTRACT PRICE AND PAYMENT

- 6.1 In consideration of the Contractor's due and proper performance of its obligations under this Contract, the Contractor may charge the Authority the Contract Price in accordance with this Clause 6 and Schedule 4. Time for payment of the Contract Price shall not be of the essence in relation to this Contract.
- 6.2 The only sums payable by the Authority to the Contractor for the provision of the Services under this Contract shall be the Contract Price. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Contract shall be the responsibility of the Contractor.
- 6.3 In accordance with the Contract, where the Contractor is required to provide Deliverables, the Authority shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Deliverables in accordance with the Specification.
- 6.4 Unless otherwise agreed in writing by the Authority and the Contractor, within 15 days of the end of each Month, the Contractor shall invoice the Authority for any Services provided by the Contractor in that Month. Such invoice shall be rendered on the

Contractor's own invoice form clearly marked with the Authority's order number (if any). Invoices must show the period to which they relate and the aspects of the Services for which payment is claimed together with the agreed charging rates and any other details the Authority may require from time to time. Failure to provide such information will entitle the Authority to delay payment of the Contract Price until such information is provided.

6.5 Subject to Clauses 6.3 and 6.6, the Authority shall pay any valid undisputed invoice submitted by the Contractor in accordance with Clause 6.4 within thirty (30) calendar days of receipt by the Authority of such invoice. The Authority shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Authority and the Contractor. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time including by the Late Payment of Commercial Debts Regulations 2013). The Contractor is not entitled to suspend delivery of the provision of the Services as a result of any sums being outstanding.

6.5.1 Where the Contractor, whilst supplying the Services, enters into a Sub-Contract it hereby warrants to include in that Sub-Contract:

6.5.1.1 Clauses having the same effect as clauses 6.4 – 6.5 above and;

6.5.1.2 a clause requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards, such clauses having the same effect as clauses 6.4 – 6.5 above

Where the Contractor fails to comply with clauses 6.4 – 6.5 above and there is an undue delay in considering and verifying the invoice received from the sub-contractor, such an invoice shall be regarded as valid and undisputed for the purposes of paragraph 6.5, after a reasonable amount of time has passed.

6.6 Without prejudice to any other rights or remedies which it may have the Authority shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority from the Contractor.

6.7 Where the performance of the Contractor does not meet the Authority's required standard then a deduction as set out in the Specification or as agreed by the Parties may be made.

6.8 Except where otherwise agreed between the Authority and the Contractor in writing, the Contract Price is exclusive of VAT which shall be payable upon receipt of a VAT invoice. The invoice provided to the Authority by the Contractor in accordance with Clause 6.4 shall show the VAT calculations separately.

6.9 The Contractor will keep accurate books and records in relation to the provision of the Services in accordance with Good Industry Practice. All such books and records shall be made available to the Authority at regular intervals and not less than quarterly.

6.10 Subject to Clause 6.11, the Contract Price shall be subject to any increase awarded to the Contractor, and on application by the Contractor, by the Authority during the Contract Period in accordance with the following:

The Contract Price may be adjusted in line with inflation on an annual basis commencing 12 months from the Commencement Date. The inflation factor to be applied will be in accordance with the General Index Retail Prices (Table 18.9 Index numbers of Producer Prices Materials and Fuels Purchased DM (RBCC) and Table

18.15 Average earnings index Transport Storage and Communication I (JVVM)) as published by the Office for National Statistics and the application of that procedure and any calculations shall be carried out by the Council. The figure used will be that most recently published at the anniversary of the Commencement Date. *The application of that indexation procedure and all calculations in that regard shall be the sole responsibility and within the sole discretion of the Authority.*

- 6.11 In the event that the Contract is varied under Clause 21 in such a way as to affect the Contract Price and if agreement between the Parties cannot be reached on the adjustment to the Contract Price within three (3) Months both Parties shall jointly act to resolve the dispute in accordance with the Dispute Resolution Procedure.
- 6.12 Where current route mileage or time taken to provide the route changes the price by more than a factor of 20%, the Council may, at its sole discretion, re-tender the route via the Dynamic Purchasing System.
- 6.13 If the adjusted Contract Price is not so agreed or certified until after such variation has taken effect, the Authority shall continue to pay the Contractor at the rate current prior to the variation but shall pay to the Contractor or be entitled to recover from the Contractor as the case may be such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually paid.
- 6.14 In the event that the Contract ends or is terminated otherwise than at the end of a complete year, the sum payable by the Authority under Clause 6 shall be one twelfth of the annual sum which would otherwise have been payable for the complete year for each completed Month.
- 6.15 The Contractor shall indemnify the Authority on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract.

7. RESOURCES

- 7.1 The Contract Price includes payment in full for all facilities and resources required by the Contractor to provide the Services in accordance with the Contract. Any facilities or resources needed or used by the Contractor to perform the Services shall be provided by the Contractor without additional cost to the Authority.
- 7.2 The Contractor confirms its satisfaction of its abilities and experience in all respects to perform the Services pursuant to the Contract to the reasonable satisfaction of the Authority.

8. CONTRACT PERIOD

- 8.1 This Contract shall take effect on the 17th April 2017 (the "**Commencement Date**") and shall expire 5 Years from the Commencement Date, unless it is in either case terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law. The DPS will remain in place for an initial period of 5 years, with the option to extend for a further 4 years in 2 yearly increments.

9. AUTHORISED OFFICERS

9.1 Any notice, information or communication given to or made by an Authorised Officer shall be deemed to have been given or made by the Authority.

9.2 Only Authorised Officers shall be able to authorise additional, or amendments to the Services.

10. CONTRACTOR STAFF

10.1 The Contractor shall be entirely responsible for the employment and terms of employment of the Contractor Staff employed in connection with the provision of the Services under this Contract.

10.2 The Contractor will employ sufficient Contractor Staff to ensure that all of the Services are provided at all times and in all respects in complete conformity with the Specification. This will include, but not be limited to, the Contractor providing a sufficient reserve of trained and competent Contractor Staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Contractor shall employ only such Contractor Staff as are skilled and experienced in the duties required of them, and will ensure that every Contractor Staff is properly and sufficiently trained and instructed (at the Contractor's expense) and carries out the Services with regard to:

10.2.1 the task or tasks that person has to perform;

10.2.2 all relevant provisions of the Contract and the Specification;

10.2.3 all relevant policies, rules, procedures and standards of the Authority (including any racial discrimination and equal opportunities policies);

10.2.4 observing the highest standards of safety, customer care and courtesy;

10.2.5 the need to keep confidential all information howsoever acquired whether relating to the Authority or its business.

10.3 The Authority reserves the right to reject Contractor Staff whom they consider to be unsuitable for the duties proposed. Where the Contractor Staff are rejected the Contractor shall supply alternative Contractor Staff. In addition, the Authorised Officer may (but not unreasonably or vexatiously) instruct the Contractor to or to remove from work in or about the provision of the Services any Contractor Staff and the Contractor shall immediately comply with such instruction, shall, as soon as it is reasonably practicable thereafter provide a substitute.

10.4 The Contractor shall ensure that any Contractor Staff to whom reference is made by name in the Specification are actively involved in the provision of the Services or are replaced with the Contractor Staff acceptable to the Authorised Officer. The Contractor acknowledges that if it is ever the wish of the Contractor to change the Contractor Staff committed to provide the Services as provided for in the Specification it shall first give notice of such wish to the Authorised Officer explaining the reasons for such wish together with full details of any proposed replacement of the Contractor Staff. The Authority shall be under no obligation to approve or accept any such replacement. If any of the Contractor Staff referred to in the Specification cease, in the reasonable opinion of the Authority, to provide and be responsible for the provision of the Services and the quality of those Services suffer then the Authority may terminate the Contract in accordance with Clause 25 paying only for the Services provided up to the date of such termination.

- 10.5 The Contractor shall procure that all Contractor Staff performing any of the Services during the Contract Period who will or may in the course of their employment or engagement have access to Service users, children or other vulnerable persons:
- 10.5.1 are questioned concerning their Convictions; and
 - 10.5.2 obtain two satisfactory references, one of which must be from the present or most recent employer. All requests for references should say that the post is exempt from Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act (Exemptions) Order 1975; and
 - 10.5.3 obtain standard and enhanced disclosures from the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 including a check against the adults' barred list or the children's barred list, as appropriate before the Contractor engages the potential staff or persons in the provision of the Services. The Contractor shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Contractor being registered with the Disclosure and Barring Service (the "DBS");
- 10.6 The Contractor shall forward to the Authority upon request the results of the checks referred to in Clauses 10.5.1, 10.5.2 and 10.5.3 and the Contractor shall procure that no person who is barred by the DBS, or discloses any Convictions upon being questioned about their Convictions in accordance with Clause 10.5.1, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the DBS in accordance with Clause 10.5.2, or who fails to obtain standard and enhanced disclosures from the DBS upon request by the Contractor in accordance with Clause 10.5.2 is employed without the Authority's Approval.
- 10.7 The Contractor shall procure that the Authority is kept advised at all times of any Contractor Staff engaged in the provision of the Services who, subsequent to his/her commencement of the provision of the Services receives a Conviction or whose previous Convictions become known to the Authority or whose status changes with the DBS.
- 10.8 The Contractor shall procure that the Authority is kept advised at all times of any:
- 10.8.1 disciplinary incident relating to the Contractor Staff involving visitors, or the Authority's staff or property; and
 - 10.8.2 incidence of serious misconduct involving the Contractor Staff.
- 10.9 The Contractor shall not and shall procure that the Contractor Staff shall not::
- 10.9.1 corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under this Contract;
 - 10.9.2 be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of their obligations under this Contract;
 - 10.9.3 act in a manner reasonably likely to bring discredit upon the Authority;

- 10.9.4 at any time be on duty under the influence of alcohol or drugs;
 - 10.9.5 neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;
 - 10.9.6 misuse or abuse the Authority's property;
 - 10.9.7 smoke while on the Authority's premises, except in those areas where smoking is expressly permitted.
- 10.10 The Contractor shall provide its Contractor Staff with a form of identification that is acceptable to the Authority and which Contractor Staff shall display on their clothing at all times when they are at the Location.
 - 10.11 The Contractor and the Contractor Staff shall confine themselves to the locality of their work and shall cause as little interference and disruption as possible with other personnel and activities at the Location.
 - 10.12 The Authority shall not be liable for loss of or damage to, the personal property of Contractor's Staff, howsoever caused.
 - 10.13 The Contractor shall ensure that the Contractor Staff are medically and physically fit in so far as the requirements of the work are concerned taking into account any reasonable adjustments in accordance with the Disability Discrimination Act 1995.
 - 10.14 The Contractor Staff shall maintain proper standards of appearance and deportment whilst providing Services to the Authority.

11. CONTROL AND SUPERVISION OF THE CONTRACTOR STAFF

- 11.1 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.
- 11.2 The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Contract Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given the Authority shall be entitled to treat as Contract Manager the person last notified to the Authorised Officer as being the Contract Manager.
- 11.3 The Contractor shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on its behalf, is available to the Authority at all times when any Contractor Staff are on duty for the provision of the specified Services.
- 11.4 The Contractor shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.
- 11.5 The Contract Manager or his deputy shall consult with the Authorised Officer and such other of the Authority's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Services in accordance with the Contract.
- 11.6 The Contractor shall provide a sufficient complement of supervisory staff in addition to the Contract Manager, to ensure that the Contractor Staff engaged in and about the provision of the Services at the Location are adequately supervised and properly perform their duties at all times.

- 11.7 All persons appointed to managerial and supervisory positions in accordance with the Specification must be to the acceptance of the Authorised Officer who will have the right to veto the appointment of any candidate who is deemed to be unsuitable.
- 11.8 The Contractor's Staff engaged in and about the provision of the Services shall primarily be under the control and direction of the Contractor's own supervisory staff but nevertheless while on the Authority's premises will obey all reasonable instructions given to them by the Authority's supervisory staff in any matter occasioned by the operational needs of the relevant Service or the health, safety or welfare of anyone.
- 11.9 The Contractor shall ensure that the Contractor Staff carry out their duties and behave while on the Authority's premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.

12. HEALTH AND SAFETY

- 12.1 While at the Location, the Contractor shall comply, and shall procure that the Contractor Staff shall comply with, the requirements of relevant health and safety and other relevant Laws, including regulations and codes of practice issued thereunder, and with the Authority's own policies and procedures.
- 12.2 The Contractor shall at all times maintain a specific health and safety at work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Contract on the Authority's premises.
- 12.3 The Contractor will be required to nominate a health and safety representative to liaise with the Authorised Officer on all health and safety matters.
- 12.4 The Contractor Staff shall follow a system of accident recording in accordance with the Authority's accident recording procedure and the Contractor's own accident reporting procedures.
- 12.5 All notifiable accidents shall immediately be brought to the attention of the Authorised Officer.
- 12.6 The Contractor shall ensure the co-operation of the Contractor Staff in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the Contractor's working practices or other occurrences likely to increase such risks or to cause new hazards.
- 12.7 The Contractor Staff shall be trained to recognise situations which involve an actual or potential hazard including:
- 12.7.1 danger of personal injury to any person on the Authority's premises and
 - (a) where possible, without personal risk, make safe any such situation; or
 - (b) report any such situation to the Authorised Officer;
 - 12.7.2 fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the Authority's policies;
 - 12.7.3 security;
 - 12.7.4 risk management;

- 12.7.5 major incident.
- 12.8 The Contractor shall provide such first aid facilities and ensure that the Contractor Staff abide by such first aid procedures as shall be required by the Authority as detailed in the Specification.
- 12.9 The Contractor shall at any time ensure that the equipment used and procedures operated conform to the Authority's fire policy as detailed in the Specification.
- 12.10 The Contractor shall co-operate with the Authority's fire, security and safety advisors and shall comply with their reasonable instructions.
- 12.11 The Contractor and the Contractor Staff shall comply with the Control of Substances Hazardous to Health (COSHH) Regulations and COSHH hazard management and control.
- 13. LOCATION – NOT APPLICABLE**
- 14. USE OF AUTHORITY SITES - NOT APPLICABLE**
- .
- 15. EQUIPMENT AND MATERIALS**
- 15.1 The Contractor shall be responsible for the provision and installation of all equipment and materials used in connection with the Contract except where these are loaned to the Contractor by the Authority in accordance with Clause 16 or transferred into the ownership of the Contractor under Clause 15.13 and 15.14.
- 15.2 Where equipment and materials are supplied by the Authority these will be serviced and maintained by the Authority.
- 15.3 The Contract Manager shall forthwith inform the Authorised Officer of any defects appearing in or losses of, or damage, occurring to the Authority's equipment. The Contractor shall be liable to pay to the Authority the cost of any replacement necessary as a result of loss or damage caused deliberately or negligently by the Contractor Staff.
- 15.4 In accordance with the Specification, the Contractor will, at its own expense, install all necessary equipment for the provision of the Services.
- 15.5 The Contractor shall ensure that all equipment used in connection with the Contract is maintained in good working order in compliance with manufacturer's instructions and applicable Law.
- 15.6 All equipment and materials used by the Contractor shall comply with latest relevant British Standards or European equivalent specifications where such exist and the Contractor shall upon request furnish the Authorised Officer with evidence to prove that such equipment and materials comply with this condition.
- 15.7 The Contractor shall:
- 15.7.1 establish effective planned maintenance programmes; and
- 15.7.2 make adequate arrangements for emergency remedial maintenance, to ensure continuity of the Services; and
- 15.7.3 agree all equipment purchases with the Authority; and

- 15.7.4 ensure compliance with all regulations covering the inspection and testing of all equipment used at the Location in the provision of the Services; and
- 15.7.5 maintain records, open for inspection by the Authority of maintenance testing and certification.
- 15.8 Any electrical equipment used by the Contractor in connection with the Contract shall not cause any interference with or damage to any equipment used by the Authority.
- 15.9 Any electrical equipment proposed to be used by the Contractor in connection with the Contract shall, at the discretion of the Authority be tested and Approved by the Authority before use on the Authority's premises.
- 15.10 Notwithstanding Clause 15.9 the Contractor shall be liable for any damage caused by any electrical equipment used in connection with the Contract.
- 15.11 The Authority reserves the right to inspect equipment used by the Contractor in the provision of the Services at any time and the Contractor shall comply with any directions of the Authorised Officer as to the manner in which such equipment shall be used.
- 15.12 The Authority shall not be responsible, charged or chargeable for any equipment or materials brought on Site by the Contractor.
- 15.13 At the Commencement Date any equipment transferred by the Authority to the Contractor in relation to the Contract shall be subject to the provisions of Clause 15.14 and shall be valued by an independent valuer appointed jointly by the Authority and the Contractor. Ownership of such equipment shall be transferred to the Contractor without charge.
- 15.14 On completion or termination of the Contract, all equipment, whether provided by the Contractor or transferred into the ownership of the Contractor by the Authority will be re-valued and transferred into the ownership of the Authority as set out in the Specification. Where there is any increase or decrease in value of the equipment, this shall be added to (in the case of an increase in value) or deducted (in the case of a decrease in value) from the Contractor's final payment. Subject to the provision of this Clause, transfer of such equipment to the Authority shall be without charge.
- 15.15 The Contractor shall:
 - 15.15.1 establish effective planned maintenance programmes; and
 - 15.15.2 make adequate arrangements for emergency remedial maintenance, to ensure continuity of the Services; and
 - 5.15.3 ensure compliance with all regulations covering the inspection and testing of all equipment used at the Location in the provision of the Services; and
 - 15.15.4 maintain records, open for inspection by the Authority of maintenance testing and certification.

16. LOAN OF AUTHORITY EQUIPMENT

- 16.1 The Contractor shall satisfy itself that any Loaned Equipment is suitable for the purpose intended.
- 16.2 The Contractor shall be liable for any damage to any Loaned Equipment.

16.3 The Authority shall not be liable for any damage to the Loaned Equipment caused by a defect in or faulty operation of the Loaned Equipment.

16.4 The Authority shall have the right to withdraw Loaned Equipment at any time and shall be under no liability whatsoever for failing to lend equipment at any time.

17. CONTRACT PROGRAMME AND MANAGEMENT

17.1 The Contractor shall perform the Services in accordance with Appendix A (General Specification).

18. ASSIGNMENT, SUB-CONTRACTING & NOVATION

18.1 The Authority may assign, novate or transfer the Contract or any part of it.

18.2 The Contractor shall not assign, novate, transfer, sub-contract or in any other way dispose any part of the Contract without the Approval of the Authority. The granting of any consent to sub-contract any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.

19. INSURANCE AND INDEMNITY

19.1 Nothing in this Contract shall be construed to limit or exclude either Party's liability for:

19.1.1 death or personal injury caused by its negligence or that of its staff;

19.1.2 fraud or fraudulent misrepresentation by it or that of its staff; and

19.1.3 any other matter which, by Law, may not be excluded or limited.

19.2 Without prejudice to any rights or remedies of the Authority (including the Authority's rights and indemnities pursuant to the Contract the Contractor shall indemnify the Authority and keep the Authority fully indemnified against all actions direct, indirect or consequential liabilities, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from the performance of the Contractor of the Services or the negligent or wrongful act or omission of the Contractor or its obligations under the Contract or an infringement or alleged infringement of any intellectual property rights caused by the Contractor's performance of the Services.

19.3 Subject to Clause 19.1, in no event shall either Party be liable to the other for any:

19.3.1.1 loss of profits;

19.3.1.2 loss of business;

19.3.1.3 loss of revenue; and/or

19.3.1.4 loss of savings (whether anticipated or otherwise).

19.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority

or its contractors, agents and other third parties or by breach by the Authority or its contractors, agents and other third parties of its obligations under this Contract.

- 19.5 During the Contract Period and for a period of six (6) years thereafter the Contractor (but without limiting its obligations and responsibilities under the indemnity given by the Contract herein shall have in force and shall require any sub-contractor to have in force with a reputable insurer:-
- 19.5.1 employers liability insurance in accordance with any legal requirements for the time being in force and in any event for not less than such sum and range of cover stated in Schedule 6 (Insurance); and
- 19.5.2 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £[5,000,000] million pounds per incident and unlimited in total (or such other sum as stated in Schedule 6), unless otherwise agreed by the Authority in writing and detailed in the Contract.
- 19.6 The [policy/or policies] of insurance referred to in Clause 19.5 shall include a term whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Authority, the insurer will indemnify the Contractor against such a claim and any costs, charges and expenses in respect thereof. The Contractor shall whenever required produce to the Authority the policy or policies of insurance and receipts for payment of the current premiums and the event that there is evidence that any required insurance is not in force the Authority may effect and keep in force any such insurance and the Contractor shall pay to the Authority any sums expended by it for such purposes.
- 19.7 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

20. REVIEW

The Contractor shall attend formal, minuted review meetings (each such meeting being a "Review"), as required by the Authorised Officer, to discuss the Authority's levels of satisfaction in respect of the Services provided under the Contract and to agree any necessary action to address areas of dissatisfaction. The Contractor will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Authority and the Contractor together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

21. VARIATION OF THE CONTRACT

- 21.1 Any variation to the terms of the Contract shall be recorded in writing and executed by a director or authorised signatory of the Contractor and the Authorised Officer. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.
- 21.2 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

- 21.3 Each record of variation must be dated and sequentially numbered. Each of the Authority and the Contractor will be entitled to an original executed counterpart of the record of variation.
- 21.4 Save as provided in any such record of variation, the Contract will continue in full force and effect.
- 21.5 The Authority may at any time propose to the Contractor any reasonable variation or addition to the Specification and the Contractor shall not unreasonably withhold or delay its consent to such variation.

22. FORCE MAJEURE

- 22.1 Subject to Clause 22.5, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract to the extent that such delay or failure is a result of Force Majeure.
- 22.2 Notwithstanding Clause 22.1, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of one hundred and twenty (120) Working Days, either Party may terminate this Contract with immediate effect by notice in writing to the other Party.
- 22.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 22.1 it shall immediately give the other Party written notice and shall inform the other Party of the period during which it is estimated that such failure or delay shall continue. The notification shall include details of the Force Majeure event together with evidence of its effect on the obligations of the affected party.
- 22.4 The affected party shall use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequence of the Force Majeure.
- 22.5 As soon as practicable following the affected party's notification and in any event within five (5) Working Days, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to facilitate the continued performance of this Contract. After such consultation, the Authority may direct the Contractor to procure the Services that are affected by the Force Majeure from a third party service Contractor in which case the Contractor will be liable for payment for the provision of these Services for as long as the delay in performance continues.
- 22.6 The Contractor will not have the right to any payment from the Authority under this Contract where the Contractor is unable to provide the Services because of an event of Force Majeure.
- 22.7 The affected party shall notify the other Party in writing as soon as practicable (and in any event within five (5) Working Days) after the Force Majeure event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure event.

23. DISPUTE RESOLUTION PROCEDURE

- 23.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Services (unless the Authority requests in writing suspension of the Services).
- 23.2 If a dispute arises between the Authority and the Contractor in relation to any matter which cannot be resolved by the Authorised Officer and the Contractor Manager either of them may refer such dispute to the Dispute Resolution Procedure.
- 23.3 In the first instance each of the Authority and the Contractor shall arrange for a more senior representative than those referred to in Clause 23.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall take place within twenty one (21) Working Days of the date of the commencement of the relevant dispute and shall be minuted and chaired by the Authority (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.
- 23.4 If the meeting(s) referred to in Clause 23.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within twenty eight (28) Working Days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until thirty (30) Working Days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as the mediator shall require and will pay the costs, as the mediator shall determine or in the absence of such determination such costs will be shared equally.

24. TRANSPARENCY

- 24.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 24.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish this Contract in its entirety (subject to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including changes to this Contract agreed from time to time, to the general public.
- 24.3 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.
- 24.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

25. TERMINATION

- 25.1 The Authority may terminate this Contract (in whole or in part) by serving written notice on the Contractor if:
- 25.1.1 the Contractor has not remedied the Contractor Default to the satisfaction of the Authority within thirty (30) Working Days or such other longer period as may be specified by the Authority, after issue of a written notice specifying the Contractor Default and requesting it to be remedied; or
 - 25.1.2 the Contractor Default is not, in the opinion of the Authority, capable of remedy; or
 - 25.1.3 the Contractor Default is a material breach of this Contract; or
 - 25.1.4 the Contractor makes any voluntary arrangements with its creditors or becomes subject to an administration order; or
 - 25.1.5 the Contractor becomes Insolvent or otherwise ceases to be capable of providing the Services or ceases or threatens to cease to carry on business; or
 - 25.1.6 the Contractor fails (in whole or in part) to perform any material obligation of the Contractor owed to the Authority; or
 - 25.1.7 the Contractor is in default of any duty of care or any fiduciary or statutory duty owed to the Authority or agent of the Authority; or
 - 25.1.8 there is a change of ownership or control of the Contractor which, in the reasonable opinion of the Authority will have a material impact on the provision of the Services or the image of the Authority and the Contractor failed to obtain Approval from the Authority prior to such change of control. For the purposes of Clause 25.1.8, any transfer of shares or of any interest in shares where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded; or
 - 25.1.9 the Contractor purports to assign the Contract in breach of Clause 18; or
 - 25.1.10 the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor); or
 - 25.1.11 the Contractor is in breach of Clauses 34 (Confidentiality and FOIA), 35 (DPA) or 38 (Bribery and Corruption).
- 25.2 The Authority shall be entitled to recover from the Contractor the amount of any Loss resulting from termination under this Clause.
- 25.3 The Contractor agrees that upon termination for any reason (under Clause 25 or Clause 26) or expiry of the Contract it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Contractor in providing the Services or costs incurred in acquiring equipment and/or materials used in the provision of the Services or in

engaging third parties in connection with the Services whether or not such costs were amortised in the calculation of the Contract Price payable by the Authority under the Contract. For the avoidance of doubt, the Contractor will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.

25.4 The Authority and the Contractor agree that termination (in whole or in part) or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the termination or expiry of the Contract or the continuance of the part or parts not terminated where the Contract is terminated in part only.

25.5 Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

26. TERMINATION WITHOUT CAUSE

Either Party may terminate the Contract by giving the other Party at least 10 Working days prior written notice and such termination shall not affect the Authority's obligation on to pay for any Services to be performed up to the date of termination.

27. ARRANGEMENTS ON TERMINATION

27.1 After termination or expiry of this Contract all Authority Personal Data, Authority Confidential Information and any Authority data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services (including any Deliverables which remain to be completed as at the date of termination or expiry) and all other items provided on loan or otherwise to the Contractor by the Authority shall be delivered by the Contractor to the Authority provided that the Contractor shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Services or to the extent that the Contractor is required by Law to maintain copies thereof or to the extent that the Contractor was possessed of such data documents and records prior to the date of the Contract. In addition, the Contractor shall co-operate fully with the Authority during the handover leading to the termination of the Contract. This co-operation shall extend to full access to all documents, reports, summaries and any other information required to achieve an effective transition without disruption to routine operational requirements.

27.2 The Contractor shall retain all papers, files and records relating to the provision of the Services as provided for under Clause 27.1 for the period of six (6) years after the date of the termination or expiry of the Contract and thereafter shall not destroy them but deliver them to the Authority.

27.3 On the expiry or termination of this Contract for any reason, the Contractor shall immediately deliver to the Authority:

27.3.1 All Authority property (including materials and access keys) provided to the Contractor for the purposes of the provision of the Services. Such Authority property shall be handed back to the Authority in good working order (allowance shall be made for reasonable wear and tear); and

27.3.2 Return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising).

27.4 Upon termination of the Contract under Clause 25 and Clause 26, all equipment and materials provided and/or assembled by (or which are in the process of being provided or assembled by) the Contractor or materials and parts of Sites or Locations which are being altered or modified by the Contractor, in accordance with the Contract shall be

transferred into the ownership of the Authority regardless of whether the assembly of such equipment and materials or the alteration or modification of such Sites or Locations has been completed.

27.5 Save as otherwise expressly provided in this Contract:

27.5.1 Termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiry and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

27.5.2 Termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Clauses 27 (Arrangements on Termination), 6 (Contract Price and Payment), 28 (Intellectual Property), 35 (Data Protection), 34 (Confidentiality and Freedom of Information), 19 (Insurance and Indemnity), 38 (Prevention of Bribery and Corruption), 40 (The Contracts (Rights of Third Parties Act 1999), 50 (TUPE) and 51 (Governing Law and Jurisdiction), the relevant parts of the Schedules relating to such provisions.

28. INTELLECTUAL PROPERTY

28.1 Subject to the terms and conditions of this Contract, the Contractor grants to the Authority a limited, non-exclusive, non-sub licensable, non-transferable, royalty free license to electronically access and Use the Services for the contract period as the Authority shall require solely for the purposes of this Contract and such other purposes as it shall reasonably require that relate to the use and receipt of the Services and to electronically access the proprietary software that is a part of the Services.

28.2 The Contractor hereby grants to the Authority a limited, non-exclusive, non-sub licensable, non-transferable, royalty free license to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Contract.

28.3 The Contractor assigns to the Authority with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights related to the delivery of the Services (including the Deliverables).

28.4 The Contractor shall, promptly at the Authority's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Authority in accordance with this Contract.

28.5 Unless otherwise agreed in writing by the Parties, all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Contractor shall at all times, be and remain the exclusive property of the Authority but shall be held by the Contractor in safe custody at its own risk and maintained and kept in good condition by the Contractor until returned to Authority and shall not be disposed of or used other than in accordance with the Authority's written instructions or Approval.

28.6 The Contractor agrees to indemnify and keep the Authority fully indemnified against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any Deliverable, process, article, matter or thing supplied under this Contract that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

29. MANAGEMENT INFORMATION

If requested by the Authority, the Contractor shall provide the Authority a statement giving accurate and complete details of the quantity and value of the Services provided by the Contractor pursuant to the Contract. The format, level of detail and frequency of the statement shall be agreed between the Authority and the Contractor in writing.

33. RECORDS AND AUDIT

The Contractor shall keep and maintain to the satisfaction of the Authority until six (6) years after the Contract has expired or otherwise terminated, records of the Services provided and costs incurred by the Contractor in connection with the Contract. The Contractor shall on request afford the Authority or its representatives such access to and the right to make copies of those records as may be required by the Authority.

34. CONFIDENTIALITY AND FREEDOM OF INFORMATION

34.1 In respect of any Confidential Information a Party may receive from the other party (“the Discloser”) and subject always to the remainder of this Clause 34, each Party (“the Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:

34.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

34.1.2 the provisions of this Clause 34 shall not apply to any Confidential Information which:-

- (a) is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose such information; or
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Authority with the FOIA.

34.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:-

34.2.1 is given only to the Contactor Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the provision of the Services and only to the extent necessary for the performance of this Contract;

34.2.2. is treated as confidential and not disclosed (without the Approval) or used by Contactor Staff or such professional advisors of the Contractor otherwise than for the purpose of this Contract.

34.3 Where it is considered necessary in the opinion of the Authority, the Contractor shall and shall ensure that Contactor Staff or such professional advisors of the Contractor sign a confidentiality undertaking in a form Approved by the Authority before commencing work in connection with this Contract. The Contractor shall ensure that Contactor Staff and its

professional advisors are aware of the Contractor's confidentiality obligations under this Contract.

- 34.4 Nothing in this Clause 34 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this Clause 34 as if any reference to the Contractor in this Clause 34 were a reference to such holding company.
- 34.5 The Contractor authorises the Authority to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Services supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Authority shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made.
- 34.6 The Contractor acknowledges that the Authority is or may be subject to the FOIA. The Contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions (the "Codes of Practice") and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time (the "EIR). The Contractor will act in accordance with the FOIA, the Codes of Practice and EIR (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Contract.
- 34.7 The Contractor agrees that:
- 34.7.1 without prejudice to the generality of Clause 34.2, the provisions of this Clause 34 are subject to the respective obligations and commitments of the Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and EIR;
 - 34.7.2 subject to Clause 34.7.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
 - 34.7.3 where the Authority is managing a request as referred to in Clause 34.7.2, the Contractor shall co-operate fully with the Authority making the request and shall respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.
- 34.8 The Contractor shall and shall procure that the Contractor Staff shall:
- 34.8.1 transfer any request for information, as defined under section 8 of the FOIA, and/or EIR (as appropriate) to the Authority as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;
 - 34.8.2 provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within five (5) Working Days (or such

other period as the Authority may specify) of the Authority requesting that Information; and

- 34.8.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA and/or EIR (as appropriate).
- 34.9 The Authority may consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.
- 34.10 This Clause 34 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause 34 shall remain in force for a period of 3 years after the termination or expiry of this Contract.
- 34.11 In the event that the Contractor fails to comply with this Clause 34, the Authority reserves the right to terminate this Contract by serving notice in writing on the Contractor with immediate effect.

35. DATA PROTECTION

- 35.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor in relation to Authority Personal Data.
- 35.2 The Contractor shall comply with the DPA and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Authority by the seventh data protection principle ("the Seventh Principle") set out in the DPA, namely:
 - 35.2.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Authority by the Seventh Principle;
 - 35.2.2 only to Process Personal Data for and on behalf of the Authority, in accordance with the instructions of the Authority and for the purpose of performing its obligations under this Contract and to ensure compliance with the DPA;
 - 35.2.3 to allow the Authority to audit the Contractor's compliance with the requirements of this Clause 35 on reasonable notice and/or to provide the Authority with evidence of its compliance with the obligations set out in this Clause 35.
- 35.3 The Contractor agrees to indemnify and keep the Authority fully indemnified the Authority against all claims and proceedings and all liability, loss, costs and expenses whatsoever incurred in connection therewith by the Authority as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Personal Data Processed by the Contractor, its employees or agents in the Contractor's performance of the Contract or as otherwise agreed between the Parties.
- 35.4 Both Parties agree to use all reasonable efforts to assist each other to comply with the DPA. For the avoidance of doubt, this includes (without limitation) the Contractor notifying the Authority immediately upon becoming aware of a breach of this Clause 35 and the Contractor providing the Authority with reasonable assistance in complying with subject access requests served on the Authority under Section 7 of the DPA and the

Contractor consulting with the Authority prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

- 35.5 The Contractor shall not cause or permit to be Processed and/or otherwise transferred outside the of the European Economic Area any Authority Personal Data without the Approval of the Authority.

36. WARRANTY

- 36.1 The Contractor warrants represents and undertakes to the Authority that:

36.1.1 it has full capacity and authority and all necessary permits, consents, licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under this Contract;

36.1.2 this Contract is executed by a duly authorised representative of the Contractor;

36.1.3 in entering into this Contract it has not committed any fraud;

36.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

36.1.5 it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

36.1.6 it will perform the Services in accordance with the terms of the Contract (including but not limited to the Specification).

- 36.2 The Authority's rights under the Contract are in addition to the statutory terms implied in favour of the Authority by the Supply of Goods and Services Act 1982 and any other Law.

37. RELATIONSHIP OF THE PARTIES

The Authority has placed the Order on the Contractor as principal. The Contractor shall not incur any liabilities on behalf of the Authority make any representations or give any warranty on behalf of the Authority or, enter into any contract or obligation on behalf of the Authority.

38. PREVENTION OF BRIBERY AND CORRUPTION

- 38.1 The Authority shall be entitled to terminate the Contract by written notice forthwith and to recover from the Contractor the amount of any loss resulting from such termination if the Contractor:

38.1.1 offers or gives, or agrees to give, to any employee, agent, servant or representative of the Authority, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

38.1.2 engages in or Contractor Staff or any person acting on the Contractor's behalf commits, in connection with this Contract, a prohibited act under the Bribery Act 2010, or any other relevant Laws, statutes, regulations or codes in relation to bribery and anti-corruption.

38.2 The Authority shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination if:-

38.2.1 the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the Contract or any other contract with the Authority; or

38.2.2 the like acts shall have been done by any Contractor Staff or acting on his behalf (whether with or without the knowledge of the Contractor); or

38.2.3 in relation to any contract with the Authority the Contractor or any Contractor Staff or acting on his behalf shall:-

(a) have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation, or

(b) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

39. GENERAL PROVISIONS

39.1 Save as required by Law and/or the provisions of this Contract, no publicity shall be made by any of the Parties relating to any matter in connection with the Contract without the prior written consent of the other Party.

39.2 Any decision, act or thing that the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority, provided that upon receipt of a written request the Authority shall inform the Contractor of the name of any person so authorised.

39.3 The Contractor shall from time to time upon the request of the Authority, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of this Contract.

39.4 Any provision of the Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

39.5 The Contractor acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of the Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the Authority for any misrepresentation (whether made carelessly or not) or for breach of any warranty unless the representation relied upon is set out in the Contract or unless such representation was made fraudulently.

39.6 The failure by the Authority, the Contractor to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

- 39.7 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
- 39.8 At all times in connection with the Contract, the Contractor shall be an independent contractor and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Contractor and the Authority and accordingly the Contractor shall not be authorised to bind the Authority.
- 39.9 The Contractor warrants represents and undertakes to the Authority that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Contractor and that there are no material contracts existing to which the Contractor is a party which prevent it from entering into the Contract; and that the Contractor has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 39.10 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document. In this provision "general law" includes the law of a country other than England, and "right" includes any power, privilege, remedy, or proprietary or security interest.

40. THIRD PARTY RIGHTS

The Parties hereby declare that no term of the Contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

41. LANGUAGE

English shall be the language of the Contract and all documentation or information required or produced in the course of the Contractor's performance shall be in English.

42. SECURITY FOR DUE PERFORMANCE - NOT APPLICABLE.

43. DUE DILIGENCE

43.1 The Contractor acknowledges that it:

43.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;

43.1.2 has raised all relevant due diligence questions with the Authority before the Commencement Date; and

43.1.3 has entered into this Contract in reliance on its own due diligence alone.

44. QUALITY ASSURANCE AND BEST VALUE

The Contractor shall maintain an effective and economical programme for quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy the Contract requirements. The Contractor acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999

and as such the Authority is required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Contractor shall assist the Authority to discharge this duty where possible and agrees to negotiate in good faith (acting reasonably) any changes to this Contract in order for the Authority to achieve best value.

45. DISCRIMINATION

- 45.1 The Contractor or the Contractor Staff shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour ethnic or national origin, disability, gender or sexual orientation, religion or belief, age or gender reassignment, marriage or civil partnership, pregnancy or maternity and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof (the "Discrimination Acts") together with any guidance or codes of practice issued by the relevant government departments concerning the Discrimination Acts.
- 45.2 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor in relation to the Discrimination Acts and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 45.3 The Contractor shall indemnify and shall keep the Authority fully indemnified against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly to any act or omission by the Contractor or the Contractor Staff.
- 45.4 The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause 45.

46. NOTICES

- 46.1 Any notice to be given under the Contract shall either be delivered personally or sent by first class recorded delivery post (airmail if overseas) or electronic mail. Notices to be sent by the Contractor to the Authority, is the Departmental address and addressee responsible for the contract during its term. A notice shall be deemed to have been served:
- 46.1.1 if personally delivered, at the time of delivery;
- 46.1.2 If posted, at the expiration of 48 hours (or in the case of airmail seven days after the envelope containing the same was delivered into the custody of the postal authorities); and
- 46.1.3 if sent by electronic mail, a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.
- 46.2 In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate).

47. ENTIRE AGREEMENT

- 47.1 This Contract, together with other documents referred to in it constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 47.2 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

48. ENVIRONMENTAL CONSIDERATIONS

- 48.1 The Contractor shall comply in all material respects with applicable Laws (including but not limited to the environment and packaging) in force from time to time and Good Industry Practice in relation to the Services. Where the provisions of any such applicable Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practices as if they were incorporated into Laws subject to those voluntary agreements being cited in the Specification.
- 48.2 Without prejudice to the generality of the foregoing, the Contractor shall:
 - 48.2.1 comply with all reasonable stipulations of the Authority aimed at minimising packaging in which any products supplied by the Contractor to the Authority, as part of the performance of the Services;
 - 48.2.2 promptly provide such data as may reasonably be requested by the Authority from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Authority under or pursuant to the Contract;
 - 48.2.3 label all products supplied to the Authority by the Contractor under the Contract and the packaging of those products, to highlight environmental and safety information as required by applicable Law;
 - 48.2.4 unless otherwise agreed with the Authority insofar as any products supplied under the Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which the Authority may reasonably require from time to time regarding the costs of such activity;
 - 48.2.5 promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Authority to permit informed choices by end users.
- 48.3 The Contractor shall meet all reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause.

49. RE-TENDERING AND HANDOVER

- 49.1 Within twenty one (21) Working Days of being so requested by the Authority, the Contractor shall provide and thereafter keep updated, in a fully indexed and catalogued

- format, all the information necessary to enable the Authority to issue invitations to offer for the future provision of the Services.
- 49.2 Where, in the opinion of the Authority, TUPE is likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Clause 49.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under those Regulations, including in particular (but not limited to):
- 49.2.1 the number of employees who would be transferred, but with no obligation on the Contractor to specify their names;
 - 49.2.2 in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;
 - 49.2.3 the general terms and conditions applicable to those employees, including provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.
- 49.3 The Authority shall take all necessary precautions to ensure that the information referred to in Clause 49.2 is given only to Replacement Contractors who have qualified to offer for the future provision of services. The Authority shall require that such Replacement Contractors shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Authority and that they shall not use it for any other purpose.
- 49.4 Subject to Clause 19 (Insurance & Indemnity), the Contractor shall fully indemnify the Authority against any claim made against the Authority at any time by any person in respect of the liability incurred by the Authority arising from any deficiency or inaccuracy in information, which the Contractor is required to provide under Clause 49.2.
- 49.5 The Contractor shall allow access to the Sites, in the presence of a representative of the Authority, to any person representing any Replacement Contractor whom the Authority has selected to offer for the future provision of services. For the purpose of such access, where the site is on the Contractor's premises, the Authority shall give the Contractor seven days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.
- 49.6 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the new Contractor, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 49.7 Within ten (10) Working Days of being so requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the services. The transfer shall be made in a

fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Authority.

50. TUPE

- 50.1 The Parties hereby acknowledge that, subject to the right of employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (“TUPE”) and any statutory re-enactment thereof, to object, TUPE will operate to transfer each of the employees to the Contractor on the Commencement Date which shall be the “time of transfer” under TUPE.
- 50.2 If in relation to any or all of the employees the transfer of their employment occurs on any date before the Commencement Date, the provisions of Clause 50.1 and this Clause generally will apply to those employees as if references to the Commencement Date were references to that date.
- 50.3 If it is determined by a Tribunal or other court of competent jurisdiction or as a result of a change of Law that TUPE does not apply at or immediately before the Commencement Date the Contractor shall ensure that it is able to and does employ all or any of the employees from the Commencement Date on the terms set out in this Clause.
- 50.4 Where Clause 50.3 applies the relevant Parties shall co-operate generally with a view to securing in a timely and economical manner that, where possible, the employees shall come to be employed by the Contractor.
- 50.5 Subject to Clause 19 (Insurance & Indemnity), the Contractor shall fully indemnify and keep the Authority fully indemnified against any Loss incurred by the Authority connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association or employee or other affected employee of the Authority made against the Authority in respect of any or all of the employees or any other employee of the Contractor and which arises from or is connected with any failure by the Contractor to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or of TUPE.
- 50.6 Subject to Clause 19 (Insurance & Indemnity), the Contractor shall fully indemnify and keep the Authority fully indemnified against any Loss incurred by the Authority connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any employee or of any other person at any time employed by (or engaged as a consultant by) the Contractor made against the Authority at any time for inter alia breach of such contract, policy or any such collective agreement, pay, unfair dismissal, statutory or contractual redundancy pay, sex, race, age or disability discrimination, or discrimination on the grounds of religion, belief or sexual orientation, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Authority and which results from any act, fault or omission of the Contractor while such employees were or such other person was employed by the Contractor.
- 50.7 Subject to Clause 19 (Insurance & Indemnity), the Contractor shall indemnify and keep indemnified the Authority against any Loss incurred from any change or proposed change to the terms and conditions of employment of any employees where such change is or is proposed to be effected following the transfer of any such person pursuant to the Contract and in respect of any Loss incurred by the Authority arising from the employment or proposed employment of any such employee otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.

- 50.8 Upon the day which is six (6) Months before the expiry of the Contract or as soon as the Contractor is aware of the proposed termination of the Contract or the provision by it of the Services the Contractor shall upon the request of the Authority, supply to the Authority all information required by the Authority or any Replacement Contractor under Regulation 11 of TUPE of any employees then assigned by the Contractor to the provision of the Services and shall warrant the accuracy of such information.
- 50.9 Except with the Approval of the Authority, the Contractor shall not vary any terms and conditions of employment of any employee or any policy or collective agreement applicable to any employee then assigned by the Contractor to the provisions of the Services (provided always that this provision shall not affect the right of the Contractor to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Contractor shall replace such person with another person of similar skills, qualifications and experience) after the Authority has served notice of the termination of the Contract or after the Contractor shall have otherwise become aware of the proposed termination of the Contract or the provision by it of the Services.
- 50.10 On the termination of the Contract, where there is no transfer pursuant to TUPE such that employees assigned by the Contractor to the provision of the Services do not transfer to a Replacement Contractor, the Contractor shall use reasonable endeavours to procure that the Replacement Contractor or the Authority as the case may be use any such employees in the provision of services equivalent to the Services from the date of expiry or termination for a period of up to twelve (12) Months thereafter.

51. GOVERNING LAW AND JURISDICTION

The construction, performance and validity of this Contract shall be governed by English Law. The Parties submit to the exclusive jurisdiction of the Courts of England and Wales provided that the Authority has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated.

SCHEDULE 2 - SPECIAL CONDITIONS OF CONTRACT

Section 3 – General Specification

Please see separate document Appendix A

Section 8 – Certificate of Non-Collusion

Providers are required to complete and upload the Form of Tender in Appendix F

Section 9 – Form of Tender

Providers are required to complete and upload the Form of Tender in Appendix G

SCHEDULE 3 - THE SERVICES

Section 4 – Vehicle Specification

Please see separate document Appendix B

Section 5 – Vehicle Questionnaire

Providers are required to complete and upload the Vehicle Questionnaire in Appendix C

SCHEDULE 4 – CHARGES & PAYMENT TERMS

Section 6 – Route Information and Pricing Schedule

Providers are required to complete and upload the Form of Tender in Appendix D

Where the Services are provided for a fixed price, the Contract Price shall be the amount set out in the Specification. The Contract Price shall be paid to the Authority in installments, as set out in the Specification. At the end of a period specified in the Specification [in respect of which an installment is due], the Contractor shall invoice the Authority for the charges that are then payable in accordance with the terms of the Contract.]

PAYMENT TERMS

- 1.1 Invoices in respect of each accounting period expressed in the lawful currency of the United Kingdom, are to be submitted within five (5) Working Days of the end of the Accounting Period addressed to: - enfield@capitalcapture.com quoting the Purchase Order number
- 1.2 Invoices must not have copies attached and shall indicate or contain the following:
 - (a) the Service title;
 - (b) the Authority's contract/order number;
 - (c) VAT shall be shown separately;
 - (d) only valid VAT invoices shall be processed for payment. Any invoice which does not meet VAT criteria shall be rejected.
- 1.3 Payment shall be made by the Authority to the Contractor, in the lawful currency of the United Kingdom, within thirty (30) calendar days from receipt of the undisputed invoices.
- 1.4 If the Authority fails to pay the Contractor undisputed sums of money within thirty (30) calendar days from the receipt of a validly issued invoice the Contractor shall:
 - 1.4.1 notify the Authority in writing of such failure to pay and provide details of the invoice concerned;
 - 1.4.2 allow the Authority to make prompt payment of such undisputed sums; and
 - 1.4.3 allow the Authority to provide details of the grounds for why the invoice is disputed.
- 1.4 Any queries regarding invoicing and progress of payments should be directed to the contacts shown at 1.1 above. Invoices attached to letters shall have London Borough of Enfield and the address in full as above typed on the invoice.

SCHEDULE 5A - CONTRACT PROGRAMME

Target Date	Activity
02/12/2016	OJEU notice published with SSQ and Procurement Documents made available to Applicants
12/12/16	Commence Applicants Briefing Sessions
03/01/17	Deadline for SSQ queries (12 noon)
06/01/17	SSQ return date (12 noon)
13/01/17	Evaluation of SSQ's completed
03/12/16	ITT issued to Applicants
16/01/17	Commence E-Auction training sessions
06/01/17	Tender return date
13/01/17	Evaluate SSQs completed and letters issued
30/01/17	E Auctions commence
13/02/2017	Provisional Contract award subject to validation
17/02/2017	Commence Validation and Audit Visits
20/02 – 1/03/17	Standstill Period
17/04/17	Contract Mobilisation

SCHEDULE 5B - CONTRACT MANAGEMENT

The Authority's personnel referred to in Schedule 1 are:-

Authority Procurement Manager:

Contact name: Peter Alekkou
 Address: London Borough of Enfield
 Finance, Resources & Customer Services
 Enfield Council
 Silver Street
 EN1 3XY

Tel: 020 8379 3163
 e-mail: peter.alekkou@enfield.gov.uk

Contract Manager:

Contact name: Chris Marsh
 Address: Morson Road Depot, Enfield. EN3 4NQ

Tel: 02083791258
 e-mail: chris.marsh@enfield.gov.uk

The addresses for notices referred to in Clause 46 are:

Notices to the Authority:

Contact name: Chris Marsh
 Address: Morson Road Depot, Enfield. EN3 4NQ

Tel: 02083791258
 e-mail: chris.marsh@enfield.gov.uk

2.2 The Contractor releases and discharges the Authority from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Authority and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a Party to the Contract at all time in lieu of the Authority;

2.3 For the avoidance of doubt, it is hereby expressly agreed that any and all rights, claims, counter-claims, demands and other remedies of the Contractor against the Authority accrued under or in connection with the Contract prior to the Transfer Date hereof shall be exercisable and enforceable by the Contractor against the New Company;

2.4 The Authority transfers its rights and obligations under the Contract to the New Company.

EXECUTED as a Deed and delivered the day of and year first above written.

THE COMMON SEAL of) _____
THE MAYOR AND BURGESSES OF THE) _____
LONDON BOROUGH OF ENFIELD) _____
was hereunto affixed in the presence of:) Secretary

THE COMMON SEAL of) _____
[THE CONTRACTOR]) Director
was hereunto affixed in the presence of:) _____
Secretary

THE COMMON SEAL of) _____
[THE NEW COMPANY]) Director
was hereunto affixed in the presence of:) _____
Secretary