

Section 4

Draft Conditions of Contract

**For: Open Access Drop-in Service for Children
& Young People**

**London Borough of Southwark
Open Access Drop-in Service
for Children & Young People
Tender**

Draft Conditions of Contract

CONTRACT PARTICULARS

Commencement Date:	
Contract Year:	a period of 12 months, commencing on the Commencement Date.
Initial Term:	the period commencing on the Commencement Date and ending on the 3 rd anniversary of the Commencement Date.
Extension Period:	The Authority may extend this agreement beyond the Initial Term by a further 12 month period of up to the maximum period of two years.
Specific Consents:	Shall include without limitation the following specific consents - NONE
The following clauses DO NOT APPLY	
Clause 19.2 & Schedule 8	Benchmarking
Clause 12 & Schedule 2 Part 2	Service Credits
Schedule 11	Commercially Sensitive Information

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1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 5.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services as identified in Schedule 12.

Authority's Premises: the premises identified in Schedule 12 and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

Barred List: the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

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

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure

- (a) a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.
- (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

- (c) a failure by the Supplier to carry out all of the Services for 24 hours and/or a failure by the Supplier to carry out any part of the Services for 30 consecutive days or 60 non-consecutive days in any Contract Year (except where relieved of the obligation to do so by express provisions of the agreement).

Change: any change to this agreement including to any of the Services.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 7.

Channel: the programme which provides support to individuals who are at risk of being drawn into terrorism which was put on a statutory footing by Chapter 2 of Part 5 of the Counter-Terrorism and Security Act 2015 (CTSA15).

Charges: the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date: the date included in the Contract Particulars.

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

Consistent Failure: shall have the meaning set out in Schedule 2.

Contract Year: as set out in the Contract Particulars.

Controller: shall have the same meaning as set out in the GDPR.

Convictions: other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (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 Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this agreement, including any Personal Data Breach.

Data Protection Legislation: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) (unless and until the GDPR is no longer directly applicable in the UK), the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Officer: shall have the same meaning as set out in the GDPR.

Data Subject: shall have the same meaning as set out in the GDPR.

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

Default Notice: is defined in clause 5.2.

Disaster: an event defined as a disaster in the Disaster Recovery Plan.

Disaster Recovery Plan: a plan as set out in the Business Continuity Plan to be adopted by the Supplier in the event that a Disaster occurs. The Disaster Recovery Plan at the date of this agreement being set out in Schedule 6.

Disclosure and Barring Scheme: the disclosure and barring scheme operated by the Disclosure and Barring Service.

Dispute Resolution Procedure: the procedure set out in clause 20.

DPA 2018: Data Protection Act 2018.

Equalities Legislation: all legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any preceding, successor or amending Legislation concerning the same.

Exit Management Plan: the plan set out in Schedule 9.

Extension Period: shall have the meaning given to it in clause 3.1.

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

General Change in Law: any change in law which impacts on the performance of the Services and comes into force after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to the supply of services to another customer of the Supplier that are the same or similar to the Services.

Health and Safety Policy: the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Information: has the meaning given under section 84 of FOIA.

Information Legislation: the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004, the Aarhus Convention and Local Audit and Accountability Act 2014 and all applicable laws and

regulations relating to Requests for Information and any subordinate legislation 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.

Initial Term: the period set out in the Contract Particulars.

Insolvency Event: where:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any

part of the other party's assets and such attachment or process is not discharged within 14 days;

- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

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

Key Personnel: those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 13.

KPIs: the key performance indicators set out in Schedule 2.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 17 and Schedule 5 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all specific consents set out in the Contract Particulars.

Payment Plan: the plan for payment of the Charges as set out in Schedule 4.

Personal Data: shall have the same meaning as set out in the GDPR.

Personal Data Breach: shall have the same meaning as set out in the GDPR.

Processor: shall have the same meaning as set out in the GDPR.

Prohibited Act: the following constitute Prohibited Acts:

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

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

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Authority in accordance with clause 30.1(a).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or partial termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time (or where the Authority is providing Replacement Services for its own account, the Authority).

Representatives: means, in relation to a party, its employees, officers, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Information Legislation.

Service Credits: a sum which the Authority is entitled to deduct or invoice for a Service Failure as specified in Schedule 2

Service Failure: a shortfall or failure by the Supplier to provide the Services in accordance with any Target KPI as specified in Schedule 2.

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1 (Specification).

Specific Change in Law: a change in law which impacts on the performance of the Services which comes into force after the Commencement Date that relates specifically to the business of the Authority and would not affect the supply of services to another customer of the Supplier that are the same or similar to the Services.

Statutory Apprenticeships: paid employment whilst completing a qualification in accordance with the Apprenticeships, Skills, Children and Learning Act 2009 (as amended by the Enterprise Act 2016) and any government regulations, guidance and policies currently in force.

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or Suppliers that enter into a Sub-Contract with the Supplier.

Sub-processor: any third party appointed to process Personal Data on behalf of the Supplier related to this agreement.

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.

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

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 3

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

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

- (a) any Extension Period; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

Termination Payment Default: is defined in Schedule 4.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or other regulations implementing the Acquired Rights Directive.

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

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes fax and e-mail.

- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 No review, comment or approval by the Authority under the provisions of the agreement shall operate to exclude or limit the Supplier's obligations or liabilities under the agreement or the Authority's rights under the agreement.
- 1.14 Where any statement is qualified by the expression **so far as [PARTY] is aware or to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Where there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to the maximum period set out in the Contract Particulars (each such extension together with any such extensions being the "Extension Period"). If the Authority wishes to extend this agreement, it shall

give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.

- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

4.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this agreement;
- (c) it 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 pursuant to clause 4.1(b);
- (d) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
- (e) it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Supplier:

- (a) warrants and represents that all information and statements made by the Supplier as part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable) remains true, accurate and not

misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and

- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- (c) warrants and represents to and undertakes with the Authority in the terms set out in the conditions of tendering.

4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.5 As soon as reasonably practical after a request by the Authority, and in any event not later than fifteen (15) Working Days after such request or prior to the Commencement Date (whichever shall be the earliest), the Supplier shall (as applicable):

- (a) procure that the Supplier's holding company (as described in the Companies Act 2006) which has executed the guarantee undertaking will execute and deliver to the Authority the parent company guarantee in the form included in the tender documents; and/or
- (b) deliver to the Authority any collateral warranties required from any Sub-Contractor in the form included in the tender documents.

4.6 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

5.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 2.

5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**) as detailed in Schedule 2 Part 4.

5.3 For the avoidance of doubt this agreement shall not be exclusive. The Authority shall be entitled at any time from the Commencement Date and thereafter throughout the Term to carry out any part of the Services or services of a similar nature itself or to procure a third party to do so.

6. KPIs

6.1 Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

6.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within Schedule 2.

6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 17.

6.4 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have:-

- (a) where this amounts to a Consistent Failure, the Authority may serve a suspension notice upon the Supplier in accordance with the provisions of clause 30A.

7. SERVICE STANDARDS

7.1 Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:

- (a) in accordance with this agreement including the Specification, any method statements and programme;
- (b) in a good, safe and competent manner and free from dishonesty and corruption;
- (c) with reasonable skill and care and in accordance with the Best Industry Practice applicable from time to time;
- (d) in a manner which is not, and is not likely to become injurious to health or detrimental to the environment or to any property in the area where the Services are being performed;
- (e) in a manner which shall promote and enhance the image and reputation of the Authority;

- (f) in all respects in accordance with all the Authority's relevant rules, codes, policies, procedures and standards notified from time to time during the Term by the Authority to the Supplier, including in particular the Authority's financial regulations and standing orders;
- (g) in accordance with all Applicable Law; and
- (h) in a spirit of co-operation with the Authority and its other contractors to deliver a high quality service.

8. COMPLIANCE

- 8.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.
- 8.3 The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (a) All applicable Law regarding health and safety; and
 - (b) The Health and Safety Policy whilst at the Authority Premises
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 8.6 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.
- 8.7 Without limiting the general obligation set out in Clause 7 the Supplier shall (and shall procure that the Supplier's Personnel shall):

- (a) Perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) All applicable Equalities Legislation;
 - (ii) The Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) Any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable Equalities Legislation; and
- (b) Takes all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation, and
- (c) At all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
- (d) Comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations) and shall ensure that it will not during the Term be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the Supplier in breach of the Blacklists Regulations.

8.8 Prevent Duty

- (a) The Supplier is aware of the Authority's obligations under CTSA15 (including any guidance, amendments and all subsequent regulations made pursuant to this Act) and in particular it's obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of it's functions (the "Prevent duty").
- (b) The Supplier will:
 - (i) co-operate with the Authority in ensuring the Authority's compliance with its obligations under CTSA15 and in particular the Prevent duty;
 - (ii) comply with any CTSA15 policy produced by the Authority;
 - (iii) demonstrate an awareness and understanding of the risk of radicalisation within the London Borough of Southwark through effective leadership, working in partnership with the Authority and the utilization of appropriate capabilities in relation to the delivery of the Services;

- (iv) ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel;
 - (v) ensure that any Authority-owned venues and resources involved in the provision of the Services do not provide a platform for extremists and are not used to disseminate extremist views;
 - (vi) use filtering solutions on any IT equipment made available to the general public under this contract which limit access to terrorist and extremist material.
- (c) Where the Services provided relate to children, the Supplier must also ensure they are part of the Authority's safeguarding arrangements and that staff are aware of and know how to contribute to Prevent duty related activity in their area where appropriate.

8.9 Modern Slavery Act 2015

- (a) The Supplier shall perform its obligations under this agreement in compliance with (and shall ensure that its employees, agents and Sub-Contractors comply with):
 - (i) all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - (ii) the Supplier's policy on the prevention of modern slavery which shall be made available to the Authority on request.
- (b) The Supplier undertakes, warrants and represents that it shall implement appropriate due diligence procedures for its own suppliers, Sub-Contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.
- (c) The Supplier will notify the Authority immediately upon discovering any breach or potential breach of this clause or any actual or suspected slavery or human trafficking in its supply chain together with the remedial actions it is taking.
- (d) The Supplier shall hold harmless, indemnify and keep indemnified the Authority against all losses, liabilities, costs (including legal fees), expenses and damages which the Authority may suffer or incur in connection with any breach by the Provider of this clause 8.9.
- (e) The Authority may terminate this agreement immediately upon written notice to the Supplier in the event that the Supplier commits any breach of this clause 8.9.

9. PREMISES AND ASSETS

- 9.1 The Authority shall, subject to clause 8 and clause 14 and the provisions of any lease or licence set out in Schedule 12, provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of providing the Services. The Supplier's right of access will terminate upon termination of this agreement subject to clause 9.3
- 9.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority's Premises as is specified in Schedule 12 or which is otherwise agreed by the parties from time to time.
- 9.3 Subject to the requirements of clause 34 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 9.4 The Supplier shall ensure that:
- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
 - (b) only those of the Supplier's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
 - (c) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative; and
 - (d) any Authority Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.
- 9.5 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 9.6 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any

property of any other recipient of the Services in the course of providing the Services.

9.7 The Supplier shall indemnify the Authority against all and any damage to the Authority Premises and the Authority Assets caused by the same.

9.8 Supplier's Premises:

(a) The Supplier shall ensure that it has access to sufficient safe, secure and suitable premises throughout the Term to provide the Services to the service standards. The Supplier shall ensure that the Supplier's premises are at all times suitable for their intended purpose, comply with all relevant health and safety requirements, including the installation of sufficient equipment, layout and provisions required under the Equalities Legislation.

(b) The Supplier shall allow the Authority access upon reasonable notice to inspect the Supplier's premises including the inspection of any security, fire protection and disabled access systems.

10. DISASTER RECOVERY (BUSINESS CONTINUITY PLAN)

10.1 The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan.

10.2 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:

- (a) implement the Business Continuity Plan;
- (b) continue to provide the affected Services to the Authority in accordance with the Business Continuity Plan; and
- (c) restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Supplier complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 6 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

11. PAYMENT

- 11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier in accordance with the Payment Plan.
- 11.2 Unless otherwise stated in Schedule 4, the Charges:
- (a) Shall remain fixed during the Term; and
 - (b) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier's Personnel.
- 11.3 The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time. Any such invoices shall take into account any Service Credits which have been accrued in the previous period, identify any additions or deductions and the Services provided.
- 11.4 Where the Supplier submits an invoice to the Authority in accordance with clause 11.3 the Authority will consider and verify that invoice within 14 days.
- 11.5 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 11.6 Where the Authority fails to comply with clause 11.4, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.5 14 days after the date on which it is received by the Authority.
- 11.7 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) Provisions having the same effect as clause 11.4 to clause 11.6 of this agreement; and
 - (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 11.4 to clause 11.6 of this agreement.

In this clause 11.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 11.8 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 11.9 Subject to clause 11.8, interest may be payable on the late payment of any undisputed Charges properly invoiced under this agreement at four (4)% above the base rate of the National Westminster Bank plc in force at that time from the day following the end of the specified payment period until payment is made. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 30.4 for failure to pay undisputed charges.
- 11.10 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 11.11 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for twelve (12) years from the end of the Contract Year to which the records relate.
- 11.12 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement, the Admission Agreement, or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.
- 11.13 If The Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to clause 11.12 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

- 11.14 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 11.15 The Authority shall be entitled to withhold 20% of any payment due in any invoice until the Supplier has provided to the Authority any Performance Bond or Parent Company Guarantee required by the Authority and, or for any period where the Supplier fails to return any contract sent to them for signature by the Authority.

12. SERVICE CREDITS/SERVICE CREDITS

- 12.1 If the Supplier commits a Service Failure, the Authority shall be entitled to either submit an invoice to the Supplier or make deductions from the Charges corresponding to the Service Credit set out in Part 2 of Schedule 2.

STAFF

13. KEY PERSONNEL

- 13.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 13.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the Authority.
- 13.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
- 13.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 30 Working

Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

13.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

13.6 If the Supplier replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Supplier.

14. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

14.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

14.2 The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

14.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

14.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the

right to provide these records in compliance with the applicable Data Protection Legislation.

- 14.5 The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.
- 14.6 The Supplier confirms that their Authorised Representative is authorised as a person to whom the Supplier's staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of the Supplier's Personnel making a protected disclosure (as defined by the said Act) shall not be subject to any detriment. The Supplier further declares that any provision in any agreement purporting to preclude a member of its staff from making a protected disclosure is void.

14A LONDON LIVING WAGE

- 14A.1 For the purposes of this clause:

Relevant Staff: shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.

Equivalent Hourly Wage: shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act).

the London Living Wage: shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure.

- 14A.2 The Supplier shall:

- (a) ensure that all Relevant Staff employed or engaged by the Supplier are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;

- (b) ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (c) provide to the Authority such information concerning the London Living Wage and the performance of its obligations under this clause 14A as the Authority may reasonably require and within the deadlines it reasonably imposes;
- (d) co-operate and provide all reasonable assistance to the Authority in monitoring the effects of the London Living Wage including without limitation assisting the Authority in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

14A.3 For the avoidance of doubt, any breach by the Supplier of this clause 14A will be a breach of a material obligation in relation to which the Authority is entitled to rely upon its termination rights under clause 30.1 of this agreement.

15. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS – DISCLOSURE AND BARRING

15.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

15.2 The Supplier shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and]
- (b) monitor the level and validity of the checks under this clause 15.2 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

15.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

15.4 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.

- 15.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to [the service users OR children OR vulnerable adults.

16. TUPE

The parties agree that the provisions of Schedule 10 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

- 17.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 5.
- 17.2 The Supplier shall implement such systems as shall be necessary to eliminate, so far as practicable, and protect the Authority from fraud, corruption, error and mistake by the Supplier or its staff. The Supplier shall notify the Authority immediately if fraud, corruption or substantial errors are suspected, and shall permit the Authority to audit such systems and shall provide the Authority with all necessary access and facilities for that purpose.
- 17.3 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Supplier shall, at each meeting, present its previously circulated Management Reports and Financial Reports in the format set out in that Schedule.

18. MONITORING

- 18.1 The Authority may monitor the performance of the Services by the Supplier.
- 18.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Authority.

19. CHANGE CONTROL, BENCHMARKING, CONTINUOUS IMPROVEMENT AND CHANGE IN THE LAW

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 19.2 The parties shall comply with the provisions of Schedule 8 (Benchmarking)/NOT USED.

- 19.3 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 19.4 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 19.3 shall be addressed by the parties using the Change Control Procedure.
- 19.5 The Supplier is neither relieved of its obligations to supply the Services in accordance with the terms of this agreement nor entitled to an increase in the Charges as the result of a General Change in Law or a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 19.6 If a Specific Change in Law occurs or will occur during the Term (other than those where the effect on the Services is known at the Commencement Date) the Supplier shall notify the Authority of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this agreement; and
 - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to meet the Service Levels at any time.
- 19.7 As soon as practicable after any notification in accordance with clause 19.6 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change in Law including:
- (a) providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

- (b) demonstrating that a foreseeable Specific Change, had been taken into account by the Supplier before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 19.3: Continuous Improvement, has been taken into account in amending the Charges.

19.8 Any increase in the Charges or relief from the Supplier's obligations agreed by the parties pursuant to clause 19.6 and 19.7 shall be implemented in accordance with the Change Control Procedure.

20. DISPUTE RESOLUTION

20.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
- (c) If the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

20.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 45 which clause shall apply at all times.

21. SUB-CONTRACTING AND ASSIGNMENT

- 21.1 Subject to clause 21.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority – such consent not to be unreasonably withheld.
- 21.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
 - (d) provide, at no charge to the Authority, of any collateral warranty required by the Authority in the form included in the tender documents.
- 21.3 The Authority shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 21.4 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:
- (a) The specific change in contractor was provided for in the procurement process for the award of this agreement;
 - (b) There has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another
 - (c) economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

LIABILITY

22. INDEMNITIES

22.1 Subject to clause 22.2, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
- (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
- (c) the enforcement of this agreement.

22.2 The indemnity under clause 22.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.

23. LIMITATION OF LIABILITY

23.1 Subject to clause 23.2, neither party shall be liable to the other party whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

23.2 Notwithstanding the provisions of clause 23.1, but subject to clause 23.4, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:

- (a) sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
- (b) wasted expenditure;
- (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- (d) losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;
- (e) any anticipated savings;

- 23.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.
- 23.4 Subject to clause 23.1 and clause 23.6, the Supplier's aggregate liability:
- (a) Is unlimited in respect of:
 - (i) the indemnities in Schedule 10 and clause 26.4
 - (ii) any breach of clause 33 – Force Majeure
 - (iii) the Supplier's wilful default
 - (iv) any breach of clause 25 - Information requests
 - (v) any breach of clause 26 - Data Protection
 - (vi) any breach of clause 27 – Confidentiality
 - (vii) [other]
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty or otherwise arising under or in connection with this agreement, be limited in each Contract Year to 125% of the total Charges payable in such Contract Year.
- 23.5 Subject to clause 23.1 and clause 23.6 the Authority's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable) shall be limited to £[REDACTED].
- 23.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other
 - (e) liability for which may not be limited under any applicable law.

24. INSURANCE

24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims.

(the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

24.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

24.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

25. INFORMATION REQUESTS

25.1 The Supplier acknowledges that the Authority is subject to the requirements of the Information Legislation. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the Information Legislation;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;

- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 25.2 The Supplier acknowledges that the Authority may be required under the Information Legislation to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the Information Legislation.
- 25.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the Information Legislation.
- 25.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.
- 25.5 The Supplier shall ensure that all Information acquired or produced in the course of the agreement or relating to the agreement is safely retained and available for disclosure during the Term and for six (6) years afterwards and shall permit the Authority, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Authority may recover possession of such materials and the Supplier shall permit the Authority or its approved agents to enter for those purposes any premises of the Supplier where any such materials may be held.
- 25.6 Where the Authority requires any Information from the Supplier relating to any potential or actual claim by a third party against the Authority, the Supplier shall ensure that any Information requested by the Authority is supplied to the

Authority in sufficient time to enable the Authority to comply with any relevant procedural rules.

26. DATA PROCESSING

- 26.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in the attached Schedule by the Authority and may not be determined by the Supplier.
- 26.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 26.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 26.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this agreement:
- (a) process that Personal Data only in accordance with the attached Schedule , unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;

- (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Supplier's Personnel do not process Personal Data except in accordance with this agreement (and in particular the attached Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier's Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
 - (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the agreement unless the Supplier is required by Law to retain the Personal Data.
- 26.5 Subject to clause 26.6, the Supplier shall notify the Authority immediately if it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this agreement;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 26.6 The Supplier's obligation to notify under clause 26.5 shall include the provision of further information to the Authority in phases, as details become available.
- 26.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 26.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Authority following any Data Loss Event;
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 26.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
 - (a) the Authority determines that the processing is not occasional;
 - (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 26.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 26.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 26.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
 - (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 26.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

- 26.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 26.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days notice to the Supplier amend this agreement to ensure that it complies with any guidance
- 26.15 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

27. CONFIDENTIALITY

- 27.1 Subject to clause 27.2, each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 27.
- 27.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:
- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
 - (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Information Legislation;
 - (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
 - (e) which a party can demonstrate was lawfully in its prior to receipt from the other party; or
 - (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.
- 27.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the

purposes of performing or advising on the party's obligations under this agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 27.3.

27.4 The provisions of this clause 27 shall survive for a period of twelve (12) years from the Termination Date.

28. AUDIT, ENQUIRY OR INVESTIGATION

28.1 During the Term and for a period of six (6) years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in Schedule 4 (Payment);
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Supplier's compliance with the Data Protection Legislation, in accordance with clause 26 (Data Processing) and clause 25 (Information Requests) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

28.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.

- 28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 28.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's Personnel.
- 28.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days notice of its intention or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
 - (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.
- 28.8 The Supplier shall at all times during the Term and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether

routine or specific) which in any way concerns, affects or relates to the Services. Such enquiry or investigation may include, inter alia:-

- (a) the Authority's Cabinet and the Authority's Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;
- (b) an investigation by the Authority into a complaint about the acts or omissions of the Supplier, the Supplier's Personnel or agents made under the Equalities Legislation;
- (c) the Authority's auditors (whether internal or external);
- (d) the Local Government Ombudsman.

28.9 Such co-operation shall include (but not be limited to the following):-

- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
- (b) providing access to the Supplier's premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Supplier in the performance of the Services;
- (c) providing access to the Supplier's Personnel (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- (d) maintaining the confidentiality of the enquiry or investigation when required to do so;
- (e) making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Authority's standing orders and financial regulations and statutory provisions relating to the agreement are being complied with.
- (f) attending meetings at the Authority's request, including meetings of the Authority's Cabinet or Overview and Scrutiny Committee to respond to questions regarding the Services and/or this agreement.

29. INTELLECTUAL PROPERTY

29.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or the Supplier's Personnel;

- (a) in the course of performing the Services; or

(b) exclusively for the purpose of performing the Services,
shall vest in the Authority on creation.

- 29.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

29A COMPLAINTS AND CORRESPONDENCE

- 29A.1 The Supplier shall maintain a register of any complaints and adverse comments received by the Supplier about the performance of the Services.
- 29A.2 The Supplier shall provide to the Authority's Authorised Representative copies of all complaints and adverse comments relating to the performance of the Services by the Supplier and provide such statistical information as the Authority may from time to time reasonably require. Such information shall be provided within five (5) Working Days of receipt of the complaint or adverse comment.
- 29A.3 The Supplier shall co-operate with the Authority in connection with any investigations undertaken by the Authority or a third party acting on its behalf.

TERMINATION AND SUSPENSION

30. TERMINATION FOR BREACH

- 30.1 The Authority may terminate this agreement in whole or part with immediate effect, or by such other period as the Authority determines, by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 30.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
 - (b) if a Consistent Failure has occurred;
 - (c) if a Catastrophic Failure has occurred;
 - (d) if, in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the ability of the Supplier to supply the Services under this agreement. This may be evidenced

by, inter alia, a proposed compromise with creditors or a proposed voluntary arrangement within the Insolvency Act 1986, the consideration by shareholders or presentation of a winding up petition or the application for the appointment of a provisional liquidator;

- (e) if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;
- (f) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- (g) if there is an Insolvency Event;
- (h) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;
- (i) If of the Authority reasonably believes that the circumstances set out in Regulation 73(1) of the Public Contracts Regulations 2015 apply.

30.2 The Authority may terminate this agreement in accordance with the provisions of clause 32 (Force Majeure) and clause 33.6 (Prevention of Bribery).

30.3 If this agreement is terminated by the Authority pursuant to this clause 30 such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.

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

30A SUSPENSION

30A.1 Without prejudice to its right to terminate this agreement under clause 30, upon the occurrence of one or more of the events listed in clause 30.1, the Authority may do any one or more of the following:

30A.2 Issue a suspension notice to the Supplier stating that the Authority will provide or procure the provision of the whole or any part of the Services until such time as the Supplier's Authorised Representative shall demonstrate to the reasonable satisfaction of the Authority's Authorised Representative that the Supplier will be able to resume performance of such part of the Services to the Service Standards whereupon a resumption notice will be issued.

During such period, the Supplier's performance of the whole or any part of the Services and the Authority's payment to the Supplier for such whole or part of the Services shall be suspended;

30A.3 The Authority may charge the Supplier any costs reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of any part of the Services by the Authority or a third party in the circumstances set out in this clause 30A, to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services;

30A.4 Suspend payment to the Supplier of any payments due under this agreement, retain any amount due to the Supplier from the Authority or make such deduction from any payment to be made to the Supplier under this agreement as may reasonably reflect sums paid or sums which would otherwise be payable in respect of such of the Services to which the Supplier's breach relates.

30AA The Authority shall have the right at any time to suspend the Agreement or any part of it by written notice (such notice having immediate effect) in the event that it wishes to investigate whether any of the events in clause 30.1 have occurred or to investigate whether the Supplier is in breach of its obligations under the Agreement.

31. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time after the end of the first Contract Year by giving three (3) months written notice to the Supplier.

32. FORCE MAJEURE

32.1 Provided it has complied with the remaining provisions of this Clause 32, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

32.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

32.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 2 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it

started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

32.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.

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

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

33. PREVENTION OF BRIBERY

33.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

33.2 The Supplier shall not during the Term:

- (a) Commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractor or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 33.3 The Supplier shall during the Term:
- (a) Establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) Keep appropriate records of its compliance with its obligations under clause 33.3(a) and make such records available to the Authority on request.
- 33.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 33.1 and/or clause 33.2 or has reason to believe that it has or any of the Supplier's Personnel have:
- (a) Been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) Been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) Received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 33.5 If the Supplier makes a notification to the Authority pursuant to clause 33.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 28.
- 33.6 If the Supplier is in Default under clause 33.1 and/or clause 33.2, the Authority may by notice:
- (a) Require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
 - (b) Immediately (or such other period as the Council determines) terminate this agreement.
- 33.7 Any notice served by the Authority under clause 33.6 shall specify, the nature of the Prohibited Act; the identity of the Party who the Authority believes has committed the Prohibited Act; and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

34. CONSEQUENCES OF TERMINATION OR EXPIRY

- 34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason:
- (a) the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier;
 - (b) the Authority shall have the right to require the Supplier to provide free of charge for three (3) months following the date of termination of the agreement such advice, assistance and co-operation as the Authority may reasonably require to enable the Authority to provide or procure the provision of the Services or part of them;
 - (c) the Authority shall have the right to require the Supplier to use its best endeavours to assign to the Authority or to any Replacement Supplier any contract to which the Supplier is a party and which relates to the Services or part of them.
- 34.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier's Authorised Representative shall certify full compliance with this clause.
- 34.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after the termination or expiry, including clause 6.3 (provision of records), clause 22 (Indemnities), clause 12 (Limitation of Liability), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Processing), clause 27 (Confidentiality), clause 28 (Audit, Enquiry or Investigation), clause 30 (Termination for Breach), clause 35 (non-solicitation) and this clause 34 (Consequences of termination) and any other clause which by implication should continue, shall remain in full force and effect.
- 34.4 .Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

GENERAL PROVISIONS

35. NON-SOLICITATION

In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

36. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

37. RIGHTS AND REMEDIES

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

38. SEVERABILITY

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

38.2 If any provision or part-provision of this agreement is deemed deleted under clause 38.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. PARTNERSHIP OR AGENCY

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

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

40. THIRD PARTY RIGHTS

- 40.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 40.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

41. PUBLICITY

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction without the prior written consent of the Authority[, which shall not be unreasonably withheld or delayed.

42. NOTICES

- 42.1 Any notice required to be given to the Authority under this agreement shall be in writing and may be served:
- by delivering the notice by hand to the Authority's Strategic Director of Commissioning at 160 Tooley Street, London, SE1 2QH; or
 - by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Authority and marked clearly for the attention of the Strategic Director of Commissioning at London Borough of Southwark, PO Box 64529, London, SE1P 5LX.
- 42.2 Any notice required to be given to the Supplier under this agreement shall be in writing and may be served:
- by delivering the notice by hand to the Supplier at the Supplier's last know place or abode or business or, if the Supplier is a company, at the registered office of the company; or

- by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Supplier at the Supplier's last known place of abode or business or, if the Supplier is a company, at the registered office of the company.

42.3 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid recorded delivery first-class post or other next working day recorded delivery service, at 9.00 am on the second Working Day after posting.

42.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

43. ENTIRE AGREEMENT

43.1 This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

43.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

44. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

45. GOVERNING LAW

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

46. JURISDICTION

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

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Schedule 1

Specification (to be inserted)

Schedule 2

Performance regime (to be agreed)

PART 1 KPIs

1. THE KPIS

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

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	KPI category (red / green)
		[NUMBER]%	
		[NUMBER]%	
		[NUMBER]%	

- 1.2 The Supplier shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with Schedule 5.

PART 2 CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean:

(a) a failure rate to meet:

(i) [X] or more of the Target KPIs labelled "Red" in a rolling INSERT NUMBER month period; or

(ii) [X] or more KPIs labelled "Green" in a rolling INSERT NUMBER month period.]

OR

(iii) INSERT NUMBER or more Target KPIs in a rolling INSERT NUMBER month period.

(b) the Authority serving INSERT NUMBER Default Notices (1) in a rolling INSERT NUMBER month period or INSERT NUMBER Default Notices (2) in a rolling INSERT NUMBER period.

AND/OR

(c) the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct

is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

PART 3: DEFAULT AND REMEDIATION NOTICE PROCEDURE

- 1.1. A Default Notice (1) issued in accordance with clause 5.2 of this agreement shall be specific to a task or group of tasks, or a breach of this agreement and shall specify the failure or defect in performance or breach of agreement, the remedy required and the time within which it shall be carried out.
- 1.2. The Supplier shall notify the Authority's Authorised Representative when it considers it has complied with the Default Notice (1).
- 1.3. A Default Notice (2) may be issued by the Authority where the Supplier has failed to comply with a Default Notice (1).
- 1.4. Where the Supplier fails to comply with any Default Notice (2), the Authority shall be entitled to issue further Default Notice (1) and Default Notice (2) as appropriate.
- 1.5. The Authority shall be entitled to levy a £50.00 administration charge for each Default Notice (1) and (2) issued.
- 1.6. A Remediation Notice may be issued by the Authority in accordance with clause 30.1(a) of this agreement where the Supplier is in breach of any material obligation and shall specify the failure or defect in performance, the remedy required and the time within which it shall be carried out.

Schedule 3

Supplier's Tender (to be inserted)

Schedule 4

Charges and payment

1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

Charges based on a fixed price

Service	Monthly cost (£)
	INSERT FIGURE TO BE CHARGED TO AUTHORITY
	INSERT FIGURE TO BE CHARGED TO AUTHORITY
	INSERT FIGURE TO BE CHARGED TO AUTHORITY
TOTAL	INSERT FIGURE TO BE CHARGED TO AUTHORITY

2. PAYMENT PLAN

INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE SUPPLIER AND WHEN THEY WILL BE DUE FOR PAYMENT

3. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of £AMOUNT have been overdue for payment for a period of 30 days or more, the Authority will have committed a Termination Payment Default.

4. ANNUAL INDEXATION

Charges shall be fixed for the Term.

Schedule 5

Contract management

1. AUTHORISED REPRESENTATIVES

1.1 The Authority's initial Authorised Representative: **INSERT DETAILS**

1.2 The Supplier's initial Authorised Representative: **INSERT DETAILS**

2. KEY PERSONNEL

INSERT DETAILS – include Supervisory Personnel

3. MEETINGS

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

4. REPORTS

4.1 Type

4.2 Contents

4.3 Frequency

4.4 Circulation list

Schedule 6	Disaster recovery (Business Continuity Plan) to
be inserted	

Schedule 7

Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for a Change is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;

- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Authority and the Supplier; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 30.1(f) will be apportioned.

2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

1. INTERPRETATION

The definitions in this paragraph apply in this schedule.

Benchmark Report: the report produced by the Benchmarker following a Benchmark Review.

Benchmark Review: shall have the meaning in paragraph 2.

Benchmarked Services: the Services taken as a whole.

Benchmarker: the independent third party appointed by the Authority following discussions with the Supplier under paragraph 4 of this Schedule 8.

Comparison Sample: a sample of organisations providing Equivalent Services identified in accordance with paragraph 5.1(d) of this Schedule 8.

Equivalent Services: services that are identical, or similar in all material respects, to the Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied to a customer similar in size and nature to the Authority over a similar period.

Median Price: in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. In the event that there are an even number of organisations in the Comparison Sample then the Median Price will be the arithmetic mean of the middle two prices.

2. BENCHMARK REVIEW

2.1 The Authority may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this Schedule 8. The first Benchmark Review may not take place until at least 18 months after the Commencement Date and each subsequent Benchmark Review must be at least 12 months after the previous one.

2.2 Subject to paragraph 2.4, if any Benchmark Review determines that the Charges do not represent Good Value (as defined in paragraph 3.2), then the Supplier shall, in accordance with Schedule 7 (Change Control) and within [three months] of completion of the Benchmark Review, make a proposal for a changes to the Services, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 6.1(c), under which there will be a new Initial Term, and modifications may be made to the Services and the KPIs.

2.3 On receipt of the proposal from the Supplier under paragraph 2.2 the Authority shall have the option to:

- (a) accept the new proposal in which case the Parties shall record the change in accordance with Schedule 7;
 - (b) reject the proposal and elect to continue to receive the Services on the existing basis or
 - (c) reject the proposal and terminate this agreement on three months notice in writing to the Supplier without cost other than the Charges up to the date of such termination.
- 2.4 If the Supplier reasonably believes the Benchmarker has not complied with the provisions of this Schedule 8 in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Supplier may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

3. PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 3.1 The purpose of the Benchmark Review shall be to establish whether the Services as a whole are **Good Value**.
- 3.2 The Benchmarked Services as a whole shall be Good Value if the Fees attributable to the Services are, having regard to the KPIs, less than or equal to 10% more than the Median Price for Equivalent Services provided by a Comparison Sample.

4. APPOINTMENT OF BENCHMARKER

- 4.1 Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. [If the parties cannot agree on the independent third party within [NUMBER] days of receipt by the Supplier of the Authority's written request, then the Benchmarker shall be [INSERT CONSULTANTS].]
- 4.2 The Authority has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.
- 4.3 Each party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of the Benchmarker shall be shared equally by the parties.
- 4.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
 - (a) benchmarking shall be carried out in an independent and objective manner;
 - (b) the Benchmarker shall be jointly instructed by the parties;

- (c) benchmarking shall be truly comparative in respect of the technology, services and KPIs;
- (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
- (e) immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.

4.5 The Supplier shall not be deemed to be in breach for any failure to perform any obligation under this agreement (nor will it be liable for Service Credits) where such failure results from any disruption to the Supplier's performance as a result of disruption caused by the Benchmarker.

5. BENCHMARKING PROCESS

5.1 The Authority's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within [NUMBER] days after the date of appointment of the Benchmarker. The plan shall include:

- (a) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
- (b) a description of the information that the Benchmarker requires each party to provide;
- (c) a description of the benchmarking methodology to be used; and
- (d) details of any organisations providing Equivalent Services which the Authority proposes, having consulted with the Supplier (and including any organisations providing Equivalent Services reasonably proposed by the Supplier), are included within the Comparison Sample.

5.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:

- (a) the contractual and business environment under which the Equivalent Services are being provided;
- (b) any front-end investment and development costs;
- (c) the Supplier's risk profile, including the financial, performance or liability risk (including any limitation or exclusion or limitation of the Supplier's liability under this agreement) associated with the provision of the Equivalent Services as a whole; and

- (d) any other factors reasonably identified by the Supplier which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.
- 5.3 Each party shall give notice in writing to the Benchmarker and to the other party within [NUMBER] days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.
- 5.4 Where a party suggests amendments to the draft plan under paragraph 5.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 5.2 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within [NUMBER] days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.5 Failure by a party to give notice under paragraph 5.3 shall be treated as approval of the draft plan by that party.
- 5.6 Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 5.7 The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 5.8 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 5.9 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Authority and the Supplier with full details of all data and methodologies employed at all stages of the Benchmark Review.

6. BENCHMARK REPORT

- 6.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:
- (a) include a finding as to whether or not the Benchmarked Services as a whole are Good Value;
 - (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
 - (c) if the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, that would be required to make the Benchmarked Services Good Value.
- 6.2 If the Benchmark Report states that the Services, Charges or KPIs (or any part of them) that are benchmarked are not Good Value then paragraph 2.2 shall apply.

Schedule 11

Commercially sensitive information (NOT USED)

DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS
COMMERCIALY SENSITIVE

DETAILS OF AUTHORITY PREMISES AND ANY APPLICABLE LICENCES TO BE INSERTED AND ANY AUTHORITY ASSETS

Prior to the Commencement Date the Supplier shall at its own expense join with the Authority pursuant to Section 38(4) of the Landlord and Tenant Act 1954 for an order excluding the Licence of the Authority's Premises from the application of Sections 24 to 28 and 37 of that Act, and subsequently execute and deliver to the Authority a counterpart of that Licence.

The Supplier shall occupy the Authority's Premises identified in the Licence(s) for the purposes of providing the Services. Any change in Premises must be agreed in advance by the Authority in accordance with the Change Control Procedure.

Supplier's Premises and Assets

