

Schedule 6 - Terms and Conditions of Contract

Dated

[2019]

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD**
- (2) [SUPPLIER]**

**CONTRACT FOR THE PROVISION OF
SUPPORTING PEOPLE TO IMPROVE THEIR HEALTH AND
WELLBEING AND IMPROVING SELF-MANAGEMENT**

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Date:

Parties:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD** acting by the Council of the London Borough of Enfield, Civic Centre, PO Box 60, Silver Street, Enfield, London EN1 3XY (**Council**); and
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Supplier**),

each a “**Party**” and together the “**Parties**”.

Introduction

- A The Council sought proposals for the provision of **[SHORT DESCRIPTION OF SERVICES]** by means of a public tender exercise. The Council placed a contract notice **[REFERENCE]** on **[DATE]** in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of **[SHORT DESCRIPTION OF SERVICES.]**
- B The Council has, through a competitive process, selected the Supplier to provide the Services (as defined herein) and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

AGREED TERMS

1 Definitions and Interpretation

1.1 Definitions

Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Annual Service Plan	has the meaning given in clause 14.4.4;
Authorised Officer	means the Council’s Authorised Representative appointed in accordance with clause 56 (Authorised Representatives);
Authorised Representatives	means the Authorised Representatives appointed by the Parties in accordance with clause 56 (Authorised Representatives), and each an Authorised Representative ;
Best Industry Practice	means the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the

	Parties, the term, the pricing structure and any other relevant factors;
Best Value Duty	means the statutory duty for local authorities to ensure best value for the use of public funds;
Best Value Service Change Notice	means a written notice served by the Council on the Supplier in accordance with clause 14.4.3;
Business Day	means a day other than a Saturday, Sunday or public holiday in England;
Business Hours	means between the hours of 09:00 and 17:00 on any Business Day;
Change in Law	means any change in Law which impacts on the performance of the Services and which comes into force after the Effective Date;
Charges	means the charges payable by the Council to the Supplier under the terms of this Contract, more particularly described at Schedule 3 (Charges and Payment);
Commencement Date	means the date set out in clause 2 (Term) of this Contract;
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Legislation ;
Conflict of Interest	means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Contract;
Contract Manager	means the Supplier's Authorised Representative appointed in accordance with clause 56 (Authorised Representative);
Council Assets	means all assets over which the Council is the legal and beneficial owner, including: <ul style="list-style-type: none"> (a) any land or buildings;

- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how); and
- (d) any Intellectual Property Rights;

Council Existing Employee

means an employee of the Council engaged in the provision of services equivalent to the Services immediately prior to the Commencement Date;

Council Premises

means the Council premises more particularly described at Schedule 5 (Property) or any other Council premises made available for use by the Supplier for the provision of the Services from time to time;

Data Controller, Data Processor, Personal Data Breach, Data Protection Officer	take the meaning given in the GDPR
Data Protection Impact Assessment	means an assessment by the Data Controller of the Impact of the envisaged processing on the protection of Personal Data
Data Protection Legislation	means (i) the GDPR, the Led and any applicable national implementing laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable laws about the processing of personal data and privacy
Data Subject	takes the meaning given in the GDPR
Data Subject Request	means a request made by, or behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract , including any Perosnal Data Breach
Default	means any default of either Party (or any party for which they are responsible) in complying with its obligations under this Contract, excluding (in the case of the Supplier) any Service Failure;
Deputy Authorised Officer	means the Council's Authorised Representative appointed in accordance with clause 56 (Authorised Representatives);
Deputy Contract Manager	means the Supplier's Authorised Representative appointed in accordance with 56(Authorised Representative);
Discloser	has the meaning given in clause 29.1;

Dispute	Has the meaning given to it in clause 55 (Dispute Resolution);
DPA	Data Protection Act 2018
Effective Date	means the date(s) on which the Service (or any part of the Services) transfer from the Council to the Supplier or Sub-Supplier;
EIR	has the meaning given in clause 29.1.2(d);
Emergency	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
Employee Liability Information	means the employee liability information to be provided pursuant to Regulation 11 of TUPE;
Exit Management Plan	means the plan set out at Schedule 6 (Exit Management Plan);
Expiry Date	has the meaning given in to it clause 2.1;
Extension Period	has the meaning given to it in clause 2.2;
FOIA	has the meaning given to it in clause 29.1.2(d);
Force Majeure Event	means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or any other failure in the Supplier's or any Sub-Supplier's supply chain;
Future Supplier	means a provider of services equivalent to the Services immediately following expiry or termination of this Supplier;
GDPR	means the EU General Data Protection Regulation (Regulation EU 2016/679);

General Change in law	means a Change in Law 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 a comparable supply of similar services to a third party;
HRA	has the meaning given in clause 36 (Human Rights);
Initial Term	has the meaning given in clause 2.1;
Insolvency Event	means where: <ul style="list-style-type: none"> (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 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 that other party (being a company) 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 if 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 other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (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

means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Supplier or any Sub-Supplier for the purposes of providing the Services and/or otherwise for the purposes of this Contract;

Law	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent Council, delegated or subordinate legislation;
LED	Law Enforcement Directive (Directive (EU) 2016/680
London Living Wage	means a basic hourly wage as updated from time to time by the Greater London Authority Economics Unit or any relevant replacement organisation and as notified to the Supplier;
Losses	means all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses);
Management Reports	means the reports to be prepared and presented by the Supplier in accordance with Schedule 8 (Contract Management);
Non-Collusion Certificate	has the meaning given to it in clause 50 (Collusion);
Personal Data	has the meaning given to it in the GDPR
Policies	means the Council policies and procedures notified to the Supplier from time to time (including, without limitation, those annexed hereto);
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract
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 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

Prohibited Act

- (a) offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of the agreement or any other contract with the Council;
- (b) showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Council or any other agreement with the Council or if any like acts shall have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier);
- (c) in relation to any contract with the Council the Supplier, or any person employed by the Supplier, or acting on the Supplier's behalf commits any offence under the Bribery Act 2010 or any amendment to it;
- (d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972;
- (e) paying commission or agreeing to pay any commission to any employee or representative of the Council, or any employee or representative of the Supplier doing the same;
- (f) offering, giving or agreeing to give to any employee, office or member of the Council any gift or consideration of any kind as an inducement or reward:
- (g) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council;
- (h) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
- (i) entering into this Contract or any other contract with the Council in connection with

which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;

- (j) committing any offence:
 - (i) under Law creating offences in respect of fraudulent acts; or
 - (ii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
- (k) defrauding or attempting to defraud or conspiring to defraud the Council;

Recipient

has the meaning given in clause 29.1;

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.

Regulatory Bodies

means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council or the Supplier and “**Regulatory Body**” shall be construed accordingly;

Relevant Employees

means an employee who is subject to a Relevant Transfer;

Relevant Requirements

means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State

	for Justice pursuant to section 9 of the Bribery Act 2010;
Relevant Transfer	means a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	means the date on which an Eligible Employee transfers to the Supplier and/or one or more Sub-Supplier whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
Remediation Notice	a written notice given by the Council to the Supplier pursuant to clause 18 (Remediation Plan Process) to initiate the Remediation Plan Process;
Remediation Plan	the plan agreed in accordance with clause 18 (Remediation Plan Process) for the resolution of a Supplier's Default;
Remediation Plan Process	the process for resolving certain of the Supplier's Defaults as set out in clause 18 (Remediation Plan Process);
Request for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
Service Delivery Proposals	means those proposals for the delivery of the Services as set out in the Supplier's Tender;
Service Users	means individuals receiving all or part of the Services directly from the Supplier;
Services	means the services to be delivered by or on behalf of the Supplier under this Contract, more particular described at Schedule 1 (Specification);
Service Transfer Date	means the date on which the Services (or any part of the Services) transfer from the Supplier or Sub-Supplier to the Council or any Future Supplier;
Site	means the Council Premises or such other site(s) at which the Services shall be provided;
Specific Change in Law	means a Change in Law that relates specifically to the business of the Council and which would not

	affect a comparable supply of similar services to a third party;
Specification	means the specification for the Services in Schedule 1 (Specification);
Staffing Information	means in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;
Sub-Contract	means any contract entered into by the Supplier with a third party for the provision of any of the Services or goods or equipment in relation to the Services;
Sub-Supplier	means any contractors or Suppliers that enter into a Sub-Contract with the Supplier;
Sub-Supplier Personnel	means all employees, workers, staff, agents and consultants of the Sub-Supplier engaged in the provision of the Services at any time;
Supplier Admission Contract	means an admission Contract entered into in accordance with regulation 5A of the LGPS Regulations by the Council and the Supplier or a Sub-Supplier (as appropriate);
Supplier's Authorised Representative	means the person designated as such by the Supplier, the first of which is set out at Schedule 8 (Contract Management);
Supplier Personnel	means all employees, workers, staff, agents and consultants of the Supplier engaged in the provision of the Services at any time;
Supplier's Final Staff List	means the list of all the Supplier's and Sub-Supplier's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;
Supplier's Provisional Staff List	means the list prepared and updated by the Supplier of all the Supplier's and Sub-Supplier's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

Supplier's Tender	means the tender submitted in response to the Specification and attached as Schedule 4 Part 1 (Supplier's Tender);
Term	means together the Initial Term (as defined in clause 2.1) and any Extension Period (as defined in clause 2.2);
Transferring Employee	means an employee of the Council (excluding (without limitation) any person engaged by the Council as an independent contractor or persons employed by any Sub-Supplier engaged by the Council) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Council and the Supplier, a contract of employment with someone other than the Council; and
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive.

In this Contract, unless the context otherwise requires:

- 1.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Contract;
- 1.3 all references to clauses and Schedules are references to the clauses of and the Schedules to this Contract unless otherwise stated;
- 1.4 the Schedules form part of this Contract;
- 1.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.6 all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
- 1.7 words importing the singular include the plural and vice versa;
- 1.8 words importing a gender include all genders;
- 1.9 “**person**” includes an individual, partnership, forum, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;

- 1.10 the words “**include**” and “**including**” are to be construed without limitation and the rule of construction known as ejusdem generis shall not apply to this Contract;
- 1.11 references to Sub-Suppliers shall be to Sub-Suppliers of any tier;
- 1.12 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.13 subject to any express provisions of this Contract to the contrary, the obligations of any Party are to be performed at that Party’s own expense.

2 Term

- 2.1 This Contract shall commence on **[INSERT DATE]** (“**Commencement Date**”) and shall continue in full force and effect until **[INSERT DATE]** (“**Expiry Date**”) or until it is otherwise terminated or extended in accordance with the provisions of this Contract (“**Initial Term**”).
- 2.2 Prior to the expiry of the Initial Term, the Council may, at its absolute discretion, serve notice on the Supplier in writing extending the term of this Contract for a further period of up to eighteen (18) months (“**Extension Period**”). In the event that the Council serves notice under this clause 2.2 the term of this Contract will be extended in accordance with the notice.
- 2.3 Unless it is terminated in accordance with clause 17 (Termination) the Contract shall terminate automatically at the end of the Extension Period without further notice.

3 Provision of the Services

- 3.1 The Supplier shall provide the Services throughout the Term in accordance with the provisions of this Contract, including, without limitation, the provisions of Schedule 1 (Specification), Schedule 4 (Supplier’s Tender) and Schedule 2 (Performance Management).
- 3.2 The Supplier is not given any sole or exclusive rights in relation to the provision of the Services.
- 3.3 Without prejudice to the provisions of the Specification and the rest of this Contract, the Supplier shall provide the Services with effect from the Commencement Date.

4 Key Performance Indicators

- 4.1 The Supplier agrees that it shall comply with the Performance Measures as set out in the Specification annexed hereto at Schedule 1.

5 Standard of Performance

- 5.1 Without prejudice to the generality of clause 5.2 the Supplier will at all times ensure that the Services comply with and meet all the requirements of this Contract (including without limitation Schedule 1 (Specification) and Schedule

2 (Performance Management)), the Service Delivery Proposals, Best Industry Practice, Guidance and all applicable Policies and Law with effect from the Commencement Date

- 5.2 The Supplier shall, at all times in connection with this Contract act in:
- 5.2.1 good faith in the best interests of the Council;
 - 5.2.2 accordance with Best Industry Practice; and
 - 5.2.3 accordance with all relevant Law.
- 5.3 The Supplier shall ensure, and shall procure that any Supplier Personnel or Sub-Supplier or Sub-Supplier Personnel shall ensure, that the Services are carried out in compliance with the terms of this Contract and all Policies and applicable Law.
- 5.4 The Supplier will at all times ensure that the Services are performed by appropriately qualified and trained personnel and that sufficient number of Supplier Personnel are engaged at all times during the Term to ensure effective Service delivery in accordance with the terms of this Contract.
- 5.5 The Supplier shall ensure that all Supplier Personnel are remunerated at an hourly rate of pay equal to or exceeding the current London Living Wage for the duration of their engagement in the delivery of the Services.
- 5.6 The Supplier shall implement any updated London Living Wage on or before 1st April in the year following notification of such updated London Living Wage.
- 5.7 The Supplier shall ensure that any Sub-Contracts contain the equivalent provisions of clauses 5.5 and 5.6 and the equivalent definition of the London Living Wage as is in clause 1 (Definitions and Interpretation) of this Contract.
- 5.8 Any breach by the Supplier of the provisions of clauses 5.5, 5.6 and 5.7 shall be treated as a material breach of the Contract.
- 5.9 The Council may require the Supplier to remove and replace any Supplier Personnel that that Council acting reasonably considers to be unsuitable for engagement in the delivery of the Services.

6 Charges and Payment

- 6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Council shall pay the Charges to the Supplier in accordance with the provisions set out in this clause 6 (Charges and Payment) and at Schedule 3 (Charges and Payment).
- 6.2 The Supplier shall invoice the Council for payment of the Charges quarterly in arrears for the duration of the Term or at the time the Charges are otherwise expressed to be payable in accordance with the provisions set out at Schedule 3 (Charges and Payment). All invoices and supporting information sent by email shall be sent to EnfieldTeam@restorescan.co.uk. Invoices attached to letters shall have the Council's address shown in the Parties section of this Contract typed clearly on the invoice.

- 6.3 Invoices must not have copies attached and shall contain the following:
- 6.3.1 the title of the Contract or Service;
 - 6.3.2 the Council's contract/order number; and
 - 6.3.3 VAT shall be shown separately.
- Only valid VAT invoices shall be processed for payment. Any invoice which does not meet VAT criteria shall be rejected.
- 6.4 Any such invoices shall take into account any service credits which have been accrued in the previous period, as applicable.
- 6.5 If the Council fails to comply with its payment obligations under this clause 6 (Charges and Payment), the Supplier shall:
- 6.5.1 notify the Council's Authorised Representative in writing of such failure to pay and provide details of the invoice concerned;
 - 6.5.2 allow the Council to make prompt payment of such undisputed sums; and
 - 6.5.3 allow the Council to provide details of the grounds for why the invoice is disputed.
- 6.6 Any queries regarding invoicing and progress of payments should be directed to the Council's Authorised Officer.
- 6.7 The Council shall pay the Supplier any sums due under a valid and undisputed invoice no later than 30 (thirty) days from the date of receipt of the invoice.
- 6.8 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- 6.8.1 provisions having the same effect as clause **Error! Reference source not found.** to clause 6.6 of this Contract; and
 - 6.8.2 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 **Error! Reference source not found.** to clause 6.6 of this Contract.
- 6.9 Where any Party disputes any sum to be paid by it under this Contract 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 55 (Dispute Resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 (thirty) days after resolution of the dispute between the Parties.
- 6.10 Subject to clause 6.8, the Supplier may charge interest on the late payment of any undisputed Charges properly invoiced under this Contract on the outstanding sum from the due date until payment is made at the then applicable statutory interest rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended, extended or re-enacted

from time to time). The Supplier shall not suspend the supply of the Services if any payment is overdue.

- 6.11 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council 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 Contract.
- 6.12 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for seven (7) years from the end of the Contract Year to which the records relate.
- 6.13 The Council 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 Contract or any other agreement pursuant to which the Supplier provides goods or services to the Council.
- 6.14 If the Council wishes to set off any amount owed by the Supplier to the Council against any amount due to the Supplier pursuant to clause 6.136.13 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Council's reasons for withholding or retaining the relevant Charges.
- 6.15 The Supplier shall make any payments due to the Council 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 Council to the Supplier.

7 NOT USED

8 Access to Council Premises

- 8.1 Subject to the provisions of the [lease(s) OR licence(s)] set out in (Property), the Council shall provide the Supplier (and any permitted Sub-Suppliers if necessary) with access to such parts of the Council Premises as the Supplier may reasonably require in order to comply with its Service delivery obligations hereunder.]
- 8.2 The Supplier shall ensure that only those of the Supplier Personnel and the Sub-Supplier's Personnel that are duly authorised to enter upon the Council Premises for the purposes of providing the Services do so.
- 8.3 Whilst on the Council Premises, or if applicable any other Council land or premises which the Supplier is required to access for the provision of the Services, the Supplier shall, and shall procure that any Sub-Supplier shall:
 - 8.3.1 adhere to all reasonable requests and instructions of the Council as may be provided from time to time;
 - 8.3.2 take steps to minimise and keep to a minimum interference with any other activities taking place;

8.3.3 ensure that all Supplier Personnel and Sub-Supplier Personnel are aware of and comply with the Council's Policies, including without limitation the Council's Health and Safety Policy, and are aware of any potential risks to health and safety in relation to the Council Premises or any other land or premises to which access is required for the purposes of providing the Services;

8.3.4 comply with all security measures implemented by the Council in relation to the Council Premises, including the provision of all Supplier Personnel and Sub-Supplier Personnel entering the Council Premises with a form of identification acceptable to the Council, which shall be displayed visibly on that person's clothing at all times whilst they are on the Council Premises or other premises used for the provision of the Services; and

8.3.5 immediately remove any Supplier or Sub-Supplier Personnel from the Council Premises or other premises used for the provision of the Services where the Council requests this.

8.4 Whilst on the Council Premises, the Council reserves the right to search any Supplier or Sub-Supplier Personnel, their vehicles or any other vehicles brought on to the Council Premises or other premises used for the provision of the Services.

8.5 Subject to the provisions of the Exit Management Plan set out at Schedule 6 (Exit Management Plan), on expiry or termination of this Contract the Council shall notify the Supplier that it is to remove its equipment from the Council Premises. All such equipment shall be promptly removed by the Supplier and in any event within [ten (10)] Business Days of the termination or expiry of this Contract, howsoever caused. The Council shall provide the Supplier with such access as the Supplier reasonably requires to the Council Premises to remove any of the Supplier's equipment, at a time which shall be convenient to the Council.

If at any time the Supplier requires access to the Council Premises or any interest in any land which does not form part of the Council Premises or any additional rights beyond those which the Supplier has in relation to any part of the Council Premises, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Supplier.

9 Occupation of Council Premises

9.1 The Council shall provide the Supplier with such accommodation and facilities in the Council Premises as is specified in [the lease] OR [the licence] set out at Schedule 5 (Property) or which is otherwise agreed by the Parties from time to time.

9.2 The Supplier shall ensure that:

9.2.1 the Council Premises and any Council Assets are used solely for the purposes of performing the Contract and shall remain the property of the Council;

9.2.2 the Supplier and the Supplier Personnel comply with any policies, rules or relations or the provisions of any insurance policies from time to time

in force in relation to the use of the Council Premises, and shall procure that any Sub-Supplier or Sub-Supplier Personnel shall comply with the same;

9.2.3 where the Council Premises or any Council Assets are used by the Supplier they are kept properly secure and it will comply and co-operate with the Council's reasonable directions regarding the security of the same; and

9.2.4 any Council 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 Council Premises unless expressly permitted under this Supplier or by the Council's Authorised Officer.

- 9.3 The Council shall maintain and repair the Council 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 Council in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 9.4 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier, Supplier Personnel or any Sub-Supplier or Sub-Supplier Personnel to any property of the Council, to any of the Council Premises or to any property of any other recipient of the Services in the course of providing the Services.
- 9.5 The Supplier shall procure that in occupying the Council Premises, there shall be no act or omission by the Supplier, or Sub-Supplier, or any Supplier or Sub-Supplier Personnel which shall give rise to a right for any person to obtain title to or any right or interest over the Council Premises or any part of it and/or cause any material disruption to the provision of the Services.
- 9.6 Except as otherwise expressly provided in this Contract the Supplier shall take the Council Premises in its state and condition in all respects as at the date of this Contract and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Contract as to the fitness and suitability of the Council Premises or any part thereof for the provision of the Services or for any other purpose.
- 9.7 The Supplier shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Council Premises, and the Supplier shall ensure that the Services are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.
- 9.8 To the extent permissible by Law, the Council will not accept liability for equipment or material left or stored on the Council Premises or any other premises used for the purposes of providing the Services.
- 9.9 Fire Folder
- 9.10 The Parties shall each act reasonably and in good faith to procure that an up to date fire folder is maintained for all Council Premises occupied by the Supplier in connection with this Contract in accordance with government

guidance referring to the Regulatory Reform (Fire Safety) Order 2005. In particular the Supplier shall:

9.9.1 provide information relating to the operation of the fire alarm system and emergency lighting [and sprinkler system];

9.9.2 maintain maintenance/test records for the fire alarm systems and emergency lighting [and sprinkler system];

9.9.3 prepare risk assessments for emergency events including fires;

9.9.4 prepare and communicate the evacuation procedures including instruction to staff and visitors at the Premises on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;

9.9.5 prepare notices/signs reinforcing the evacuation procedures; and

9.9.6 take all reasonable steps to ensure and maintain discipline of the occupants of the Premises to prevent fires and deliberate and/or accidental activation of the system.

10 Conduct of Supplier and Sub-Supplier Personnel and admission to Council Premises

10.1 Whilst engaged at the Council Premises the Supplier shall and shall procure that any Sub-Supplier shall comply with the Council's Policies relating to the conduct of Supplier Personnel and security arrangements. The Council (acting reasonably) may:

10.1.1 instruct the Supplier that disciplinary action is taken against any employee of the Supplier or any Sub-Supplier involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

10.1.2 where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).

10.2 Subject to clauses 10.3 and 10.4 the Supplier shall, at least twenty (20) Business Days before the date on which the Supplier first provides any of the Services at any Council Premises, provide the Council with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Site in connection with the provision of the Services, specifying the capacities in which those employees or other persons are concerned with the provision of the Services and giving such other particulars as the Council may require. The Supplier shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Council on whether any person is to be refused admission to a Site shall be final and conclusive and the Council shall not be obliged to give reasons for its decision.

- 10.3 Where the Supplier is unable (acting reasonably) to comply with clause 10.2 by the time period specified in it then the Supplier shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on Site. Until such time as the Supplier has complied with its obligations in respect of that individual, he or she shall at all times be accompanied on Site by a member of the Supplier's or Sub-Supplier's Personnel who has been properly notified to the Council in accordance with clause 10.2.

Clauses 10.2 and 10.3 shall not apply to those individuals who shall be required by the Supplier or any Sub-Supplier to attend on Site to provide emergency reactive services. In the case of such individuals, the Supplier shall or shall procure that any Sub-Supplier shall ensure that such individuals are accompanied at all times while on each Site by a member of the Supplier or Sub-Supplier's Personnel who has been properly notified to the Council in accordance with clause 10.2.

11 Refusal of Admission

- 11.1 The Council reserves the right for it to refuse to admit to the Council Premises any person, employed or engaged by the Supplier or a Sub-Supplier, whose admission would, in the opinion of the Council present a risk to the Council, any third party or the Council's property and shall not be obliged to give any reasons for such refusal.
- 11.2 The decision of the Council as to whether any person is to be refused admission to the Council Premises pursuant to clause 11.1 shall be final and conclusive.
- 11.3 The Supplier shall comply with and/or procure compliance with any notice issued by the Council from time to time requiring the removal from Council Premises of any person employed thereon who in the opinion of the Council is not acceptable on the grounds of a risk to the Council, any third party or the Council's property and that such persons shall not be employed again in relation to the provision of Services without the written consent of the Council.

12 Contract delay

- 12.1 If, at any time, the Supplier becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Supplier's performance of its obligations under this Contract it shall immediately notify the Council in writing, providing details of the potential or actual delay.
- 12.2 The Supplier shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in clause 12.1 upon the Council.

13 Change

- 13.1 Should the Council wish to change any aspect of the provision of Services it shall provide the Supplier with written notice of the proposed change including sufficient detail to enable the Supplier to comply with its obligations under clause 13.2.
- 13.2 Within fifteen (15) Business Days of receipt of the notice referred to in clause 13.1 the Supplier shall provide the Council with details of the proposed

timetable for implementation and details of any changes to the Charges arising as a result of the proposed change on a transparent and open-book basis.

- 13.3 In calculating any changes to the Charges the Supplier shall ensure that any alteration reflects a fair and proportionate change based upon the reasonable costs of a well-run provider of Services and the current profit margin achieved by the Supplier.
- 13.4 After receipt of the information referred in clause 13.2 the Council shall be entitled to abandon or continue with the proposed change. Should the Council decide to continue with the proposed change the Parties shall take such steps as are reasonably necessary to agree a variation to this Contract to reflect the proposed change.

14 Best Value

- 14.1 The Supplier acknowledges that:
 - 14.1.1 the Council is subject to the Best Value Duty;
 - 14.1.2 the provisions of this clause 14 (Best Value) are intended to assist the Council in discharging its Best Value Duty in relation to the Services; and
 - 14.1.3 the provisions of this clause 14.1 shall apply in respect of the obligations of the Supplier and the Council concerning the Best Value Duty.
- 14.2 The Supplier shall, throughout the Term, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 14.3 The Supplier shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with its Best Value Duty, including:
 - 14.3.1 complying with all requests by the Council to procure the attendance of specific officers or employees of the Supplier or any Sub-Supplier (or to procure attendance of any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one (1) Contract Year); and
 - 14.3.2 permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:
 - (a) any document or data relating to the Services; and
 - (b) any Supplier Personnel or Sub-Supplier Personnel.
- 14.4 **Annual Service Report and Annual Service Plan**
 - 14.4.1 Without prejudice to any other provision in this Contract the Supplier shall, no later than the [DATE TO BE INSERTED] in each

Contract Year, at its own cost provide to the Council a written report (“**Annual Service Report**”) in accordance with the requirements of the Specification.

- 14.4.2 The Supplier shall upon a written request from the Council promptly provide such written evidence or other supporting information as the Council may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 14.4.3 If, in the Council’s reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Council may serve a Best Value Service Change Notice stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Council desires.
- 14.4.4 The Supplier shall, within twenty (20) Business Days of the date of receipt of the Best Value Service Change Notice, provide the Council at its own cost with a written statement (“**Annual Service Plan**”) containing the Service Delivery Proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.
- 14.4.5 As soon as practicable after the Council receives the Annual Service Plan, the Parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Council may modify the Best Value Service Change Notice, in which case the Supplier shall, as soon as practicable, and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Council of any consequential changes to the Annual Service Plan.
- 14.4.6 If the Parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with the Disputes Resolution Procedure.
- 14.4.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the dispute resolution procedure the Council shall:
 - (a) confirm in writing the Annual Service Plan; or
 - (b) withdraw the Best Value Service Change Notice.
- 14.4.8 If the Council either withdraws the Best Value Service Change Notice or does not confirm the Annual Service Plan within twenty (20) Business Days of the Annual Service Plan having been agreed or determined pursuant to the Disputes Resolution Procedure, then the Annual Service Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.
- 14.4.9 If the Council confirms the Annual Service Plan then the Council shall issue a change notice (which shall include the information set

out in the Best Value Service Change Notice) in accordance with clause 13 (Change).

14.4.10 To the extent that the implementation of the proposals in the Annual Service Plan will result in a decrease in the costs of the Supplier, the Charges shall be adjusted downwards.

14.4.11 To the extent that the implementation of the proposals in the Annual Service Plan will result in an increase in the costs of the Supplier, the Charges shall be adjusted upwards.

14.5 The Supplier shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Best Value Service Change Notice and a change notice served pursuant to clause 14.4.8.

15 Emergencies

15.1 If an Emergency arises during the Term which cannot be dealt with by performance of the Services, the Council may instruct the Supplier to use its best endeavours to procure that such additional or alternative services are undertaken by the Supplier as and when required by the Council to ensure that the Emergency is dealt with and normal provision of the Services resumes as soon as is reasonably practicable provided that the Supplier shall not be obliged to provide any service which it is neither qualified nor competent to provide.

15.2 The reasonable and properly incurred additional costs of the Supplier of any additional or alternative services provided to the Council under clause 15.1 arising as a direct result of the Supplier providing any additional or alternative services shall be borne by the Council. If such costs are not agreed, the matter shall be referred to the Dispute Resolution Procedure.

16 Supplier Warranties and Undertakings

16.1 The Supplier warrants, represents and undertakes to the Council that on the date hereof:

16.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

16.1.2 the information contained in the Supplier's Tender remains true and accurate unless and to the extent that any changes have been notified to the Council in writing and the Council has agreed to the provision of the Services on the basis of those changes and no others, and that it shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council which materially and adversely affects its ability to perform the Services;

16.1.3 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

16.1.4 all action necessary on the part of the Supplier to authorise the execution of and the performance of its obligations under this Contract has been taken;

- 16.1.5 the obligations expressed to be assumed by the Supplier under this Contract are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
- 16.1.6 the execution, delivery and performance by it of this Contract does not contravene any provision of:
- (a) any existing Law either in force, or enacted but not yet in force binding on the Supplier;
 - (b) the Memorandum and Articles of Association of the Supplier;
 - (c) any order or decree of any court or arbitrator which is binding on the Supplier; or
 - (d) any obligation which is binding upon the Supplier or upon any of its assets or revenues;
- 16.1.7 the Supplier warrants that all data and information provided to the Council in connection with the provision of the Services, including (without limitation) information provided as part of the Supplier's Tender, is true and accurate in all respects;
- 16.1.8 (where the Supplier is a special purpose vehicle to be used for the delivery of the Services) the Supplier has not, other than in connection with the Services, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- 16.1.9 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Supplier, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Supplier to perform its obligations under this Contract;
- 16.1.10 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Supplier to perform its obligations under this Contract;
- 16.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Supplier, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 16.1.12 it has not paid commission or agreed to pay any commission to any employee, agent, Sub-Supplier, officer or member of the Council either directly or through another on its behalf,

and the Council relies upon such warranties and representations.

- 16.2 The Supplier warrants and undertakes to the Council that for so long as this Contract remains in full force:

- 16.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant council may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Supplier) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Services, the Supplier's ability to perform its obligations under this Contract;
 - 16.2.2 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Supplier to perform its obligations under this Contract;
 - 16.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
 - 16.2.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Supplier;
 - 16.2.5 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services;
 - 16.2.6 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business; and
 - 16.2.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.
- 16.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Supplier in this Contract are cumulative and none shall be given a limited construction by reference to any other.

17 Termination

- 17.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances where:
- 17.1.1 the Supplier is in breach of any material obligation under this Contract, provided that if the breach is in the reasonable opinion of the Council capable of remedy the Council may only terminate this Contract under this clause 17.1 if the Supplier has been notified of the breach by the Council and had the opportunity to remedy it and has failed to remedy such breach within twenty eight (28) days of receipt of notice from the Council (a **Remediation Notice**) to do so;
 - 17.1.2 the Supplier has repeatedly breached any one or more of the Supplier's obligations under this Contract in such a manner as to reasonably justify the Council's opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - 17.1.3 **NOT USED;**
 - 17.1.4 there is an Insolvency Event;
 - 17.1.5 there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;
 - 17.1.6 this Contract has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - 17.1.7 the Supplier was, at the time when this Contract was awarded, in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and therefore should not have been awarded this Contract;
 - 17.1.8 any competent court makes an award for ineffectiveness of this Contract under the Public Contracts Regulations 2015; or
 - 17.1.9 this Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations of the Treaty on European Union, the TFEU or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of TFEU.
- 17.2 The Council may terminate this Contract in accordance with the provisions of clause 31 (Bribery and Fraud), clause 34 (Discrimination), clause 36 (Human rights) and 37 (Conflict of interest).
- 17.3 If this Contract is terminated by the Council under clause 17.1 (with the exception of clauses 17.1.8 and 17.1.9) or clause 17.2 such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the

Council against any such Losses which the Council may suffer as a result of any such termination for cause.

17.4 Termination on notice

Without affecting any other right or remedy available to it, the Council may terminate this Contract at any time by giving six 6 months' written notice to the Supplier.

18 Remediation Plan Process

18.1 If the Supplier commits a material breach of any of its obligations under this Contract, and that breach is capable of remedy, the Council may give a Remediation Notice to the Supplier which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default.

18.2 Within twenty (20) Business Days of receipt of a Remediation Notice, the Supplier shall either:

18.2.1 submit a draft Remediation Plan; or

18.2.2 inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.

18.3 The Council shall either approve the draft Remediation Plan within twenty (20) Business Days of its receipt pursuant to clause 18.2, or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Parties shall work together in good faith to agree a revised Remediation Plan. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.

18.4 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.

18.5 If, despite the measures taken under clause 18.3, a Remediation Plan cannot be agreed within twenty (20) Business Days then the Council may elect to end the Remediation Plan Process and serve a Termination Notice or invoke its rights under clause 22 (Step-In).

18.6 If a Remediation Plan is agreed between the Parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date (as specified therein), the Council may:

18.6.1 terminate this Contract by serving a Termination Notice;

18.6.2 give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or

18.6.3 escalate any issues arising out of the failure to implement the Remediation Plan to the Supplier's Services Manager under the Dispute Resolution Procedure.

- 18.7 If, despite the measures taken under clause 18.6, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 18.8 The Council shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of three (3) months following the conclusion of such previous Remediation Plan. In such event, the Council may serve a Termination Notice.

19 Consequences of termination/expiry

- 19.1 In the event that this Contract is terminated in accordance with clause 17.1 with the exception of clauses 17.1.8 and 17.1.9 or clause 17.2 the provisions of clause 17.3 shall apply.
- 19.2 The Losses referred to in clause 23.2 shall include:
- 19.2.1 any additional costs incurred by the Council in procuring replacement services (including any difference in purchase price); and
 - 19.2.2 any costs incurred by the Council in procuring an alternative supplier to provide services similar to the Services.
- 19.3 In the event that this Contract is terminated in accordance with clause 17.1.8 or 17.1.9 each Party shall bear its own costs and shall have no liability to the other Party.
- 19.4 On the expiry of the Term, or if this Contract is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a replacement supplier.
- 19.5 On termination of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Supplier shall ensure that all Council Assets shall be delivered to the Council (or as otherwise directed by the Council) forthwith and the Supplier's Contract Manager or Deputy Contract Manager shall certify full compliance with this clause.
- 19.6 If the Supplier fails to comply with clause 19.4 or clause 19.5 then the Council or its representatives may enter the Supplier's premises and take possession of any Council Assets in the Supplier's possession or control. Until such time as they have been delivered or returned, the Supplier shall be solely responsible for the safekeeping of the Council Assets in its possession or control and will not use them for any purpose not connected to the Contract.
- 19.7 Termination or expiry of this Contract 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 Contract which existed at or before the date of termination or expiry.

20 Force Majeure

- 20.1 Subject to the remaining provisions of this clause 20 (Force Majeure), either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 20.2 The Supplier cannot claim relief if the Force Majeure Event is attributable to its:
- 20.2.1 wilful act;
 - 20.2.2 neglect; or
 - 20.2.3 failure to take reasonable precautions against the relevant Force Majeure Event; or
 - 20.2.4 failure to comply with a business recovery plan required under this Contract or otherwise agreed with the Council during the Term.
- 20.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 20.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 20.5 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the Affected Party, it shall take all steps in accordance with Best Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 20.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 20.7 The Charges payable by the Council shall be reduced proportionately to the reduction in Service provision to the extent that the Council does not receive the Services or part thereof as a result of the Force Majeure Event.
- 20.8 If the performance of the Affected Party's obligations under the Contract is prevented by circumstances of a Force Majeure Event for a period of twenty (20) Business Days or more then the Council may by giving written notice to the Supplier terminate the Contract forthwith.

21 Survival of termination

- 21.1 On termination or expiry of this Contract, the following clauses shall continue in force: clauses 11, 16, 19, 23-27, 29, 46, 47, 53-55, 57, 59, 63 and 69.

22 Step-In

- 22.1 If the Council reasonably believes that it needs to take action in connection with the Services:

- 22.1.1 because of a material breach by the Supplier of its obligations that has not been rectified in accordance with the Remediation Plan;
- 22.1.2 because there have been [five (5)] or more Serious Failures in respect of any one Contract Year;
- 22.1.3 because there have been [one (1)] or more Severe Failures in respect of any one Contract Year;
- 22.1.4 because a serious risk exists to the health or safety of persons or property or to the environment;
- 22.1.5 to discharge a statutory duty;
- 22.1.6 because an emergency has arisen;
- 22.1.7 because a breach of safeguarding has occurred or the Council has reasonable grounds to suspect that a breach of safeguarding has occurred; or

then, without prejudice to any other rights it may have, the Council may take action in accordance with clauses 22.2 to 22.5.

- 22.2 If clause 22.1 applies and the Council wishes to take action, the Council shall notify the Supplier in writing of the following:

- 22.2.1 the action it wishes to take;
- 22.2.2 the reason for such action;
- 22.2.3 the date it wishes to commence such action;
- 22.2.4 the time period which it believes will be necessary for such action; and
- 22.2.5 to the extent practicable, the reasonably foreseeable effect on the Supplier and its obligation to provide the Services during the period such action is being taken.

- 22.3 Following service of such notice, the Council may take such action as notified under clause 22.2 and any consequential additional action as it reasonably believes is necessary (together, the “**Required Action**”) and the Supplier shall give all reasonable assistance to the Council while it is taking the Required Action. The Council shall, to the extent that the Required Action is taken, provide the Supplier with notice of completion of such Required Action and

shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

- 22.4 Where the Required Action has been taken otherwise than as a result of a Default by the Supplier, the Council shall undertake the Required Action in accordance with Good Industry Practice.
- 22.5 For so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Services, then the Supplier shall be relieved from its obligations to provide such part of the Services and the Council shall be relieved of its obligation to pay the applicable Charges to the Supplier in respect of the affected Services.

23 Indemnities

- 23.1 Neither Party excludes or limits liability to the other Party for:
 - 23.1.1 death or personal injury;
 - 23.1.2 fraud; or
 - 23.1.3 fraudulent misrepresentation.
- 23.2 The Supplier shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:
 - 23.2.1 the Supplier's breach, negligent performance or non-performance of any of its obligations under this Contract;
 - 23.2.2 any breach of statutory duty arising in relation to this Contract;
 - 23.2.3 the enforcement of this Contract;
 - 23.2.4 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any act or omission by the Supplier, Supplier Personnel, Sub-Suppliers or Sub-Supplier Personnel, professional advisors and consultants in the delivery of its obligations under this Contract; or
 - 23.2.5 any claim made against the Council by a third party arising out of or in connection with this Contract to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Contract by, or presence at any Site of, the Supplier, Supplier Personnel, Sub-Suppliers or Sub-Supplier Personnel, professional advisors and consultants.

24 NOT USED

25 Duty to mitigate

Both Parties shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other Party in relation to the performance of obligations under this Contract.

26 Right of Set-off

The Council may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Council.

27 Insurance

- 27.1 The Supplier shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Contract, and any other insurances required in order to comply with the Law for the duration of the Term. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 27.2 The insurances referred to at clause 27.1 shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:
- 27.2.1 Employers' Liability Insurance to the value of £5m
 - 27.2.2 Public Liability Insurance to the value of £10m
- 27.3 The Supplier shall provide to the Council on request, copies of all insurance policies referred to in this clause 27 (Insurance) or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 27.4 The Supplier shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 27.1.
- 27.5 Should the Supplier fail to take out any insurances in accordance the clause 27.1 the Council may purchase such insurances and recover the costs of such insurances from the Supplier.

28 IPR

- 28.1 All Intellectual Property Rights:
- 28.1.1 furnished to or made available to the Supplier by the Council shall remain the property of the Council; and
 - 28.1.2 prepared by or for the Supplier for use, or intended use, in relation to the performance of its obligations under the Contract shall belong to the Council,

and the Supplier shall not, and shall procure that the Supplier Personnel and Sub-Suppliers shall not, (except when necessary for the implementation of the Contract) without obtaining the Council's prior written approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Supplier may obtain in performing the Contract except information which is in the public domain.

- 28.2 The Supplier shall obtain the Council's prior written approval before using any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall procure that the owner of such rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 28.3 Where a claim or proceeding is made or brought against the Council which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with this Contract infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Council otherwise than in accordance with the terms of this Contract, the Supplier shall indemnify the Council at all times from and against all such claims and proceedings in accordance with clause 23.2.
- 28.4 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced in the performance of the Contract.

29 Freedom of information and confidentiality

- 29.1 In respect of any Confidential Information it may receive from the other Party ("**Discloser**") and subject always to the remainder of this clause 29 (Freedom of Information and Confidentiality) , each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 29.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;
- 29.1.2 the provisions of this clause 29.1 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - (b) is obtained by a third party who is lawfully authorised to disclose such information;
 - (c) is authorised for release by the prior written consent of the Discloser; or
 - (d) the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the "**FOIA**") the Environmental Information Regulations 2004 (the "**EIR**") or the Local Government Transparency Code 2014/2015; and

- 29.1.3 the Council may, at its sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.
- 29.2 Nothing in this clause 29 (Freedom of Information and Confidentiality) shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 29.1, to its professional advisors or insurers.
- 29.3 The Supplier acknowledges that the Council is subject to the FOIA and the EIR. The Supplier notes and acknowledges the FOIA, the EIR and the Codes of Practice under section 45 and 46 of the FOIA). The Supplier will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Supplier from time to time) to the extent that they apply to the Supplier's performance under this Contract.
- 29.4 The Supplier agrees that:
- 29.4.1 without prejudice to the generality of clause 29 (Freedom of Information and Confidentiality), the provisions of this clause 29.4 are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.
- 29.4.2 where it considers that any information should not be available for disclosure, it will:
- (a) identify it specifically; and
- (b) explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.
- 29.5 All decisions regarding disclosure of information following a Request for Information will be made at the sole discretion of the Council. The Supplier acknowledges that, even where the Supplier has indicated that information is commercially sensitive, the Council may be required to disclose it under the FOIA or EIA, with or without consulting the Supplier and although the Council will use reasonable endeavours to consult with the Supplier prior to any disclosure, the Council shall not be under any further obligation to consult the Supplier prior to disclosure.
- 29.6 The Supplier shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) Business Days of receiving a Request for Information.
- 29.7 Where the Council is managing a request as referred to in clause 29.5, the Supplier shall co-operate with the Council and shall respond together with copies of any documentation so requested within five (5) Business Days of any request by it for assistance.

30 Data Protection Legislation

- 30.1 Each party, to the extent that, it, along with the other party, acts as Data Controller, as the term is defined in the Data Protection Legislation, with respect to Personal Data, shall reasonably cooperate with the other party to enable the exercise of data protection rights as set forth in the Data Protection Legislation. For the avoidance of doubt, the parties hereby acknowledge and agree that each is acting independently as Data Controller with respect of Personal Data and the parties are not joint Data Controllers as defined in the Data Protection Legislation.

31 Bribery and Fraud

- 31.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- 31.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 31.1.2 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.
- 31.2 The Supplier shall not during the term of this Contract:
- 31.2.1 commit a Prohibited Act; and/or
 - 31.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 31.3 The Supplier shall during the term of this Contract:
- 31.3.1 establish, maintain and enforce, and require that its Sub-Suppliers establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 31.3.2 keep appropriate records of its compliance with its obligations under clause 31.3.1 and make such records available to the Council on request.
- 31.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of clause 31.1 and/or 31.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 31.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 31.4.2 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
- 31.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 31.5 If the Supplier makes a notification to the Council pursuant to clause 31.4, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 41 (Resources, Training and Policies).
- 31.6 If the Supplier is in Default under clauses 31.3.1 and/or 31.2, the Council may by notice:
 - 31.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
 - 31.6.2 immediately terminate this Contract.
- 31.7 Any notice served by the Council under clause 31.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

32 Health and Safety Requirements

- 32.1 The Supplier shall (and shall ensure that all Sub-Suppliers and other related parties shall) at all times comply with all relevant health and safety procedures which shall include the requirements of the Health and Safety at Work etc Act 1974, all other applicable Legislation, its own health and safety policies and safe working systems (to be produced to the Council on request), any relevant health and safety plans for the Site and, in respect of the Council's Personnel and others who may be affected by the provision of the Services, the Council's health and safety Policies and procedures.
- 32.2 The Supplier shall promptly notify the Council of any incidents on the Site or otherwise related to the provision of the Services which are or may give rise to a health and safety or an environmental hazard.

33 Hazardous Substances

- 33.1 The Supplier shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Best Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Council

of all such materials being used or stored at the Site and shall comply with any other reasonable requirement of the Council in respect of such materials and equipment.

- 33.2 The Supplier shall ensure that all hazardous materials and waste are disposed of in a manner that does not cause harm to any person or the environment and in accordance with all statutory duties.
- 33.3 The Supplier shall maintain a COSHH register in relation to the Site and shall ensure that a copy of each register is held at the Site, at the Supplier's registered office and that a copy is given to the Council. The Council shall notify the Supplier of any items which it or any council related party is using or storing at the Site and which requires to be included in such register.

34 Discrimination

- 34.1 The Supplier acknowledges the Council's obligations under equality Law and agrees to perform its obligations under this Contract, and agrees to procure that any Supplier Personnel and if applicable any Sub-Supplier shall perform its obligations in relation to the Services with regard to:
 - 34.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 34.1.2 the Council's equality and diversity policy as updated from time to time;
 - 34.1.3 the Equality and Human Rights Commission's Code of Practice in Employment as updated from time to time;
 - 34.1.4 any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace; and
 - 34.1.5 any other requirements and instructions which the Council imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law or under the Council's own policies or rules.
- 34.2 The Supplier shall take all necessary steps, and inform the Council 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).
- 34.3 To the extent that the Supplier's obligations under this Contract involve the exercise of public functions of the Council, the Supplier shall, and shall procure that any Supplier Personnel and if applicable any Sub-Supplier shall comply to the extent permitted by Law with the provisions of:
 - 34.3.1 Sections 28 and 29 of the Equality Act 2010, as if they were a body within the meaning of those Sections 28 and 29; and
 - 34.3.2 Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act.

- 34.4 The Supplier shall assist the Council in its performance of its obligations under the Equality Act 2010, including but not limited to the provision of information that the Council shall require in order to monitor:
- 34.4.1 equality of access to the Services; and
 - 34.4.2 compliance with the Council's obligation under the equality Law.
- 34.5 The Supplier shall provide to the Council such information as the Council may require within ten (10) Business Days of receipt of a request from the Council's Authorised Representative.
- 34.6 The Supplier shall ensure and shall procure that any Sub-Supplier shall ensure that any Supplier Personnel or any Sub-Supplier Personnel engaged in the provision of the Services shall comply with the requirements of this clause 34 (Discrimination).
- 34.7 Breach of this clause 34 (Discrimination) by the Supplier shall entitle the Council to terminate the Contract with immediate effect.

35 Sub-contracting

- 35.1 The Supplier shall not, without the prior written consent of the Council, Sub-Contract, whether in whole or in part, any one or more of its obligations under this Contract.
- 35.2 In relation to any sub-contracting pursuant to clause 35.1:
- 35.2.1 the Supplier shall be responsible to the Council in Law or otherwise for all such Sub-Contracted work and/or services and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Supplier under this Contract and/or at Law or otherwise;
 - 35.2.2 the Supplier's remuneration shall not be increased by any amounts payable by the Supplier to its Sub-Suppliers; and
 - 35.2.3 the Supplier shall be liable for the tortious acts and omissions of the person performing any Sub-Contracted work and/or services.

36 Human Rights

- 36.1 The Supplier shall, and shall procure that the Supplier Personnel and any Sub-Supplier shall at all times comply with the provisions of the Human Rights Act 1998 ("HRA 1998") in the performance of this Contract.
- 36.2 The Supplier shall undertake or refrain from undertaking, and shall procure that the Supplier Personnel and any Sub-Supplier shall undertake or refrain from undertaking, such acts as the Council requests in order to enable the Council to comply with its obligations under the HRA 1998.
- 36.3 In the event that the Supplier, any Supplier Personnel or any Sub-Supplier does or omits to do, or permits or allows anything to be done which is incompatible with the provisions of the HRA 1998 which causes or may cause the Council to

be in breach of its obligations under the HRA 1998 the Supplier shall immediately notify the Council in writing and the Council may terminate this Contract immediately upon notice in writing in its absolute discretion.

- 36.4 The Supplier shall indemnify the Council against any Losses or liability (including any interest, penalties or costs incurred) which arises as a result of a breach by the Supplier of its obligations under this clause 36 (Human Rights).

37 Conflict of Interest

- 37.1 The Supplier acknowledges and agrees that no Conflict of Interest exists between the Supplier and or any Sub-Supplier and the Council at the date stated on the face of this Contract. In the event that the Supplier becomes aware of a Conflict of Interest between its own interests or those of a Sub-Supplier and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.

- 37.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Supplier or a Sub-Supplier.

38 Assignment/Novation

- 38.1 The rights and obligations of the Council under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Council under this Contract being:

- 38.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 38.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Council under this Contract; or
- 38.1.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Supplier) by the Council or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Council under this Contract.

- 38.2 The Supplier shall not assign, novate, or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.

39 Records and Open Book Accounting

- 39.1 The Supplier shall:

- 39.1.1 comply at all times with the requirements set out in Schedule 8 (Contract Management);

- 39.1.2 at all times maintain a full record of particulars of the costs of performing its obligations under this Contract and, upon request by the Council, provide a written summary of such costs, including details of any funds held by the Supplier specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Supplier of its obligations under this Contract; and
 - 39.1.3 provide such access as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 39.1.
- 39.2 Compliance with clause 39 (Records and Open Book Accounting) shall (without limitation) require the Supplier to keep books of account in accordance with best accountancy practices and the provisions of Schedule 8 (Contract Management) with respect to this Contract, showing in detail (without limitation):
- 39.2.1 administrative overheads;
 - 39.2.2 where applicable, any payments made to Sub-Suppliers;
 - 39.2.3 capital and revenue expenditure; and
 - 39.2.4 such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,
- and the Supplier shall have the books of account evidencing the items listed in sub-clauses 39.2.1-39.2.4 inclusive, available for inspection by the Council (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Council as and when requested from time to time.
- 39.3 The Supplier shall maintain or procure detailed records relating to the performance of its obligations under this Contract, in each case in accordance with Best Industry Practice and any applicable Law, and shall (without limitation) provide the Management Reports in the form provided at Schedule 8 (Contract Management).
- 39.4 Without prejudice to clause 39.1, the Supplier shall maintain or shall procure that the following are maintained:
- 39.4.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
 - 39.4.2 full records of all maintenance procedures carried out during the term of this Contract,
- and the Supplier shall have the items referred to in clause 39.4 available for inspection by the Council (and its advisers) upon reasonable notice, and shall present a report of them to the Council as and when requested from time to time.

- 39.5 The records referred to in this clause 39 (Records and Open Book Accounting) shall be retained for a period of at least seven (7) years after the Supplier's obligations under this Contract have come to an end.
- 39.6 All information referred to in this clause 39 is subject to the obligations set out in clause 29 (Freedom of Information and Confidentiality).

40 Audit

- 40.1 The Council, or any third party nominated by the Council (and notified to the Supplier in accordance with the provisions of clause 59 (Notices), shall at any time within Business Hours and on request:
- 40.1.1 have access to any place of business at which the Supplier is carrying out work in relation to this Contract;
 - 40.1.2 be able to inspect, audit and obtain copies of all records, invoices, accounts, reports, designs, drawings, manuals, estimates, bills of quantities, Sub-Contract quotations and other documents, used, intended to be used, or stored in connection with work being carried out by the Supplier under this Contract; and
 - 40.1.3 be able to inspect, audit and obtain copies of the Supplier's quality management system and have access to any records and documentation relating to any management processes and procedures which are relevant to work being carried out by the Supplier under this Contract.
- 40.2 The Supplier shall provide the Council with all reasonable assistance in obtaining the right to such access and inspection, and shall provide any copies of records so required without charge.

41 Resources, Training and Policies

- 41.1 The Supplier shall procure that:
- 41.1.1 there shall be at all times a sufficient number of Supplier Personnel (including all relevant grades of supervisory personnel) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient Supplier Personnel to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
 - 41.1.2 all employees receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
- 41.2 The Supplier shall procure that there are set up and maintained by it and by all Sub-Suppliers involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Supplier shall procure that the terms and implementation of such policies and procedures comply with Law and Best Industry Practice and that they are published in written form and that

copies of them (and any revisions and amendments to them) are forthwith issued to the Council.

42 Change in Law

- 42.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges as the result of:
 - 42.1.1 a General Change in Law; or
 - 42.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 42.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 42.1.2), the Supplier shall notify the Council of the likely effects of that change, including:
 - 42.2.1 whether any Change is required to the Services, the Charges or this Contract; and
 - 42.2.2 whether any relief from compliance with the Supplier's obligations is required.
- 42.3 As soon as practicable after any notification in accordance with clause 42.2, the Parties shall discuss and seek to agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:
 - 42.3.1 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-Suppliers];
 - 42.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
 - 42.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 42.3.4 demonstrating that any expenditure that has been avoided, [for example which would have been required under the provisions of clause 14 (Best Value), has been taken into account in amending the Charges.
- 42.4 Any increase in the Charges or relief from the Supplier's obligations agreed by the Parties pursuant to clause 42.3 shall be implemented in accordance with clause 13 (Change).

43 Compliance with Policies

- 43.1 The Supplier shall ensure that each of the Supplier Personnel shall comply at all times with each of the Council's policies (which shall include (without limitation) rules, codes of practice, procedures and standards) as amended or updated from time to time and any additional policies which the Council may

adopt from time to time, copies of which can be found at <http://www.enfield.gov.uk>.

- 43.2 The Supplier Personnel shall include any Sub-Suppliers engaged by the Supplier at any time for the provision of the Services.
- 43.3 The Supplier shall procure that any Sub-Supplier engaged in the provision of the Services shall ensure that the Sub-Supplier's Personnel shall comply with this clause 43 (Compliance with Policies).
- 43.4 The Supplier acknowledges and agrees to support the Council's commitment to reduce CO2 emissions, which shall include compliance with the Council's environmental policy and sustainable community strategy, a copy of which has been provided to the Supplier.

44 Mistakes in information/inspection of premises

44.1 The Supplier acknowledges and confirms that prior to entering into this Contract:

- 44.1.1 it has been offered the opportunity to thoroughly inspect and carry out due diligence in relation to all Council Premises which may be used by the Supplier in relation to the provision of the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services from the Council Premises in accordance with the terms of this Contract;
- 44.1.2 it has received all information requested by it from the Council pursuant to clause 0 to enable it to determine whether it is able to provide the Services from the Council Premises in accordance with the terms of this Contract;
- 44.1.3 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 Council pursuant to clause 0;
- 44.1.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- 44.1.5 it has entered into this Contract in reliance on its own due diligence.

44.2 The Supplier is deemed to have inspected the Council Premises before tendering for this Contract and is deemed to have understood and be satisfied with all matters in relation to the Council Premises and the provision of the Services from the Council Premises before entering into this Contract.

45 Security

- 45.1 The Supplier shall, and shall procure that any Sub-Supplier and Supplier and Sub-Supplier Personnel shall:
 - 45.1.1 comply with the Council's security policy and any other rules or policies in relation to the Council Premises appended hereto or

otherwise provided to the Supplier, as amended or updated from time to time;

- 45.1.2 comply with the provisions of any Law or statutory guidance in relation to security which may be applicable to the provision of the Services; and
- 45.1.3 comply and co-operate with any investigation carried out by the Council or any other person responsible to the Council relation to security which shall include:
 - (a) making Supplier or Sub-Supplier Personnel available for interview for the purposes of the investigation (such persons shall have the right to be accompanied by the Supplier's Authorised Officer and to be advised or represented by such other person whose presence at the interview is acceptable to the Council's Authorised Officer;
 - (b) providing all documents or information, in whatever format and howsoever stored as may be required by the Council for the purposes of the investigation. The Council may retain such material for use in connection with the investigation and shall so far as possible provide the Supplier with a copy of any material retained. Any material retained shall be subject to clause 29 (Freedom of Information and Confidentiality).

46 TUPE and Employees

46.1 The Council and the Supplier agree that the following events:

46.1.1 the transfer of Services on the **Service Transfer Date** (meaning the date upon which the responsibility as an employer of the Relevant Employees moves from the transferor to the transferee); and

46.1.2 where a service provision change occurs in accordance with TUPE

shall constitute a **Relevant Transfer** and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of Transfer of Undertakings (Protection of Employment Regulations 2006 as amended "**TUPE**") thereafter as if originally made between those employees and the new provider.. On the occasion of a Relevant Transfer the Supplier shall procure that any former and new Sub-Suppliers shall comply with their obligations under TUPE.

46.2 The Council shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract (where applicable) and the Supplier shall comply and shall procure that each Sub-Supplier shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract and the Supplier shall indemnify the Council against any Losses sustained as a result of any breach of this clause 46.2 (Relevant Transfers) .

46.3 The Council has:

- 46.3.1 facilitated (working with the Outgoing Supplier (being XXXX) the provision of the following information relating to all Relevant Employees : remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise and the Outgoing Supplier has agreed it shall be responsible for the above up to the Service Transfer Date.
- 46.3.2 The Supplier shall procure (and shall procure that any relevant Sub-Supplier) is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Supplier or any Sub-Supplier in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.
- 45.7.3 Upon expiry or termination of this Contact or in the event that the Council conducts a re-tendering exercise for the Services, the Supplier hereby procures that it (and any Sub-Supplier) shall fully co-operate with the Council in relation to the provision of all information relating to any Relevant Employees.

46.4 Employment Costs

- 46.4.1 The Council has (upon liaising with the Outgoing Supplier of the Services in relation to TUPE and re-tendering of the Services) supplied to the Supplier the information, as at the date of this Contract, which is contained in Schedule 7, Part 1 (the “**First Employee List**”) regarding the identity number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those employees of the current outgoing supplier of the Services and of any Sub-Supplier of the Council who it is expected, if they remain in the employment of the outgoing supplier or of the Sub-Supplier of the Council as the case may be until immediately before the Service Transfer Date, would be Relevant Employees but the Council gives no warranty as to the accuracy or completeness of this information.

46.4.2 The Council shall supply to the Supplier an updated First Employee List ten (10) Business Days before the Service Transfer Date where possible, upon liaising with the outgoing supplier of the Services. The Council shall also supply to the Supplier within five (5) Business Days after the Service Transfer Date information, which was correct as at the Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list shall be deemed the Final Employee List. The Council gives and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.

46.4.3 The Supplier has provided to the Council, and the Council has agreed, the details set out in Schedule 7 Part 2 (the “**Proposed Workforce Information**”) which shows, in respect of each of the Services, the following information:

- (a) the workforce which the Supplier proposes to establish to provide the Services (the “**Proposed Workforce**”) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- (b) the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs (the “**Remuneration Costs**”) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (c) the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment). These costs (the ‘Reorganisation Costs’) have been calculated by the Supplier and the Sub-Suppliers on the basis of the information contained in the First Employee List.

46.4.4 If at any time (including, without limitation, after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to clauses 46.4.4, 46.4.6 and 46.4.7) there

shall be a corresponding adjustment to the Charges to compensate for any such difference.

46.4.5 If the circumstances described in clause 46.4.3(c) arise:

- (a) in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of Services; and
- (b) the Supplier and the relevant Sub-Supplier shall take all reasonable steps to mitigate any additional costs and any adjustment to the Charges shall be calculated as if they had done so.

46.4.6 In calculating any adjustment to be made to the Charges pursuant to clause 46.4.3(c) :

- (a) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce and to the extent that the Supplier has employed replacement employees on equivalent remuneration and has used all reasonable endeavours to mitigate all expenses in recruiting and employing such replacement employees;
- (b) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Supplier has been or will be compensated as a result of any indexation of the Charges under this Contract;
- (c) to avoid doubt any changes in costs which fall to be dealt with under clause 46.4.3(c) and which arise from a Change in Law shall be dealt with in accordance with the provisions of clause 46.4.3(c) and shall not be taken into account for the purposes of clause 47;
- (d) no adjustments under clause 46.4.3(c) shall be made in respect of overpayments made by the Supplier or a Sub-Supplier to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Supplier or the Sub-Supplier is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
- (e) if there are underpayments by the Supplier or a Sub-Supplier to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Charges in respect of all such liabilities of the Supplier or the Sub-Supplier for all such

underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with clauses 46.3 or **Error! Reference source not found.** to **Error! Reference source not found.**) and an appropriate increase in respect of such liabilities of the Supplier which represent ongoing costs;

- (f) in order to prevent duplication, no adjustment shall be made under this clause 46.4.6 if any indemnity given by the Council under any other provision of this Contract would apply; and
- (g) no adjustments under clause 46.4.4 shall be made to the extent that any payment is made to the Supplier or relevant Sub-Supplier under Regulation 12 of TUPE.

46.4.7 Where absolutely necessary, the Supplier may propose an adjustment to Charges pursuant to clause 46.4.3(c) by giving not less than ten (10) Business Days' notice to the Council. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to clause 46.4.3(c)

46.4.8 In relation to all matters described in clauses 46.4.4 and 46.4.6 the Supplier and the Council shall, and the Supplier shall procure that the relevant Sub-Supplier shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

46.4.9 The Council shall and the Supplier shall and shall procure that each and every Sub-Supplier shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Council including the Services and to the employees who transfer.

46.5 Union Recognition

- 46.5.1 The Outgoing Supplier has and the Supplier shall procure that, on each occasion on which the a supplier changes pursuant to this Contract, in the event that there is a Relevant Transfer, the Future Supplier shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the Future Supplier to the same extent as they were recognised before the change of identity of the Future Supplier in respect of the provision of the Services.

46.6 Indemnities

46.6.1 The Supplier shall indemnify and keep indemnified in full the Council, and at the Council's request each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Contract (**Future Supplier**) against:

- (a) all Losses incurred by the Council or any Future Supplier in connection with or as a result of any claim or demand against the Council or any Future Supplier by any person who is or has been employed or engaged by the Supplier or any Sub-Supplier in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Supplier and/or any Sub-Supplier after the Service Transfer Date;
- (b) all Losses incurred by the Council or any Future Supplier in connection with or as a result of a breach by the Supplier of its obligations under clause 46.3.1 above; and
- (c) all Losses incurred by the Council or any Future Supplier in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Supplier and/or the relevant Sub-Supplier in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Supplier and/or any Sub-Supplier to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.

46.6.2 The Supplier shall indemnify and keep indemnified in full the Council, against all Losses incurred by the Council in connection with or as a result of:

- (a) the change of employer from the Supplier to the Future Supplier (occurring by virtue of TUPE) being significant and detrimental to any of the Relevant Employees on or after any relevant Service Transfer Date as a result of the change in employer and whether such claim arises on or after the relevant Service Transfer Date;
- (b) any proposed or actual change by the Supplier to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Supplier which are to any of the Relevant Employee's material detriment on or after the relevant Service Transfer Date as a result of any such proposed changes or measures and whether such claim on or after the relevant Service Transfer Date; and
- (c) any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Supplier or Sub-Supplier to the Relevant Employees or their

representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

- 46.6.3 The indemnities in clauses 46.8.4(b) and 46.4.3(c) shall not apply in respect of any sum for which the Council is to indemnify the Supplier or a relevant Sub-Supplier pursuant to clause **Error! Reference source not found.** or as a result of any adjustment to the Charges in accordance with clause 46.4.3(c) or to the extent that the claim arises from a wrongful act or omission of the Council or any Future Supplier.
- 46.7 The Supplier shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Council provide to the Council details of any measures which the Supplier or any Sub-Supplier envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Council against all Losses resulting from any failure by the Supplier to comply with this obligation.
- 46.8 The Supplier shall (and shall procure that any Sub-Supplier shall) within ten (10) Business Days of a request by the Council or following the service of a termination notice under clause 17 or as a consequence of the Council notifying the Supplier of its intention to retender this Contract:
- 46.8.1 on receiving a request from the Council provide in respect of any person engaged or employed by the Supplier or any Sub-Supplier in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Supplier or of any Sub-Supplier as the case may be until immediately before the Termination Date, would be Relevant Employees (the **Retendering Information**);
 - 46.8.2 provide the Retendering Information promptly and at no cost to the Council;
 - 46.8.3 notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 46.8.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
 - 46.8.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent; and
 - 46.8.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been

employed or engaged in providing the Services to provide the Services save with the Council's prior written consent.

46.8.7 Without prejudice to clauses 46.7 and 46.8.7 the Supplier shall provide and shall procure that any Sub-Supplier shall provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE.

46.8.8 The Supplier shall indemnify and shall keep indemnified in full the Council and any Future Supplier against all Losses arising from any claim by any Party as a result of the Supplier or Sub-Supplier failing to provide or promptly to provide the Council and/or any Future Supplier with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.

46.9 Termination of Contract

46.9.1 On the expiry or earlier termination of this Contract, the Council and the Supplier agree that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Service being provided under this Contract (but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be) and this clause is without prejudice to such determination.

46.9.2 Upon expiry or termination of this Contract for whatever reason, the provisions of this clause 46 will apply:

(a) The Supplier and any Sub-Supplier shall procure that all wages, salaries and other benefits of any respective Relevant Employees and other employees or former employees of the Supplier or the Sub-Suppliers (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of those employees or former employees of the Supplier or Sub-Suppliers up to the date of expiry/termination are satisfied;

(b) Without prejudice to clause 46.9.2, the Supplier shall:

(i) remain (and procure that Sub-Suppliers shall remain) (as relevant) responsible for all the Supplier's or Sub-Supplier's employees (other than the Relevant Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Supplier against all Losses incurred by the Council or any Future Supplier resulting from any claim

whatsoever whether arising before on or after the date of expiry/termination by or on behalf of any of the Supplier's or Sub-Supplier's employees who do not constitute the Relevant Employees;

- (ii) in respect of those employees who constitute Relevant Employees indemnify the Council and any Future Supplier against all Losses incurred by the Council or any Future Supplier resulting from any claim whatsoever by or on behalf of any of the Relevant Employees in respect of the period on or before the date of expiry/termination (whether any such claim, attributable to the period up to and including that date, arises before, on or after the date of expiry/termination) including but not limited to any failure by the Supplier or any Sub-Supplier to comply with its obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Supplier.

- (c) The Council shall be entitled (where applicable) to assign the benefit of this indemnity to any Future Supplier.

46.10 If TUPE does not apply on the expiry or earlier termination of this Contract, the Council shall ensure that each Future Supplier (including the Council where relevant) shall offer employment to the persons employed by the Supplier or a Sub-Supplier in the provision of the Services immediately before the expiry/termination of this Contract.

46.10.1 If an offer of employment is made in accordance with clause 46.10, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with clause 47) as applied immediately before the expiry or earlier termination of this Contract including full continuity of employment, except that the Council or Future Supplier may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of clause 47.

46.10.2 Where any such offer as referred to in clause 46.10 is accepted, the Supplier shall indemnify and keep indemnified in full the Council and/or any Future Supplier on the same terms and conditions as those set out in clause 46.6 of this Contract as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this clause 46 each and every such employee shall be treated as if they were a Relevant Employee.

46.10.3 Where any such offer as referred to in clause 46.10 is not accepted and TUPE does not apply, the employee shall remain an employee of the Supplier or Sub-Supplier as appropriate.

46.11 In the event that the Supplier enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Suppliers in the same terms as those imposed on it pursuant to clauses 46 and 47 and shall procure that the Sub-Supplier complies with such terms. The Supplier shall indemnify and keep the Council indemnified in full against all Losses, incurred by the Council or any Future Supplier as a result of or in connection with any failure on the part of the Supplier to comply with this clause and/or the Sub-Supplier's failure to comply with such terms.

47 Pensions

47.1 The Supplier shall comply with all applicable Laws as they apply to this Agreement in relation to pensions.

48 Safeguarding Children and Vulnerable Adults

- 48.1 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 Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (each having the meaning given in that Act).
- 48.2 The Supplier shall:
 - 48.2.1 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”);
 - 48.2.2 monitor the level and validity of the checks under this clause 48.2 for each such member of staff; and
 - 48.2.3 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.
- 48.3 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.
- 48.4 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 48(Safeguarding children and vulnerable adults) have been met.
- 48.5 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].

49 Carbon reduction

- 49.1 The Supplier acknowledges and agrees to support the Council’s commitment to reduce CO2 emissions, which shall include compliance with the Council’s environmental policy and Sustainable Community Strategy, a copy of which has been provided to the Supplier.
- 49.2 Where requested by the Council, the Supplier shall provide to the Council any such information as may be required by the Council in order to demonstrate the Supplier’s compliance with clause 49.1.

- 49.3 The Supplier shall participate in the development of local or regional multi-agency climate change quality indicators and or carbon reduction plans where required by the Council.

50 Collusion

The Supplier warrants that (in accordance with the Non-Collusion Certificate submitted as part of its Supplier Tender and enclosed at Schedule 4 Part 1 (where a tender has been submitted)), up until the date of this Contract it has not engaged in collusion of any kind with any of the other bidders in relation to this Contract.

51 Canvassing

The Supplier warrants that, up until the date of this Contract, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Contract or its subject matter.

52 Capacity

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Supplier.

53 Co-operation

Each Party agrees to co-operate, at its own expense (but without being compelled to incur material additional expenditure), with the other Party in the fulfilment of the purposes and intent of this Contract. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

54 Public Relations and Publicity

- 54.1 The Supplier shall not make any announcement (including advertisements) in relation to or publicise in any way either the Contract (or any part thereof) or its activities under the Contract without obtaining the prior approval of the Council. Such approval shall not be unreasonably withheld and, if applicable, will be notified to the Supplier in accordance with the provisions of clause 59 (Notices).
- 54.2 The Supplier shall ensure that Supplier Personnel, Sub-Supplier Personnel and professional advisors and consultants comply with the provisions of this clause 54 (Public Relations and Publicity).
- 54.3 In circumstances where an announcement is required by Law, any governmental or regulatory Council, or by any court or other competent Council, the Party required to make the announcement shall notify the other Party as soon as is reasonably practicable in accordance with the provisions of clause 59 (Notices). The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.

- 54.4 The provisions of this clause 54 (Public Relations and Public) shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.

55 Dispute resolution

- 55.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute (“**Dispute**”) between them arising out of or in connection with the Contract within ten (10) Business Days of either Party notifying the other of the dispute.
- 55.2 In the event that the Dispute cannot be resolved within ten (10) Business Days of notification being provided in accordance with clause 55.1 the Parties shall escalate the dispute to the Matt Casey of the Council and the Managing Director/Chief Executive (or equivalent) of the Supplier.
- 55.3 If the Dispute cannot be resolved by the Parties pursuant to clauses 55.1 and 55.2 within twenty (20) Business Days of notification being provided in accordance with clause 55.1 the Dispute shall be referred to mediation pursuant to the procedure set out in clause 55.4 unless:
- 55.3.1 the Council considers that the Dispute is not suitable for resolution by mediation; or
 - 55.3.2 the Supplier does not agree to mediation,
- in which case the provisions of clause 55.4.6 will apply.
- 55.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 55.4.1 a neutral adviser or mediator (“**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator.
 - 55.4.2 the Parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - 55.4.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - 55.4.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is executed by their duly Authorised Officers.

- 55.4.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 55.4.6 If:
- (a) the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties; or
 - (b) the provisions of clauses 55.3.1 or 55.3.2 apply,
- then the provisions of clause 55.5 shall apply.
- 55.4.7 The performance of the Contract shall not be suspended, cease or be delayed by the application of the procedures set out in this clause 55 (Dispute Resolution) and Supplier shall comply fully with the requirements of the Contract at all times.
- 55.5 If the Dispute cannot be resolved by the Parties pursuant to clauses 55.1, 55.2 and 55.4 then before the Supplier may commence any court proceedings it shall serve written notice on the Council of its intention and the Council shall have fifteen (15) Business Days from receipt of the Supplier's notice in which to reply requiring the Dispute to be referred to arbitration in accordance with the provisions in clause 55.7.
- 55.6 In its notice to the Council pursuant to clause 55.5, the Supplier may request that the Dispute is referred to arbitration, to which the Council may, in its sole discretion, consent.
- 55.7 If:
- 55.7.1 the Council requires the Dispute to be referred to arbitration in accordance with clause 55.5; or
 - 55.7.2 the Council consents to the Supplier's request to refer the Dispute to arbitration in accordance with clause 55.6,
- the Dispute shall be referred to arbitration and the Parties shall comply with the following provisions:
- 55.7.3 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("LCIA") procedural rules shall be applied and are deemed to be incorporated into this Contract (save that in the event of any conflict between those rules and this Contract, this Contract shall prevail);
 - 55.7.4 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);

55.7.5 the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA; and

55.7.6 the arbitration proceedings shall take place in London.

55.8 Nothing in this clause 55 (Dispute Resolution) shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

56 Authorised Representatives

56.1 The Council shall, prior to the Commencement Date, appoint both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Authorised Officer is unavailable) to act as its Authorised Representatives for the purpose of this Contract.

56.2 The Supplier shall, prior to the Commencement Date, appoint both a Contract Manager and a Deputy Contract Manager (to act in those instances where the Contract Manager is unavailable) to act as its Authorised Representatives for the purpose of this Contract.

56.3 The identity and contact details for the Authorised Representatives are as listed at Schedule 8 (Contract Management).

56.4 Any changes to the contact details under clause 56.3 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause 59 (Notices).

56.5 The Authorised Representatives shall have authority to act on behalf of the Council and the Supplier respectively (as applicable) for all purposes in connection with this Contract unless otherwise notified to the other Party in writing in accordance with clause 59 (Notices).

56.6 The Authorised Representatives shall each be entitled to give directions to/receive notices and instructions from each other as direct representatives of the Parties from time to time for any purpose under or in connection with this Contract, except as otherwise notified by one Party to the other in writing in accordance with clause 59 (Notices).

56.7 The Council reserves the right to reject the appointment of any individual as Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Services or is any other way unsuitable for the role.

57 NOT USED

58 No Agency

58.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Supplier.

- 58.2 Save as expressly provided otherwise in this Contract, the Supplier shall not be, or be deemed to be, an agent of the Council and the Supplier shall not hold itself out as having authority or power to bind the Council in any way.
- 58.3 Without limitation to its actual knowledge, the Supplier shall for all purposes of this Contract, be deemed to have such knowledge in respect of the provision of the Services as is held (or ought reasonably to be held) by any Supplier Personnel or Sub-Supplier or Sub-Supplier Personnel.

59 Notices

- 59.1 A notice (or any other communication) from one Party to the other under or in connection with this Contract shall be:
- 59.1.1 in writing;
 - 59.1.2 signed on behalf of the Party giving it;
 - 59.1.3 marked for the attention of the Representative of the receiving Party as provided for in clause 54 (Public Relations and Publicity); and
 - 59.1.4 sent by a delivery method listed in clause 59.2.
- 59.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

Delivery Method	Deemed Delivery
By hand	On signature of a delivery receipt.
By pre-paid first class post, recorded delivery or other next Business Day delivery service	At 09:00 on the second Business Day after posting.
By fax	At the point of transmission or, if transmitted outside of Business Hours, at 09:00 on the next Business Day.
By document exchange (DX)	At 09:00 on the second Business Day after being put into the DX.
By electronic mail	Save for when returned as undelivered, either at the time of sending or, if transmitted outside of Business Hours, at 09:00 on the next Business Day.

- 59.3 All references to the time of deemed delivery in clause 59.2 are to local time in the place of deemed receipt.
- 59.4 This clause shall not apply to the service of proceedings or any other document in connection with any legal action or, if applicable, in connection with any other method of dispute resolution as provided for in clause 55 (Dispute Resolution).

60 Change in Currency

60.1 All payments under this Contract shall be in pounds sterling (£GBP). If £GBP ceases to be used as a currency in England or the government of England recognises a currency other than £GBP ("**New Currency**") as the lawful currency of England then:

60.1.1 all payments under this Contract shall be in the New Currency from the date of its adoption by England;

60.1.2 (unless prohibited by Law) any conversion from the Pound to the New Currency shall be at the official rate of exchange recognised by the government of England;

60.1.3 this Contract shall be subject to such reasonable changes in interpretation as may be appropriate to minimise the economic effect on the Parties to this Contract of the adoption by the government of England of the New Currency; and

60.1.4 any changes required under this clause 60 (Change in Currency) shall be implemented by the Supplier at no cost to the Council.

61 Severability

61.1 If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

62 Waiver

62.1 A waiver of any right or remedy either by Law or under this Contract shall only be effective if it is notified to the other Party in accordance with the provisions of clause 59 (Notices) and is expressly stated to be a waiver.

62.2 No waiver of any right or remedy arising from a breach of this Contract shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Contract.

62.3 Any failure or delay by a Party to exercise any right or remedy either by law or under this Contract shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by law or under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.

63 Assistance in legal proceedings

63.1 The Supplier shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or expected legal proceedings in which the Council is or may be involved or any relevant internal disciplinary hearing at the Council.

63.2 The Supplier shall ensure that its servants, employees, agents, Sub-Suppliers, Suppliers, professional advisors and consultants are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.

63.3 In circumstances where:

63.3.1 it is reported that Losses (incurred by any person or body) have either been caused by or have been contributed to by an act or omission on the part of the Supplier; and

63.3.2 the Council decides to, in light of such finding, make a payment to or provide some other benefit to such person or body,

then the Supplier shall either reimburse the Council the amount of any such payment or pay to the Council the reasonable cost of any such benefit as is applicable and proportionate to the act or omission of the Supplier. The Council may also deduct any such amounts from any payment otherwise due to the Supplier under this Contract.

64 [NOT USED]

65 Third Party Rights

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

66 Entire Agreement

66.1 This Contract, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.

66.2 The Supplier acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

66.3 Nothing in this clause 66 (Entire Agreement) shall operate to exclude any liability for fraud.

67 Double recovery

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the provisions of this Contract or otherwise.

68 Counterparts

68.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

- 68.2 No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.

69 Law and jurisdiction

- 69.1 This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 69.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

Schedule 1

Specification

[INSERT]

Schedule 2

Not Used

Schedule 3

Charges and Payment

Schedule 4

Supplier's Tender

[SET OUT DETAILS OF AGREED CHARGES/PAYMENTS FOR THE SERVICES HERE]

[INSERT]

Schedule 5

Property

Part 1. [Leases]

[[INSERT LIST OF COUNCIL PREMISES TO BE LEASED TO THE CONTRACTOR FOR DELIVERY OF THE SERVICES AND ATTACH COPY LEASE(S)]]

Part 2. [Licences]

[[INSERT LIST OF COUNCIL PREMISES TO BE LICENCED TO THE CONTRACTOR FOR DELIVERY OF THE SERVICES AND ATTACH COPY LICENCE(S)]]

Schedule 6

Exit Management Plan

[INSERT]

Schedule 7

Employment and Pensions

Part 1. First Employee List

[INSERT (see clause **Error! Reference source not found.**)]

Part 2. Proposed Workforce Information

[INSERT (see clause **Error! Reference source not found.**)]

Part 3. Bulk Transfer Arrangements

[INSERT If applicable (see clause **Error! Reference source not found.**)] OR Delete]

Schedule 8

Contract Management

1 Authorised Representatives

1.1 Council:

1.1.1 Authorised Officer: [INSERT DETAILS]

1.1.2 Deputy Authorised Officer: [INSERT DETAILS]

1.2 Supplier:

1.2.1 Contract Manager: [INSERT DETAILS]

1.2.2 Deputy Contract Manager: [INSERT DETAILS]

2 Key personnel

[] OR [NOT USED]

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 9

Disaster Recovery

[INSERT PLAN (if used)]

Schedule 10

NOT USED

Executed as a DEED by affixing the
common seal of THE MAYOR AND
BURGESSES OF THE LONDON BOROUGH
OF ENFIELD in the presence of:

.....
Authorised Signatory

EXECUTED as a DEED by [NAME OF
SUPPLIER], acting by)
[NAME OF DIRECTOR], a director, in)
the presence of:

.....
Signature of Director

Director/Company Secretary

Signature:

Print Name:

Address:
.....

Occupation:

ANNEX

Council Policies

In accordance with clause 5 (Standard of Performance) the Supplier has been given notice of, and must comply with (without limitation) the following Policies, and any other Policies provided to it during the Term, as amended or updated:

- Data Protection
- Security
- Equality / non-Discrimination
- FOI
- Environmental policy and sustainable community strategy
- Health & Safety
- Dignity at Work
- Staff Information Security
- Whistleblowing
- Publicity
- Anti-Fraud / Money Laundering
- **[ANY OTHERS?]**