

DATED [ ]

THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF ISLINGTON

and

[ ]

CONTRACT FOR THE PROVISION OF SUPPORTED LIVING SERVICES FOR  
ADULTS WITH LEARNING DISABILITY  
(CONTRACT NO. 1718-0173 XXX)

Commented [CE1]: Add contract reference

Director of Law and Governance  
Resources Directorate  
Islington Council  
7 Newington Barrow Way  
London N7 7EP

Ref. ROC/ACCA/1152



## **CONDITIONS OF CONTRACT**

### **CONTENTS**

<b>Condition</b>	<b>Subject matter</b>
------------------	-----------------------

#### **PART A: GENERAL PROVISIONS**

- |           |                                       |
|-----------|---------------------------------------|
| <b>1.</b> | <b>DEFINITIONS AND INTERPRETATION</b> |
| <b>2.</b> | <b>FORM OF CONTRACT</b>               |
| <b>3.</b> | <b>CONTRACT PERIOD</b>                |

#### **PART B: PROVIDER'S OBLIGATIONS AND PERSONNEL**

- |            |                                                      |
|------------|------------------------------------------------------|
| <b>4.</b>  | <b>THE PROVIDER'S OBLIGATIONS</b>                    |
| <b>5.</b>  | <b>PERFORMANCE OF SERVICES AND THE SPECIFICATION</b> |
| <b>6.</b>  | <b>THE PROVIDER'S PERSONNEL</b>                      |
| <b>6A.</b> | <b>LONDON LIVING WAGE</b>                            |
| <b>6B.</b> | <b>BLACKLISTING</b>                                  |

#### **PART C: AUTHORISED OFFICERS**

- |           |                                         |
|-----------|-----------------------------------------|
| <b>7.</b> | <b>THE COUNCIL'S AUTHORISED OFFICER</b> |
| <b>8.</b> | <b>THE CONTRACT MANAGER</b>             |

#### **PART D: WARRANTIES, LIABILITIES AND INSURANCE**

- |            |                                                |
|------------|------------------------------------------------|
| <b>9.</b>  | <b>PROVIDER'S WARRANTIES &amp; LIABILITIES</b> |
| <b>10.</b> | <b>INSURANCE</b>                               |

#### **PART E: MONITORING AND VARIATIONS**

- |            |                                                      |
|------------|------------------------------------------------------|
| <b>11.</b> | <b>MONITORING OF THE SERVICES</b>                    |
| <b>12.</b> | <b>CONTINUOUS IMPROVEMENT AND PERFORMANCE REVIEW</b> |
| <b>13.</b> | <b>VALUE FOR MONEY REVIEW</b>                        |
| <b>14.</b> | <b>VARIATION OF THE SERVICE</b>                      |

#### **PART F: PAYMENT**

- 15. CERTIFICATES AND PAYMENTS
- 16. RECOVERY OF MONIES ON BEHALF OF THE COUNCIL
- 17. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE
- 18. VALUE ADDED TAX
- 18A. TAX COMPLIANCE

#### **PART G: DEFAULT, DISPUTE RESOLUTION AND TERMINATION**

- 19. DEFAULTS
- 20. DISPUTE RESOLUTION AND EXPERT DETERMINATION
- 21. TERMINATION

#### **PART H: IPR AND INFORMATION**

- 22. COPYRIGHT AND INTELLECTUAL PROPERTY
- 23. CONFIDENTIALITY & PUBLICITY
- 24. FREEDOM OF INFORMATION
- 25. DATA PROTECTION

#### **PART I: OTHER PROVISIONS**

- 26. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES
- 27. HEALTH & SAFETY
- 28. THE PROVIDER'S WHISTLEBLOWING OBLIGATIONS
- 29. QUALITY & ENVIRONMENTAL MANAGEMENT SYSTEMS
- 30. TUPE
- 31. FORCE MAJEURE
- 32. COMPLAINTS
- 33. USE OF SUBSTITUTE PROVIDER
- 34. ASSIGNMENT AND SUB CONTRACTING
- 35. NOTICES
- 36. PREVENTION OF CORRUPTION
- 37. GRATUITIES TIPS AND CHARGES
- 38. ENTIRE AGREEMENT AND SURVIVAL PROVISIONS
- 39. WAIVER
- 40. EMERGENCIES
- 41. LAW AND JURISDICTION
- 42. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
- 43. COUNTERPARTS
- 44. ACCESS AGREEMENTS
- 45. DUE AUTHORISATION AND EXECUTION

**SCHEDULE 1A: SPECIFICATION**  
**SCHEDULE 1B: TENDER RESPONSE**  
**SCHEDULE 2: BOND & GUARANTEE**  
**SCHEDULE 3: VALUE FOR MONEY REVIEW TOOLS**  
**SCHEDULE 4: SPECIAL CONDITIONS**  
**SCHEDULE 5: PRICE AND PAYMENT**  
**SCHEDULE 6: PROCESSING, PERSONAL DATA AND DATA SUBJECTS**



**THIS AGREEMENT** is made on

**BETWEEN**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of the Town Hall, Upper Street, London N1 2UD *[or insert details of third party authority permitted to use the DPS as identified in the Contract Notice]* (hereinafter called "**the Council**")

and

- (2) [ ] whose registered office is at [ ] (registered no [ ]) (hereinafter called "**the Provider**" of the other party)

(hereinafter collectively called "**the Parties**" and independently called "**the Party**")

**WHEREAS**

- A. The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- B. The Council placed a Contract Notice on [ ] (the **Contract Notice**) in the Official Journal of the European Union to establish a Dynamic Purchasing System (**DPS**) for the procurement of supported living services for adults with learning disability (**the Full Range of Services**).
- C. The Full Range of Services comprised of several Lots.
- D. The Service Provider was successful in being admitted to the Lot for *[Supported living for people with learning disabilities / Specialist supported living for people with profound and multiple learning disabilities / Specialist supported living for people with learning disabilities and behaviour that challenges]*
- E. Following an invitation to tender the Service Provider has been awarded a contract for the Services as more particularly described in this Agreement.
- F. The Parties have executed this Agreement to appoint the Service Provider to provide the Services.

**Commented [CE2]:** This can be added now? When was this published?

**Commented [CE3]:** To be deleted as appropriate

**NOW THEREFORE** it is agreed between the Parties as follows:

**PART A: GENERAL PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

In this Contract the following expressions shall (save where the context may otherwise require) have the following meanings:

**“2000 Act”**

means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;

**“Authorised Officer”**

shall include the person or persons notified by the Council to the Provider pursuant to **Condition 7** (Council’s Authorised Officer);

**“Best Value”**

means the Council’s duty to ensure continuous improvement in the way in which its functions are exercised having regard to:

- (a) economy, efficiency and effectiveness as that duty is defined in the Local Government Act 1999, all subsidiary legislation and Government guidance made thereunder and relevant Technical Releases of the Audit Commission; and
- (b) the Councils’ independent objectives including (but not limited to) performance of equality, environmental welfare and regeneration; each of which shall be considered and assessed with regard to every element of the Services;

**“Bribery Act”**

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

**“Bond”**

means a bond to be given by a bank or reputable insurance company approved by the Council in the form set out in **Schedule 2**;

**“Commencement Date”**

means **XX/XX/XXXX** or such other alternative date as may be agreed between the Parties in writing;

**Commented [CE4]:** Date of contract start

**“Confidential Information”**

means Information, data and material of any nature which either Party may receive or obtain in connection with the Contract and:

- (1) which comprises Personal Data (as defined in the GDPR); or
- (2) the disclosure of which would or would be likely to prejudice the commercial interests of either Party or any other person and the public interest in maintaining non disclosure would outweigh the public interest in disclosure; or
- (3) the disclosure of which by the Council would constitute a breach of confidence actionable by the Provider or a third Party; or
- (4) which constitutes a trade secret;

**“Contract”**



means the agreement concluded between the Council and the Provider comprising these Conditions and the Tender Documents;

**“Contract Documents”**

means the contract documents incorporated in or referred to in this Contract and listed in 1B hereof;

**“Contract Manager”**

shall include the person appointed as contract manager by the Provider in accordance with **Condition 8** (Contract Manager) or (in the event of the Contract Manager’s temporary absence from work) that person’s deputy also appointed in accordance with **Condition 8**;

**“Contract Period”**

means the period referred to in **Condition 3** (Contract Period);

**“Contract Price”**

means the sum to be paid to the Provider for the delivery of the Services in accordance with the Tender Documents and as set out in Schedule 5;

**“Council’s Guidelines”**

shall include relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council (including but not limited to the Constitution of the Council) as set out or referred to in the Specification and the Tender Documents or being reasonably notified to the Provider by the Council or the Authorised Officer from time to time, as any of the same may from time to time be reasonably amended by the Council and notified to the Provider;

**“Council’s Publication Scheme”**

shall include the publication scheme adopted by the Council pursuant to section 19 of the 2000 Act and as amended by the Council from time to time;

**“Customer”**

shall include any person assessed by the Council as being eligible for the Service or any part thereof;

**“Default Notice”**

means a notice served on the Provider in accordance with **Condition 19** (Defaults);

**“Default”**

shall include any incident of performance of the Services by the Provider which is not to the standard anticipated by the Council or not in accordance with any of the terms of the Contract or would permit the Council to issue a Default Notice;

**“Directive”**

means the European Acquired Rights Directive 77/187;

**“Data Loss Event”**

means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**“Data Protection Impact Assessment”**

means an assessment by the 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 legislation as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**“Data Subject Access Request”**

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

**“DOTAS”**

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992 and as may be amended from time to time;

**“DPA”**

means Data Protection Act 2018;

**“Environmental Information Regulations”**

means the Environmental Information Regulations 2004;

**“Expert”**

means the person appointed by the mutual agreement of the Parties, or in accordance with **Condition 20** (Dispute Resolution and Expert

Determination), the cost of whose appointment shall be equally borne by each Party subject to the provisions of **Condition 20**;

**“External Audit”**

means the independent external audit of the Council’s accounts under the Audit Commission Act 1998 or under the Local Government Act 1999 in relation to Best Value Performance Plans;

**“Force Majeure”**

shall include an event referred to in **Condition 31** (Force Majeure);

**“GDPR”**

means the General Data Protection Regulation (Regulation (EU) 2016/679);

**“General Anti-Abuse Rule”**

means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

**“Guarantee”**

means a guarantee to be given by the Provider’s ultimate holding company in the form set out in **Schedule 2**;

**“Halifax Abuse Principle”**

means the principle explained in the CJEU Case C-255/02 Halifax and others;

**“Health and Safety Guidelines”**

means all rules, procedures and requirements concerning health and safety at work notified to the Provider by the Council from time to time;

**“Information”**

means information as defined in section 84 of the 2000 Act;

**“Insurance”**

shall include the policies of insurance which the Provider is obliged to take out and maintain under **Condition 10** (Insurance);

**“Intellectual Property Rights”**

shall include the rights of ownership in respect of all manner of intellectual property rights (including, without limitation, patents, trade marks and service marks, copyright and design rights) and know-how as set out in **Condition 22** (Copyright and Intellectual Property);

**“Key Performance Indicators”**

shall include (where applicable) the indicators by which the Provider’s levels of performance of the Services is to be measured as set out in the Tender Documents as amended from time to time by the

agreement of the Parties whether following a Best Value Review, a review required pursuant to the Race Relations Act 1976 (as amended) and other applicable legislation or otherwise;

**“Law”**

shall include all Acts of Parliament and statutory regulations, instruments or orders, court decisions or judgements having the force of law and codes of practice issued thereunder and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;

**“LED”**

means Law Enforcement Directive  
(Directive (EU) 2016/680);

**“Location”**

shall include any premises at which the Services are to be provided including any land and/or premises;

**“London Living Wage”**

means the basic hourly wage of £10.20 (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Greater London Authority;

**Commented [CE5]:** To be updated in incorrect

**“New Joiner(s)”**

shall include a person who is employed by the Provider after the Transfer Date to undertake the Services;

**“Occasion of Tax Non-Compliance”**

means:

(a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2016 is found on or after 1 April 2017 to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2016 gives rise, on or after 1 April 2017, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion;

**“Performance Standard”**

shall include the standard to which the relevant part of the Services is to be performed as set out in or inferred from the Specification;

**“PIDA 1998”**

means the Public Interest Disclosure Act 1998;

**“Prescribed Rate”**

means the rate of interest payable by either Party when in default of its payment obligations hereunder being 3% (three percent) above the base rate for the time being of the Co-operative Bank p.l.c.;

**“Protective Measures”**

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

**“Provider’s Personnel”**

means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Provider engaged in the performance of its obligations under this Contract;

**“Qualifying Contract”**

means a contract with a value of £5million or over;

**“Quality and Environmental Management Systems”**

shall include the system of operating and controlling the performance of the Services adopted by the Provider under **Condition 29**;

**“Regulations”**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**“Relevant Review Date”**

means six weeks post-“commencement date” and each subsequent period of three months or such other dates as may be agreed between the Parties;

**“Relevant Tax Authority”**

means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;

**“Request for Information”**

shall have the meaning set out in section 8 of the 2000 Act or any apparent request for Information under the 2000 Act or the Environmental Information Regulations;

**“Schedule”**

means a schedule to these Conditions;

**“Service(s)”**

shall include any or all of the services to be provided by the Provider pursuant to this Contract or such of them as may from time to time remain the subject of this Contract as are more particularly described in the Specification;

**“Service Data”**

shall include any data and/or information howsoever stored which is compiled in relation to all or any of the Services or part thereof;

**“Specification”**

means the specifications set out in the Tender Documents relating to the provision of the Services as varied by the Council from time to time in accordance with **Condition 14** (Variation of the Service);

**“Sub-processor”**

means any third Party appointed to process Personal Data on behalf of the Provider related to this Contract.

**“Tender Documents”**

shall include the documents contained herein and/or annexed hereto and contained in Schedule 1, including the following:  
these Conditions of Contract,  
the Specification,  
the Pricing Submissions as completed by the Provider, and  
the Tender Documentation;

**“Transfer Date”**

means “commencement date”transfer

**“Transferring Employee(s)”**

means an employee of any person (including the Council) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out the contract between the Council and the Provider, a contract of employment with someone other than the Council;

**“Value for Money Review”**

means a review carried out by the Council pursuant to Best Value encompassing the requirement to challenge, compare, consult and compete under **Condition 13** (Value for Money Review);

**“Value for Money Review Date”**

means in respect of each and every element of the Services (considered individually and as a whole) the date(s) for Value for Money Review(s) which the Council considers in its discretion to be appropriate to ensure Best Value is achieved;

**“Variation”**

shall include a variation to the Contract made by notice by the Authorised Officer to the Provider in accordance with **Condition 14** (Variation of the Service);

**“Warranties”**

shall include the warranties, representations, covenants and undertakings made and/or given by the Provider under **Condition 9** (Provider’s Warranties and Liabilities);

**“Whistleblowing Policy and Guidelines”**

means the policy and guidelines issued and updated from time to time by the Council (which are available on its website) in relation to the issue of whistleblowing including the Council’s *‘Whistleblowing Policy for Council Contractors’* as amended from time to time;

**“Working Day”**

means Monday to Friday excluding bank and public holidays.

Unless the context requires otherwise, words in the singular may include the plural and vice versa.

Where the Provider is more than one person those persons shall be jointly and severally liable under the Contract.

Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.

Words importing the masculine gender shall include the feminine gender and vice versa.

The headings in this Contract are for ease of reference only and do not affect its interpretation or construction.

All stipulations of the Contract as to time shall be of the essence (except any stipulations as to the time of payment by the Council to the Provider).

1B The following documents shall be deemed to form and be read and construed as part of this Contract:

List of documents in order:

1. These terms and conditions of Contract;
2. Special Conditions included in Schedule 4;
3. Processing, Personal Data and Data Subjects, included in Schedule 6;
4. Price and Payment, included in Schedule 5;
5. The tender documents including the Specifications, included in Schedule 1A
6. Tender response, included in Schedule 1B
7. Performance Bond & Guarantee at Schedule 2 (where applicable)
8. Value for money review tools, included in Schedule 3

1C In the event of any conflict or inconsistency arising between any of the Contract Documents, unless expressly indicated to the contrary, the order of priority of the Contract Documents is deemed to be the order in which they are listed in Clause 1B above.

## **2. FORM OF CONTRACT**

### **Sufficiency of Information**

2.1 Subject to the Council's warranties contained in this Contract the Council does not warrant the accuracy of any representation or statement of fact or law given to the Provider by the Council, its servants or agents at any time before the execution of this Contract and the Council shall not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as the relevant representation, statement, information or advice was made or given fraudulently.

### **Copyright**

2.2 Any Intellectual Property Rights in the Contract shall remain the property of the Council; the Provider may obtain or make at its own expense further copies of the Contract exclusively for the use of the Provider for the performance of the Services.

### **Standing Orders of the Council**

2.3 The Contract shall be subject to the Council's Guidelines (including the Constitution of the Council) current from time to time, the contents of which the Provider acknowledges it has had sight of and is fully aware of their contents.

## **3. CONTRACT PERIOD**



- 3.1 The Contract Period shall extend until the contract is terminated in accordance with the provisions set out in this Agreement.

## **PART B: PROVIDER'S OBLIGATIONS AND PERSONNEL**

### **4. THE PROVIDER'S OBLIGATIONS**

- 4.1 The Provider shall be subject to the Conditions and carry out and complete the Services in compliance with the Contract.
- 4.2 At all times, the Provider shall provide the Services described in the Specification with due skill, care and diligence, with the utmost good faith and in accordance with the Specification and any written instructions of the Authorised Officer.
- 4.3 The Provider shall ensure that files, books and records are kept for a period of **six (6) years** after expiry of the Contract Period in respect of the provision of the Service to the extent:
- 4.3.1 required by the Conditions and the Specification and/or law;
- 4.3.2 required to record details of any and all monies collected on behalf of the Council; and
- 4.3.3 otherwise reasonably required ensuring the Service is provided in a proper and timely fashion.
- 4.4 The Provider shall at all times during the provision of the Service allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:
- 4.4.1 all work places used by the Provider for the purposes of inspecting works being performed for the provision of the Service;
- 4.4.2 all work places used by the Provider for the purposes of inspecting records and documents in the possession, custody or control of the Provider in connection with the provision of the Service;
- 4.4.3 any personnel or agent of the Provider for the purposes of interviewing such persons in connection with the provision of the Service; and
- 4.4.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.
- 4.5 The Provider shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Contract.
- 4.6 The Provider shall at all times comply with the Constitution of the Council referred to under **Condition 2.3** (Form of Contract) and any relevant financial regulations.
- 4.7 If the Provider or its personnel default in complying or fail to comply with this Condition, any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the

time spent by its officers (and any third parties employed by the Council) as a result of the default or failure, may be deducted from any sums due or to become due to the Provider under this Contract or shall be recoverable by the Council from the Provider as a debt.

- 4.8 The Provider shall provide each year to the Authorised Officer a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.
- 4.9 The Provider shall not advertise the fact that it is providing Services to the Council under this Contract other than with the written permission of the Council.
- 4.10 The Provider shall at all times provide, maintain, replace (as necessary) and insure all equipment (including software) used for the performances of the Services. In the event of failure to do as aforesaid, the Provider will be liable for and will fully indemnify the Council against all liabilities, damages, costs, expenses, charges, losses, demands and proceedings arising as a consequence of failure to do as aforesaid.
- 4.11 The Provider shall not in any way whatsoever be, act or hold itself out as an agent of the Council nor make representations or warranties on behalf of the Council and the Provider undertakes to contract with the Council as principal and not as agent.
- 4.12 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 4.13 The Provider shall procure the execution and delivery to the Council of the Bond and/or Guarantee (if applicable).

## **5. PERFORMANCE OF SERVICES AND THE SPECIFICATION**

- 5.1 The Provider shall at all times during the Contract Period perform the Services comprehensively with due skill, care and diligence strictly in accordance and in compliance with the Contract, including but not limited to:
  - 5.1.1 the Specification and implementation and maintenance of the Quality and Environmental Management Systems;
  - 5.1.2 the Council's Guidelines in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Council and supplied to the Provider;
  - 5.1.3 the instructions issued to the Provider by any Authorised Officer under or in connection with the Contract;
  - 5.1.4 all relevant Law;

5.1.5 in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Customers and other occupiers of the Locations and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council.

5.2 The Provider's performance shall be monitored by the Council and shall in particular be measured on the basis of the Key Performance Indicators (where applicable) and on the level of compliance with the Specification.

## **6. THE PROVIDER'S PERSONNEL**

6.1 The Provider shall employ sufficient suitably qualified personnel to ensure that the Services are provided in all respects to the Specification throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise.

6.2 Without prejudice to the generality of **Condition 5** (Performance of Services and the Specification) the Provider shall perform the Services in accordance with the arrangements relating to personnel stated in the Specification.

6.3 The Provider shall notify the Authorised Officer of any material amendments to the personnel arrangements during the Contract Period whether or not they fall within the provisions of **Condition 6.2** above.

6.4 The Provider shall employ or engage in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.

6.5 The Provider shall, for the purposes of enabling the Council and the Authorised Officer to satisfy themselves as to the Provider's compliance with this **Condition 6** maintain at all times accurate and up-to-date records of all personnel in the Provider's employ who are and who are likely to have any connection with the performance of the Services including employee attendance records and shall afford the Council and the Authorised Officer full access to these records upon reasonable notice in writing by the Authorised Officer.

6.6 The Authorised Officer shall, on giving notice together with reasons to the Contract Manager or the relevant Assistant Contract Manager, have the power to require the Provider, (but not unreasonably or vexatiously), to remove from the provision of the Services any individual member of the Provider's personnel or of its sub-Providers including the Contract Manager or an Assistant Contract Manager.

6.7 The Council shall under no circumstances be liable either to the Provider or to its personnel for any cost, expense, liability, loss or damage occasioned by removal under **Condition 6** and subject as aforesaid the Provider shall fully indemnify the Council in respect of any claim made by the personnel.

- 6.8 For the avoidance of doubt, the Provider shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the Commencement Date and fully indemnifies the Council against any liability arising as a consequence thereof.
- 6.9 In carrying out the Services, the Provider shall take all reasonable steps to minimise any nuisance or annoyance to the Customer.
- 6.10 With regard to police checks of personnel, the Provider undertakes as follows:
- 6.10.1 to ensure that all of the Provider's Personnel are police checked in accordance with the Law (including but not limited to the Care Standards Act 2000) and the Codes of Practice for Registered Persons and other Recipients of Disclosure Information under section 122 of the Police Act 1997;
  - 6.10.2 police checks carried out via the Provider will only be accepted upon written confirmation from the Disclosure and Barring Service (DBS) that the Provider is registered with this service for the purposes of initiating police checks;
  - 6.10.3 where the Provider asks the Council to process police checks, the Provider must do so via the Council's Designated Officer; and
  - 6.10.4 police checks in connection with the Service provided under this Contract must be initiated to obtain the highest level of disclosure available from the Disclosure and Barring Service in respect of each prospective employee, volunteer or other persons who may work with, give support to, or otherwise have substantial contact with Customers who are the subject of this Contract.
- 6.11 The Provider will ensure that all Provider's Personnel have a clear commitment to abide by the London Child Protection Committee (LCPC) procedures when dealing with matters affecting the welfare of young people.
- 6.12 The Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.
- 6.13 The Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Council when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children.

#### **6A. LONDON LIVING WAGE**

6A.1 Without prejudice to any other provision of this contract, the Service Provider shall:

6A.1.1 ensure that none of its employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by the Council).

6A.1.2 provide to the Council such information concerning the payment of the London Living Wage to its employees or to the employees of its sub-contractors

engaged in the provision of the Services as the Council may reasonably require from time to time; and

6A.1.3 co-operate and provide all reasonable assistance to the Council in monitoring the effect of the London Living Wage on the quality of service provided under this Contract.

## **6B. BLACKLISTING**

The Service Provider must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 2018 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Council to terminate the Contract with immediate effect.

## **PART C: AUTHORISED OFFICERS**

### **7. THE COUNCIL'S AUTHORISED OFFICER**

- 7.1 The Council shall notify the Provider of the person appointed to be the Authorised Officer (and of any variation of such nominee).
- 7.2 The function of the Authorised Officer shall be to liaise with and give instructions to the Provider and its personnel in relation to all matters concerning the performance by the Provider of its obligations under the Contract and to determine any matters or issue any notices as may be the function of the Authorised Officer under this Contract.
- 7.3 The Authorised Officer shall have power on behalf of the Council to issue instructions and directions on any matter relating to the performance of the Services and exercise the functions and powers of the Council under this Contract and the Provider shall observe and comply with all such instructions or directions, which the Authorised Officer shall use reasonable endeavours to confirm in writing.

### **8. THE CONTRACT MANAGER**

- 8.1 The Provider shall ensure that at all times during the Contract Period there shall be one member of the Provider's personnel who has been and remains appointed as the Contract Manager with authority to represent the Provider for all purposes, the identity and contract details of whom shall be notified to the Council 14 days prior to the Commencement Date.
- 8.2 The Contract Manager shall be appointed subject to his identity having the written approval of the Council and his being available all times throughout the Contract Period.

- 8.3 The Contract Manager will follow and comply with any instructions or directions given or issued by the Authorised Officer in connection with performance of the Services.

## **PART D: WARRANTIES, LIABILITIES AND INSURANCE**

### **9. PROVIDER'S WARRANTIES AND LIABILITIES**

- 9.1 The Provider from the date hereof and throughout the Contract Period warrants, represents and undertakes to the Council as follows:
- 9.1.1 it has in all respects complied with every requirement in the Tender Documents (where applicable);
- 9.1.2 it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract including the Specification and these Conditions and it is not contracting with the Council in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council except those contained in the Invitation to Tender (if applicable) and this Contract;
- 9.1.3 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with or arising out of the Tender are true, complete and accurate in all respects;
- 9.1.4 it has full power and authority to enter into the Contract and thereafter to perform the Services;
- 9.1.5 it is of sound financial standing and the Provider is not aware of any circumstances (other than such circumstances as expressly disclosed in writing by the Provider to the Council) which may adversely affect any financial standing in the future;
- 9.1.6 it has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and other resources available to it in order to carry out the Service in accordance with the Specification;
- 9.1.7 it has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services; and
- 9.1.8 it will perform all of the Services in accordance with the Specification with due skill, care and diligence and within the times stated in the Specification, which times shall be of the essence.
- 9.2 The Provider shall be liable for and shall fully and promptly indemnify and hold harmless the Council, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or

suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with the Provider's obligations under the Contract in respect of:

- 9.2.1 any claims, demands or proceedings brought against the Council by any third party by reason either directly or indirectly of any default or breach by the Provider of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;
- 9.2.2 any fraudulent or negligent act or omission by the Provider (including, without limitation, any misappropriation of monies properly due to the Council);
- 9.2.3 any liability of the Council to pay compensation to a Customer arising out of the Provider's default in respect of repairs or failure to perform the Services in accordance with the Contract; and
- 9.2.4 any failure by the Provider to perform the Services in accordance with all and any terms of the Contract (including but not limited to the Specification).
- 9.3 The Provider's liability to the Council under **Condition** 9.2 shall be without prejudice to any other right or remedy available to the Council and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever the Bond or the Guarantee as appropriate.
- 9.4 Except as provided by this Contract, the Council shall not under any circumstances be liable to the Provider whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, in the course of or in connection with the provision by the Provider of the Services or the access to or use of the Council's premises or facilities by the Provider or the Provider's personnel.
- 9.5 **Condition** 9.4 shall not apply in relation to:
  - 9.5.1 any failure by the Council to make proper payment to the Provider in accordance with the terms of the Contract; and
  - 9.5.2 any deliberate or negligent act or omission of the Council or any of its employees giving rise to death or personal injury.

## **10. INSURANCE**

- 10. 1 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for

the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

- 10.2 Notwithstanding the generality of clause 10.1 the Provider shall hold public liability insurance in the sum of at least £10,000,000 in respect of any one occurrence or series of occurrences arising out of one event.
- 10.3 The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 10.4 The Provider shall before the Commencement Date and annually thereafter and at such times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this **Condition 10**.
- 10.5 The Provider shall before the Commencement Date and annually thereafter and at such times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this **Condition 10** or a broker's verification of insurance to demonstrate that the appropriate cover is in place.
- 10.6 In the event that the Provider fails to comply with any of these requirements the Council shall be entitled to effect such insurance itself and recover the proper and reasonable costs of so doing from the Provider together with an administrative charge equal to ten per centum (10%) of the total cost of obtaining such insurance (subject to a maximum administrative charge of £500).

#### **Professional Indemnity**

- 10.7 The Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £2,000,000 for each individual claim or such higher limit as the Client may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

#### **PART E: MONITORING AND VARIATIONS**

##### **11. MONITORING OF THE SERVICES**

- 11.1 The Parties shall meet on the Relevant Review Date(s) at premises to be agreed between them throughout the Contract Period in order to agree upon any issues which are outstanding and/or require review and to ensure total compliance with by the Supplier with any monitoring arrangements or



monitoring exercise that may be reasonably instigated or required by the Council.

- 11.2 The Supplier shall keep and maintain such necessary data and information and shall provide such assistance as the Council may reasonably require to enable the Council to complete all official returns, including (where applicable) but without limitation (provided the nature of such data and information and the format for the same has been agreed by the Parties at the last Relevant Review Date):
  - 11.2.1 returns to the Department of Health and the Department of Social Security;
  - 11.2.2 returns to the Chartered Institute of Public Finance and Accountancy;
  - 11.2.3 information required by the Audit Commission;
  - 11.2.4 information required for the purposes of compliance with any External Audit, Best Value Review, Best Value performance plans or other inspection; and
  - 11.2.5 information required in order to ensure compliance with the Race Relations Act 1976 (as amended), other applicable legislation and generally to ensure conformity with obligations contained in **Condition 26** (Unlawful Discrimination and Equal Opportunities).
- 11.3 The Supplier shall provide such data and information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.
- 11.4 The Supplier shall at all times during the currency of the Contract allow the Authorised Officer and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Authorised Officer access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Supplier for the purposes of monitoring and inspecting work being performed pursuant to the provision of the Services and any or all records and documents in the possession, custody or control of the Supplier in connection with the provision of the Services.

## 12. CONTINUOUS IMPROVEMENT AND PERFORMANCE REVIEW

- 12.1 The Authorised Officer shall at its discretion convene regular meetings ("**Continuous Improvement Meetings**") to promote jointly with the Provider continuous improvement in the delivery of the Services provided under the Contract.
- 12.2 Working jointly at Continuous Improvement Meetings (to be chaired by the Authorised Officer and the Contract Manager on a rotational basis) the Authorised Officer and Contract Manager shall scrutinise and review all aspects of the activities and performance of the Contract and develop and bring forward agreed proposals for achieving such continuous improvements or for preventing failures in the provision of the Services.
- 12.3 The Parties will agree and record the changes to be introduced and assign organisational responsibilities for delivering such changes and specify a time

scale for both the implementation of any operational improvements and for achievement of such improvements.

### **13. VALUE FOR MONEY REVIEW**

- 13.1 At any time within three months before any Value for Money Review Date the Council may require the Provider to initiate a Value for Money Review at the Provider's expense in relation to all or any part of the Services which may include subcontracted elements of the Services.
- 13.2 The Value for Money Review shall be carried out by one of the methodologies approved for use by the Council as may be varied from time to time at the sole discretion of the Council. The methodologies that are approved for use by the Council at the present time are set out in Schedule 3.
- 13.3 The manner of any Value for Money Review and the nature of comparative material to be researched (including the way in which such research is obtained) shall be identified by the Council and the timing of any Value for Money Review shall be at the discretion of the Council.
- 13.4 Following the conclusion of a Value for Money Review, the Parties shall agree whether the Services are being performed by the Provider to standards and prices acceptable to the Council and whether any adjustment needs to be made to the Contract Price or to secure an improvement to the Services to achieve Best Value. In the event of failure to agree as aforesaid, the matter shall be referred to an Expert in accordance with **Condition 20** (Dispute Resolution and Expert Determination). Within one month of the conclusion of the Value for Money Review both Parties shall review the detail of the Provider's accounts in relation to the performance of the Services.
- 13.5 Where any Value for Money Review results in any adjustment to the Contract Price, the adjustment shall be determined in accordance with the provisions of **Condition 14** (Variation of the Service).
- 13.6 Where any Value for Money Review results in any adjustments to delivery of the Services or adjustment to the payments to be made under **Condition 15** (Certificates and Payment), any such adjustments shall take effect immediately (and if relevant, on a retrospective basis).
- 13.7 Where a Value for Money Review results in the appointment of a new sub-Provider, the change in identity of the relevant sub-Provider shall take place within 12 weeks of the relevant Value for Money Review Date or within a time-scale approved by the Authorised Officer.
- 13.8 The Parties agree that any Value for Money Review shall be carried out in good faith and that each Party shall act reasonably in relation to any Value for Money Review.
- 13.9 The Council shall be entitled (but without any obligation whatsoever) following an adverse Value for Money Review by both Parties carried out in accordance

with this **Condition** 13 to give written notice to terminate the Contract twelve months after any Value for Money Review Date.

#### **14. VARIATION OF THE SERVICE**

- 14.1 The Council may from time to time require changes to the Specification and accordingly the Authorised Officer may, upon giving seven days' written notice thereof to the Provider (or such other period as may be agreed between the Parties), issue instructions to the Provider to do all or any of the following:
- 14.1.2 to reduce or increase the volume or frequency of any part of the Service permanently or during such time or for such period as the Authorised Officer may determine;
  - 14.1.3 to perform the Service or any part thereof in such a manner as the Authorised Officer may reasonably require, provided that a requirement to perform the Service in accordance with the Specification shall not be a Variation;
  - 14.1.4 to provide such services additional to the Service, (including at additional locations), as the Authorised Officer may reasonably require, provided that such additional services shall be the same type or similar to the Services referred to in the Specification; and
  - 14.1.5 to vary temporarily or permanently the Services or the Specification or any part thereof.

No Variation pursuant to this Condition shall vitiate the Contract.

- 14.2 The value of all Variations shall be ascertained by the Authorised Officer after consultation with the Provider in accordance with the following principles:
- 14.2.1 where services are of similar character and executed under similar conditions to Services priced in the pricing documents the Variation shall be valued at such rates and prices contained therein as may be applicable;
  - 14.2.2 where the Variation involves work that is not the same as or of similar character to or not executed under similar conditions to the Service, the rates and prices in the pricing documents shall be used as the basis for valuing such Variation in so far as may be reasonable and otherwise a fair valuation shall be made by the Authorised Officer.
- 14.3 In the event of any dispute as to the value of any Variation or additional work or as to whether any Variation or additional work should give rise to any increase or decrease in the Contract Price, the decision may be dealt with in accordance with the provisions of **Condition** 20 (Dispute Resolution and Expert Determination).

#### **PART F: PAYMENT**

#### **15. CERTIFICATES AND PAYMENTS**

- 15.1 In consideration of the provision of the Services by the Provider, the Council shall pay the Provider sums due within thirty (30) days of receipt of an invoice for Services previously rendered in accordance with this Contract. The Council shall only make payments against VAT invoices correctly submitted for Services properly performed in accordance with the Contract. Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the said period, interest shall be payable on the sums due at the Prescribed Rate calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.2 The element of the Contract Price due relating to the unit rates for work executed shall be requested by the Provider by means of an application for payment and shall relate only to those Services performed in the preceding calendar month.
- 15.3 Such applications for payment shall comprehensively detail the Services for which payment is requested and the Provider shall supply such additional information as the Council requires to verify the accuracy of such application. The Council will use such means as it considers appropriate to verify the application for payment including but not limited to enquiries with third parties.

## **16. RECOVERY OF MONIES ON BEHALF OF THE COUNCIL**

The Provider will collect payment on behalf of the Council (where applicable) and be responsible for the security and handling of any transactions or funds, but shall not bank any monies, other than directly into an account nominated by the Council or to transfer cash and cheque payments to the Council's collection service unless otherwise stated in the Specification.

## **17. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE**

- 17.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this Contract or any other contract with the Council.
- 17.2 If the Provider is unable or fails to provide the Services or any part thereof in accordance with the requirements of this Condition, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred as a consequence thereof may be deducted from any sums due or to become due to the Provider under the Contract or shall be recoverable from the Provider by the Council as a debt.
- 17.3 Where the Authorised Officer considers that an overpayment has been made to the Provider or that any other sum is due to the Council from the Provider under the terms of this Contract due to:

- 17.3.1 an error in any account which has been subject to certification for payment;
  - 17.3.2 an error in any invoice; or
  - 17.3.3 arising from any other cause,  
he or she shall serve a notice on the Provider indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Provider.
- 17.4 If the Provider is of the opinion that the Council has either failed to make a payment due under this Contract or made a payment in error, then the Provider shall within not more than 28 days of such payment either being due or made in error as the case may be give to the Council written notice specifying the said error or failure made, the sum due to the Provider (or the Council, as the case may be) to correct such error or failure and information as to the unpaid Services undertaken by the Provider to which it is of the opinion that such non-payment or incorrect payment has been made. In the event such sum is properly due to the Provider, the Council shall pay to the Provider such sum in accordance with this Contract within 14 days of receipt of such written notice.

## **18 VALUE ADDED TAX**

All payments made by either Party to the other Party under the terms of this Contract shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which payment is consideration and in so far as such payments are to be made under this Contract such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

## **18A. TAX COMPLIANCE**

Where the Contract is a Qualifying Contract the following conditions shall apply:

- 18A.1 the Provider represents and warrants that as at the date of this Contract it has notified the Council in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.
- 18A.2 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Provider shall:
- a) notify the Council in writing of such fact within 5 Working Days of its occurrence; and
  - b) promptly provide to the Council:
    - i) details of the steps which the Provider is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Council may reasonably require.

## **PART G: DEFAULT, DISPUTE RESOLUTION AND TERMINATION**

### **19 DEFAULTS**

- 19.1 If at any time after the Commencement Date:
- 19.1.1 the Council (or its Authorised Officer) determines that the Services or any part of them have not been carried out in accordance with the Contract; or
  - 19.1.2 the Provider has failed to comply with any requirement made by the Council (or its Authorised Officer) within the terms of the Contract; or
  - 19.1.3 the Council (or its Authorised Officer) deems that Provider has adversely affected the image or reputation of the Council; or
  - 19.1.4 the Provider is in breach of any part of this Contract
- then without prejudice to any other right or remedy available to the Council, the Council or its Authorised Officer may issue Default Notices and deduct sums of money in accordance with the procedures set out below.
- 19.2 Any or all of the following procedures may be used upon issue of notice in writing to the Provider and the Authorised Officer shall have sole and entire discretion as to which is most appropriate:
- 19.2.1 the Council may make such deduction from the payment due to the Provider as the Authorised Officer shall reasonably calculate as compensation to the Council in respect of the Provider's failure;
  - 19.2.2 without terminating the Contract, the Council may itself provide or procure the provision of any part of the Service until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Provider is able to perform the Contract to a standard acceptable to the Council;
  - 19.2.3 without terminating the whole Contract, the Council may determine that part of the Service shall no longer be provided by the Provider and itself provide or procure a third party to provide that part of the Service;
  - 19.2.4 without terminating the Contract, the Council may require the Provider to remedy the default within a specified timescale at the discretion of the Council; and
  - 19.2.5 the Council may terminate the whole of the Contract, in accordance with **Condition 21** (Termination).
- 19.3 Any expenses incurred which are in addition to the cost of the relevant part of the Services arising as consequence of suspension of the Services or procuring a third party to do so shall be recovered from the Provider in accordance with these Conditions.

### **20. DISPUTE RESOLUTION AND EXPERT DETERMINATION**

- 20.1 Authorised representatives of each of the Council and the Provider agree to discuss and attempt to resolve any dispute or difference between themselves relating to this Contract prior to the appointment of an Expert.
- 20.2 If any dispute is incapable of resolution between the Parties, the Council and the Provider shall on request promptly supply to the Expert all such

assistance, documents and information as he may require for the purpose of his determination and both the Council and the Provider shall use all reasonable endeavours to procure the prompt determination of the reference.

- 20.3 The Expert shall be deemed to act as an expert and not as an arbitrator.
- 20.4 The costs of the Expert appointed under this **Condition** 20 shall be equally apportioned between the Parties or as may otherwise be directed by the Expert.
- 20.5 If the Parties are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Parties with the intent that by agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven days.
- 20.6 Nothing in this Contract shall prevent either the Council or the Provider at any time from seeking any interim or interlocutory relief from the Court.
- 20.7 Either Party may, within 90 days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.
- 20.8 Without prejudice to **Condition** 14 (Variation of the Service), until the time that a dispute between the Provider and the Council is resolved the Provider shall continue to perform the Services and be paid by the Council in accordance with this Contract.

## 21. TERMINATION

- 21.1 The Council shall be entitled upon the happening of any of the following events to terminate the Contract ("Termination"), without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect:
  - a) the Provider commits a breach of any term of the Contract which breach is capable of being remedied and the Provider has failed to remedy the said breach within 14 days after issue of a written request from the Council that the Provider should do so;
  - b) any material breach by the Provider of any of its obligations under the Contract;
  - c) the Provider suffering an execution to be levied on his goods;
  - d) if the Provider consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
  - e) if the Provider consists of a body corporate, the Provider having a receiver or manager or administrator, provisional liquidator or liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a

composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition;

- f) if the Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
- g) the Provider has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;
- h) the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state;
- i) if the Authorised Officer shall certify in writing to the Council that in his opinion the Provider has abandoned the Contract;
- j) if the Authorised Officer shall certify in writing to the Council that the Provider without reasonable excuse has failed to commence the Service on the Commencement Date or has suspended the performance of the Service or a substantial part thereof for seven days after receiving from the Authorised Officer written notice to proceed;
- k) the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of the Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Provider or acting on its behalf, (whether with or without the knowledge of the Provider);
- l) if in relation to any contract with the Council, the Provider or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Law.
- m) if in relation to tax compliance:
  - (i) the warranty given by the Provider pursuant to Clause 18A.1 is materially untrue; or
  - (ii) the Provider commits a material breach of its obligation to notify the Council of any Occasion of Tax Non-Compliance as required by 18A.2; or
  - (iii) the Provider fails to provide details of proposed mitigating factors which in the reasonable opinion of the Council, are acceptable.

21.2 Upon such Termination and in addition to such consequences as are set out in these Conditions of Contract:

- a) the Provider shall forthwith cease to perform the Service;
- b) the Provider shall fully and promptly indemnify the Council in respect of the cost of causing to be performed the Service or any part thereof as would have been performed by the Provider during the remainder of the Contract period



to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for performing the Service. The Council shall be at liberty to have the Service or any part thereof performed by any persons (whether or not servants of the Council), as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Service or part thereof performed;

- c) the Council shall cease to be under any obligation to make further payments to the Provider and shall be entitled to retain any payments which may have fallen due to the Provider before termination until the costs, losses and/or damages resulting from or arising out of the Termination of the Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Provider, the Council shall pay the Provider such sums forthwith and in any event within 10 (ten) Working Days of the calculation being agreed between the Parties;
- d) the Council shall be entitled to repossess any of its premises, materials, equipment or other goods loaned or hired to the Provider and to exercise lien over any of the materials, equipment or other goods belonging to the Provider for any sum due hereunder or otherwise due from the Provider to the Council;
- e) the Council shall be entitled to employ and pay other persons to perform and complete the Service or any part thereof;
- f) the Council shall be entitled to deduct, retain or set off from any sum or sums which would but for paragraph c) of this Condition have been due from the Council to the Provider under this Contract or any other Contract or be entitled to recover the same from the Provider as a debt, any loss or damage to the Council resulting from or arising out of the termination of the contract. Such loss or damage shall include reasonable cost to the Council of the time spent by its officers in terminating the contract and in making alternative arrangements for the provision of the Service or any part thereof;
- g) when the total costs, losses and/or damages resulting from or arising out of the Termination of the Provider's employment have been calculated and deducted insofar as is practicable from any sum or sums which would but for paragraph c) of this Condition have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

21.3 Notwithstanding anything to the contrary contained herein, the Council may terminate this Contract by giving 30 days notice in writing to the Provider in the event any grant from Central Government or a recognised third party to fund the Services is withdrawn, reduced or delayed.

21.4 The rights of the Council under this **Condition 21** are in addition to and without prejudice to any other rights the Council may have whether against the Provider directly or pursuant to any guarantee or indemnity.

21.5 The Provider may terminate this Contract by serving notice on the Council at least sixty (60) days prior to termination of the Contract if any sums remain unpaid for thirty (30) days after receipt by the Council of an invoice for Services previously rendered in accordance with this Contract and the Provider has given the Council prior written notice stating sum(s) remaining unpaid and its intention

to terminate the Contract and such sum(s) remain unpaid for thirty (30) days following service of the notice Provided Always that the Provider shall not exercise this right of termination where the sum(s) outstanding is/are the subject of a genuine dispute.

- 21.6 Notwithstanding anything to the contrary contained in this clause 21 either party may terminate this Contract by giving six (6) months' notice in writing to the other.

## **PART H: IPR AND INFORMATION**

### **22. COPYRIGHT AND INTELLECTUAL PROPERTY**

- 22.1 Subject to **Condition 22.2** the Intellectual Property Rights in this Contract and all documents, records, data, or other information produced by the Provider as part of the Services shall belong exclusively to the Council and the Provider shall not make or distribute to a third party any copies of this Contract or the documents, records, data or other information produced by it without the written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold.
- 22.2 The Provider shall be entitled to make copies of the Contract where such copies are required to enable it to perform the Services.
- 22.3 Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Services by the Provider shall belong to the Council and the Provider agrees that it shall execute or cause to be executed (by personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.
- 22.4 The Provider shall indemnify the Council against any claims, liabilities, costs, losses, expenses, proceedings and damages arising out of any infringement or alleged infringement of any third party Intellectual Property Rights in connection with the provision of the Services.
- 22.5 Subject to **Condition 22.6**, the Provider shall notify the Council of and conduct any litigation arising from (including all negotiations in connection with) any claims, demands and actions in respect of any infringement or alleged infringement of any Intellectual Property Rights. The Council shall at the request of the Provider, afford the Provider all reasonable assistance for the purpose of contesting any such claims, demands and actions. The Provider shall reimburse the Council for all costs and expenses (including, but not limited to legal costs and disbursements on a full indemnity basis) incurred in so doing.
- 22.6 If so requested by the Council, the Provider shall either:

- 22.6.1 take all such steps as may be necessary to avoid the infringement or the alleged infringement of any Intellectual Property Rights; or
- 26.2.1 procure such licence as may be necessary to continue the carrying out of the Services without infringement, on terms which are reasonably acceptable to the Council.

- 22.7 The Provider shall act as the bailee of any Service Data which may at any time be in the Provider's possession or under its control and shall store such Service Data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as Service Data relating to each of the Services and the Provider shall at all times comply with the Data Protection Act 2018 and the Computer Misuse Act 1990 and shall give the Authorised Officer (and/or persons nominated by him) right of access to premises used by the Provider to monitor performance of the Services and compliance with the Law.

## 23. CONFIDENTIALITY AND PUBLICITY

### Confidentiality

- 23.1 Subject to **Conditions** 23.3, 23.6 and 23.8, each Party undertakes to the other Party as follows:
  - 23.1.1 to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly both during the Contract Period and following expiry or termination of the Contract;
  - 23.1.2 not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract; and
  - 23.1.3 not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with this Contract.
- 23.2 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party in breach of **Condition** 23.1 above and only use such Confidential Information in connection with the performance of the Contract.
- 23.3 **Condition** 23.1 shall not apply to any disclosure of Confidential Information:
  - 23.3.1 which a Party can demonstrate has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;
  - 23.3.2 which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;
  - 23.3.3 which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 23.3.4 which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - 23.3.5 to enable a determination to be made under the Dispute Resolution

Procedure referred to under **Condition** 20 (Dispute Resolution and Expert Determination);

23.3.6 by either Party to any department, office or agency of the Government;

23.3.7 which is for the purpose of:

- (i) the examination and certification of the Council's or the Provider's accounts (including any External Audit of the accounts); or
- (ii) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has utilised its resources;

23.3.8 which is independently developed without access to the Confidential Information;

23.3.9 by the Council to any third party insofar as this may be necessary to the performance or provision by that party of any services or works whatsoever for or to the Council;

23.4 The Provider shall not make use of this Contract or other information issued or provided by the Council in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Council.

23.5 When the Provider, in carrying out its obligations under this Contract, is provided with Confidential Information or other information relating to users or potential customers of the Services the Provider shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Provider has sought and obtained the prior written consent of that person or the Council.

23.6 At the request of the Council, the Provider shall facilitate the Council's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that the Council is required to provide information to a person as a result of a request made to it under such Code or regulations, the Provider shall provide such information relating to the Contract, the Services or itself to enable the Council to adhere to the requirements of the Code or regulations.

23.7 Nothing in this **Condition** 23 shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.

23.8 The Provider acknowledges to the Council that nothing in this **Condition** 23 shall fetter or affect the Council's obligations under the Data Protection Act 2018, the 2000 Act or the Environmental Information Regulations.

#### **Publicity**

23.9 Subject to **Condition** 23.11, the Provider shall not and shall procure that any member of the Provider's personnel or sub-contractor shall not make any public

statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Council's prior written approval as to its contents and manner and timing of its presentation and publication.

23.10 The Provider shall not and shall procure that any member of the Provider's personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.

23.11 Either Party may make a public statement or announcement concerning the completion of this Contract if required by:

23.11.1 law; or

23.11.2 any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law **PROVIDED THAT** any such statement does not contravene the duty of confidentiality contained in **Condition 23.1**

23.12 Subject to the provisions of **Condition 23.1** the Council reserves the right to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

## **24. FREEDOM OF INFORMATION**

24.1 The Provider acknowledges that the Council is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Council (at the Provider's expense) to comply with its obligations imposed under those provisions.

24.2 The Provider shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.

24.3 Subject to **Condition 24.6**, the Provider shall and shall procure that its sub-contractors shall:

24.3.1 transfer any Request for Information received by the Provider or its sub-contractors to the Council promptly and, in any event, within two Working Days of its receipt;

24.3.2 provide the Council with a copy of all Information in its possession or power in the form and within the time scale that the Council requires including such information as the Council may require in order to comply with the Council's Publication Scheme;

24.3.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request Information within the time for compliance prescribed by section 10 of the 2000 Act;

24.3.4 do not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Council.

- 24.4 Subject to **Condition** 24.6, the Council shall be responsible for determining, in its absolute discretion, whether:
- 24.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
  - 24.4.2 any Information is to be disclosed in response to a Request for Information.
- 24.5 The Provider acknowledges that the Council may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
- 24.5.1 without consulting the Provider; or
  - 24.5.2 following consultation with the Provider and having taken its views into account.
- 24.6 Where the 2000 Act applies to the Provider (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Provider shall:
- 24.6.1 comply with the 2000 Act and any associated Law and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
  - 24.6.3 where the Provider receives a Request for Information from a third Party under the 2000 Act which relates to the Council and / or this Contract:
    - 24.6.3.1 inform the Council about the Request For Information and the nature of the Information being sought as soon as reasonably possible;
    - 24.6.3.2 consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request For Information;
    - 24.6.3.3 consult with the Council prior to the disclosure of any such Information; and
    - 24.6.3.4 keep the Council informed about the Provider's progress in dealing with any Request For Information and where requested by the Council, provide the Council with copies of any correspondence and documents relating to the Request For Information.
- 24.7 The Provider shall indemnify the Council against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Council as a result of any breach of this **Condition** 24 by the Provider, the Provider's personnel, sub-contractors or agents.
- 24.8 The Provider acknowledges that the definition of Confidential Information is indicative only and that the Council may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.

## 25. DATA PROTECTION

- 25.1 For the purposes of this Condition 25 the terms "**Controller**", "**Processor**",

**“Data Subject”, “Personal Data”, “Personal Data Breach”, and “Data Protection Officer”** take the meaning given in the GDPR.

- 25.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule 6 by the Council and may not be determined by the Provider.
- 25.3 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 25.4 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 25.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 25.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 25.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 25.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 25.5 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 25.5.1 process that Personal Data only in accordance with Schedule 6, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
  - 25.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
    - 25.5.2.1 nature of the data to be protected;
    - 25.5.2.2 harm that might result from a Data Loss Event;
    - 25.5.2.3 state of technological development; and
    - 25.5.2.4 cost of implementing any measures;
  - 25.5.3 ensure that:
    - 25.5.3.1 the Provider Personnel do not process Personal Data except in accordance with this Contract (and

- in particular Schedule 6);
- 25.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
- 25.5.3.2.1 are aware of and comply with the Provider's duties under this clause;
  - 25.5.3.2.2 are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
  - 25.5.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
  - 25.5.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 25.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- 25.5.4.1 the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
  - 25.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 25.5.4.3 the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
  - 25.5.4.4 the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 25.6 Subject to clause 25.7, the Provider shall notify the Council immediately



- if it:
- 25.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 25.6.2 receives a request to rectify, block or erase any Personal Data;
  - 25.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 25.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 25.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 25.6.6 becomes aware of a Data Loss Event.
- 25.7 The Provider's obligation to notify under clause 25.6 shall include the provision of further information to the Council in phases, as details become available.
- 25.8 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- 25.8.1 the Council with full details and copies of the complaint, communication or request;
  - 25.8.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 25.8.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 25.8.4 assistance as requested by the Council following any Data Loss Event;
  - 25.8.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 25.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 25.9.1 the Council determines that the processing is not occasional;
  - 25.9.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences

- referred to in Article 10 of the GDPR; and
- 25.9.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 25.10 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 25.11 The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 25.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:
- 25.12.1 notify the Council in writing of the intended Sub-processor and processing;
  - 25.12.2 obtain the written consent of the Council;
  - 25.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 25 such that they apply to the Sub-processor; and
  - 25.12.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 25.13 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 25.14 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 25.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 25.16 The Provider acknowledges that damages may not be an adequate remedy for breach of the provisions under this Contract. The Council reserves the right to seek equitable relief for a breach, including relief in the form of an injunction or specific performance.
- 25.17 The Provider shall indemnify and keep indemnified the Council against all actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the Council in respect of any breach by the Provider (and/or any act or omission of any sub-contractor) of its obligations under this Clause 25.

25.18 The Council may terminate this Contract forthwith by providing written notice to the Provider in the event that the Provider breaches any terms of this Clause 25.

25.19 Upon termination or expiry of this Contract the Provider shall (and ensure any sub-processors shall) within 10 Business Days, unless the Provider is legally required to preserve that type of data:

25.19.1 Return all copies of information subject to the provisions under the DPA and/or GDPR to the Council in a secure format;

25.19.2 Remove, delete or destroy any electronic Personal Data stored on the Provider's IT systems and/or any physical Personal Data retained by the Provider in any form whatsoever; and

25.19.3 Certify to the Council its compliance with this clause 25.

## **PART I: OTHER PROVISIONS**

### **26. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES**

26.1 The Provider shall abide by the principles set out in the Council's Equality and Cohesion Charter and operate an equal opportunities policy (in a form to be approved by the Council).

26.2 The Provider shall at the Council's request complete all equal opportunities monitoring forms provided by the Council.

26.3 Notwithstanding the generality of clause 26.1 the Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment, including but not limited to the Equality Act 2010 and the Human Rights Act 1988.

26.4 The Service Provider shall take all reasonable steps to secure the observance of clause 26.3 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in performance of this Contract.

26.5 The Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Council for non-

compliance with any relevant Law and/or any codes of practice as a result of the breach of this Condition by the Provider.

- 26.6 The Provider shall inform the Authorised Officer as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Provider under any relevant Law or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Authorised Officer with such further information and documentation as may be required in relation thereto.

## **27. HEALTH AND SAFETY**

- 27.1 The Provider shall in performing the Services ensure that its personnel and any sub-providers, Council Personnel or any other person acting on behalf of the Provider comply with all statutory and other legal requirements in relation to the safety and health of its employees, of sub-providers, of any other persons in or near the Locations and of the members of the public. The Provider shall in particular comply with all Law in the field of health and safety at work and in performance of the Services and generally perform the Services in accordance with the Provider's health and safety policy statements and the Provider's health and safety codes of practice and/or the Health and Safety Guidelines (where applicable). In the event of any inconsistency between the Provider's health and safety policy statements and codes of practice and the Health and Safety Guidelines, the Health and Safety Guidelines shall prevail.
- 27.2 Not used
- 27.3 The Authorised Officer shall be empowered to suspend the provision of the Services in the event of non-compliance by the Provider with the health and safety requirements of the Contract. The Provider shall not resume provision of the Services until the Authorised Officer is satisfied that the non-compliance has been rectified.
- 27.4 No payment will be made for any part of the Services omitted as result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Authorised Officer requires the Provider to take to remedy the breach of the health and safety requirement.
- 27.5 The Provider shall:
- 27.5.1 keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Council in writing of any changes made; and

- 27.5.2 comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Provider's health and safety procedures or the Health and Safety Guidelines (where applicable).

## **28 THE PROVIDER'S WHISTLEBLOWING OBLIGATIONS**

- 28.1 The Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular, (but without limitation) the Provider agrees:
- 28.1.1 to accept and adopt the Council's Whistleblowing Policy and Guidelines as a procedure for the purposes of s.43C(2) of the Employment Rights Act 1996 (as introduced by s.1 of PIDA 1998) and the Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;
- 28.1.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Contractor's employees and agents and to any sub-contractors.
- 28.2 Without limiting the generality of Condition 28.1, the Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Works/Services/Supplies, which give rise to a reasonable belief that one or more of the following matters (referred to in this Condition as "instances of malpractice") has occurred, is occurring or is likely to occur:
- 28.2.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);
- 28.2.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
- 28.2.3 miscarriage of justice;
- 28.2.4 danger to health and safety;
- 28.2.5 damage to the environment;
- 28.2.6 any other matter designated as malpractice in the Whistleblower Policy and Guidelines;
- 28.2.7 concealment of any of the above
- 28.3 Without limiting the generality of Condition 28.1, in the event that any employee, agent or sub-contractor of the Provider should make a report to the

Council (or to any other person authorised by law) pursuant to this Condition, the Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.

- 28.4 The Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Provider to report, within a reasonable time, any instances of malpractice in accordance with this Condition, the Whistleblowing Policy and Guidelines and/or PIDA 1998.
- 28.5 Where the Provider acting reasonably and in good faith makes a report pursuant to this Condition, and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report, the Council shall indemnify the Provider against any cost the Provider may incur as a direct consequence of the Council's action or inaction.

## **29. QUALITY AND ENVIRONMENTAL MANAGEMENT SYSTEMS**

- 29.1 The Provider shall as from the Commencement Date institute and throughout the Contract Period maintain in relation to its performance of the Services a system of quality assurance, improvement planning and operation and an environmental management system designed to ensure that the Services are carried out in accordance with the Specification.
- 29.2 The Quality and Environmental Management Systems shall be operated by the Contract Manager on behalf of the Provider and shall include (without prejudice to the generality of the foregoing):
  - 29.2.1 the keeping of records in order to comply with obligations under this Contract;
  - 29.2.2 carrying out frequent checks and reconciliation in compliance with the Specification;
  - 29.2.3 reporting to the Council on the extent to which the Provider is achieving the Specification; and
  - 29.2.4 making suggestions to the Council as to how the Services could be improved, and in particular taking into account views expressed by residents, Customers and other occupiers of Locations.
- 29.3 The Provider shall achieve conformity with the Quality and Environmental Management Systems.
- 29.4 From time to time the Council or an authorised third party may audit the Quality and Environmental Management Systems. In the event of any reasonable written recommendation concerning the modification of the Quality and Environmental Management Systems being made by the Authorised Officer from time to time, such recommendation shall, as soon as reasonably practicable, be incorporated and implemented by the Provider.

## **30. TUPE**

- 30.1 The Provider accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the Directive and the Regulations and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.

The Council and the Provider agree that the transfer of the Services (where applicable) to be effected by this Contract is governed by the Regulations and accordingly:

- 30.1.1 the Council shall use reasonable endeavours to request that the existing provider of services similar to the Services transfers, on the Transfer Date, the contract of employment for each of the Transferring Employees to the Provider (save insofar as such contracts relate to any occupational pension schemes);
- 30.1.2 on termination of the Agreement for whatever reason or expiry of the Contract Period, the Provider shall discharge all wages salaries and honoraria (excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance); and
- 30.1.3 subject to the Data Protection Act 2018, the Council shall provide to the Provider such information as may be reasonably required to comply with the Regulations, including without limitation:
- (a) the number of personnel, including supervisory and administrative personnel employed by the Council in the provision of the Service;
  - (b) the terms and conditions of employment of those personnel; and
  - (c) any other information in relation to those personnel as may properly be required by the Provider under this Condition.
- 30.2 The Provider shall at its own cost undertake all liability for and shall fully indemnify the Council against:
- 30.2.1 all losses, claims, damages and costs which may be brought against the Council as a consequence of the Provider's failure to consider fully the application of the Directive and Regulations to this Contract and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting of this Contract; and
- 30.2.2 all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date by all or any of the Transferring Employees as a result of their employment with the Provider.

30.3 The Provider warrants that the pension arrangements that it will make for the Transferring Employees are the same as or better than those the Transferring Employees had as employees of the Council. The Provider shall indemnify the Council against any breach of this warranty or any claims brought by any of the Transferring Employees and arising from the Provider's failure to provide pension benefits which are the same as or better than those the Transferring Employees had as employees of the Council.

30.4 On the termination of the Contract for whatever reason or on the expiry of the Contract Period, the Provider shall supply within seven (7) days of demand by the Council all such information as the Council shall consider to be required as a result of the Directive and the Regulations, including without limitation:

30.4.1 the number of personnel, including supervisory and administrative personnel, employed by the Provider and any sub-Provider employed in the provision of the Service;

30.4.2 the terms and conditions of employment of those personnel; and

30.4.3 any other information in relation to those personnel as may properly be required by the Council under this Condition.

The Provider shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information.

30.5 Prior to the termination of this Contract (or any part of this Contract) for whatever reason, the Provider shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected employees pursuant to Directive Article 6 and Regulation 10 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising at the end of the Contract Period or on any earlier termination of the Contract (or any part of the Contract) for whatever reason. The Provider shall indemnify and hold harmless the Council against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this Condition.

30.6 If at the termination of the Contract for whatever reason (apart from cause for termination being a result of a material breach of the Contract by the Provider) the Services cease to be provided by the Provider and are neither taken back in-house nor transferred to a third party Provider, then the Provider shall use its best endeavours to re-deploy employees previously engaged in the performance of the Contract. If having taken all such steps the Provider dismisses exclusively on the grounds of redundancy any of the employees previously employed by the Council in the provision of the Services, the Council shall (subject to the Provider consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Provider that amount



of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment with the Council.

- 30.7 In addition to the provisions contained in **Condition** 30.6 above, the Parties agree that if during the Contract Period staffing levels are reduced exclusively as a consequence of redundancy of employees, the Council shall (subject to the Provider consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Provider such amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment by the Council. The Provider accepts liability for all redundancy payments pertaining to the length of service of the relevant employee with the Provider.
- 30.8 The Provider shall ensure that New Joiners are offered terms and conditions of employment which are, overall, no less favourable than those of Transferring Employees and in doing so the Provider shall comply with the provisions of any code of practice issued by the Government in relation to New Joiners. The Provider shall indemnify the Council against any claim by a New Joiner or a former New Joiner which may arise out of the failure on the part of the Provider to comply with the requirements of this Condition.
- 30.9 The Provider shall undertake to include in any sub-contract specific provisions which provide equivalent obligations upon each sub-Provider to those accepted by the Provider under this Contract and which provide for enforcement by:
- (a) Transferring Employees; and/or
  - (b) New Joiners; and/or
  - (c) the Council

directly against the sub-Provider and preserving their rights under the Contracts (Rights of Third Parties) Act 1999. Copies of all sub-contracts (un-priced) shall be provided to the Council upon sub-contract award. The Provider shall indemnify and hold harmless the Council against all claims, whatsoever and howsoever arising, which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this Condition.

## **31 FORCE MAJEURE**

- 31.1 If a Force Majeure event arises on or following the date of this Contract (irrespective of the fact that this Contract may then be conditional) which directly causes the Provider to be materially unable to comply with any of its obligations hereunder, the Provider and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Provider is

materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of **Condition 21 (Termination)**. Failure by the Provider to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

- 31.2 The events which are to be classified as Force Majeure events shall include each of the following:
- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
  - b) nuclear, chemical or biological contamination of the Provider's property arising from any of the events at (a) above;
  - c) riot, flood or earthquake;
  - d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
  - e) any circumstances beyond the reasonable control of either of the Parties.

## **32 COMPLAINTS**

- 32.1 The Provider shall comply with its own complaints procedure, notice of which shall have been given to the Council and will comply with the Council's complaints procedure whenever a complaint is made by any third party directly to the Council as the same may be amended and notified to the Provider from time to time.
- 32.2 The Provider shall keep a record in a form approved by the Authorised Officer, of any complaints received (whether received orally or in writing, and whether from members of the Council, Customers, members of the public or others) and of the action taken by the Provider to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times.
- 32.3 The Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

## **33. USE OF SUBSTITUTE PROVIDER**

- 33.1 The Authorised Officer may engage a substitute Provider in accordance with this Condition if:
- 33.1.1 the Provider fails to undertake any of the Services in accordance with the performance indicators stipulated in the Tender Documents;
  - 33.1.2 in the reasonable opinion of the Authorised Officer the Provider has failed to allocate sufficient resources to perform any of the Services.

- 33.2 Where the Authorised Officer pursuant to **Condition** 33.1 decides to engage a substitute Provider he shall notify the Provider in respect of the Provider's failure under **Condition** 33.1. above and raise an Order to a substitute Provider of his choice to carry out the relevant work until the Provider is able reasonably to satisfy the Authorised Officer of its ability to carry out that work in accordance with the Specification.
- 33.3 Where the Authorised Officer has served notice on the Provider in accordance with **Condition** 33.2 he may in respect of the relevant Services forthwith recover from the Provider any costs, damages or expenses incurred by the Council by reason of the default of the Provider to comply with the requirements referred to in this **Condition** 33 together with any costs or expenses incurred by the Council in excess of the sums that would have been paid by the Council to the Provider under the terms of this Contract.

#### **34. ASSIGNMENT AND SUB-CONTRACTING**

- 34.1 The Council shall with the Provider's consent (not to be unreasonably withheld or delayed) be entitled to assign the benefit of the Contract or any part thereof and shall give reasonable written notice of any such assignment to the Provider.
- 34.2 The Provider shall not:
- 34.2.1 assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;
- 34.2.2 sub-contract the provisions of the Services or any part thereof
- to any person without the previous written consent of the Authorised Officer which consent shall be at the absolute discretion of the Authorised Officer. This shall not relieve the Provider from any liability or obligation under the Contract, and the Provider shall be responsible for the acts, defaults or neglect of any sub-Providers, its employees and agents in all respects as if they were the acts, defaults or neglect of the Provider itself.

#### **35. NOTICES**

Notices under this Contract shall be given by sending them by pre-paid registered post, fax (with a confirmatory copy by post), electronic mail or personal delivery to the other Party at its address set out in the description of the Parties or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received 48 hours after sending (as evidenced by the sender's receipt), notices sent by fax and electronic mail shall be deemed to have been received on the first working day after sending (in the case of notices by fax as shown by the timed print out on

or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

## **36. PREVENTION OF CORRUPTION**

36.1 Neither the Provider nor any sub-contractor nor any other person employed by the Provider or acting on the Provider's behalf shall commit and the Provider warrants, represents and undertakes that in entering this Contract, neither the Provider nor any such person has committed in connection with this Contract any of the following (hereinafter referred to as "Prohibited Acts"):

36.1.1 directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

36.1.1.1 induce that person to perform improperly a relevant function or activity; and/or

36.1.1.2 reward that person for improper performance of a relevant function or activity;

36.1.2 directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract.

36.1.3 enter 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 Provider (or anyone acting on its behalf or to its knowledge) unless before such contract is made, particulars of any such commission and the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Council;

36.1.4 commit any offence under the Bribery Act 2010, or Section 117(2) of the Local Government Act 1972 or under legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

36.1.5 defraud or attempt to defraud or conspire to defraud the Council.

36.2 The Provider further warrants, represents and undertakes that neither the Provider nor any sub-contractor nor any other person employed by the Provider or acting on the Provider's behalf is aware of any financial or other advantage being given to any person working for or engaged by the Council, and/or that no agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

36.3 The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform

any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.

36.4 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent the Provider (or the Provider's personnel or any subcontractor or any other person employed by the Provider or acting on its behalf) from committing a Prohibited Act and shall enforce it where appropriate.

36.4. If the Provider (or the Provider's personnel or any subcontractor or any other person employed by the Provider or acting on its behalf or to its knowledge) commits any of the Prohibited Acts with or without the knowledge of the Provider, in relation to this Contract then the Council shall be entitled to:

36.4.1 terminate this Contract by notice in writing having immediate effect upon which the provisions of **Condition** 21 shall apply; and/or

36.4.2 require the Provider to procure the termination of any Subcontract or agency agreement if the Prohibited Act is that of the Provider's subcontractor or agent; and/or

36.4.3 require the Provider to dismiss an employee of the Provider, if the Prohibited Act is committed by the employee acting independently of the Provider; and/or

36.4.4 recover from the Provider any loss sustained in consequence of any breach of this **Condition** 36 by the Provider.

36.5 In determining whether to exercise its right of termination pursuant to **Condition** 36.4, the Council shall give all due consideration, where appropriate to action other than termination of this Contract unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Subcontractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub- Contractor) means and shall be construed as acting:

36.5.1 with the authority; or

36.5.2 with the actual knowledge;

of any one or more of the directors of the Provider or the Sub Contractor (as the case may be); or

36.5.3 in circumstances where one or more of the directors or partners of the Service Provider or the Sub Contractor ought reasonably to have had knowledge

36.6 Any termination notice given pursuant to **Condition** 36.4 shall specify:

36.6.1 the nature of the Prohibited Act;

36.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

36.6.3 the date on which this Contract will terminate.

36.7 Any termination pursuant to **Condition** 36.4 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

36.8.1 The Provider shall promptly inform the Council of the occurrence of any Prohibited Act of which it becomes aware or of which it suspects.

36.8.2 If the Provider notifies the Council that it suspects or knows that there may be a breach of this **Condition** 36, the Provider must respond promptly to the Council's enquiries, cooperate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

36.9 Notwithstanding the provisions of **Condition** 20, any dispute relating to:

36.9.1 the interpretation of this **Condition** 36; or

36.9.2 the amount or value of any gift, consideration or commission

shall be determined by the Council and its decision shall be final binding and conclusive

### **37. GRATUITIES TIPS AND CHARGES**

The Provider shall not whether itself or by any of the Provider's Personnel engaged in the provision of the Services solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges approved by the Council.

### **38. ENTIRE AGREEMENT AND SURVIVAL PROVISIONS**

38.1 This Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the Parties relating to the Services. Unless otherwise stated herein, this Contract applies in place of and prevails over any other terms, conditions and prior representations, whether contained in correspondence or implied by custom or law. Nothing in this Contract shall limit or otherwise exclude liability for fraudulent statements or misrepresentations made by either Party.

38.2 The rights and obligations which expressly or by their nature are intended to survive the expiry or termination of this Contract shall so survive and bind the Parties and their legal representatives, successors and assigns.

### **39. WAIVER**

39.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the other Party of any of the provisions of the Contract shall not:

39.1.1 constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of the Contract; nor

- 39.1.2 affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

#### **40. EMERGENCIES**

- 40.1 On receipt of an instruction from the Authorised Officer, the Provider shall deploy resources from the provision of the Services to enable the Council to carry out any of its functions which in the opinion of the Authorised Officer amounts to a situation of urgency or a potential or actual disaster or exceptional emergency. Any such deployment shall be dealt with in accordance with the procedure for Variations set out in Condition 14 (Variation of the Service).
- 40.2 During any period in which the Provider is engaged in carrying out work in accordance with an instruction pursuant to **Condition** 40.1, the Authorised Officer may issue further instruction to the Provider suspending the provision of the Services (or part of the Services) to the extent reasonably necessary as a consequence of the deployment of members of the Provider's personnel to comply with the instruction under **Condition** 40.1.
- 40.3 On receipt of an instruction from the Authorised Officer, the Provider shall ensure that appropriate members of the Provider's personnel attend training sessions arranged by the Council for the purposes of enabling such persons to prevent, deal with or alleviate the consequences of any such situation as is mentioned in **Condition** 40.1. The Provider's participation in any such training session shall be treated as a Variation in accordance with **Condition** 14 (Variation of the Service).
- 40.4 Certain common emergencies (which shall for the avoidance of doubt exclude the matters referred to in **Condition** 40.1) which may affect the performance of the Services are to be anticipated during the Contract Period, including (without limitation) break-ins, minor flooding, minor fire damage and vandalism at the Provider's premises. The Provider shall ensure that the Services, so far as reasonably practicable, are maintained irrespective of any such common emergencies and (where necessary) are rectified at no additional cost to the Council.

#### **41. LAW AND JURISDICTION**

The Contract shall be governed by and construed in accordance with the Laws of England and the Parties submit to the exclusive jurisdiction of the English courts.

#### **42. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless expressly stated nothing in this Contract or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Contract.

#### **43. COUNTERPARTS**

#### 45. DUE AUTHORISATION AND EXECUTION

**IN WITNESS** whereof this Contract has been executed by each of the Parties in accordance with their respective constitutions on the day and year above written

**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF ISLINGTON**

.....  
 Authorised Officer (1)

.....  
 Authorised Officer (2)

[ ]

(1) .....  
Director (signed)

.....  
Director (print name)



(2) .....  
Witness (signed)

.....  
Witness (print name)

.....  
Witness (print occupation)

.....  
Witness (print address)

**Schedule 1A**

**INVITATION TO TENDER INCLUDING THE SPECIFICATION**

## **Schedule 1B**

## TENDER RESPONSE

## **Schedule 2**

**BOND AND GUARANTEE**

### **Schedule 3**

## VALUE FOR MONEY REVIEW TOOLS

- **Best value reviews** – large-scale using a corporate framework. Best value review provides a framework for the planning, delivery and continuous improvement of Council services. The overriding purpose is to establish a culture of good management for improving the delivery of efficient, effective and economic services that meet the residents needs.
- **Peer review** – This is a review undertaken by a senior officer from within the council or an external organisation with the appropriate expertise. It involves following key lines of enquiry (KLOEs) to establish how the service is performing against established good practice. This includes using benchmarks of an 'ideal' fully effective service, learning from others and investigating different practices. An analysis is then done of the current achievement of the services compared with the benchmark standards, any gaps are highlighted and an action plan developed to address these.
- **Self-assessments** – allowing services at a unit level and larger to identify their strengths and areas for development using a structured framework. The Support Services BVR adopted this approach and reported high levels of “buy-in” to the process from the services involved.
- **“Helicopter reviews”** – This is a proactive review initiated externally from the service in response to triggers by performance indicators or contract renewals, looking objectively and strategically at a service and then identifying quick wins and practical steps that could be taken to improve the service. Also can identify where we can develop efficiency and improved use of resources.
- **Think – tanks** to problem solve and to apply brainpower in specific challenges and circumstances. Think tanks can be used to complement other processes, they are not deemed sufficient as stand alone tool.
- **360-degree** feedback model - A process in which services evaluate themselves using a set of criteria with CMB, clients and service users evaluate them. The feedback provides insight about the skills and behaviours considered necessary in the services /organisation to accomplish its vision, goals and objectives. The feedback is firmly planted in behaviours required to exceed customer expectations. There is a degree of overlap between this tool and the self-assessment tool; hence it is recommended that the 360-degree feedback model should be used as part of a self-assessment Review.
- **BPI (Business Process Improvement)** – This an exercise that examines the processes used by the Council to deliver a service, with a view to make them more efficient and streamlined by mapping out the services and identifying steps that can be eliminated or improved upon which will lead to time or cost savings.



#### **Schedule 4**

## **SPECIAL CONDITIONS FOR SOCIAL CARE CONTRACTS**

### **TO BE INCLUDED IN SERVICES FOR ADULTS AS WELL AS SERVICES FOR CHILDREN**

#### **1. FINANCIAL REGULATION AND GOVERNANCE**

- 1.1 Where the Service Provider is not a company that is registered and regulated under Companies Act 2006 and associated legislation it shall, within 12 months of the contract being awarded, comply with the Minimum Standards for Islington Council funded VCS Organisations as published on the Council's web site

#### **2. WHISTLEBLOWING**

- 2.1 The Service Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular, (but without limitation) the Service Provider agrees:
- 2.1.1 to accept and adopt the Council's Whistleblowing Policy and Guidelines as a procedure for the purposes of s.43C(2) of the Employment Rights Act 1996 (as introduced by s.1 of PIDA 1998) and the Service Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;
- 2.1.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, The Service Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to The Service Provider's employees and agents and to any sub-contractors.
- 2.2 Without limiting the generality of Condition 2.1, The Service Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Works/Services/Supplies, which give rise to a reasonable belief that one or more of the following matters (referred to in this clause as "instances of malpractice") has occurred, is occurring or is likely to occur:
- 2.2.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);
- 2.2.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
- 2.2.3 miscarriage of justice;

2.2.4 danger to health and safety;

2.2.5 damage to the environment;

2.2.6 any other matter designated as malpractice in the Whistleblower Policy and Guidelines;

2.2.7 concealment of any of the above

- 2.3 Without limiting the generality of Condition 3.1, in the event that any staff, agent or sub-contractor of The Service Provider should make a report to the Council (or to any other person authorised by law) pursuant to this clause, The Service Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.
- 2.4 The Service Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of The Service Provider to report, within a reasonable time, any instances of malpractice in accordance with this clause, the Whistleblowing Policy and Guidelines and/or PIDA 1998.
- 2.5 Where The Service Provider, acting reasonably and in good faith, makes a report pursuant to this clause and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report the Council accepts such liability as The Service Provider may incur as a direct consequence of such report.

### **3. SAFEGUARDING ADULTS**

- 3.1 The Service Provider will have procedures in place to ensure the safeguarding of vulnerable adults, those procedures should be compatible with the Council's 'multi-agency safeguarding adults' policy and procedures' and must further comply with the Safeguarding Vulnerable Groups Act 2006.
- 3.2 The Service Provider must promote best practice by ensuring robust and up to date policies and procedures are in place. The Service Provider must also ensure that all staff, students and volunteers receive the required Safeguarding Adults training and ensure the training is up to date and that safe employment procedures are followed.
- 3.3 The Service Provider will ensure information about how to make a complaint or raise a safeguarding concern is accessible to Service Users, carers and staff.
- 3.4 The Service Provider will ensure that staff, students and volunteers are aware of abuse of vulnerable adults, including understanding and recognising abuse and knowing how to deal with a concern or allegation. Training in Safeguarding Adults is a mandatory requirement for staff, students and any volunteers and training records must be kept to evidence staff attendance and learning.

- 3.5 The Service Provider will ensure that Safeguarding Adults is included in induction for all staff, students and volunteers and training is available for staff at a level that is commensurate with their role in the safeguarding adults' process.
- 3.6 The Service Provider shall ensure that the identification of vulnerability and assessments of risks including risk of abuse are integrated into assessments practices, care planning and person-centred planning processes for the purposes of reducing risk and increasing Service User's self-protection mechanisms.
- 3.7 The Provider shall encourage good communication between staff and managers and between Service Users, relatives and other professionals and foster an "open culture" within the organisation.
- 3.8 The Service Provider shall ensure that staff know about and comply with the requirements to make accurate, factual and contemporaneous records.
- 3.9 The Service Provider must be able to evidence safe and robust recruitment procedures and practice for all staff, including agency staff, students and volunteers working with vulnerable adults. The Service Provider must ensure that all staff, students, agency staff and volunteers are registered with the ISA before commencing employment under this Contract.
- 3.10 If visits are taking place as part of the recruitment process, potential staff must be accompanied by a member of staff at all times.
- 3.11 The Service Provider must have in place comprehensive procedures for reporting of and managing allegations against staff and volunteers which demonstrates the promotion of the safety and welfare of vulnerable adults and are compliant with statutory requirements.
- 3.12 The Service Provider must have a robust system which evidences that when staff are suspended or dismissed Safeguarding Adults guidance including government guidance is followed and relevant professional bodies informed.
- 3.13 The Service Provider shall have codes of conduct in place for all staff that set out clear standards of conduct especially in relation to personal and sexual relationships between staff and service users or other vulnerable adults.
- 3.14 The Service Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to staff and Service Users that using these procedures appropriately will not prejudice their own positions and prospects.
- 3.15 If abuse of an individual is taking or has taken place or is suspected the Provider must immediately notify the Safeguarding Adults lead of the Council as well as their local Safeguarding Adults lead and should consider suspension of staff member(s) and take emergency measures (inform

police/seek medical assessment/treatment). The Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the multi-agency strategy group. The Provider will also notify CQC and the Disclosure and Barring Service.

#### **4. SAFEGUARDING CHILDREN**

- 4.1 The Service Provider is required to adhere to the London Safeguarding Children's Board requirements and follow the All London Child Protection Procedures. The Service Provider shall in accordance with the Children Act 1989 give paramount consideration to the welfare of the child at all times.
- 4.2 The provider will have its own local safeguarding procedure that is tailored to the type of activities that it provides and offers guidance on how to respond where there are concerns about a child's safety or welfare. The Service Provider's safeguarding and child protection policy and procedure must be consistent with the terms and requirements of Islington's Safeguarding Children's Board and Islington's early years safeguarding and child protection guidance.
- 4.3 A named person should be identified within the Service Provider's organisation who has a clearly defined role and responsibilities in relation to safeguarding, and to whom staff can go to for advice. This person must have undertaken relevant training which must be updated every 2 years.
- 4.4 The Service Provider shall not utilise any member of its Staff for the provision of the Services who has a previous conviction of a violent, sexual or dishonest nature without the Council's express written consent.

#### **TO BE INCLUDED IN SERVICES FOR ADULTS ONLY**

#### **5. DUTY TO ALLOW ENTRY TO THE LOCAL HEALTHWATCH**

- 5.1 In compliance with the requirements of the Local Government and Public Involvement in Health Act 2007 section 225 (as amended by section 186 of the Health and Social Care Act 2012) and associated regulations the Service Provider shall allow authorised representatives of the Local Healthwatch to enter and view the carrying-on of activities on premises from which the Services are provided subject to **Condition 5.2** and **5.3** below.
- 5.2 Premises excluded from the duty to provide access pursuant to **Condition 5.1** above are:
  - 5.2.1 parts of a care home which are not communal areas;
  - 5.2.2 premises or parts of premises used as residential accommodation for employees of the Service Provider;
  - 5.2.3 premises which are occupied by one or more persons as their

home and whereby at least one of those persons occupies under a tenancy or a licence.

- 5.3 The duty to provide access pursuant to clause 5.1 above does not apply if the presence of an authorised representative would compromise the effective provision of the Services or the privacy or dignity of any person or if, in the opinion of the Service Provider, the authorised representative in seeking to enter and view the premises is not acting reasonably and proportionately and/or does not provide the Service Provider with evidence that the representative is authorised.

## **6. DUTY TO RESPOND TO THE LOCAL HEALTHWATCH**

- 6.1 Where a report or recommendation is made by the Local Healthwatch in respect of the provision of Services by the Service Provider under this Agreement, the Provider will respond in accordance with the requirements of section 224 of the Local Government and Public Involvement in Health Act 2007 (as amended by the Health and Social Care Act 2012) and associated regulations.
- 6.2 Where a report or recommendation is received by the Service Provider it must within 20 working days of receipt acknowledge receipt to the Local Healthwatch and provide a copy of the report or recommendation to the Council.
- 6.3 Where the Council decides that the Service Provider may act on its behalf in relation to a report or recommendation made by the Local Healthwatch the Service Provider shall within 20 working days of receiving the report or recommendation provide to the Local Healthwatch:
- 6.3.1 an explanation of any action that the Council intends to take in respect of the report or recommendation; or
- 6.3.2 An explanation of why the Council will not take any action in respect of the report or recommendation.

## **7. MENTAL CAPACITY ACT 2005**

- 7.1 The Service Provider shall comply with the Mental Capacity Act 2005 in its entirety in terms for Service Users and the Services provided under this Contract.
- 7.2 Service Providers will comply with the legal requirements of the Mental Capacity Act 2005.

- 7.3 Service Providers will comply with the legal requirements of the Deprivation of Liberty Safeguards 2007 (DoLS).
- 7.4 Service Providers as Managing Authorities will ensure that appropriate staff are trained and aware of Mental Capacity and DoLS and that key managers are knowledgeable of their responsibilities and duties under the legislation.
- 7.5 Service Providers will ensure that wherever a resident/Service User is subject to a DoLS authorisation that they comply with all conditions required by the Supervisory Body and that they notify the Supervisory Body as soon as a change occurs in the resident/clients circumstances.
- 7.6 Service Providers should contact the relevant Supervisory Body as soon as they are concerned that an incapacitated resident/client **is** or **may** be deprived of their liberty. To contact DoLS Islington, email [dolsoffice@islington.gov.uk](mailto:dolsoffice@islington.gov.uk) telephone 020 7527 8180.

#### **TO BE INCLUDED IN SERVICES FOR FOR CHILDREN ONLY**

#### **5. INFORMATION SHARING**

- 5.1 The Service Provider shall ensure Service Users' and service activity data are recorded on a continuous basis in such a system as is approved by the Council and/or Central Government or in an electronic system that is e-GIF compliant, and which meets Data Protection Act standards.
- 5.2 The Service Provider is responsible for ensuring its own compliance with the Data Protection Act and the relevant Children's Acts with regard to handling personal data and information sharing.
- 5.3 The Service Provider should ensure its staff members work within the Islington Information Sharing Protocol and associated Information Sharing Agreement for the children's workforce; and any national or regional guidance or protocols to which the Council is, or may become, a party.
- 5.4 The Council may require the release of personal data to it, subject to the consent of the individuals concerned having been obtained to such sharing, or an exemption under the Data Protection Act applying.

(Version 09.11.12)

**Schedule 5**  
**PRICE AND PAYMENT**



## SCHEDULE 6

### PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Provider shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), Councils/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website et</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>