

CONDITIONS

1. INTERPRETATION

1.1. In this Contract the following expressions shall (save where the context otherwise requires) have the following meanings:

Authorised Officer means the person stated in the Variables and whose role is more fully described in Clause 7.

Business Day means any day on which the clearing banks in the City of London are open for business.

Clause means a clause in the Conditions.

Commencement Date means the date specified as such in the Variables.

Contract means this Contract and includes all Schedules and Appendices to it and all documents referred to in it (if any).

Contract Period means a period specified as such in the Variables (or as otherwise provided in this Contract).

Contract Price means the sum(s) specified in the Variables.

Contractor's Representative means the person stated in the Variables, whose role is more fully described in Clause 8.

Losses means all actions liabilities damages costs losses claims charges expenses demands penalties compensation fines and proceedings (including economic and/or consequential loss) whatsoever and howsoever arising whether in contract, tort or otherwise directly or indirectly out of or in connection with the Services and/or this Contract. For the avoidance of doubt, Losses include time and resources spent by Council officers resulting from a breach or failure.

Material Breach means a breach of any of the provisions set out in Clauses 16, 19.6, 36.5 and 38 or any other provisions where a breach is expressed as being a material breach.

Paragraph means a paragraph in the Schedules.

Performance Targets means any targets or performance indicators identified as set out in Schedule 2.

Registration Authority means where appropriate any appropriate registration authority in accordance with the Care Standards Act 2000 and/or any other regulatory registration body which applied to this Contract by virtue of any legislation whereby the Contractor is required to obtain and keep in place any formal statutory registration for carrying out the Services.

Service User means any person intended to benefit directly from the provision of the Services.

Services means those services which are more particularly described in Schedule 1 (Specification) and/or referred to elsewhere in this Contract.

Specification means the specification of the Services which are to be provided by the Contractor (as set out in Schedule 1) subject to any variation thereto made pursuant to Clause 37.

Tender Response means the Contractor's response (which may be included at Paragraph 2 of Schedule 3) to the Invitation to Tender (as sent out during the tender period and may be included at Paragraph 1 of Schedule 3).

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Acquired Rights Directive 77/187 (as amended from time-to-time).

Transferring Employees means any employees who are transferred from the employment of the Council to that of the Contractor pursuant to the Transfer Regulations and whose names and employment details were supplied during the tender period.

VAT means Value Added Tax or any other tax levied or imposed in replacement or substitution thereof.

Variation means any change to this Contract including the specification of the Services the extension or earlier termination of the Contract Period or other variations as provided for in Clause 37.

- 1.2. Any reference to any of the Contractor's personnel shall be deemed to include the Contractor's directors, employees, agents and sub-contractors.
- 1.3. References to any statute or section or part of any statute include a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made there under or pursuant thereto.
- 1.4. Except where the context otherwise, requires words denoting the singular meaning shall include the plural meaning and vice versa and wording denoting any one gender shall include the other gender.
- 1.5. A reference to any Party shall where the context so permits be a reference also to the successors in title and assigns of such Party and/or any person authorised by such Party.
- 1.6. Any reference to a Schedule or Clause shall unless the contract is specified be a reference to the corresponding Schedule or Clause of this Contract.
- 1.7. The Clause headings in this Contract are for the convenience of the Parties only and shall not affect its interpretation.
- 1.8. If there is any conflict between the terms of this Contract and any of the Schedules to this Contract and it is unclear which provision is to take precedence then the provisions shall be interpreted so that they are given precedence in the following order:
 - a. the Variables; followed by
 - b. the Conditions; followed by

- c. the Schedules to this Contract (in chronological order)
- 1.9. This Contract shall commence on the Commencement Date (as stated in the Variables) and shall continue for the Contract Period (as stated in the Variables) unless otherwise terminated early.
- 1.10. This Contract supersedes all other agreements between the Parties.
- 1.11. The Council, this Contract and the Contractor's performance of the Services will, at all times, be subject to the Constitution of the Council.

2. PERFORMANCE OF THE SERVICES

- 2.1. At all times the Contractor shall provide the Services as and when required by the Council (in accordance with the provisions of this Contract) in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Council, its staff, agents, subcontractors and members of the public and with reasonable skill, care and diligence with the utmost good faith to the Variables as specified in this Contract at all times and to the reasonable satisfaction of the Council for the Contract Period in accordance with the Specification (Schedule 1), the Performance Targets (Schedule 2) and the Contractor's Tender Response (Schedule 3).
- 2.2. The Contractor shall provide the Services in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council.
- 2.3. Except as otherwise provided for in this Contract the Contractor shall provide or procure the provision of any asset, resource or personnel or other thing necessary for the provision of the Services. This includes engaging a sufficient number of suitably qualified and trained personnel, as outlined in Clause 9.
- 2.4. The Contractor shall be responsible for the security of anything used in connection with the provision of the Services and the Council shall be under no liability in respect thereof (save as may be specifically provided to the contrary in this Contract or otherwise).
- 2.5. The Contractor shall promptly inform the Authorised Officer:
 - a. of any actual or anticipated inability or failure of the Contractor to provide the Services or any part thereof; or
 - b. if the Contractor is aware of anything and whether or not the result of any act or omission on the part of the Council which prevents or hinders or which may prevent or hinder the Contractor from complying with the Contract giving details of the circumstances, reasons and likely duration.
- 2.6. The Contractor shall confirm in writing any verbal information given to the Authorised Officer.
- 2.7. The provision of information under Clause 2.5 and 2.6 shall not in any way release the Contractor from any of its obligations under this Contract.

- 2.8. Should the Contractor require any further instruction or information which is necessary for or in connection with the provision of the Services, the Contractor shall make a written application in adequate details for the same to the Authorised Officer. Such application shall be made on a date which gives adequate time for response.
- 2.9. The Contractor shall, at all times throughout the Contract Period upon reasonable prior written notice to the Contractor's Representative (and without notice in the case of emergency) allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:
 - a. all work places of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Services;
 - b. any personnel or agent of the Contractor for the purpose of interviewing such persons in connection with the provision of the Services; and
 - c. any technology, resources, systems, and procedures used or proposed to be used in connection with the provision of the Services.
- 2.10. The Council requires that the Services be performed within a best value framework in accordance with the relevant best value legislation, all best practice regulatory and guidance applicable to the Services. The Contractor shall comply with any actions as the Council may require for compliance with the Council's duty to achieve value for money and continuous improvement, which may include collaboration with other organisations in the borough.
- 2.11. Unless otherwise stated in the Schedules, the Services shall be provided on Business Days. If the Contractor wishes to provide the Services on non-Business Days, the Contractor may apply in writing to the Authorised Officer for permission (whose decision shall be final).
- 2.12. The Contractor shall, at all times throughout the Contract Period, continuously improve the Services in regards to efficiency and effectiveness.
- 2.13. During the Contract Period the Council may, in its absolute discretion, arrange for the same or similar Services to be delivered by other parties (including itself).

3. CONTRACT PRICE

- 3.1. In consideration for the provision of the Services, the Council shall pay the Contract Price be as stated in the Variables.
- 3.2. The Contract Price shall include all costs of providing the Service and all charges, expenses and outgoings incurred by the Contractor in fulfilling the Contractor's obligations under this Contract.
- 3.3. The Contract Price shall be adjusted according to the Price Adjustment formula stated in the Variables.

4. INVOICES AND PAYMENT

- 4.1. The Contractor must provide the Authorised Officer (or any nominated officer) with production a satisfactory invoice in a format to be agreed with the Authorised Officer. The invoice must specify the following:
 - a. unique invoice number;
 - b. hours worked (if relevant);
 - c. services provided
 - d. completion of milestones or Performance Targets (if relevant);
 - e. the Council's order or job number (if services are provided upon order by the Council);
 - f. name and address of Contractor;
 - g. date invoice was raised.
- 4.2. The Contractor shall deliver the invoices to the Authorised Officer (or any nominated Officer) at the frequency stated in the Variables.
- 4.3. So long as the Contractor shall continue to provide the Services in accordance with the provisions of the Contract, to the reasonable satisfaction of the Authorised Officer, the Council shall pay a valid invoice within 30 days from receipt of the invoice.
- 4.4. If any element of the invoice is in dispute or the Contractor's performance is deemed unsatisfactory, the Council may reduce payment or may withhold payment until such dispute or underperformance is resolved.
- 4.5. Any payments made in accordance with this Contract are exclusive of VAT and VAT shall be added to any payments where appropriate.
- 4.6. In respect of any payment on receipt of any valid VAT invoice from the Contractor the Council shall pay VAT to the Contractor in addition to the other sums payable in accordance with this Contract.
- 4.7. The Council will pay the Contractor by way of a bank transfer ("BACS Transfer"), unless payment is made using the Council's Visa Purchase Card.
- 4.8. If the Council does not make payment within 30 days of receipt of a valid invoice, and the Council does not provide reasons for withholding payment, the Contractor shall be entitled to charge interest on the late payment at [] % above the base rate of the Cooperative Bank.

5. APPORTIONMENTS AND PREPAYMENTS

- 5.1. The Parties will deal with prepayments and apportionments at the commencement of this Contract as follows:
 - a. The Council will account to the Contractor for any prepayments received by the Council in respect of the Services within three months of the Commencement Date:

- b. All utilities charges salaries wages and other outgoings and costs of a periodical nature attributable to the carrying out of the Services which are chargeable by reference to a period commencing before the Commencement Date and ending after such date shall be apportioned between the Parties on a time basis; and
 - c. All VAT payable or refundable in respect of goods and services supplied or deemed to be supplied by the Council to the Contractor and all interest payable thereon and penalties attributable thereto shall be paid to HM Customs and Excise by the Council and the Council shall be entitled to receive and retain all reimbursement or credit from HM Customs and Excise for VAT borne by the Council on good and services supplied to the Council prior thereto and any payments received in respect of VAT overpaid to HM Customs and Excise prior thereto and all VAT payable or receivable in respect of the period after the Commencement Date shall be for the account of the Contractor.
- 5.2. On the termination of this Contract (for whatever reason) the Parties will deal with prepayments and apportionments in the same manner as set out in Clause 5.1 above and (if the Council shall so require) the Contractor shall make such arrangements directly with any new contractor as notified by the Authorised Officer.

6. ORDERING PROCEDURE

- 6.1. Where the Services are to be supplied upon the order or request of the Council, any request for the provision of Services shall be made by the Authorised Officer by means of an official order in a format which will be advised by the Authorised Officer.
- 6.2. The terms of this Contract shall apply to the provision of Services pursuant to any official order (but subject to any specific Variation contained in such order form).

7. THE AUTHORISED OFFICER

- 7.1. The Authorised Officer shall be the person specified in the Variables or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Contract.
- 7.2. Before issuing any instructions to the Contractor in accordance with this Contract the Authorised Officer shall consult with the Contractor and the Parties shall use all reasonable endeavours to agree upon any appropriate steps to avoid the need for a formal instruction under Clause 7.3.
- 7.3. The Authorised Officer shall have power to issue reasonable instructions to the Contractor requiring compliance with this Contract and the Contractor shall comply therewith.
- 7.4. From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. The Authorised Officer shall give written notice to the Contractor of any such nomination. Until such notice is received, the Contractor shall be under no obligation to comply with any instruction issued by anyone who is not the Authorised Officer.

8. THE CONTRACTOR'S REPRESENTATIVE

- 8.1. The Contractor shall appoint a senior employee as the Contractor's Representative for the proper administration of this Contract (except in the case of a sole trader when the Contractor's Representative shall be the sole trader).
- 8.2. The Contractor's Representative shall have suitable and sufficient qualifications and experience to carry out this function and shall be the representative empowered to act on behalf of the Contractor for all purposes connected with the Contract during the operation of the Services.
- 8.3. The Contractor's Representative shall be the person specified in the Variables or such other person nominated in writing by the Contractor from time to time to act in the name of the Contractor for the purposes of the Contract.
- 8.4. The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity, address and telephone numbers of any persons authorised to act for any period as deputy for the Contractor's Representative and any changes in any such appointment.
- 8.5. From time to time the Contractor may appoint one or more representatives to act for the Contractor generally or for specified purposes or periods. Immediately any such appointment is made or terminated, the Contractor shall give written notice thereof to the Council and, until such notice is received, the Contractor shall be under no obligation to comply with any instruction issued by such representative.
- 8.6. Any notice, information, instruction or other communication given to the Contractor's Representative shall be deemed to have been given to the Contractor.

9. THE CONTRACTOR'S PERSONNEL

- 9.1. The Contractor shall be entirely responsible for the recruitment and conditions of service of all staff engaged in the provision of Services including, without limitation, the payment of wages and other emoluments.
- 9.2. The Contractor shall employ in and about the provision of the Services only such persons as:
 - a. have the right to work in the UK;
 - b. are capable of carrying out the work required by the Services; and
 - c. are careful, skilled, honest, courteous, professional and trained (or undergoing training) in the work which they are to perform.
- 9.3. The Contractor shall ensure that every person employed or engaged by the Contractor in and about the provision of the Services at all times complies with and is properly and sufficiently trained and instructed with regard to:
 - a. the task or tasks which that person has to perform, including but not limited to the use and operation of equipment and/or the supervision of persons using equipment;

- b. any relevant provisions of the Contract;
 - c. all relevant rules, codes, policies, procedures and standards of conduct of the Council which are either referred to or notified to the Contractor by the Council from time to time; and
 - d. all relevant rules, procedures and statutory requirements concerning health and safety at work
- 9.4. The Contractor shall implement a programme of staff training and instruction on all matters concerned with the Services and related tasks so as to ensure that only well-trained and knowledgeable staff are engaged in the provision of the Services.
- 9.5. The Contractor shall maintain an up-to-date register of all training given to staff which shall be made available on request to the Authorised Officer or any nominated Council representative. Such training shall include updated, amended or replaced legislation, regulations or guidance.
- 9.6. Where any part of Service delivery requires formal qualifications or registration (including certificates of competencies), the Contractor shall, upon reasonable request by the Authorised Officer, provide this in respect of the relevant employee. In particular the Contractor shall ensure that all electrical repairs must be carried out by a National Inspection Council for Electrical Installation Contracting (NICEIC) approved contractor or member of staff and that all gas service installations and repairs must be undertaken by staff or contractors with GAS SAFE registration.
- 9.7. The Contractor shall keep at all times proper and up-to-date records of all persons in the Contractor's employ, including disabled persons with any disclosed liability who are likely to have any connection with the Services and shall afford the Council and the Authorised Officer full access to such records. Any information relating to the Contractor's disabled staff will be for the purpose of information to assist the Council in considering and determining access to Council premises, and what facilities and aids may be required, to enable those of the Contractor's Staff who are disabled to carry out their work on Council premise.
- 9.8. The Contractor must ensure that each person engaged in or about the Services completes a statutory form disclosing all criminal offences and cautions. If the circumstances under which the Services are provided are such that personnel of the Contractor are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975, then the Contractor shall ensure that all personnel engaged in the provision of the Services shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act. The Contractor shall disclose to the Authorised Officer the names and addresses and sufficient information and as appropriate all convictions of its personnel engaged in and about the provision of the Services to enable proper checks to be made.
- 9.9. The Contractor shall comply with any Council policy regarding the engagement of ex-offenders and any Disclosure and Barring Service codes of practice.

- 9.10. The Contractor shall take all reasonable steps to ensure that personnel of the Contractor advise them of any convictions they receive whilst in the employment of the Contractor.
- 9.11. The Council may require any personnel, engaged by the Contractor (or any sub-contractor) in providing the Services, to be immediately removed from the provision of the services where the Council, in its sole discretion, deems such personnel unsuitable. The Council shall not be liable for any costs incurred by the Contractor in complying with this Clause 9.11.

10. CHILDREN / VULNERABLE ADULTS

- 10.1. Where the Services involve unsupervised contact with children (as stated in the Variables), this entire Clause 10 shall apply. Where the Services involve unsupervised contact with vulnerable adults but not children (as stated in the Variables) only Clauses 10.2 and 10.3 shall apply. The Council will require a signed undertaking from the Contractor that the provisions of this Clause 10 have been complied with prior to Services commencing.
- 10.2. The Contractor will ensure that checks are carried out on all employees in accordance with the registration requirements under the Care Standards Act and that appropriate Disclosure and Barring Service checks are obtained.
- 10.3. With regard to police checks of personnel, the Contractor undertakes:
 - a. to ensure that all of the Contractor's personnel are police checked in accordance with the Legislation (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;
 - b. that police checks carried out via the Contractor will only be accepted upon written confirmation from the Disclosure and Barring Service (DBS) that the Contractor is registered with this service for the purposes of initiating police checks;
 - c. where the Contractor asks the Council to process police checks, the Contractor must do so via the Council's Nominated Officer notified to the Contractor in the Specification or otherwise notified to the Contractor by the Council in writing;
 - d. to obtain the highest level of disclosure available from the DBS (including the Enhanced Certificate of Disclosure) in respect of each prospective employee, volunteer or other persons who may work with, give support to, or otherwise have direct contact with Service Users; and
 - e. to update all police and DBS checks every three years; and
 - f. to keep full records on the personal file of all persons who have undergone Disclosure and Barring Service checks.
- 10.4. Prior to the Commencement Date, the Contractor shall submit to the Council a Child Protection Policy and written code of behaviour for staff and volunteers. These documents will, where relevant, adopt the All London Child Protection Procedures

and work to the Local Safeguarding Children Board guidance and procedures. The Contractor's Child Protection Policy must demonstrate how staff working across agencies and professions will work together to ensure children's safety is paramount at all times. The Contractor shall incorporate any instructions given by the Authorised Officer to revise or amend such a policy.

- 10.5. The Contractor shall at all times comply with Child Protection Procedures relevant to the Local Authority in which the child is placed and will ensure that any of the Contractor's internal procedures or inter-agency protocols are consistent with these procedures.
- 10.6. Contractor's staff (including employees, carers and volunteers) must:
 - a. have a clear commitment to abide by the All London (or relevant) Child Protection Procedures, as amended from time to time, when dealing with matters affecting the welfare of young people and shall comply with any requirements included in the Specification attached as Schedule 1;
 - b. be subject to the highest standard of recruitment practices, including any guidelines or codes of practice issued by the Local Safeguarding Board and/or the Council;
 - c. maintain accurate and up to date records of decision making and actions taken;
 - d. ensure they are at all times sensitive to needs arising from race, culture, religion, or linguistic background;
 - e. respect confidentiality of information about individuals;
 - f. share information with agencies to the extent that is required to assess and meet the needs of the child; and
 - g. receive regular mandatory child protection training.
- 10.7. The Contractor shall provide the Council, upon reasonable request, with records evidencing any of the requirements of this Clause 10. The Council reserves the right to additionally make spot checks to verify compliance with this Clause 10.
- 10.8. A breach of this Clause 10 shall be considered a Material Breach.

11. COMPLAINTS

- 11.1. The Contractor is required prior to the commencement of the Contract to provide the Authorised Officer with a written procedure for dealing with complaints from any source for approval, and details of how the Contractor intends to ensure that this procedure is available to, and understood by, all employees, agents, sub contractors and service users. The Contractor and its personnel shall comply with such procedure at all times.
- 11.2. The Contractor is required to maintain a record of all complaints received together with details of any action taken and resolution reached. Such record shall be kept available for inspection by the Authorised Officer upon request.

- 11.3. Within fourteen days of receipt of such a complaint, the Contractor will provide the Authorised Officer with copies of such complaints and correspondence arising from or in relation to the Services being provided.
- 11.4. If a Service User, their representative/advocate or a member of the public is dissatisfied with the Contractor's response to a complaint, the complainant must be advised of their rights to take the matter further and given details of the Council's Complaints Procedure.
- 11.5. A record of any complaints received by the Contractor in relation to the Services must be kept for a period of six (6) years following resolution of the complaint, irrespective of the date at which the Contract terminates.

12. TUPE

- 12.1. Where the Transfer Regulations apply to employees of the Council (as stated in the Variables):
 - a. The Council shall on the Commencement Date transfer the contract of employment for each of the Transferring Employees to the Contractor under the provisions of the Transfer Regulations and on the terms and conditions of employment outlined during the tender process (save insofar as such contracts relate to any occupational pension scheme).
 - b. The Council 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 and will pay over all deductions properly made therefrom (including but not limited to taxation, national insurance, and any pension payments) for the period up to and including the Commencement Date.
 - c. The Council will indemnify the Contractor against all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim, (other than those arising solely because of the operation of Transfer Regulations), arising from a cause of action occurring prior to the Commencement Date by all or any employees at any time engaged in the provisions of the Service and arising from their employment with the Council, prior to the Commencement Date.
 - d. The Contractor shall indemnify the Council against all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a course of action occurring on or subsequent to the Commencement Date by all or any of the transferring employees as a result of their employment with the Contractor subsequent to the Commencement Date.
 - e. The Contractor shall at his own cost undertake all liability for and shall fully indemnify the Council against all Losses arising from any claim which may be brought against the Council as a consequence of or arising from:

- i. the Contractor's failure to fully consider the application of the Transfer Regulations to this contract; and/or have taken the appropriate action required under the Transfer Regulations;
 - ii. any action or proceedings taken or initiated by or on behalf of any Transferring Employee or future employee of the Contractor; or
 - iii. the letting of this Contract or any breach of the provisions of this Clause.
- 12.2. Where the Transfer Regulations do not apply to employees of the Council (as stated in the Variables):
 - a. The Council, where it has provided information to the Contractor during the course of the Tender regarding employees of a previous contractor, makes no warranty about the accuracy of the information, but that the Council used its reasonable endeavours to provide all relevant information.
 - b. The Contractor has sought its own advice regarding the Transfer Regulations and has entered this Contract on the basis of such advice.
 - c. The Contractor shall indemnify the Council against the following:
 - i. all costs and expenses howsoever incurred if a claim is made that the Transfer Regulations apply to the Contract;
 - ii. all damages, awards, orders, compensation, costs and expenses incurred if an Employment Tribunal or other tribunal or court decides that the Transfer Regulations apply to this Contract including but not limited to compensation for unfair dismissal and/or compensation for failure to consult and any order for costs;
 - iii. all redundancy payments made to employees formerly engaged in the provision of the Services to whom Transfer Regulations applies, if Transfer Regulations are held to have applied.
 - d. The Contractor shall at his own cost undertake all liability for and shall fully indemnify the Council against all Losses which may be brought against the Council as a consequence of or arising from:
 - i. the Contractor's failure to fully consider the application of the Transfer Regulations to this Contract, and/or failure to take the appropriate action required under the Transfer Regulations;
 - ii. any action or proceedings taken or initiated by or on behalf of any transferring employee or future employee of the Contractor; and/or
 - iii. the letting of this Contract or any breach of the provisions of this Clause.
- 12.3. It is acknowledged that the Transfer Regulations may apply upon termination of this Contract (howsoever caused) and Clause 18.9 will apply.

13. DAMAGES AND INDEMNITY

- 13.1. The Council shall not be liable for any Losses suffered by the Contractor save for any such arising from any breach of the Council's obligations under this Contract

and in such case only to the extent that the Contractor is unable to mitigate such Losses.

- 13.2. Without prejudice to any other provisions in this Contract, the Contractor shall indemnify and keep the Council indemnified against any Losses arising from all breaches of this Contract, and such indemnity shall be paid without any deduction or set-off.
- 13.3. For the avoidance of doubt such Losses shall include the reasonable cost to the Council of the time spent by its officers in dealing with such breach and (if necessary) in making alternative arrangements for the provision of the Services or any part thereof.
- 13.4. The Contractor will not knowingly enter into any arrangement or provide the Services in a manner that might result in a conflict between the Council's statutory duties and any obligations under this Contract and will notify the Council as soon as it becomes aware of the possibility of any such conflict.
- 13.5. In the event of such a conflict arising, the Contractor will use its best endeavours and take such steps as the Authorised Officer may require to resolve it as far as possible in order to comply with its other obligations under the Contract.

14. SET OFF

- 14.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other Contract with the Council.
- 14.2. If the Contractor's engagement is terminated as provided in this Contract or is suspended and is not reinstated, the Council shall be entitled, in respect of any Losses resulting from or arising out of the termination of the Contractor's employment, to deduct the same from any sum or sums which are due from the Council to the Contractor under this or any other Contract with the Contractor or be entitled to recover the same from the Contractor as a debt. Such Loss shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the Service or any part thereof.
- 14.3. The provisions of this Clause 14 shall survive the expiry or termination of this Contract.

15. DEFAULT

- 15.1. Without prejudice to any other provision of this Contract the Council will monitor the Contractor's performance of this Contract and, should the Contractor fail to carry out all or any part of the Services or fail to perform all or any part of the Services in the manner specified in this Contract and/or the Council (or its Authorised Officer) deems that Contractor has adversely affected the image or reputation of the Council, the Authorised Officer shall be entitled on giving written notice to the Contractor of

the same to do any one or more of the following (but without prejudice to all other rights and remedies available to the Council or without determining the Contract):

- a. require the remedying of any delay or failure in performance under the Contract; and
- b. arrange for the Council or a third party to carry out those parts of the Services until such time as the Contractor shall have demonstrated to the absolute satisfaction of the Authorised Officer its capability to perform the Service in the required manner;
- c. determine the Contract in respect of such parts of the Service that the Contractor shall have omitted or failed to provide to the satisfaction of the Authorised Officer; and
- d. terminate the whole Contract.

15.2. Where the Authorised Officer has arranged for any part of the Services to be carried out by the Council or a third party under Clause 15.1.b:

- a. all payments to the Contractor in respect of that part of the Services shall cease until such time as the Contractor is able, with the written approval of the Authorised Officer, to resume provision of that part of the Services; and
- b. the Contractor shall pay to the Council by way of indemnity all additional Losses incurred by the Council directly or indirectly by reason of the making of any alternative arrangements for the provision of the Services or any part of them and the Council shall be under no obligation to adopt the cheapest arrangements. This indemnity shall include the reasonable cost to the Council of the time spent by its officers in suspending the Contractor's employment and making such alternative arrangements. The Council may recover the same from the Contractor as a debt or deduct it from any sum or sums due to the Contractor under this or any other Contract.

15.3. If it becomes known to the Contractor that any aspect of the Services has or may fall below the standard required by this Contract or has or may be omitted, the Contractor shall immediately inform the Authorised Officer in writing and the Authorised Officer may (in his absolute discretion) waive the said failure or take further action under this Contract.

15.4. If the Contractor (or where applicable any director thereof):

- a. has any director of it or partner in it convicted of dishonesty;
- b. is subject to any material adverse criticism by any Court or by any Registration Authority; or
- c. experiences, in the reasonable opinion of the Authorised Officer, a conflict of interest between the interests of the Council and any other person;

the Authorised Officer and the Contractor's Representative shall forthwith meet to agree the appropriate remedial action and the timescale for effecting this.

- 15.5. If the Contractor does not carry out the agreed remedial action, pursuant to clause 15.4, within the agreed timescale or the Parties cannot reasonably agree such action or timescale as provided for above, the Authorised Officer may serve a notice requiring the Contractor to remedy such breach, pursuant to Clause 15.1.a.
- 15.6. The rights of the Council under this Clause are in addition to and without prejudice to any other rights or remedies which the Council may have.

16. FAULT TERMINATION

- 16.1. The Council shall have the right without prejudice to any accrued rights or remedies of either Party hereunder to terminate this Contract by notice in writing with immediate effect if the Contractor (or where applicable any director or member of the committee of management or partner or senior employee thereof) (or in respect of Clauses 16.1.d. 16.1.d or 16.1.e any agent of the Contractor whether or not acting with the express or implied authority of the Contractor):
- a. commits or suffers to occur a Material Breach;
 - b. has been required to remedy three delays, failures and/or defaults in any twelve-month period, pursuant to Clause 15.1.a;
 - c. is substantially or persistently in breach of any of its obligations under this Contract;
 - d. offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (irrespective of the Contractor's awareness);
 - e. commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972;
 - f. commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, other contractors or employees;
 - g. becomes insolvent or is wound up or is otherwise dissolved or if an administrator or receiver is appointed or being an individual has an interim order or bankruptcy order made against them or if the Contractor makes a composition or arrangement with its creditors or a liquidator is appointed OR if any other events or circumstances arise which affect or are likely to affect the ability of the Contractor to carry out the Service;
 - h. there has been a change in control of the Contractor;
 - i. fails to carry out and/or update checks of its employees as required by any Registration Authority;
 - j. (if applicable) has its registration or that of any of its employees cancelled pursuant to any power under the Care Standards Act 2000, Children Act 1989 or any other legislation relevant to the Services, or the Contractor fails to maintain any such required registration or has any such registration cancelled in respect of similar services which the Contractor provides elsewhere;

- k. is convicted or cautioned or bound over in respect of any suspected offence in relation to the Services or if such is applicable the carrying out of any of the functions contained in Schedule 2 of the Local Authority Social Services Act 1970 for any other local authority;
- l. (if such is applicable) is the subject of a formal inquiry under the provisions of Section 7 of the Local Authority Social Services Act 1970 or a formal inquiry carried out by the Council;
- m. (if such is applicable) is included on any register or list held by the Department of Health or any other statutory body;
- n. one or more or its directors has been convicted of fraud;
- o. any professional person engaged by the Contractor in providing the Services is the subject of any disciplinary or similar action by his professional body or ceases to be registered or accredited by their professional body; or
- p. has directly or indirectly canvassed any Elected Member of the Council or any other person concerning the award of, Variations to or any extension to, this Contract.

17. NO FAULT TERMINATION

- 17.1. If this Clause applies (as stated in the Variables), the Council may terminate this Contract by giving the Contractor the period of notice specified in the Variables.

18. CONSEQUENCES OF TERMINATION

- 18.1. Expiry or termination shall be without prejudice to the rights and remedies of the Contractor and the Council accrued before such termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination or expiration.
- 18.2. Upon expiry or termination (for whatever reason):
- a. the Contractor shall forthwith cease to provide the Services;
 - b. all provisions which are expressed to survive expiry or termination of this Contract, this Clause and Clauses 13, 14, 20, 23.2, 24, 31, 32 and 38 shall continue in force in accordance with their terms; and
 - c. subject as otherwise provided herein neither Party shall have any further obligation to the other under the Contract.
- 18.3. Without prejudice to the generality of this Clause 18, the Contractor shall provide all information required as set out in this Clause 18.3, Clause 18.4 any other relevant provisions of this Contract so that the Council can:
- a. make all required arrangements for the future of the Services; and

- b. meet its legal obligations (including the duty of best value);
 - c. prepare the necessary documentation for tendering, re-tendering or any transferring in-house of the Services in accordance with its Constitution; and
 - d. carry out an efficient, effective and legally compliant re-tendering process.
- 18.4. At any time prior to the expiry or termination of the Contract or the Contractor ceasing to provide the whole or any part of the Services, the Contractor shall co-operate with the Council (and/or any third Party at the direction of the Council) to ensure the smooth handover and continued running of the Services during such handover. In particular (but without limitation) the Contractor shall, to the extent reasonably required by the Council:
- a. allow the Council (and/or any third party at the direction of the Council) reasonable right of access to any premises from which the Services are provided (including without limitation the Contractor's and any sub-contractor's premises, systems, procedures and staff; and
 - b. deliver to the Council upon request and in a form approved by the Council all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted sub-contractors and in default of compliance with this provision the Council may recover possession thereof

and the Contractor grants a free and unrestricted licence to the Council and its appointed agents to enter for the purpose of any such recovery any premises of the Contractor where any such documents, information or materials may be held.

- 18.5. On the expiry or termination of the Contract or any part thereof:
- a. the Contractor will deliver to the Council (and/or any third party at the direction of the Council) upon request and in a form approved by the Council all information, materials documents and records (free of charge) relating to the Services in its possession or under its control and in default of compliance with this provision the Council may recover possession thereof;
 - b. the Council shall be entitled to repossess any physical resources licensed, loaned, or hired to the Contractor and to exercise a lien over any of the physical resources or any other thing belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Council and shall have full and unfettered licence over all drawings, details, descriptive schedules and other documents for use in connection with the Services;
 - c. if any licences, authorisations, orders, grants, confirmations, consents, permissions and approvals from third Parties are necessary or required for the transfer of any chattels, licences, materials, documents, records (or other matters as set out in Clauses 18.5.a or b) to the Council or enable the Council to continue or re-contract the Services or any part thereof, the Contractor shall use all reasonable endeavours to procure that the same are issued or as the case may be transferred to the Council as soon as reasonably practicable after the expiry or termination of Contract;

- d. without prejudice to the generality of Clause 18.5.c, the Contractor will co-operate in the preparation and execution of a secure transfer (if required by the Council) of all computer operations including the preparation of agreed transfer plans plus the provisions of unrestricted access to software and data in order to arrange the transfer of any intellectual property or licences to use any of the said software and data.
 - e. Upon request by the Council, shall destroy all data related to the Contract which it has in its possession.
- 18.6. The Contractor shall carry out the requirements of this Clause 18 free of charges.
- 18.7. The Council shall be entitled, in respect of any Losses to the Council resulting from or arising out of the termination of the Contractor's engagement, to deduct the same from any sum or sums which are due from the Council to the Contractor under this or any other Contract with the Contractor to be entitled to recover the same from the Contractor as a debt. Such Losses shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contractor's engagement and in making alternative arrangements for the provision of the Services or any part thereof.
- 18.8. The Contractor shall indemnify the Council against any Losses and when the total Losses suffered by the Council resulting from or arising out of the termination of the Contractor's engagement have been calculated and after taking into account any deduction made in accordance with this Contract, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, shall pay to the Contractor any balance shown as due to the Contractor.
- 18.9. The Parties acknowledge that the Transfer Regulations may apply upon the Contractor ceasing to provide the whole or any part of the Services and accordingly:
- a. the Contractor shall promptly provide (and in any event within 14 days of request by the Council) such information about all employees who by virtue of the Transfer Regulations will or may become employees of the Council or a third party after termination of this Contract:
 - b. the Council may use such information for:
 - i. its own internal purposes; and/or
 - ii. disclosure to any third Parties who submit a tender for any subsequent contract for the provision of all or any part of the Services; and/or
 - iii. any third party who may become the employer of some or all of such employees by virtue of the Transfer Regulations or otherwise;
- PROVIDED THAT the Council will require any such third party to enter into a confidentiality undertaking before disclosing any employee information;
- c. the Contractor shall fully disclose the terms and conditions on which such employees are employed and any anticipated or contractually committed changes to these so that the information disclosed accurately and fully sets out

- the rights and obligation of the Contractor to the potentially transferring employees immediately prior to the time of transfer;
- d. the Contractor shall promptly and fully disclose to the Council from time-to-time any changes to the terms and conditions on which such employees are employed and any anticipated or contractually committed changes to these which have occurred since the first disclosure (as referred to above) and shall ensure that the information disclosed is regularly updated;
 - e. the Contractor shall discharge all of its liabilities to the employees transferred pursuant to Clause 12.1 accruing up to the time of the transfer; and
 - f. the Contractor shall indemnify and keep the Council fully indemnified against all Losses incurred or suffered in connection with any claim by any of the employees who are transferred to the Council or to another organisation under the Transfer Regulations (or otherwise).
- 18.10. During the period of 6 months preceding the expiry of this Contract by effluxion of time, or at any time after either Party has given notice to terminate this Contract (or any part thereof) for whatever reason, the Contractor shall not in relation to any employees, employed in or about the Services:
- a. terminate the employment of any such employee for any reason whatsoever save where in the reasonable opinion of the Contractor or any sub-contractor, termination is justified for cause due to the actions of any such employee; or
 - b. alter or change in any way any of the terms and conditions of employment of any such employee (whether with or without the consent of such employee) other than for wage or salary awards as are required pursuant to this Contract or by any applicable statutes, laws, regulations and agreements; or
 - c. replace any of the said employees or deploy any person other than those already providing the Services to perform the Service or increase the number of employees performing the Services; or
 - d. recruit (except as a replacement for any said employee whose employment is terminated and where the replacement is being recruited on terms which are no better than the terms of the person being replaced) or any person, without the prior written agreement of the Council, such agreement not to be unreasonably withheld or delayed.
- 18.11. The Council may assign to and for the benefit of (and/or any third party at the direction of the Council) for all or any part of the Services the benefit of the rights of and obligations to the Council under this Clause 18.
- 18.12. At any time during the Contract Period the Authorised Officer may require the Contractor to prepare a plan which sets out the processes and tasks required to enable the Council to plan effectively for the transfer of responsibility for the Services and ensure there is a smooth handover to the Council or a third party on expiry or termination of the Contract or if the Contractor otherwise ceases to provide the Services (or any part thereof). The Authorised Officer may require the Contractor to revise such plan from time-to-time.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1. The Contractor shall not assign, delegate, sub-contract or otherwise part with any of its rights or obligations under this Contract or any part without the express written permission of the Council.
- 19.2. The Authorised Officer may at any time (and without giving reasons) require that any particular employee, sub-contractor or agent of the Contractor be removed from provision of the Services. The Council shall not be liable for any costs incurred by the Contractor in such removal.
- 19.3. The Council may assign this Contract in whole or in part to a statutory or public body or any successor authority or authorities of the Council.
- 19.4. The Contractor shall not be relieved or excused of responsibility or liability under this Contract nor shall performance of its obligations be affected by the appointment of any sub-contractor or any other delegation of its responsibilities for parting with any of its rights or obligations under this contract.
- 19.5. The Contractor shall be responsible for the acts, omissions and neglect of any sub-contractor (whether engaged directly or indirectly by the Contractor), and the agents or employees of any such sub-contractor as fully as if they were the acts or omissions or neglect of the Contractor.
- 19.6. The Contractor shall ensure that the terms on which he contracts with any sub-contractor include provisions requiring the sub-contractor to comply with all relevant terms of this Contract including (but without limitation) any provisions relating to the requirement for appropriate checks to be carried out from the Disclosure and Barring Service and a breach of this Clause 19.6 shall be deemed a Material Breach.

20. INTELLECTUAL PROPERTY

- 20.1. The Contractor shall not in connection with the Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any intellectual property rights and the Contractor shall indemnify the Council against all Losses incurred by the Council as a consequence of the Contractor's breach of this provision.
- 20.2. All rights in Intellectual Property (including without limitation, in patents, copyright, trademarks, registered dealings, design right and know-how) to which the Contractor may become entitled by reason of activities in the course of its engagement shall vest automatically in the Council and the Contractor shall at the request of the Council execute such documents and do such things as maybe required by the Council to evidence such vesting.
- 20.3. The rights referred to in Clause 20.2 shall continue after termination (for whatever reason) of this Contract for the benefit of the Council and any subsequent contractor with whom the Council may contract for the provision of the Services or any of them.

21. CONFIDENTIALITY AND PUBLICITY

- 21.1. Subject to the provisions of Clauses 20.1 to 20.3 (inclusive), none of the Parties shall during the Contract Period or at any time thereafter make use of for its own purposes or disclose to any person (except as may be required by law) the Contract or any information contained in it or in any material provided to one of the Parties by any other party pursuant to the Contract or prepared by a Party pursuant to the Contract. All information referred to in this provision shall be deemed to be confidential.
- 21.2. If any of the Parties wishes to use of the information as set out above it shall first obtain the written consent of the Party whose information it wishes to use.
- 21.3. Neither Party shall divulge or dispose of or part with possession, custody, or control of any confidential material or information provided to one Party by the other Party pursuant to the Contract or prepared or obtained by any of the Parties pursuant to the Contract, other than as required by law or in accordance with the express written instructions of the Party who provided the said material.
- 21.4. This Contract, any documents provided during the tender period, any correspondence from the Council, any information gathered by the Contractor and any other information in connection with this Contract:
 - a. shall be treated as confidential by the Contractor.
 - b. must be given to the Council on the termination of the Contract forthwith upon demand;
 - c. shall remain the property of the Council and copyright shall remain vested in the Council;
 - d. shall not be copied by the Contractor other than for the performance of this Contract, except with the prior written consent of the Council;
 - e. shall not be shown to any third person without the prior written consent of the Council.
- 21.5. Any Party may disclose information which would otherwise be considered confidential if required by law and without prejudice to the generality of this Clause 21 and the provisions of Clause 23.2, the Parties acknowledge that the provisions of the Freedom of Information Act 2000 applies to this Contract.
- 21.6. Save as required by an order of the Court or Regulatory Authority, the Contractor may not make any statement, publication or comment to the press or other news media or any other company, body or person (including its own publications) in relation to the Services unless it has first secured prior, written permission from the Council – such permission not to be unreasonably withheld. The Contractor shall notify the Council of all requests by the media or interested parties for information regarding the Services.
- 21.7. The Contractor must at all times comply with the Data Protection Act 1998.
- 21.8. For the avoidance of doubt, if the Services directly or indirectly involve the handling of information personal to Services Users, the Contractor must keep this information secure and confidential at all times. Where appropriate this information is to be

shared (via secure means) only with the Authorised Officer or any nominated Officer.

- 21.9. Upon termination of the Contract (howsoever caused), all information regarding Service Users must be destroyed. Any further information related to the Contract shall be destroyed upon reasonable request from the Authorised Officer.
- 21.10. Subject to Clause 21.1, the Contractor shall not and shall procure that any member of the Contractor'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.
- 21.11. The Contractor shall not and shall procure that any member of the Contractor'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.
- 21.12. Either Party may make a public statement or announcement concerning the completion of this Contract if required by:
 - a. law; or
 - b. 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 this Clause 21.

22. HEALTH & SAFETY

- 22.1. The Contractor shall in performing the Services (and to the satisfaction of the Council) adopt safe methods of work in order to protect the health and safety of the Contractor's staff, the employees of the Council and of all other persons including members of the public.
- 22.2. The Contractor shall at all times comply with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 (and shall supply a copy of its risk assessment under these Regulations when requested by the Council), and of other Acts, Regulations, Orders, Codes of Practice or rules of law pertaining to health and safety. The Contractor shall comply with and ensure all staff comply with future changes in these regulations.
- 22.3. The Contractor shall at all times comply with any additional health and safety requirements as set out in this Contract.
- 22.4. The Contractor shall comply with its health and safety policy.
- 22.5. If at any time the Authorised Officer considers that the Contractor is in breach of his requirements under health and safety legislation or best health and safety practice (whether or not he has been notified of this or served with any enforcement

proceedings by any regulator) the Authorised Officer shall be entitled to do either or both of the following:

- a. instruct the Contractor to take specified steps to comply with the Health and Safety at Work Act (1974) and/or any regulations and/or to comply with any advice given by or requirements of the Health and Safety Executive; and/or
- b. instruct the Contractor to cease to carry out the Services (or a specified part thereof) either immediately or within a specific period or not later than a specified date or time.

22.6. No instruction given, works undertaken or actions taken in order to secure compliance with this Clause shall constitute a Variation (as set out in Clause 37 or under any other provision of the Contract) and the Contractor shall not be entitled to any payment either for Services not carried out whilst complying with an instruction given pursuant to this Clause or for any additional work or accumulation of tasks or variation of the Services arising out of or in connection with any such instruction.

23. OBSERVANCE OF STATUTORY AND OTHER REQUIREMENTS

23.1. Except where such obligation would be in breach of Part II of the Local Government Act 1988, the Contractor shall, at all times throughout the Contract Period, comply with:

- a. all statutory and other provisions of a like nature to be observed and performed in connection with the Services and shall indemnify the Council against any Losses incurred or suffered by the Council arising from or in relation to a breach or alleged breach of this;
- b. all statutory and other provisions of a like nature relating to the recruitment and employment of any staff engaged in providing the Services. This obligation shall apply to employees sub-contractors and any agents of the Contractor;
- c. any applicable British, European or International Standard Specifications or Codes of Practice;
- d. the Council's Constitution, and any policies or procedures notified to the Contractor during the Contract Period (including the Council's Whistleblowing Policy);
- e. the Human Rights Act 1998 whether or not it is bound by the Act and if not bound by the Act as though it were bound by the Act (regardless of whether such be in fact the case) and in such a way that the Council shall not be liable to any person for a breach of its duties under the said Act and shall indemnify the Council against any Losses incurred or suffered by the Council arising from or in relation to a breach or alleged breach of the said Act;
- f. the Data Protection Act 1998 (and any Guidance issued pursuant to it from time to time) in all respects (and whether the Contractor is a data controller or a data processor within the meaning of the Act) and to comply with all requirements of the Authorised Officer in relation to data protection;

- g. the Crime and Disorder Act 1998. The Contractor (and/or its Sub-Contractor) will, without prejudice to its other obligations under the Contract, have due regard to the Council's obligations under the Crime and Disorder Act 1998 and shall take all reasonable steps in complying with its obligations under this Contract to prevent crime and disorder.
- h. the Care Standards Act 2000. Where relevant the Contractor is required to obtain and maintain registration under the requirements of the Care Standards Act 2000. The Contractor must inform the Authorised Officer immediately and in writing within 5 working days if the Contractor:
 - i. receives a disqualification or conviction under the Care Standards Act 2000 or any other relevant legislation
 - ii. receives a notice of proposed or actual cancellation of registration or proposed or actual prosecution
 - iii. there are any changes in registration or legal requirements, or any relevant legislation that you must comply with (together with the dates the Contractor will be expected to comply). Should the Contractor believe that they may not be able to comply with such requirements, they have a duty to inform the Authorised Officer under this Clause 3.15.5 and to suggest how the service may be maintained until they are able to comply with such requirements.

and a breach of this Clause 23.1h shall be deemed a Material Breach.

- 23.2. If an unforeseeable change in law occurs during the Contract Period which impacts on the either Party's obligations, the Parties shall meet and negotiate in good faith with a view to varying the Contract and continuing the Services within the Council's Best Value framework. Where such a change results in a decrease in the volume of Services, the Council shall not be liable for the Contractor's loss.

24. FREEDOM OF INFORMATION ACT 2000

- 24.1. The Contractor acknowledges that the Council is (and the Contractor may be) subject to the provisions of the Freedom of Information Act 2000 ("**FOIA**").
- 24.2. In this Clause 24 'Information' has the meaning given to it in s84 of FOIA.
- 24.3. If the Contractor receives any request for Information pursuant to FOIA (regardless of whether such request complies or does not comply with the strict requirements of FOIA) it shall:
 - a. make no response to such request other than a bare acknowledgement of receipt stating that the request has been passed to the Council;
 - b. pass such request (and a copy of the letter referred to in Clause 24.3a) to the Council within 24 hours of receipt of the request by the Contractor;
 - c. take no further action in regard to such request save at the direction of the Council.

- 24.4. The Contractor shall upon request by the Council (and within such period as the Council may specify) provide the Council with all assistance and Information under its control to enable the Council to respond to a request for Information within the time for compliance prescribed by FOIA.
- 24.5. The Council shall have sole discretion for deciding:
- a. what Information is to be disclosed pursuant to a request for Information (regardless of whether such Information originates from the Council or the Contractor);
 - b. what Information (if any) is exempt from disclosure pursuant to FOIA;
 - c. whether or not to include any category of Information in its Publication Scheme.
- 24.6. The Contractor acknowledges that the provisions of this Clause 24 and of FOIA may override any obligation of confidentiality as between the Council and the Contractor and that the Council may be obliged to disclose Information without consulting the Contractor or having consulted the Contractor but in opposition to the views of the Contractor.
- 24.7. Each Party shall bear its own costs of compliance with this Clause.

25. AGENCY AND PARTNERSHIP

- 25.1. None of the Parties nor their personnel shall in any circumstances hold itself or themselves out as:
- a. being the servant or agent of any other party otherwise than in circumstances expressly or implicitly permitted by the Contract;
 - b. being authorised to enter into any Contract on behalf of any other party or in any other way to bind any other party to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by the Contract; or
 - c. having the power to make, vary, discharge or waive any bye-law or regulation of any kind.
- 25.2. None of the Parties nor their employees shall in any circumstances enter into a contract or any arrangement on behalf of any other party that purports to bind the other party to the performance, variation, release or discharge of any obligation.
- 25.3. None of the provisions of this Contract shall be deemed to constitute a partnership between the Parties and neither of them shall have any authority to bind the other in any way.

26. LEGAL PROCEEDINGS

- 26.1. The Contractor and any other party immediately upon becoming aware of the same shall notify the Authorised Officer of any legal proceedings, accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Services. Any verbal notification shall be followed by confirmation in writing.

- 26.2. If requested to do so by the Authorised Officer the Contractor and any other party shall provide the Authorised Officer with any relevant information in connection with any legal inquiry arbitration court tribunal or other proceedings or inquiry in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Services.
- 26.3. Such assistance shall be provided at the Contractor's own cost where the matter upon which assistance is requested has arisen during the Contract or relates to any act or omission of the Contractor, but otherwise the Council shall pay to the Contractor and any other party its reasonable costs of providing such assistance.
- 26.4. Should any part of the Services involve the Contractor or any other party in performing duties or exercising powers under some other Contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other Contract forthwith notify the Authorised Officer of the existence of any such matter together with such particulars as are available.
- 26.5. If one or more of the provisions of these Terms and Conditions are or become to any extent invalid or unenforceable under any applicable law then the remainder of these Terms and Conditions shall continue in full force and effect. The Parties shall enter into good faith negotiations to amend the concerned provision in such a way that, as amended, it is valid and enforceable and, to the maximum extent possible, carries out both Parties' original intents.

27. NOTICES

- 27.1. Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee or if sent by pre-paid second class post, by telex, electronic mail or facsimile transmission to the address stated in the Variables to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the third Business Day after the date of posting or on successful transmission, as the case may be.

28. WAIVER

- 28.1. Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not 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.

29. FORCE MAJEURE

- 29.1. Notwithstanding any provision of this Contract or in any document referred to or incorporated in it (subject to any provision for civil contingency contained in the Schedules hereto) in the event of war, riot, civil commotion, terrorism, fire, lightning,

earthquakes, flood or similar natural calamity strikes, or other industrial action or dispute (other than involving the Contractor's own staff) or acts of government, then:

- a. neither Party shall be liable for any failure to carry out or delay in performing any of their respective obligations under this Contract if such delay is due to the events described above;
- b. the Party affected shall be allowed a reasonable extension of time for performing such obligations;
- c. if necessary, the Parties may meet to agree such terms as are appropriate for the continued performance of the Contract while the events, above, continue; and
- d. if, after one calendar month, the Party affected still cannot perform its obligations, the other Party may terminate this Contract forthwith.

30. EMERGENCIES

- 30.1. Upon receipt of an instruction from the Authorised Officer, the Contractor shall deploy resources (including, without limitation, personnel) from the provision of the Services to enable the Council to carry out any of its functions during an emergency (such classification to be in the sole discretion of the Authorised Officer). During an emergency, the Authorised Officer may issue instruction to the Contractor to reduce or suspend the Services.
- 30.2. During an emergency, the Contractor shall follow all instructions given by the Authorised Officer including, without limitation:
 - a. Reducing or suspending the Services; and
 - b. Deploying personnel to the Council to carry out different services; and
 - c. Releasing personnel for training to be conducted by the Council.
- 30.3. The Council shall pay the Contractor's reasonable costs of complying with this Clause 30. Such costs shall, where possible, be calculated in accordance with the Contract Price and any price elements contained in the Contractor's Tender Response. Payment will be made in accordance with the provisions of this Contract, set-off against any reduction or suspension in the Services.

31. DISPUTE RESOLUTION

- 31.1. The Parties agree that, where a dispute raises multiple issues under this Contract, a lease or any other contract between them, they shall so far as practicable endeavour to consolidate the resolution of such disputes.
- 31.2. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Business Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the relevant director (or equivalent) of each Party.

- 31.3. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 31.4. If the dispute cannot be resolved by the Parties pursuant to Clause 31.2 the dispute shall be referred to mediation pursuant to the procedure set out in Clause 31.6 unless:
- a. the Council considers that the dispute is not suitable for resolution by mediation; or
 - b. the Contractor does not agree to mediation.
- 31.5. The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 31.6. The procedure for mediation and consequential provisions relating to mediation are as follows:
- a. a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Business Days from the date of the proposal to appoint a Mediator or within 10 Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - b. The Parties shall within 10 Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - c. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - d. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - e. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior consent of both Parties.
 - f. If the Parties fail to reach agreement in the structured negotiations within 60 Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

32. GOVERNING LAW

- 32.1. The construction, validity and performance of this Contract shall be governed in all respects by English law.

33. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 33.1. Nothing in this Contract confers or purports to confer on any third party (as defined in the Contracts (Rights of Third Parties) Act 1999) any benefit under or any right to enforce any term of this Contract.

34. UNENFORCEABILITY

- 34.1. In the event of any provision of this Contract being held or agreed between the Parties as or becoming invalid, illegal or unenforceable, either in its entirety or in part, then this shall be without prejudice to the validity of and shall not invalidate the remaining provisions of this Contract, which shall remain in full force and effect.

35. EQUAL OPPORTUNITIES

- 35.1. The Contractor shall operate the equal opportunities policy detailed in its Tender Response. In the event that the policy has not been detailed or submitted, or if it is less onerous than the provisions of this Clause 35, the provisions of this clause 35 shall apply.
- 35.2. So far as law permits it, the Contractor will comply with the provisions of the Equality Act 2010 and all other anti-discriminatory legislation and guidance in force now or in the future and accordingly, will not treat one group of people less favourably than others because of their colour race nationality or ethnic origin in relation to decisions to recruit train or promote its personnel and will have due regard to the need to eliminate unlawful discrimination and to promote racial equality and good race relations.
- 35.3. In the event of any finding of unlawful racial discrimination being made against any of the Contractor by any court or employment tribunal or of an adverse finding in any court or employment tribunal or of an adverse finding in any formal investigation by the Commission for Racial Equality, the Contractor shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 35.4. The Contractor shall, on request, provide the Council with details of any steps taken under Clause 35.3.
- 35.5. The Contractor shall set out its policy on race relations:
- a. in instructions to those concerned with recruitment training and promotion;
 - b. in documents available to its personnel recognised trade unions or other representative groups of its personnel;
 - c. in recruitment advertisements and other literature.
- 35.6. The Contractor shall on request provide the Council with examples of the instructions and other documents, recruitment advertisements and other literature.

- 35.7. The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice in employment as approved by Parliament in 1983 which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities.
- 35.8. Upon request, the Contractor shall provide the Council information or access to the workplace reasonably required to assess the Contractor's compliance with this Clause 35. This shall include, without limitation:
- a. a breakdown of job applicants and workforce of: different racial groups (meaning groups of persons defined by reference to colour, race, nationality or ethnic or national origins), disability, gender, transgender, transsexual, and age as maybe required, having regard to the Council's procedures for monitoring representation among its own employees;
 - b. copies of any policies adopted by the Contractor pursuant to its obligations;
 - c. reports of organisational reviews which demonstrate how the Contractor's equal opportunities policies are being complied with; and
 - d. access to Council Officers at the Contractor's premises or any work sites where the Services are delivered, including access to disabled persons.
- 35.9. The Contractor shall inform the Authorised Officer as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Contractor under Race Relations legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising, and shall provide the Authorised Officer with such further information and documentation as reasonably may be required in relation thereto.
- 35.10. For the avoidance of doubt, the Contractor shall impose the obligations stated above on any sub-contractors or agents.

36. GRATUITIES AND LEGAL RELATIONSHIPS

- 36.1. The Contractor shall not, whether itself, or by any partner or director or member of the committee of management or partner or senior employee (where applicable) engaged in the provision of the Services, or by any person employed by it to provide the Services solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Services other than charges properly approved by the Council in accordance with the provisions of the Contract.
- 36.2. Gifts and money must not be exchanged and any bequests to the Contractor any partner or director engaged in the provision of the services or to any person employed by it to provide the Services must be refused unless the prior written consent of the Authorised Officer is obtained.
- 36.3. If any gift or money is received whether in breach of the above Clauses 36.1 and 36.2 or otherwise this shall be promptly entered into a hospitality book specifically as a record of any gifts money or bequests.

36.4. If any of the Contractor, its partners, directors, employees or any person engaged by the Contractor in providing the Services, in relation to a Service User, becomes or has been granted:

- a. a power of attorney;
- b. a beneficiary or executor of a will;
- c. entitled to share in the administration of the estate;
- d. a trustee by any court or authority;
- e. a guardian;
- f. a nominee for any shares;
- g. a joint bank holder; or
- h. any similar legal relationship;

such event must be reported to the Authorised Officer as soon as the Contractor is made aware of this. The Contractor must include provisions within its contracts of employment to ensure that its partners, directors or employees are under an obligation to report this promptly to the Contractor, who must then report it to the Council.

36.5. Breach of the provisions of this Clause 36 shall be a Material Breach.

37. VARIATIONS

37.1. The Parties may agree any Variation (including without prejudice to the generality a reduction or increase in the extent of the Services) in accordance with this Clause provided that unless expressly so agreed no such agreement shall constitute or be construed as a general waiver of any of the provisions of this Contract by either of the Parties and the rights and obligations of the Parties hereunder shall remain in full force and effect notwithstanding any variation agreed between the Parties on any particular occasion but for the avoidance of doubt no Variation (unless required by the Authorised Officer pursuant to Clause 37.6.a) shall be effected unless both Parties agree in writing as provided for below.

37.2. The Parties shall use their best endeavours to ensure that all Variations are effected in a consensual and reasonable manner.

37.3. Any Variation shall be recorded in writing and be signed by each of the Authorised Officer and the Contractor's Representative.

37.4. If any Variation affects the Contract Price, the Parties shall use reasonable endeavours to agree a modified Contract Price but the Contractor shall be under an obligation to take all reasonable steps to mitigate any additional cost arising from any Variation and the Council shall be under no obligation to pay any additional sum other than a sum which cannot reasonably be avoided by way of mitigation by the Contractor.

37.5. If the Parties cannot agree on whether the Variation affects the Contract Price or the modified Contract Price then:

- a. If the Variation in dispute could give rise to a reduced Contract Price the Council will pay the Contractor the sum or sums which are agreed by both Parties as being payable in any event and such payments shall be made in accordance with the payment arrangements set out in Clauses 3 to 6 (but for the avoidance of doubt such sums will exclude the sums in dispute) and the Parties thereafter shall seek to settle the dispute as expeditiously as possible;
 - b. If the Variation in dispute could give rise to an increased Contract Price until the resolution of the dispute the Contractor shall not be obliged to provide the Services to an extent or in a manner beyond that agreed before the proposal of the Variation in dispute.
- 37.6. In the event that the Authorised Officer reasonably considers (in his absolute discretion) that additional services similar to the Services may be required to enable the Council to carry out its functions:
- a. the Authorised Officer shall be entitled to require the Contractor to provide such additional services at such time and place and in such manner as he shall require; and
 - b. such additional services shall be treated as a Variation and the provisions of this Clause shall apply save that the Contractor shall be obliged to provide such additional services (and accordingly Clause 37.1 shall not apply).

38. INSURANCE AND INDEMNITIES

- 38.1. The Contractor shall indemnify and keep indemnified the Council against all Losses whatsoever in respect of or in any way arising out of the provision of the Services in relation to the injury to or death of any person and loss of or damage to any property including property belonging to the Council except and to the extent that it may arise out of the act default or negligence of the Council its employees or agents not being the Contractor or its personnel.
- 38.2. Without thereby limiting its responsibilities under this Clause, the Contractor shall use its best endeavours to insure with a reputable insurance company approved by the Council against its liabilities under this Contract.
- 38.3. For all claims against which the Contract requires the Contractor to insure, the insurance cover shall be for sums specified in the Variables or such greater sums as the Contractor may choose or the Authorised Officer may require, in respect of any one incident.
- 38.4. The Contractor shall supply to the Council before the Commencement Date and upon each renewal date of any relevant policy (or otherwise as reasonably requested by the Authorised Officer) a certificate from its insurers or brokers confirming that the Contractor's insurance policies comply with the obligations in this Clause 38. The Contractor may not amend any aspect of the insurance policies without the prior written permission of the Council.
- 38.5. If the Contractor fails to take out or maintain the insurance required under this Clause 38 then the Council may pay any premiums required to have such insurance

in force. If this occurs, the Contractor must pay the Council the cost of the insurance plus 10% which shall be the administrative cost of taking out and maintaining the insurance. This may be set off against future payments or recovered as a debt.

39. STATEMENT RELATING TO BONA FIDE TENDER

- 39.1. Where this Contract has been awarded following a tendering process, the Contractor states that the Tender Response submitted by the Contractor was a bona fide tender, intended to be competitive and that the Contractor had not fixed or adjusted the pricing in the Tender Response by or under or in accordance with any agreement or arrangement with any other person.
- 39.2. The Contractor states that it has not at any time before the hour and date specified for submission of the Tender Response:
 - a. communicated to a person other than the person calling for those tenders, the amount or approximate pricing in the proposed Tender Response, except where the disclosure, in confidence, of the approximate pricing in the Tender Response was necessary to obtain insurance premium quotations required for the preparation of the Tender Response;
 - b. entered into any agreement or arrangement with any other person that they shall refrain from tendering or as to the amount of any tender to be submitted;
 - c. offered or paid or gave or agreed to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or thing in relation to any other tender or proposed tender for Contract;
 - d. offered or gave or agreed to give to any persons any gift or consideration of any kind as an inducement or reward for doing or forbearing to do any action in obtaining the Contract.
- 39.3. In this statement, the word "person" includes any person or any body or association, corporate or un-incorporate, and "any agreement or arrangement" includes any such transaction, formal or informal, and whether legally or not.
- 39.4. The Contractor confirms that all costs included in the Tender Response have been based on the application of best practice.
- 39.5. The Contractor understands and accepts that it is a criminal offence, punishable by imprisonment, to give or offer any gift or consideration whatsoever as an inducement or reward to any servant of a public body. Additionally, such action will negate this and any future contracts.
- 39.6. The Contractor acknowledges that in the event that any of the Contractor's Statements in clauses 39.1 to 39.5 above prove to be incorrect, the Council may terminate this Contract and any other Contracts with the Contractor forthwith and will be indemnified by the Contractor for any damages or loss that arises therefrom.

40. POLICIES

- 40.1. Unless otherwise stated in the Invitation to Tender, the Contractor is required to develop and adhere to the policies listed in the Variables at all times throughout the Contract Period. The Contractor shall ensure its personnel are aware of and adhere to such policies throughout the Contract Period and shall, upon request, provide the Council with evidence that such policies are being complied with. The Contractor shall review and update the policies annually (such updates being subject to the Authorised Officer's approval).
- 40.2. The above policies will form part of the Contractor's Tender Response and, when approved by the Authorised Officer, will be included in Schedule 3, if appropriate.
- 40.3. Where the Authorised Officer agrees that Services may commence without any or all of the policies being in place, the Contractor shall adhere to the relevant Council policies, and shall develop its own policies within the timeframe stated by the Authorised Officer and submit them for approval.
- 40.4. If the Authorised Officer requires amendment to the above policies, the Contractor shall carry out the required amendments within the timeframe stated by the Authorised Officer and shall submit the new policy / policies for approval.
- 40.5. If the Contractor wishes to amend its policies, it must submit draft revisions to the Authorised Officer for approval.