

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 named in the Variables and whose role is more fully described in Clause 5.

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 named in the Variables, whose role is more fully described in Clause 6.

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 shall include any time and resources spent by the Council arising from the Contractor's breach.

Paragraph means a paragraph in the Schedules.

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

Service User means any person intended to directly benefit from the provision of the Services and meets the eligibility criteria set out in the Specification.

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.

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

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

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 supersedes all other agreements between the Parties.
- 1.10. 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. 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.
- 2.2. At all times the Contractor shall provide the Services as and when required by the Council (in accordance with the provisions of this Contract) 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) and the Performance Targets (Schedule 2).
- 2.3. Except as otherwise provided for in this Contract, the Contractor shall provide all assets, resources, personnel and other things necessary for the provision of the Services. This includes engaging a sufficient number of suitably qualified and trained personnel, as outlined in Clause 7.

- 2.4. 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.
- 2.5. The Contractor's delivery of the Services from Council owned premises shall in no way be deemed to result in the Contractor obtaining any rights in respect of occupation or otherwise in relation to the same.
- 2.6. 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).
- 2.7. 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.

3. CONTRACT PRICE

- 3.1. In consideration for the provision of the Services, the Council shall pay the Contract Price 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 not be adjusted throughout the Contract Period as stated under the Price Adjustment provision in the Variables.

4. INVOICES AND PAYMENT

- 4.1. The Contractor must provide to the officer named in Clause 9 of the Specification (or any other nominated officer) a satisfactory invoice (in a format to be agreed with the Authorised Officer) at the frequency stated in the Variables. The invoice must specify the following:
 - a. unique invoice number;
 - b. services provided
 - c. name and address of Contractor;
 - d. date invoice was raised.
- 4.2. 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.

5. THE AUTHORISED OFFICER

- 5.1. 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.
- 5.2. The Authorised Officer shall have power to issue reasonable instructions to the Contractor requiring compliance with this Contract and the Contractor shall comply therewith.
- 5.3. 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.
- 5.4. The Contractor shall allow the Authorised Officer (or any nominated person) access to the Contractor's work place, records and personnel for the purposes of inspecting the Services.

6. THE CONTRACTOR'S REPRESENTATIVE

- 6.1. 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.
- 6.2. From time to time the Contractor may notify the Council that it has appointed one or more representatives to act for the Contractor generally or for specified purposes or periods.

7. THE CONTRACTOR'S PERSONNEL

- 7.1. 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.
- 7.2. 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 (including, but not limited to, any formal qualifications or registration); and
 - c. are careful, skilled, honest, courteous, professional and trained (or undergoing training) in the work which they are to perform.
- 7.3. 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.

- 7.4. The Contractor shall comply with any Council policy regarding the engagement of ex-offenders and any Disclosure and Barring Service codes of practice.
- 7.5. 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 7.5.

8. COMPLAINTS

- 8.1. The Contractor is required to maintain a record of all complaints received together with details of any action taken and resolution reached. Such records shall be supplied to the Council on a quarterly basis.
- 8.2. 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.

9. TUPE

- 9.1. Where the award of this Contract, or any successor/replacement contract, creates rights under the Transfer Regulations, the Contractor shall indemnify the Council against any transfer costs (including, without limitation, any claims, damages, awards, orders or payments for the Contractor's failure to comply with the Transfer Regulations).

10. SET OFF

- 10.1. 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.

11. DEFAULT

- 11.1. 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, the Authorised Officer shall be entitled to do any one or more of the following:
 - a. require the Contractor to remedy the delay or failure in performance;
 - b. reduce or withhold payment;
 - c. arrange for the Council or a third party to carry out the Services (and shall be entitled to recover such costs from the Contractor);

- d. 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/or
- e. terminate the whole Contract.

12. FAULT TERMINATION

12.1. 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 12.1.c, 12.1.d or 12.1.e, any agent of the Contractor whether or not acting with the express or implied authority of the Contractor):

- a. has been required to remedy three delays, failures and/or defaults in any twelve-month period, pursuant to Clause 11.1.a;
- b. is substantially or persistently in breach of any of its obligations under this Contract;
- c. 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);
- d. commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972;
- e. commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, other contractors or employees;
- f. 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;
- g. there has been a change in control of the Contractor;
- h. fails to carry out and/or update checks of its employees as required by any Registration Authority relevant to the Services;
- i. (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;
- j. 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;

- k. (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;
- l. (if such is applicable) is included on any register or list held by the Department of Health or any other statutory body;
- m. is convicted of fraud;
- n. 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
- o. 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.

13. NO FAULT TERMINATION

- 13.1. 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.

14. CONSEQUENCES OF TERMINATION

- 14.1. 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.
- 14.2. Upon expiry or termination (for whatever reason):
 - a. the Contractor shall forthwith cease to provide the Services and shall ensure that they vacate all and any premises owned or run by the Council from which they have been providing the services;
 - b. the Contractor shall comply with any instructions issued by the Authorised Officer;
 - c. all provisions which are expressed to survive expiry or termination of this Contract, this Clause and Clauses 9, 9.1, 16, 17, 18, 22 and 23.6 shall continue in force in accordance with their terms; and
 - d. subject as otherwise provided herein neither Party shall have any further obligation to the other under the Contract.
 - e. 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;

- f. 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 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;
 - g. the Contractor shall obtain instructions from the Council's Authorised Officer regarding the retention or return of all information and/or data regarding Service Users. Where the Contractor is instructed to retain such information then the Contractor undertakes to adhere at all times with the provisions of the Data Protection Act 1998, in particular with regards to storage. The Contractor shall not disclose any information retained without the prior written consent of the Council. The Contractor shall return to the Council any information requested during the retention period.
- 14.3. The Contractor shall carry out the requirements of this Clause 14 free of charges.
- 14.4. The Council shall be entitled, in respect of any Losses to the Council resulting from or arising out of the early 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.

15. ASSIGNMENT AND SUB-CONTRACTING

- 15.1. 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. 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.
- 15.2. 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.

16. INTELLECTUAL PROPERTY

- 16.1. 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.
- 16.2. 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.

17. FREEDOM OF INFORMATION ACT 2000

- 17.1. The Contractor acknowledges that the Council is (and the Contractor may be) subject to the provisions of the Freedom of Information Act 2000. The Contractor will comply with any instructions given by the Authorised Officer and particularly will comply in the timescales required.

18. CONFIDENTIALITY AND PUBLICITY

- 18.1. 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 (including this Contract), other than as required by law or in accordance with the express written instructions of the Party who provided the said material.
- 18.2. 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.
- 18.3. Information personal to Services Users must be kept 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.
- 18.4. The Contractor shall ensure that its contractors, employees, staff and volunteers are aware of the Contractor's confidentiality obligation under this Contract.
- 18.5. Upon termination of the Contract (howsoever caused), the Contractor shall comply with the requirements of Clause 14.2g.
- 18.6. 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 18.

19. HEALTH & SAFETY

- 19.1. 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, Service Users, the employees of the Council and of all other

persons including members of the public. The Contractor shall ensure that it undertakes a risk assessment at all the premises and sites from which the Services shall be provided.

- 19.2. The Contractor shall at all times comply with the requirements of the Health and Safety at Work, etc, 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.
- 19.3. The Contractor shall in performing the Services comply with the security and safety arrangement at any premises that the Contractor visits.
- 19.4. The Contractor shall at all times comply with any additional health and safety requirements as set out in this Contract
- 19.5. The Contractor shall comply with its own health and safety policy.
- 19.6. The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the agreement where that incident causes any personal injury or damage to property.

20. OBSERVANCE OF STATUTORY AND OTHER REQUIREMENTS

- 20.1. The Contractor shall, at all times throughout the Contract Period, comply with:
 - a. all statutory and other provisions of a like nature relating to the recruitment and employment of any staff engaged in providing the Services (for the avoidance of doubt, this obligation shall apply to employees sub-contractors and any agents of the Contractor);
 - b. any applicable British, European or International Standard Specifications or Codes of Practice;
 - c. the Council's Constitution, and any policies or procedures notified to the Contractor during the Contract Period (including the Council's Whistleblowing policy);
 - d. the Human Rights Act 1998;
 - e. the Data Protection Act 1998;
 - f. the Crime and Disorder Act 1998;
 - g. the Equality Act 2010 and all other anti-discriminatory legislation and guidance;
 - h. the Bribery Act 2010; and
 - i. any Health and Safety legislation

21. AGENCY AND PARTNERSHIP

- 21.1. 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.
- 21.2. 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.

22. DAMAGES, INDEMNITY AND INSURANCE

- 22.1. 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.
- 22.2. 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 or in any way arising out of the provision of the Service in relation to the injury, to or death of any person or loss of or damage to any third party property due to the negligence of the Contractor its employees, servants or agents. Such indemnity shall be paid without any deduction or set-off.
- 22.3. The Contractor shall take out and maintain the insurance cover 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. Such insurance shall be renewed each year throughout the Contract Period, and evidence provided to the Authorised Officer.
- 22.4. In the event of the Contractor failing to maintain appropriate insurance cover, the Council may pay any premiums required to keep such insurances in force and recover such amounts as a debt from the Contractor on written demand, together with all expenses incurred in procuring such insurance.

23. MISCELLANEOUS

- 23.1. Should legal proceedings arise in connection with the Services, the Contractor shall immediately notify the Authorised Officer. The Contractor shall follow any instructions given by the Authorised Officer.
- 23.2. 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 which affect provision of the Services, then the Parties shall meet and agree terms as are appropriate for the continued performance of the Contract while these events continue.
- 23.3. Any variation shall be agreed between the Parties in writing.
- 23.4. 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.

- 23.5. Notices may be sent between the parties via post, fax or email.
- 23.6. The construction, validity and performance of this Contract shall be governed in all respects by English law.
- 23.7. 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.
- 23.8. 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.