



Date 2020

Rossendale Borough Council
and
[]

Management Agreement in respect of Rawtenstall Market,
Newchurch Road, Rawtenstall



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This Agreement is made the

day of

2020

Parties

(1) **Rossendale Borough Council** of Business Centre, Futures Park, Bacup, OL13 OBB (the **Landlord**); and

(1) [] of [] (the **Supplier**)

THE PARTIES AGREE as follows:

1. Interpretation

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

1.1 Definitions:

Applicable Laws: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.

Business Days: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Change: an amendment to:

- (a) the scope, nature, volume, monitoring or execution of the Services under this agreement; or
- (b) any other term or schedule of this agreement.

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

Change Control Procedure: the procedure for agreeing a Change as set out in clause 10 (Change control).

Change in Law: any change in any Applicable Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

Charges: the Service Charges and the Dividend and any other charges which may become due and payable pursuant to this agreement.

Commencement Date: [28 September 2020].

Confidential Information: any information, which by its nature is confidential, concerning the business, affairs, Councils, clients or suppliers of the other party or of any member of its Group.

Consents: all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services and the installation and use of the Equipment on the terms of this agreement.

Contract Managers: the managers appointed by the parties in accordance with clause 9.1 (Review and monitoring).

Contract Year: a period of 12 months (or such shorter period if this agreement is terminated earlier), commencing on the Commencement Date and/or each anniversary of the Commencement Date.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Critical Service Failure: an event where the performance of any of the Operational Services falls to, or below, any of the Critical Service Levels for that Service.

Critical Service Levels: has the meaning given in Schedule 3 (Service Levels).

Council Materials: the documents, information, items and materials (whether owned by the Council or a third party), which are provided by the Council to the Supplier in connection with the Services and which are listed Schedule 4 (Council's Responsibilities).

Council's Responsibilities: the responsibilities of the Council as specified in Schedule 4 (Council's Responsibilities).

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Day Permit: the permit given to Traders who wish to trade on an ad hoc basis in the form attached at Schedule 2, Part 2.

Disaster Recovery and Business Continuity Plan: the business continuity and disaster recovery plan as set out in Schedule 9 (Disaster Recovery and Business Continuity Plan) as amended from time to time.

Dispute Resolution Procedure: the procedure set out in clause 28 (Dispute resolution procedure).

Dividend: the dividend due and payable by the Council to the Supplier which shall be calculated in accordance with paragraph 2 of Schedule 6.

Equipment: the equipment, tools, systems or cabling, used directly or indirectly in the supply of the Services.

Exit Assistance Services: the services to be provided by the Supplier to the Council pursuant to clause 32 (Exit assistance and service transfer) to facilitate the transfer of the Operational Services to the Council or a Replacement Supplier.

Exit Management Plan: the plan to be agreed by the parties in accordance with paragraph 4 of Schedule 10 (Exit Management Plan and service transfer arrangements).

Exit Period: the period beginning on the earlier of:

- (a) the date a Termination Notice is received by a party; or
 - (b) six months before the expiry of this agreement,
- and ending six months after the Termination Date.

Facilities: the premises known as Rawtenstall Market, Newchurch Road, Rawtenstall, as shown edged in red on the plan annexed at Schedule 5.

Force Majeure Event: has the meaning given in clause 34.1.

General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

Good Industry Practice: means using the standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time.

Initial Term: the period commencing at midnight on the Commencement Date and ending on the fifth anniversary of the Commencement Date.

Insolvency Event: in respect of either party or a subcontractor:

- (a) other than for the purposes of a bona fide reconstruction or amalgamation, such party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved;
- (b) the appointment of an administrator of, or the making of an administration order in relation to, either party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue;
- (c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to

obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors;

- (d) that party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
- (e) that party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

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

Key Personnel: those personnel identified in Part 2 of Schedule 7 (Contract Managers and Key Personnel) for the roles attributed to such personnel, as modified pursuant to clause 16 (Key personnel).

Licence the licence agreement between the Trader and the Council allowing the Trader to trade at a stall within the Facilities in the form attached at Schedule 2, Part 1

Licence Fees the fee paid by each Trader on Market Days for the Licence and/or Day Permits together with fees paid for additional organised events (for example artisan and farmers markets and other externally provided events using the Facilities).

Mandatory Policies: the Council's policies codes and procedures from time to time and any activity at the sole discretion of the Council that may be deemed to be inappropriate use for a Council building including but not limited to events of a sexual or racist nature or involving performing animals (and which may be communicated to the Supplier from time to time).

Market Days: five days a week including Thursdays and Saturdays.

month: a calendar month and **monthly** shall be interpreted accordingly.

Operational Services: the services for the management of the Facilities more particularly set out in Schedule 1 (Operational Services Specification) (or any part of any of them), or as otherwise agreed between the parties in accordance with clause 10(Change control), including services which are incidental or ancillary to such services other than the Exit Assistance Services.

Receipts: the Licence Fees and any other sums received by the Supplier in connection with the use and/or operation of the Facilities.

Remediation Notice: a written notice given by the Council to the Supplier pursuant to clause 29 (Remediation Plan Process) to initiate the Remediation Plan Process.

Remediation Plan: the plan agreed in accordance with clause 29 (Remediation Plan Process) for the resolution of a Supplier's default in complying with its obligations under this agreement.

Remediation Plan Process: the process for resolving certain of the Supplier's defaults as set out in clause 29 (Remediation Plan Process).

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

Replacement Supplier: any third party supplier of Replacement Services appointed by the Council from time to time.

Service Charges: the charges which become due and payable by the Council to the Supplier in respect of the Operational Services, which shall be calculated in accordance with paragraph 1 of Schedule 6 (Charges and deductions).

Service Failure: a failure by the Supplier to deliver any part of the Operational Services in accordance with the Service Levels.

Service Levels: the service levels to which the Operational Services are to be provided, as set out in Schedule 3 (Service Levels).

Services: the services to be delivered by or on behalf of the Supplier under this agreement, including the Operational Services and the Exit Assistance Services and **Service** means any of the Services (or any part of any of them).

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

Term: the period commencing on the Commencement Date and ending on the expiry of the Initial Term or, if extended pursuant to clause 2.2 (Commencement and duration), the period ending on the expiry of any extended term or such earlier date on which the agreement terminates in accordance with its terms.

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

Termination Notice: any notice to terminate this agreement which is given by either party in accordance with clause 30 (Termination).

Trader: those individuals that hold a current Licence or Day Permit to allow them to trade on the Market during Market Days and additional organized events.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax or any equivalent tax chargeable in the UK.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
- 1.6.1 another person (or its nominee) by way of security or in connection with the taking of security; or
 - 1.6.2 its nominee.
- For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in section 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended or re-enacted on or after exit day.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.12 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.13 A reference to **writing** or **written** includes fax and email.
- 1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.15 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.16 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2. Commencement and duration**
- 2.1 This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier by either party in accordance with clause 30 (Termination), for the Term.
- 2.2 If the Council wishes to extend the agreement beyond the expiry of the Initial Term, it shall give the Supplier at least nine months' written notice of such intention prior to the expiry of the Initial Term provided always that the Council shall not be entitled to extend the Initial Term by more than five years. If the Council gives such notice, then the parties shall negotiate in good faith to agree the terms of such extension by not later than four months prior to the expiry of the Initial Term.
- 3. Supplier's general obligations**
- 3.1 The Council shall appoint the Supplier, and the Supplier shall provide the Services to the Council, on the terms of this agreement and in consideration of the payment of the Charges by the Supplier to the Council the Supplier may retain the Receipts.
- 3.2 The Supplier shall at all times:
- 3.2.1 without prejudice to clause 7 (Service Levels) provide the Services with reasonable care and skill and in accordance with Good Industry Practice;
 - 3.2.2 ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 3.2.3 obtain, maintain and comply with all Consents;
 - 3.2.4 ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Council, attend such meetings at the Premises, the premises of the Council or elsewhere as may be reasonably required by the Council;

- 3.2.5 provide such reasonable co-operation and information in relation to the Services to such of the Council's other suppliers as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Council;
- 3.2.6 notify the Council of the any maintenance work that needs to be undertaken as soon as the Supplier becomes aware of it;
- 3.2.7 not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- 3.2.8 be responsible for and bear all costs incurred in the performance of the Services, including the costs of contracts which are entered into by the Supplier to enable it to perform the Services (other than as covered by the Service Charge);
- 3.2.9 The Supplier shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services, and use all reasonable endeavours to ensure that the Council receives the benefit of any such efficiencies.
- 3.2.10 hold all Council Materials in safe custody at its own risk and maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisations; and
- 3.2.11 to ensure compliance with all necessary conditions in respect of the licence issued for the Facilities under the Licensing Act 2003 and to procure that such licence remains in place and fully valid for the Term. The Supplier shall also provide a designated premises supervisor (DPS) who must hold a personal licence issued under the Licensing Act 2003 who will be responsible for authorising licensable activities and ensuring the licensing objectives under the licence are upheld.
- 3.2.12 The Supplier shall conduct the Services on a full open book basis.
- 3.3 Without prejudice to clause 23 (Audits), the Council may appoint a representative to monitor the Supplier's performance of the Services at any time and without notice and the Supplier shall provide such representative with all such assistance as is reasonably necessary to carry out such monitoring.
- 3.4 All the Supplier's property located or left at the Facilities, including the Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Council shall be liable for the loss of or damage to any of the Supplier's property located at the Facilities which is caused by the negligent act or omission of the Council, its employees, workers, agents, consultants or subcontractors.
- 4. **Due diligence**
- 4.1 The Supplier acknowledges and confirms that:

- 4.1.1 it has tendered for and has had the opportunity to ask the Council all the questions it considers to be relevant to enable it to establish whether it is able to provide the Services in accordance with the terms of this agreement;
 - 4.1.2 it has received all information to enable it to determine that it is able to provide the Services in accordance with the terms of this agreement;
 - 4.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.1.2; and
 - 4.1.4 it has entered this agreement in reliance on its own due diligence.
- 4.2 No representations, warranties or conditions are given or assumed by the Council in respect of any information provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Supplier shall promptly notify the Council in writing if it becomes aware of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services in accordance with this agreement.
- 4.4 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, nor be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 4.4.
- 5. **[Not used]**
- 6. **Council's responsibilities**

The Council shall:

 - 6.1 comply with the Council's Responsibilities; and
 - 6.2 co-operate with the Supplier in all matters relating to the Services
- 7. **Service levels**
 - 7.1 The Supplier shall ensure that the Operational Services meet or exceed the Service Levels at all times from the Commencement Date.
 - 7.2 If there is a Service Failure, the Supplier shall:
 - 7.2.1 notify the Council immediately of the Service Failure;
 - 7.2.2 provide the Council with a draft Remediation Plan;
 - 7.2.3 deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and

- 7.2.4 carry out the actions identified in a Remediation Plan in accordance with its terms.

Provided the Council shall only have an obligation to follow the Remediation Plan Process if the Service Failure is not a Critical Service Failure or if it issues a Termination Notice in the circumstances set out in clause 30.2.4 or 30.2.5.

- 7.3 The Council and the Supplier shall review the Service Levels every 12 months throughout the Term and also the submissions annexed at Schedule 3 and make any changes in accordance with the Change Control Procedure to reflect changes in the Council's requirements.

8. Facilities

- 8.1 With effect from the Commencement Date, the Council shall grant the Supplier a non-exclusive and revocable licence to enter the Facilities for the sole purpose of providing the Services to the Council. The licence shall be subject to the conditions of this agreement, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties.
- 8.2 The licence granted pursuant to clause 8.2 shall terminate immediately on the Termination Date.
- 8.3 The Supplier may not without the prior written consent of the Council permit the Facilities or any part thereof to be used other than as a market or conduct or allow any business which is not ancillary to the use as a market.
- 8.4 The Supplier shall be entitled to use the Facilities as a market seven days per week up to 10pm to allow for evening and special events in accordance with this Agreement in addition to opening on the Market Days.
- 8.5 The Traders will be licensees of the Council.
- 8.6 The Supplier will issue Licences or Day Permits on behalf of the Council. The Supplier agrees not to vary the terms of the Licence or Day Permit without the prior written consent of the Council.
- 8.7 The Supplier is hereby authorised by the Council to sign the Licences or Day Permits on behalf of the Council.
- 8.8 The Supplier will not allow anyone to trade from the Facilities until they have entered into a Licence or hold a Day Permit.
- 8.9 The Supplier will ensure that all rights and conditions of the Licence or Day Permit and the consequences of breaching the same are explained to each Trader in clear and comprehensive terms.
- 8.10 The Supplier has authorisation to commence enforcement action against any Trader in breach of their Licence or Day Permit to include the signing of a notice to terminate such Licence or Day Permit on behalf of the Council.

- 8.11 In the event that legal proceedings shall become necessary for any breaches of Licence the Supplier shall provide all necessary evidence to the Council to allow proceedings to be instigated and shall thereafter support the Council to include acting as a witness in Court.
- 8.12 The Supplier has no right to exclude the Council from any part of the Facilities and the Council reserves the right at all times to permit other parties to use the Facilities.
- 8.13 The Supplier shall not alter or modify any part of the Facilities, unless such alteration or modification is part of the Services to be provided by the Supplier and has been agreed in writing by the Council.
- 8.14 The Supplier will collect the Receipts in line with this Agreement as detailed in Schedule 6 and retain sufficient funds for the provision of the Services and the payment of the Charges in a dedicated bank account.
- 8.15 The Supplier will ensure that any Trader in arrears will be served with the notice to terminate no later than 21 days after the Licence Fees first fell due.
- 8.16 The Supplier will be responsible for managing the Facilities outside Market Days other than by prior agreement with the Council. The Supplier shall provide 24 hour contact numbers to be provided to relevant stakeholders to include but not limited to alarm systems and out of hours call outs and ensure that these are updated as necessary. The Council will ensure that up to date contact numbers are provided to relevant stakeholders for use in the event of agreed absence cover and/or emergency purposes.
- 8.17 Any equipment and small goods belonging to the Supplier and brought on to the Facilities for the performance of the Services shall remain the property and sole responsibility of the Supplier and the Council will have no liability in respect of these items.
- 8.18 The Supplier shall ensure that when carrying out the Services at the Facilities, the Supplier's Personnel shall:
- 8.18.1 keep the Facilities clean, tidy and properly secure;
 - 8.18.2 co-operate as far as may be reasonably necessary with the Council's employees and the Traders;
 - 8.18.3 act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Council; and
 - 8.18.4 comply with all rules and regulations that the Council notifies to the Supplier from time to time in writing (if any) relating to the use and security of the Facilities.
- 8.19 The Supplier shall ensure that the Supplier's Personnel shall not:
- 8.19.1 obstruct access to the Facilities, or any part of them; or

- 8.19.2 do or permit to be done on the Facilities anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Council or the Traders, occupiers of or visitors to the Facilities.
- 8.20 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier's Personnel to any property of the Council, or to any of the Facilities in the course of providing the Services. The Supplier shall be responsible for the reasonable costs of repair or replacement and, without prejudice to its other rights and remedies under this agreement or otherwise, the Council shall be entitled to set off such reasonable costs of repair or replacement against sums owing to the Supplier under this agreement.
- 8.21 The Agent shall set up and maintain a written compliment, complaints and suggestion procedure, in accordance with the Council's compliments, complaints and suggestion procedure and shall monitor and evaluate the effectiveness of its delivery of the Service. The Agent shall make available to the Council the written compliment, complaints and suggestion procedure.
9. **Review and monitoring**
- 9.1 As soon as practicable following the Commencement Date, each party shall nominate a Contract Manager who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this agreement. The first Contract Managers are listed in Part 1 of Schedule 7 Contract Managers and Key Personnel). The Contract Managers will co-ordinate and manage the provision of the Operational Services and the Exit Assistance Services and work with each other to address any problems that arise in connection with the Operational Services or Exit Assistance Services (including by signing Change Control Notes).
- 9.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Contract Manager throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.
- 9.3 The Supplier will produce a monthly financial report for the Facilities, detailing income and expenditure for inspection by the Council.
- 9.4 The Contract Managers shall meet at not less than quarter annually intervals to monitor and review the performance of this agreement, including, after the Commencement Date, the achievement of the Service Levels. Such meetings shall be minuted by the Council's Contract Manager and copies of those minutes shall be circulated to and approved by both parties.
- 9.5 In advance of each meeting to be held in accordance with clause 9.3:
- 9.5.1 the Supplier shall provide the Council with a quarterly written report detailing its performance against each of the Service Levels and identifying any issues regarding the performance of the agreement for discussion at the meeting; and

- 9.5.2 the Council shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- 9.6 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause 29 (Remediation Plan Process) shall apply. Progress in implementing the plan shall be included in the agenda for the next meeting.
- 9.7 A review meeting to assess the Supplier's performance of its obligations under this agreement shall be held at six-monthly intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Contract Managers.
- 9.8 The Council may increase the extent to which it monitors the performance of the Operational Services if the Supplier fails to meet the Service Levels or fails to fulfil its other obligations under this agreement. The Council shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Council pursuant to this clause 9.7.
10. **Change control**
- 10.1 Either party may submit a written request for Change to the other party in accordance with this clause 10, but no Change will come into effect until a Change Control Note has been signed by the parties' respective Contract Managers.
- 10.2 If the Council requests a Change:
- 10.2.1 the Council will submit a written request to the Supplier containing as much information as is necessary to enable the Supplier to prepare a Change Control Note; and
- 10.2.2 within 10 Business Days of receipt of a request, the Supplier will, unless otherwise agreed, send to the Council a Change Control Note.
- 10.3 If the Supplier requests a Change, it will send to the Council a Change Control Note.
- 10.4 A Change Control Note must contain sufficient information to enable the Council to assess the Change, including as a minimum:
- 10.4.1 the title of the Change;
- 10.4.2 the originator of the Change and date of request;
- 10.4.3 description of the Change;
- 10.4.4 details of the effect of the proposed Change on:
- (a) the Services;
- (b) the Service Levels;

- (c) the Charges;
 - (d) any systems or operations of the Council which communicate with, or are otherwise affected by, the Services; and
 - (e) any other term of this agreement;
- 10.4.5 the date of expiry of validity of the Change Control Note; and
- 10.4.6 provision for signature by the Council and Supplier.
- 10.5 If, following the Council's receipt of a Change Control Note pursuant to clause 10.2 or clause 10.3:
 - 10.5.1 the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend this agreement; and
 - 10.5.2 either party does not agree to any term of the Change Control Note, then the other party may refer the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.
- 10.6 Each party will bear its own costs in relation to compliance with the Change Control Procedure.
- 11. **Subcontracting**

The Supplier shall not enter into subcontracting arrangements unless it has the Council's written consent to such subcontracting arrangements, which shall be fully at the Council's discretion.
- 12. **Compliance and change in laws**
 - 12.1 The Supplier shall at all times act, and shall procure that any subcontractors shall at all times act, in compliance with the Applicable Laws and the Mandatory Policies. The Supplier shall maintain such records as are necessary pursuant to the Applicable Laws and the Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council (or its authorised representative).
 - 12.2 Breach of clause 12.1 shall constitute a material breach of this agreement, which is irremediable, under clause 30 (Termination for material breach).
 - 12.3 The Supplier shall monitor and shall keep the Council informed in writing of any changes in the Applicable Laws which may impact the Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Supplier shall only implement such changes in accordance with the Change Control Procedure.
 - 12.4 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.

13. Charges, invoicing and payment

- 13.1 The Supplier shall pay the Charges to the Council in accordance with Schedule 6 (Charges and deductions).
- 13.2 Subject to payment of the Charges and clause 8.14, the Supplier may retain the balance of the Receipts. For the avoidance of doubt where the Charges exceed the Receipts there shall be no deduction from or reduction to the Charges payable to the Council.
- 13.3 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.
- 13.4 All Charges are stated exclusive of VAT which shall be paid by the Council at the rate and from time to time in the manner prescribed by law.
- 13.5 The Supplier shall submit its calculations for the Dividend (in accordance with Schedule 6, Part 2) within four weeks of each anniversary of the Commencement Date. The Council may raise such queries and make further enquiries in respect of such calculation as it deems necessary and the Supplier shall expeditiously assist with the same so that any queries on the calculation of and the amount of the Dividend can be agreed. The Council shall invoice the agreed figure for the Dividend following the agreement of the Dividend.
- 13.6 The Council shall invoice the Supplier at the beginning of each month for the Service Charge, comprising of 1/12th of the annual fee (referred to at paragraph 2 of Part 1 of Schedule 6) and for the charges incurred to the end of the previous calendar month (pursuant to paragraph 1 of Part 1 of Schedule 6).
- 13.7 The Supplier shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.

14. Condition

- 14.1 The Supplier will be responsible for the cost of the day to day repairs and maintenance to include but not limited to internal repairs and decoration of the Facilities and the whole of the external cabins.
- 14.2 The Council will be responsible for the cost of repairs to the main structure and large plant to include the boilers, heating units, fire alarm and intruder alarm.
- 14.3 The Supplier will give written notice to the Council of any defect or want of repair in the Facilities that is the Council's responsibility as soon as it becomes aware of the same.
- 14.4 The Council will use its reasonable endeavours to carry out such repairs as are within its sole discretion reasonably necessary to comply with clause 14.2 of this agreement within agreed response times with as little disruption to the Traders as is reasonably practicable (although the Facilities may need to temporarily fully or partially close to facilitate such works). Timescales will be agreed with the Supplier as necessary works are identified or as appear on the Council's Capital Repair contract. The Council may also undertake sustainability works where it deems that they may be required.

- 14.5 The Supplier will use its best endeavours to carry out all day to day repairs and maintenance in a timely manner to the satisfaction of the Council with as little disruption to the Traders as is reasonably practicable. Where any such repairs are considered dangerous, the Supplier shall procure that the necessary repairs are carried out immediately and in any event within 24 hours.
- 14.6 Where the Supplier fails to carry out the repairs it is responsible for to the satisfaction of the Council, the Council shall be at liberty to carry out the necessary repairs and recharge the Supplier for the cost of the same.
- 14.7 The Supplier will obtain the consent of the Council in writing for any proposed alterations to the Facilities, consent not to be unreasonably withheld. All agreed works subsequently undertaken by the Supplier will be at the Supplier's cost unless otherwise agreed in writing by the Council.
- 14.8 The Council will (and subject always to the Supplier's obligations set out at clause 25 and the indemnity as set out in clause 26), retain responsibility for insuring the following risks:-
- 14.8.1 fire (and such other risks as the Council will determine) to the full replacement value and where possible apply any monies received in respect of such insurance in reinstating the property. Evidence of such insurance is to be provided by the Council to the Supplier on request.
 - 14.8.2 third party claims arising from the condition of the Facilities. (Property Owners' Liability Insurance).
 - 14.8.3 claims by employees of the Council working in or on the Facilities.
 - 14.8.4 such other risks as the Council may from time to time determine.
- 14.9 The Council will keep all gas and electrical equipment which has been provided by the Council in good and safe working order (including replacing where necessary) and carry out regular gas and electrical checks sufficient to comply with all legislative safety provision.
- 14.10 The Council will provide and maintain in good repair adequate fire alarm and firefighting equipment at the property and replace the same where necessary in accordance with the recommendations of the relevant Fire Officer.
- 14.11 The Council will carry out all necessary compliance checks sufficient to comply with all legislative provision. The Supplier will not do anything which shall hinder such checks being undertaken.
- 14.12 The parties shall inform each other of any repair needed under the terms of this Agreement as soon as it is reasonably practicable to do so.
- 14.13 The Supplier shall report to the police any criminal damage at the Facilities and obtain a crime reference number.
- 14.14 The Supplier shall take appropriate action against any Traders causing deliberate damage and collect charges made for repair as a result of damage.

- 14.15 Where a Trader requires a specific adaptation or installation due to disability the Supplier will apply for the prior written approval for the same from the Council.
- 14.16 The Council will carry out internal and external inspections of the Facilities to ensure compliance with the above obligations upon giving reasonable notice to the Supplier of its intention to do so.
- 14.17 The Supplier shall maintain a repair log for inspection by the Council and ensure that all guarantees and warranties for work are stored for safe keeping during relevant warranty/guarantee period. All emergency repairs relating to fire equipment should be reported to the Council.

15. Disaster recovery and business continuity

- 15.1 The Supplier shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms.
- 15.2 The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every 12-month period from the Commencement Date). The Council shall be entitled to participate in such tests as it may reasonably require.
- 15.3 Following each test, the Supplier shall send to the Council a written report summarising the results of the test and shall promptly implement at the Supplier's expense any actions or remedial measures which the Council reasonably considers to be necessary as a result of those tests.
- 15.4 The Supplier shall implement the Disaster Recovery and Business Continuity Plan if the Operational Services are not available for more than three days.

16. Key personnel

- 16.1 Each party shall appoint the persons named as such in Part 2 of Schedule 7 (Contract Managers and Key Personnel) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 16.2 The Supplier shall not remove or replace any of its Key Personnel unless:
- 16.2.1 required to do so by the Council in accordance with clause 17.3;
 - 16.2.2 the person is on long-term sick leave;
 - 16.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
 - 16.2.4 the person resigns from their employment with the Supplier; or
 - 16.2.5 the Supplier obtains the prior written consent of the Council.

- 16.3 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than seven Business Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.

17. Supplier's Personnel

- 17.1 At all times, the Supplier shall ensure that:

17.1.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the Services in respect of which they are engaged;

17.1.2 there is an adequate number of Supplier's Personnel to provide the Services properly; and

17.1.3 all of the Supplier's Personnel comply with the Mandatory Policies.

- 17.2 The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any of the Mandatory Policies, or if they otherwise present a security threat.

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

- 17.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Supplier's Personnel. The Supplier shall ensure that the Supplier's Personnel cannot be individually identified from the information so provided.

- 17.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

18. Staff transfers

The Council and the Supplier confirm that no employees will transfer under TUPE

19. Non-solicitation

- 19.1 To protect their respective legitimate business interests each party covenants with the other for itself and as agent for each member of its Group that it shall not (and shall procure that no member of its Group shall) (except with the prior written consent of the other party):

19.1.1 attempt to solicit or entice away; or

- 19.1.2 solicit or entice away,
- from the employment or service of the other party or any member of its Group the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party or any member of its Group.
- 19.2 The parties shall be bound by the covenant set out in clause 19.1 during the Term, and for a period of six months after termination or expiry of this agreement.
- 19.3 For the purposes of this clause 19, a **Restricted Person** shall mean any firm, company or person employed or engaged by a party or any member of its Group during the Term, who has been engaged in the provision of the Services or the management of this agreement.
20. **Equipment**
- 20.1 The Supplier shall, at its own expense, be responsible for the provision, maintenance, installation and replacement of all the Equipment.
- 20.2 The Supplier shall ensure that the Equipment:
- 20.2.1 is suitable for the performance of the Services;
- 20.2.2 is maintained in good working order, in a safe, serviceable and clean condition and in accordance with the manufacturer's instructions and Applicable Laws; and
- 20.2.3 complies with the latest applicable British standard where such exists.
- 20.3 The Supplier shall comply with any reasonable directions issued by the Council in respect of the use and maintenance of the Equipment at the Facilities.
- 20.4 The Supplier shall procure such spare parts, repair parts, components and consumables as are necessary to maintain the Facilities in accordance with this agreement and in particular clause 14.
21. **Intellectual Property Rights**
- 21.1 In relation to the Council Materials:
- 21.1.1 the Council and its licensors shall retain ownership of all Intellectual Property Rights in the Council Materials; and
- 21.1.2 the Council grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Council Materials for the Term for the purpose of providing the Services to the Council.
- 21.2 The Supplier:

- 21.2.1 warrants that the receipt, use and onward supply of the Services by the Council shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 21.2.2 shall indemnify the Council in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Council arising out of, or in connection with any claim brought against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or supply of the Services.

22. Data protection

- 22.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 22 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 22.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the controller and the Supplier is the processor. Schedule 8 sets out the scope, nature and purpose of processing by the Supplier.
- 22.3 Without prejudice to the generality of clause 22.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.
- 22.4 Without prejudice to the generality of clause 22.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 22.4.1 process that personal data only on the written instructions of the Council unless the Supplier is required by any Applicable Law to otherwise process that personal data. Where the Supplier is relying on Applicable Law as the basis for processing personal data, the Supplier shall promptly notify the Council of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Council;
 - 22.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and

- evaluating the effectiveness of the technical and organisational measures adopted by it);
- 22.4.3 without prejudice to clause 33 (Confidentiality), ensure that all Supplier's Personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 22.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (a) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (d) the Supplier complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the personal data;
- 22.4.5 assist the Council, at the Council's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 22.4.6 notify the Council without undue delay on becoming aware of a personal data breach;
- 22.4.7 at the written direction of the Council, delete or return personal data and copies thereof to the Council on termination of the agreement unless required by any Applicable Law to store the personal data; and
- 22.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 22 and allow for audits by the Council or the Council's designated auditor of such records and information in accordance with clause 23 (Audits) and immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 22.5 The Council does not consent to the Supplier appointing any third party processor of personal data under this agreement.
- 22.6 Either party may, at any time on not less than 30 days' notice, revise this clause 22 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 22.7 The Supplier shall indemnify the Council in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit,

loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Council arising out of, or in connection with any breach of the Supplier's obligations under this clause 22 except and to the extent that such liabilities have resulted directly from the Council's instructions.

23. Audits

23.1 The Supplier shall allow the Council and any auditors of or other advisers to the Council to access any of the Supplier's premises, systems, Supplier's Personnel and relevant records as may be reasonably required to:

23.1.1 fulfil any legally enforceable request by any regulatory body;

23.1.2 verify the accuracy of the Charges or identify suspected fraud; or

23.1.3 verify that the Services are being provided and all obligations of the Supplier are being performed in accordance with this agreement.

23.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or impede the provision of the Services and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.

23.3 Subject to the Supplier's obligations of confidentiality, the Supplier shall provide the Council (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

23.4 The Council shall provide at least 10 Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

23.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 23, unless the audit identifies a material breach of this agreement by the Supplier, in which case the Supplier shall reimburse the Council for all its reasonable costs incurred in the course of the audit.

23.6 If an audit identifies that the Supplier has failed to perform its obligations under this agreement, the provisions of clause 29 (Remediation Plan Process) shall apply.

24. Warranties

Each party warrants that:

24.1 it has full capacity and authority to enter into and to perform this agreement;

24.2 this agreement is executed by a duly authorised representative of that party;

24.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this agreement;

- 24.4 once duly executed, this agreement will constitute legal, valid and binding obligations; and
- 24.5 its Key Personnel shall be authorised to carry out the matters for which they are expressed to be responsible in Schedule 7 (Contract Managers and Key Personnel).

25. Insurance

The Supplier shall take out and maintain in full force and effect with a reputable company during the Term, at its own cost, minimum level of insurance cover as follows:

- 25.1 Public liability insurance – minimum insurance of £5,000,000 against all loss of and damage to property (real or personal or intellectual) and death or injury to persons in relation to any one claim or series of claims.
- 25.2 Employer's Liability (Compulsory Insurance) Act 1969 – minimum insurance of £10,000,000 (except where the Supplier is exempt from the obligations of this Act, provided that alternative arrangements for meeting such liability will be agreed with the Council.) in relation to any one claim or series of claims
- 25.3 Professional Indemnity Insurance - (where applicable) in respect of the Supplier's business with a minimum level of indemnity of £1,000,000 in relation to any one claim or series of claims and shall In view of the claims made nature of the insurance, maintain continuity of cover with the insurer for at least six years after the year the policy was in force and ensure that all professional consultants or sub-contractors involved in the provision of the Service hold and maintain appropriate cover.
- 25.4 Product liability insurance (where applicable) with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and not less than £5,000,000 in aggregate for all claims arising in any year.
- 25.5 Efficacy Insurance to cover any Service or Product failure to perform (where applicable) extending either the Public Liability or Product Liability Insurance or both, the minimum value of such extended cover shall be £5,000,000.
- 25.6 The insurance cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of this Agreement, including death, personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 25.7 The Supplier shall when required by the Council produce evidence of the insurance required in the sub-clauses above. In the event that the Supplier at any time fails to maintain the insurance in sub-clauses above the Council may take out and maintain such insurance and the Supplier shall pay to the Council the cost and expenses so incurred by the Council.
- 25.8 The terms of the insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement.

25.9 Where the insurance is a “Claims Made Policy” (i.e. an insurance policy with a condition whereby only claims notified to the insurer during the policy period are covered). the Supplier shall hold and maintain the insurance for a minimum of 6 years following the expiry or earlier termination of the Agreement.

25.10 The Supplier shall notify the Council of any potential or actual claims brought against it in relation to the Services as soon as it is reasonably practicable to do so.

26. **Indemnity**

26.1 The Supplier shall fully and properly indemnify and keep the Council indemnified against all actions, loss, damage, cost liability, howsoever arising whether in tort, contract, under statute or otherwise out of breach or negligence of the Supplier, its agents, employee or subcontractors, in connection with the provision of the Services: for any claim made against the Council :

26.1.1 by a third party arising out of, or in connection with, the provision of the Service

26.1.2 for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the provision of the Services; and

26.1.3 by a third party for death, personal injury or damage to property arising out of, or in connection with the Services to the extent that it is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

26.2 Nothing in this Contract excludes or limits the liability of the Supplier for:

26.2.1 fraud or fraudulent misrepresentation;

26.2.2 death or personal injury caused by the Supplier's negligence.

27. **Fire**

27.1 The Council will:-

27.1.1 at all times comply with all regulations, byelaws and other requirements relating to fire prevention, precautions and escape in the event of fire.

27.1.2 be responsible for the installation and servicing of fire equipment which includes: fire alarms, smoke detectors, emergency lighting, fire extinguishers, and heat detectors.

27.1.3 carry out any repair or replacement of fire equipment required as a result of an act of deliberate damage or neglect of the Trader. The Trader will be responsible for the cost of the repair and the Supplier will be responsible for collection of the charge.

27.2 The Supplier will:

27.2.1 at all times comply with all regulations, byelaws and other requirements relating to fire precautions and means of escape in the event of fire.

- 27.2.2 carry out fire alarm tests and fire drills at appropriate intervals and record these for inspection.
 - 27.2.3 regularly check that fire appliances are in good working order (including smoke detectors, extinguishers) and report back to the Council any concerns.
 - 27.2.4 report to the Council any actual or suspected deficiencies in the firefighting equipment or smoke detectors.
 - 27.2.5 ensure that fire doors are not fixed open and that self-closing mechanisms are not disconnected.
- 27.3 The Supplier will be responsible for carrying out an annual fire risk assessment for agreement with the Council.
28. **Dispute resolution procedure**
- 28.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- 28.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers of each of the parties shall attempt in good faith to resolve the Dispute;
 - 28.1.2 if the Contract Managers of each of the parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Executive of the Council and the [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and
 - 28.1.3 if the Chief Executive of the Council and the [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.
- 28.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Drafting note, Jurisdiction (Jurisdiction), which clause shall apply at all times.
- 28.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of

that 30-day period, or the mediation terminates before the expiry of that 30-day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Drafting note, Jurisdiction (Jurisdiction) in this agreement.

29. Remediation Plan Process

- 29.1 Subject to clause 29.2, if the Supplier is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Council may not terminate this agreement without first operating the Remediation Plan Process. If the Supplier commits such a default, the Council shall give a Remediation Notice to the Supplier which shall specify the default in outline and the actions the Supplier needs to take to remedy the default.
- 29.2 The Council shall have no obligation to initiate the Remediation Plan Process if it issues a Termination Notice in the circumstances set out in clause 30.2.
- 29.3 Within 10 Business Days of receipt of a Remediation Notice, the Supplier shall either:
- 29.3.1 submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - 29.3.2 inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.
- 29.4 The Council shall either approve the draft Remediation Plan within 10 Business Days of its receipt pursuant to clause 29.3.1, or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Council within five Business Days of its receipt of the Council's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.
- 29.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.
- 29.6 If, despite the measures taken under clause 29.4, a Remediation Plan cannot be agreed within five Business Days then the Council may elect to end the Remediation Plan Process and serve a Termination Notice.
- 29.7 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, the Council may:
- 29.7.1 terminate this agreement by serving a Termination Notice;
 - 29.7.2 give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
 - 29.7.3 refer the matter for resolution under the Dispute Resolution Procedure.
- 29.8 If, despite the measures taken under clause 29.7, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the

Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.

- 29.9 The Council shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Supplier as had previously been addressed in a Remediation Plan within a period of 12 months following the conclusion of such previous Remediation Plan. In such event, the Council may serve a Termination Notice.

30. Termination

- 30.1 Without affecting any other right or remedy available to it, and subject to clause 29 (Remediation Plan Process), the Council may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:

- 30.2 Without affecting any other right or remedy available to it, and subject to clause 29 (Remediation Plan Process), the Council may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:

30.2.1 the Supplier fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;

30.2.2 the Supplier is in material breach of this agreement, which is irremediable;

30.2.3 the Supplier fails to procure that the Commencement Date occurs on or before the Commencement Longstop Date;

30.2.4 the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;

30.2.5 the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;

30.2.6 the circumstances referred to in clause 29.9 occur;

30.2.7 the Supplier has committed a Critical Service Failure;

30.2.8 the Supplier suffers an Insolvency Event; or

30.2.9 there is a change of Control of the Supplier to which the Council reasonably objects, provided that the Council serves its Termination Notice within three months of the date on which the Supplier informs the Council (by written notice) of the change of Control or on which the Council otherwise becomes aware of the change of Control.

- 30.3 Where the Council wishes to terminate this agreement for convenience the Council may terminate this agreement at any time, on giving not less than six months' prior written notice to the Supplier.

- 30.4 Either party may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the other if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 100 Business Days.
- 30.5 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement by giving the Council written notice if:
- 30.5.1 the Council commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 56 days after being notified in writing to do so;
 - 30.5.2 the Council repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
 - 30.5.3 the Council suffers an Insolvency Event.

Material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement over any 12-month period during the Term. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding. A party terminating for material breach may rely on a single material breach or several breaches or repeated breaches that, taken together, constitute a material breach.

31. **Consequences of termination and survival**

- 31.1 On the Termination Date, the Supplier shall:
- 31.1.1 pay to the Council any amount owing to the Council for the period up to the Termination Date;
 - 31.1.2 vacate the Facilities leaving them clean and tidy and removing any materials or equipment belonging to it. The Council may dispose of any materials or equipment that have not been removed within five days of termination or expiry of this agreement and shall not be obliged to account to the Supplier for the same;
 - 31.1.3 deliver the Documentation to the Council; and
 - 31.1.4 return to the Council such of the following as are in the Supplier's possession or control:
 - (a) security and access keys and codes issued to the Supplier's Personnel;
 - (b) the Council Materials;
 - (c) any other equipment which belongs to the Council; and

(d) any items that have been on-charged to the Council, such as consumables,

and if the Supplier fails to do so, then the Council may enter the Supplier's premises and take possession of them.

31.2 On the Termination Date, each party shall return to the other party all Confidential Information of the other party and erase all of the other party's Confidential Information from its computer systems (to the extent possible) and shall certify that it does not retain the other party's Confidential Information.

31.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

31.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the Termination Date, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

32. **Exit assistance and service transfer**

Without prejudice to any other rights and obligations in this agreement, in the event of termination or expiry of the agreement the parties shall comply with the provisions of Schedule 10 (Exit Management Plan and service transfer arrangements) and the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, the Replacement Supplier.

33. **Confidentiality**

33.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any Confidential Information, except as permitted by clause 33.2.

33.2 Each party may disclose the other party's Confidential Information:

33.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 33.2.1; and

33.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

33.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

34. **Force majeure**
- 34.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including:
- 34.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 34.1.2 epidemic or pandemic;
 - 34.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 34.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 34.1.5 any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 34.1.6 collapse of buildings, fire, explosion or accident; and
 - 34.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same Group as that party); and
 - 34.1.8 non-performance by suppliers or subcontractors (other than by companies in the same Group as the party seeking to rely on this clause); and
 - 34.1.9 interruption or failure of utility service.
- 34.2 Provided it has complied with clause 34.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 34.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 34.4 The Affected Party shall:
- 34.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - 34.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 34.5 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question, or if it is attributable to a failure by the Supplier to comply with the provisions of the Disaster Recovery and Business Continuity Plan (unless such failure is also due to a Force Majeure Event affecting the operation of the Disaster Recovery and Business Continuity Plan).

35. General

Entire agreement

- 35.1.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 35.1.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

Variation

Subject to clause 10 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Assignment and other dealings

- 35.1.3 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 35.1.4 The Council may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Supplier.

Waiver

- 35.1.5 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 35.1.6 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

Severance

- 35.1.7 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 35.1.8 If any provision or part-provision of this agreement is deemed deleted under clause 35.1.7, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

Notices

- 35.1.9 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the address to the Council at PROPERTYSERVICES@ROSSENDALEBC.GOV.UK and copying the Economic Development Manager and Property Services Manager (details of the parties to be copied to be communicated to the Supplier from time to time by written notification of a relevant email address for service under this clause 35.1.9) and by email to the address to the Supplier at [DN – FIXED ADDRESS TO BE GIVEN] and copying [] (details of the parties to be copied to be communicated to the Council from time to time by written notification of a relevant email address for service under this clause 35.1.9)
- 35.1.10 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), **business hours** means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Third party rights

- 35.1.11 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 35.1.12 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

Inadequacy of damages

- 35.2 Without prejudice to any other rights or remedies that the Council may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Council shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

No partnership or agency

- 35.2.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 35.2.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

Counterparts

- 35.2.3 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 35.2.4 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) or the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

Announcements

No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

Rights and remedies

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

Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

Governing law

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

Jurisdiction

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

35 Freedom of Information Act 2000 (FOIA) and Environment Information Regulation 2004 (EIR)

35.1 The Supplier acknowledges that the Council is under a statutory obligation to disclose certain information in order to comply with the FOIA and the EIR (the Acts); and shall provide such assistance and cooperation as the Council reasonably requires in order to enable the Council to comply with any request for disclosure of information which the Council is legally obliged to disclose.

35.2 The Supplier shall, if required, provide and shall use all reasonable endeavours to procure that its sub-contractors provide at the Supplier's expense, such information to the Council as the Council reasonably requires in order to enable the Council to comply with any request for disclosure of information which the Council is legally obliged to disclose in such form as the Council reasonably requires and within ten working days of receiving a Request for Information.

35.3 Failure to provide such information in accordance with the terms of this Agreement shall be a breach of this Agreement and the Supplier shall indemnify the Council for any claims, costs, damages and expenses that the Council may incur by reason of such breach including but not limited to claims, costs, damages and expenses arising directly or indirectly as a result of any decision of the Information Commissioner that such information shall be disclosed.

35.4 The Council shall not be liable for any loss, damage or detriment, howsoever caused, arising from disclosure of any information disclosed in compliance with a request for information under the Acts.

35.5 The Council shall be responsible for determining at its absolute discretion whether any information is exempt from disclosure under the Acts or is to be disclosed in response to a request for information and in no event shall the Supplier respond directly to a request for information.

36 Prevention of Bribery and Corruption

36.1 The Supplier shall :-

36.1.1 comply with the Bribery Act 2010 and all laws and regulations relating to anti bribery and anti-corruption;

36.1.2 have and shall maintain an adequate anti bribery policy to prevent the Supplier and its staff from committing any Prohibited Acts and shall enforce it where appropriate.

36.1.3 promptly notify the Council of any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with performance of this Agreement; and

36.1.4 must co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

36.2 The Council may terminate this Agreement and any other contract with the Supplier by written notice with immediate effect if the Supplier, her employees or any person acting on her behalf (whether with or without the knowledge of the Supplier) breaches the obligations under this clause.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 - Operational Services Specification

- 1 Hold at least 20 events annually to draw in new people to Rawtenstall, especially people from outside of the Borough with fees payable agreed by the Council.
- 2 Consider how best to extend the open space for events at the front of the Market to accommodate larger events and to create a better frontage to the main Market. However, any relocation of the existing traders needs to be carefully thought through with clear alternatives and mitigating measures.
- 3 To offer accommodation to the Farmer's & Artisan Market for at least 12 Sundays per annum, in the front and rear of the site outside for a fee of £150 per event (or such other amount agreed with the Council).
- 4 Promote the Market and cooperate with the Council to support delivery of outputs outlined in the Economic Development Strategy.
- 5 Manage the Facilities and stallholders on a day-to-day basis.
- 6 Clean the Facilities to shopping centre standards.
- 7 Ensure health and safety and other statutory standards are met. RBC will recharge by arrangement for all statutory compliance testing that it carries out on the Market.
- 8 Work in partnership with the Council's Communications Team to ensure that all media releases (either traditional or electronic) are in line with Council policies.
- 9 Opening on any closed days before Market Days to facilitate trader access for stocking up at times to be agreed directly with the Traders
- 10 Opening at 7.30am and closing at 6pm on Market Days. Any times outside of this to be agreed between the Supplier and the Trader separately
- 11 Cleansing of the Market both inside and outside
- 12 Day to day maintenance and repairs
- 13 Rent collections and processing – Current Traders shall have Licence Fee protection until 31 March 2021. New Traders and current Traders after 31 March 2021 to be charged at a rate to be agreed with the Council.
- 14 Debt management and enforcement
- 15 Trader liaison to include development of a trader forum and newsletters
- 16 Reporting and facilitating Market repairs and maintenance
- 17 Facilitating contractor access
- 18 Organising and promoting of events and specialist markets

- 19 Management of Trader Licences/Day Permits and any subsequent variations to the same
- 20 Dealing with new applications
- 21 Allocate stalls according to goods on offer and in line with byelaws
- 22 Monitoring and minimising void stalls through effective marketing
- 23 Annual public liability checks
- 24 Weekly fire alarm checks
- 25 Regular safety checks
- 26 Responding to queries, concerns, issues and complaints relating to the Market
- 27 Entering into a contract for the adequate provision of Trade Waste collection with the Council
- 28 Being point of call for alarm system and contractors subject to clause 8.15
- 29 Out of hours call outs subject to clause 8.15
- 30 Comply with the Council's Winter Weather Plan in relation to the Market
- 31 Monitor footfall and baseline
- 32 Promote the Market on all media platforms to include the development of a new website to be agreed with the Council
- 33 Work in collaboration with other businesses in the borough as agreed with the Council
- 34 Offer skills training opportunities in conjunction with the Council
- 35 Offer training to traders to include social media training and visual merchandising
- 36 Work with North West food organisations to promote fresh food/vegetarian/vegan nutrition
- 37 Ensure Traders are fully appraised of their obligations under the Licence or Day Permit with confirmation that the Council is not responsible for contents insurance
- 38 Promote use of the Market for filming and media studies in agreement with the Council
- 39 To collect the Licence Fees
- 40 To comply with the requirements set out in the ITT dated [15 June 2020]

Schedule 2

Part 1

Licence



ROSSENDALE BOROUGH COUNCIL

LICENCE TO OCCUPY MARKET STALL

Rossendale Borough Council (hereinafter called 'the Council') hereby gives and grants to hereinafter called 'the Licensee') licence and authority to occupy and use

stall(s) at **RAWTENTSTALL MARKET** (hereinafter referred to as 'the Stall(s)') on
.....
upon the following terms and conditions.

The Licensee hereby assents to the terms and conditions, agrees to observe and perform the same and understands that failure to do so will result in the Licence being suspended, revoked or terminated in a manner specified in the said terms and conditions. Reference in this Licence to the Licensee shall also apply to any employee, representative servant or agent of the Licensee. It is the Licensee's responsibility to ensure that the same are aware of the terms and conditions of the Licence and comply with the same.

- A. The Licensee shall pay in respect of the right to occupy and use the Stall(s) and the basic facilities there provided the current stallage charge(s) as set down and authorised by the Council (hereinafter called 'the Charges') each week during the subsistence of this licence such sum to become due and payable in advance weekly and to be payable whether or not the Licensee attends the Stall(s) in any week.
- B. During the subsistence of this Licence the Licensee shall be entitled to use the Stall(s) for the purpose of carrying on thereat the business of selling by retail the goods set out in **Schedule** below only on recognised market days in each week.
- C. The Licensee hereby agrees with the Council as follows:-
 - 1. To pay the said charges on the days and in manner aforesaid. To
 - 2. To observe and conform to all the Statutes and Byelaws relating to the Markets and to occupy and use the stall in accordance with the following conditions and any other conditions from time to time made by the Council for the management of the markets.
 - 3. To observe and trade each recognised market day 9AM-4PM.
 - 4. Any goods, articles, or things of every description brought or left in any inside or outside market in the Borough, will be, as regards fire, theft, loss, damage and in every other respect, at the risk of the owners of such goods,

articles, or things, and the Council will not be responsible therefore in any respect whatever. You must have your own business contents insurance.

5. You must be given permission from the market management for all portable electric equipment brought onto the market by the Licensee. The portable electric equipment will be the responsibility of the Licensee. All such equipment will be required to have had annual Portable Appliance Testing (PAT) carried out by an electrical contractor qualified to N.I.C.E.I.C or equivalent at the Licensee's expense, to be appropriately evidenced and marked on the said equipment. Electric heaters shall not be used on lighting circuits. Electric heating is not allowed to be installed without express permission from Rossendale Borough Council. If you receive permission you will be charged for useage. Portable electric heaters must never be left unattended and are subject to additional charge.
6. The Licensee will have adequate Public Liability Insurance cover before being permitted to trade on Rossendale Markets and shall maintain the same during the subsistence of this licence. The Licensee shall provide written proof of such insurance and supply the same upon each and every renewal of the policy.
7. The Licensee will indemnify the Council from and against all claims, damages, loss, expenses and costs in respect of any explosion, fire, accident or injury to property, persons or things which may arise or occur through or in connection with the occupation or use of the Stall(s).
8. The Licensee shall notify the Markets Management of any person they intend to employ to work on the Stall(s) prior to their employment and the Market Management can prohibit anyone who is not considered a fit and proper person.
9. Alterations to Council owned stalls may not be carried out without prior approval and permission of the Markets Management and stalls so altered shall revert to the Council.
10. A casual Licensee occupying a Council owned stall who does not attend on any market day, including holiday periods, must pay a retaining charge of the normal stallage charge if he wishes to have the use of that particular stall on future occasions.
11. The Licensee shall notify the Markets Management, in writing, prior to businesses being sold or advertised for sale.
12. The parting with possessions, sub-letting or transfer of stalls or any part thereof is prohibited.
13. This Licence cannot be transferred.
14. The Markets Management shall be authorised at their discretion to decide upon the goods which may be sold from any stall in the case of a new occupancy.
15. The Licensee shall not, without first obtaining the permission of the Markets

Management, sell any goods from their stalls other than those listed in Schedule A to this licence.

16. The sale or storage of any illegal goods on Rossendale Markets is strictly prohibited.
17. Parking of Licensee's vehicles to the prejudice of the efficient operation of the market and the safety of the public on any part of any market ground or the approaches thereto except during the off-loading and on- loading of goods for a period of no longer than half an hour is prohibited. In any event vehicles must leave any market area not later than 09.00 a.m. on market days. The loading of vehicles in any market area is not permitted before 5.00 p.m. except by permission of the Markets Management.
18. Licensees using the toilets, washbasins and sinks on the market grounds shall leave them in a clean condition after use. Improper use of the toilets and/or washbasins for the washing up of utensils or the disposal of waste matter is strictly prohibited.
19. You are responsible for obtaining and arranging the disposal of your own commercial waste and associated costs.
20. Licensees shall use the Stall(s) in a diligent and business-like manner and not do or allow to be done anything which might be or be deemed by the Markets Management to be or cause to be a nuisance or annoyance to the public or to the occupiers of neighbouring or adjoining stalls or which may be detrimental to the Market.
21. Entry to **RAWTENSTALL** Market on days other than market days is not permitted unless authorised by the Markets Management.
22. In the event of any work on the market premises being required in an emergency on days other than market days and for which the stallholders would normally be responsible, the Markets Management shall be permitted to authorise such work without prejudicing the Council's right to recover such expenses as may be incurred from the stallholder, and power of entry to any stall shall be reserved for this purpose.
23. No smoking is permitted by Licensees in or on land owned by the Council and operated as a market. This does not include the car parks which service the markets.
24. Licensees shall obey the reasonable instructions of the Markets Management.
25. In addition to the afore-mentioned conditions the following conditions shall apply to stalls owned by Licensees:
 - a. Licensee's stalls shall be maintained, painted and lettered to the satisfaction of the Markets Management.
 - b. A charge shall be deemed to and shall include an acknowledgement by the Licensee that the use of the land on which the stall is situated is so situated not of right but with the permission and authority of the Council.

- c. Should the Licensee's stall be deemed by the Markets Management to be a risk to the health and safety of visitors to the Market, the Licensee will be required to carry out repairs necessary to make it safe within the reasonable time period stipulated by the Market Management.
- d. This Licence may be terminated at any time by either party giving to the other a minimum of two weeks' notice in writing to expire on a Saturday PROVIDED ALWAYS that if the Licensee shall fail to carry on business at the Stall(s) for any period of two successive weeks without giving to the Markets Management a reasonable explanation in writing addressed to them at Rawtenstall Market, Newchurch road, Rawtenstall Lancashire BB4 7QX and shall fail for the same period of time to pay the Charges then this Licence shall automatically be deemed to have been terminated but without prejudice to the right of the Council to recover any sums due to them hereunder.
- e. In particular and without prejudice to the rights of the Council to terminate this Licence at any time as provided in paragraph D if the Licensee shall make default in the payment of the Charges at the prescribed times whether formally demanded or not or shall fail to observe or perform any of the above conditions or shall neglect by himself, his agents or his servants to observe or conform to all the Statutes and Byelaws, Rules and Regulations from time to time made by the Council with regard to the Market then it shall be lawful for the Council to terminate this licence with immediate effect. Such termination shall be without prejudice to any claim of the Council in respect of any breach by the Licensee of any condition contained herein.

SCHEDULE

The Licensee is permitted to sell the following items only:

(List of items)

NB written permission MUST be obtained before selling any other items

MARKET MANAGEMENT

DATED this

I/We accept the Licence hereby granted subject to the terms and conditions therein stated.

Signed: _____
(Licensee)

In the presence of:

Witness's Name _____

Address _____

Occupation _____

Trading name:

Name: Address:

Date of Birth:

Email address:

Telephone number:

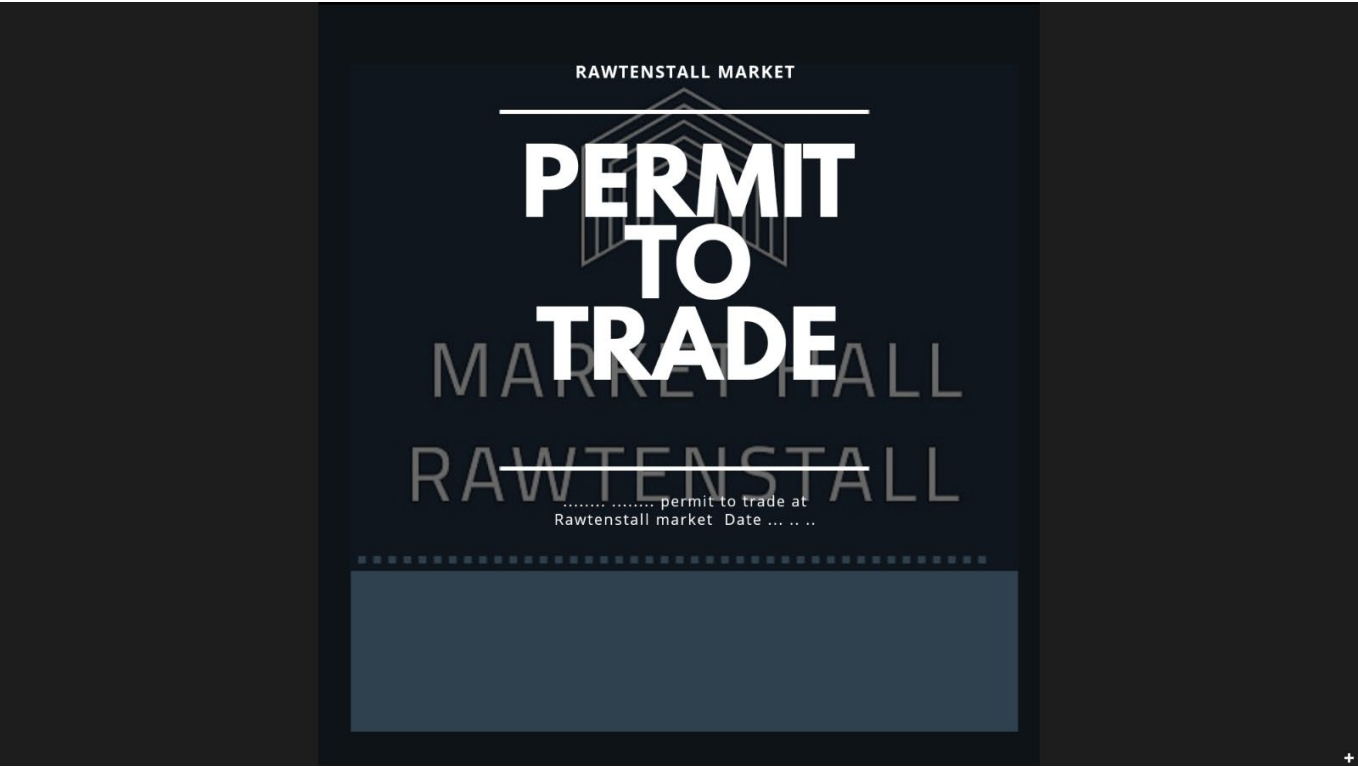
Mobile number:

Public Liability:

Schedule 2

Part 2

Day Permit



Schedule 3 - Service Levels

- 1 The holding of markets on at least five days a week, which must include Thursday and Saturday (except for public holidays) (a Critical Service Level).
- 2 Suitable provision must be made for current stallholders who are unable or unwilling to increase their opening from 2 to 5 days a week (a Critical Service Level).
- 3 Opening for a minimum of 5 hours per trading day (a Critical Service Level).
- 4 The holding of regular events, minimum of 20 days per year, including at least 5 evening events.
- 5 The holding of at least one event per year in partnership with the East Lancashire Railway (The Council's Economic Development Team will provide a linkage at the ELR for this to be coordinated) (a Critical Service Level).
- 6 The Farmer's and Artisan Market should be held 12 Sundays out of the year, outside of the 20 required event days, at the agreed charge of £150 per annum per event. This event requires 30 mobile stores to have available space to trade at the front and back of the market (a Critical Service Level)
- 7 Having a minimum stall occupancy rate for the Facilities of 50% in year one, rising to 60% in year 2, 70% in year 3 and a minimum of 75% thereafter. If the occupancy level falls below the stipulated levels, the RBC nominated officer must be informed within 14 days.
- 8 Footfall counters to monitor the level of visitors to the Facilities and these must show a steady increase with monthly data submitted to the Council (targets to be included part of the tender submission process). These can be electronic or done manually, if manual details of the methodology must be produced to evidence that it was done as accurately as possible.
- 9 The Supplier will produce a monthly financial report for the Facilities, detailing income and expenditure for inspection by the Council using the formula and methodology set out in the tender submission and which is annexed below. (a Critical Service Level)
- 10 The Supplier will adhere to each of the plans and submissions annexed below: (a Critical Service Level)

[Dividend formula and methodology

full business plan.

Financial projections.

Evidence of financial suitability.

A management structure.

Existing trader's transition and incorporation plan

Events plan.

Profit dividend percentage payments schedule.

A methodology for calculating net profit.

An ethical compliance statement.

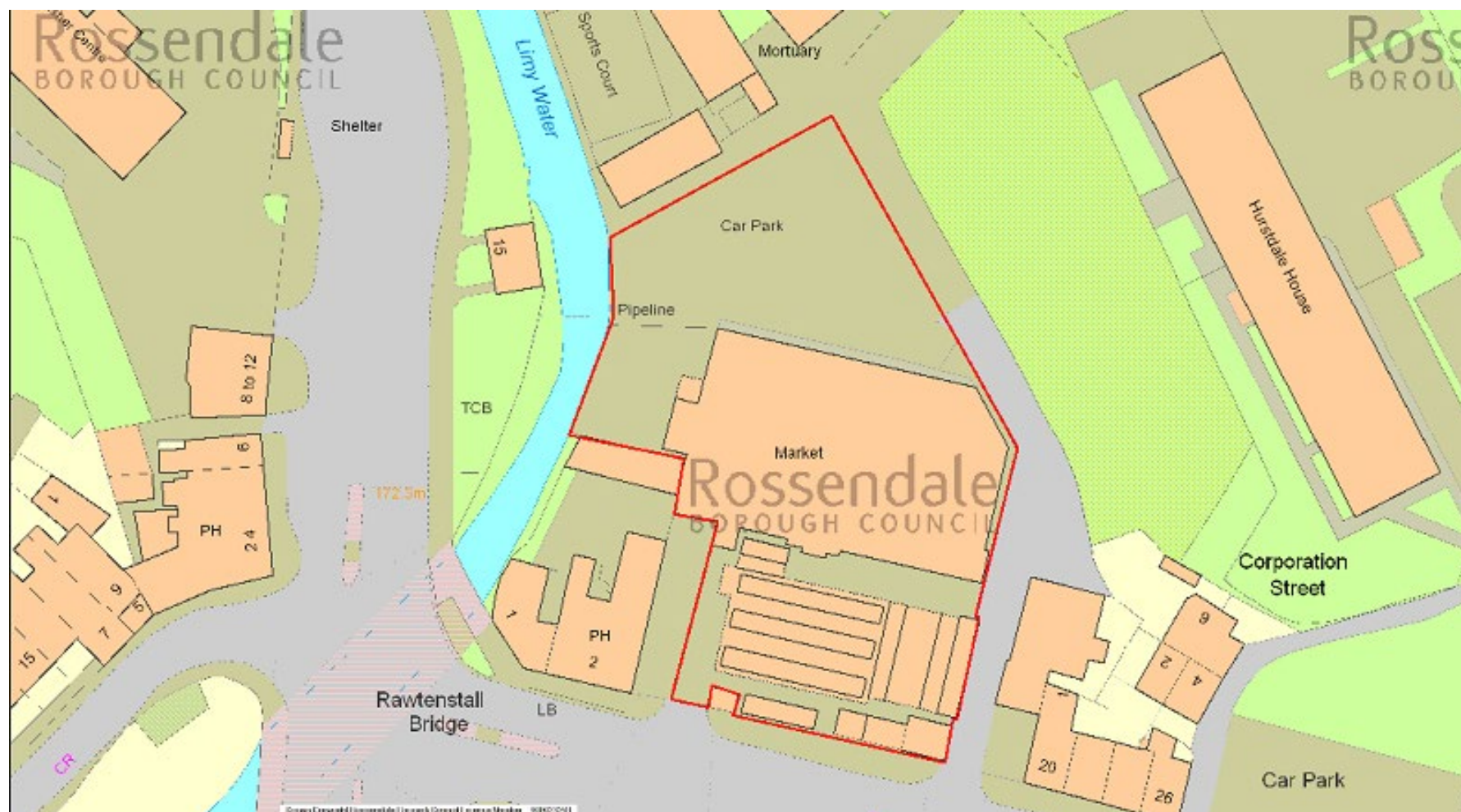
Disaster Recovery and Business Continuity Plan

[to be inserted from successful tender]

Schedule 4 - Council's Responsibilities

1. The Council shall provide the Supplier with the following documents, information, items and materials:
All logos and regular slots on the Council's website and social media platforms
2. The Council shall:
 - 2.1 respond to and provide such documentation, data and other information as the Supplier reasonably requests for the Supplier to discharge its obligations under this agreement;
 - 2.2 respond to requests for information in a prompt and timely manner, where such requests are reasonably made by or on behalf of the Supplier to enable the Supplier to discharge its obligations under this agreement; and
3. The Council shall:
 - 3.1 repair and maintain the main structure to include roof foundations load bearing walls joists beams chimneys windows external drains and external surfaces of the Facilities and any cisterns tanks sewers drains pipes wires ducts circuits and other conduits serving the Facilities (as referred to as Council's obligations under clause 14).
 - 3.2 Maintain the Council owned equipment at the Café
 - 3.3 Carry out an annual compliance check on relevant equipment and at other times if deemed appropriate
 - 3.4 Maintain adequate buildings insurance in accordance with clause 14.8 (including the payment of any excesses)
 - 3.5 Maintain utility contracts
 - 3.6 To enter into an agreement with the Supplier for the provision of a weekly Trade Waste collection
 - 3.7 Promote the Facilities on its social media and new news page
 - 3.8 Carry out works agreed with the Supplier
 - 3.9 subject to the Supplier's compliance with clause 20.2 and clause 20.3, not unreasonably refuse a request from the Supplier to keep the Equipment at the Facilities;
4. The Council shall use its reasonable endeavours to ensure that all of its staff who will use the Facilities:
 - 4.1 familiarise themselves with the agreed procedures for reporting faults, incidents, accidents and problems relating to the use of the Facilities; and
 - 4.2 are kept up to date with matters relating to the use of the Facilities via notices, email or other form of messaging service.

Schedule 5 – Facilities



Schedule 6- Charges

Part 1

Service Charges

1. The costs incurred by the Council in carrying out its obligations pursuant to this agreement (including but not limited to the cost of insurance, utilities, waste disposal and those costs set out at Schedule 4)
2. The annual fee of £[20,000] ***[DN: minimum £20,000 although enhanced figure may be tendered]***

Part 2

Dividend

10% of the net profits of the Supplier (calculated on an open book basis) based on the Receipts and deducting the Service Charges and any other relevant costs and expenses incurred in connection with the provision of the Operational Services following the formula and procedure specified below:

[DN: copy successful submission formula and procedure including methodology for depreciation of assets and the proposed staff and directors' remuneration costs and their increase methodology]

NB Profits must not be mitigated and should follow standard accountancy practice

Schedule 7 - Contract Managers and Key Personnel

Part 1 - Contract Managers

Part 2 - Key Personnel

Schedule 8 - Processing, personal data and data subjects

CONDITIONS FOR PROCESSING

1The data subject has given consent to the processing where:

2The processing is necessary—

- (a)for the performance of a contract to which the data subject is a party, or
- (b)in order to take steps at the request of the data subject prior to entering into a contract.

3The processing is necessary for compliance with a legal obligation to which the controller is subject, other than an obligation imposed by contract.

4The processing is necessary in order to protect the vital interests of the data subject or of another individual.

5The processing is necessary—

- (a)for the administration of justice,
- (b)for the exercise of any functions of either House of Parliament,
- (c)for the exercise of any functions conferred on a person by an enactment or rule of law,
- (d)for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
- (e)for the exercise of any other functions of a public nature exercised in the public interest by a person.

6(1)The processing is necessary for the purposes of legitimate interests pursued by—

- (a)the controller, or
- (b)the third party or parties to whom the data is disclosed.

(2)Sub-paragraph (1) does not apply where the processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data subject.

(3)In this paragraph, “third party”, in relation to personal data, means a person other than the data subject, the controller or a processor or other person authorised to process personal data for the controller or processor.

Schedule 9- Disaster Recovery and Business Continuity Plan

[To be inserted]

Schedule 10 - Exit Management Plan and service transfer arrangements

1. Interpretation

1.1 The following definitions apply in this Schedule 10 only.

1.2 **Registers:** the registers referred to in paragraph 3.1.1 of this Schedule 10.

2. Purpose of Schedule

2.1 The Supplier is required to ensure the orderly transition of the Services to the Council or Replacement Supplier (as applicable) in the event of any termination or expiry of this agreement. This Schedule 10 describes the roles and responsibilities of the parties which are intended to achieve this.

3. Obligations during the Term to facilitate exit

3.1 During the Term, the Supplier shall:

3.1.1 create, maintain and promptly make available to the Council on request registers of:

(a) all assets (excluding assets owned by the Council) required to perform the agreement, detailing their ownership status, whether they are used exclusively for this agreement, conditions and physical location, and their value;

(b) subcontracts and other agreements (including software licences) required to perform the agreement;

(c) operational risks relating to the Services;

(d) all performance records and standards in relation to the Services; and

3.1.2 compile and maintain a procedures manual, describing how the Operational Services are delivered, including the processes used; and

3.1.3 maintain copies of any subcontracts or other agreements referred to in the Registers.

4. Exit Management Plan

4.1 The Supplier shall, within six months of the Commencement Date, submit an Exit Management Plan to the Council which complies with the requirements of this Schedule.

4.2 The parties shall use their reasonable endeavours to agree the contents of the Exit Management Plan. If the parties are unable to agree the contents of the Exit Management Plan within 30 Business Days of its submission, either party may refer the dispute to the Dispute Resolution Procedure.

4.3 The Exit Management Plan shall:

4.3.1 address each of the issues set out in this Schedule to facilitate the transition of the Services from the Supplier to the Council or Replacement Supplier (as applicable) and ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;

4.3.2 detail how the Services will transfer to the Council or Replacement Supplier (as applicable); and

- 4.3.3 provide a timetable for exit and compliance with the requirements of the agreement.
- 4.4 The Supplier shall review and, if appropriate, update the Exit Management Plan on a basis consistent with the principles set out in this Schedule:
 - 4.4.1 in the first month of each Contract Year (commencing with the second Contract Year); and
 - 4.4.2 following any major change to the Services under the agreement.
- 4.5 During the Exit Period, the Supplier shall comply with all its obligations in the Exit Management Plan.
- 5. Exit Assistance**
- 5.1 During the Exit Period, the Supplier shall:
 - 5.1.1 provide the Council or Replacement Supplier with the procedures manual compiled pursuant to paragraph 3.1.2;
 - 5.1.2 provide access, during Business Hours, to the Council or Replacement Supplier to:
 - (a) any information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier's Personnel involved in the provision of the performance of the agreement and who are still employed or engaged by the Supplier.
- 6. Transfer of contracts**
- 6.1 At least 60 Business Days before the Termination Date, the Supplier shall provide the Council with the up-to-date Register referred to in clause (b), identifying which contracts are used exclusively to deliver the Services.
- 6.2 The Council shall notify the Supplier at least 15 Business Days after receipt of the list pursuant to paragraph 6.1 which exclusive third party contracts, if any, the Council requires to be transferred to it or the Replacement Supplier (if applicable).
- 6.3 The Supplier shall, at the Council's request and with the co-operation of the Council, procure the novation to the Council or Replacement Supplier (as applicable) of any transferring third party contracts notified to it under paragraph 6.2.
- 7. Reports**
- 7.1 At least every four weeks during the Exit Period, the Supplier shall provide the Council with a report to confirm the progress of implementation of the Exit Management Plan.

EXECUTED

The Common Seal of **ROSSENDALE**

BOROUGH COUNCIL was

Hereunto affixed in the presence of:

Solicitor to the Council

.....

INSERT EXECUTION