

Appendix E – Contract Terms and Conditions

CONTRACT

Between

The Mayor and Burgesses of the London Borough of Lambeth

And

xxx

THE CONTRACT

The Contract shall comprise the following:

A. The Conditions of Contract comprising:

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- 2 Definitions & Interpretations
- 3 Contract Term
- 4 The Service Provider's obligations
- 5 The Service Provider's Representative
- 6 The Council's obligations
- 7 The Council's Authorised Officer
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- 9 Confidentiality
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(Schedule 1)

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(Schedule 2)

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(Schedule 3)

CONTRACT FOR the delivery of a consultancy recruitment service with respect to the appointment of a range of Chief Officer roles to be provided by xxx

THIS CONTRACT is made the.....day of.....

BETWEEN

(1) xxx, a registered company (company no. xx), whose address for service within the jurisdiction of the courts of (England and Wales) is (the 'Service Provider')

AND

(2) The Mayor and Burgesses of the London Borough of Lambeth of Lambeth Town Hall, Brixton Hill, London SW2 1RW (the 'Council'),

1 Appointment

1.1 The Council wishes to commission the Service Provider to provide consultancy services relating to the to provide a recruitment service with respect to the appointment of a range of Chief Officer roles in accordance with the Conditions, the Service Specification, Schedules and any appendices herewith.

(CONDITIONS OF CONTRACT)

2 Definitions & Interpretations

2.1 Definitions

Authorised Officer means xx, whose contact details are listed in Schedule 2, or any person whose name has been notified in writing by or on behalf of the Council to the Service Provider in accordance with Clause 7

Commencement Date shall be the date the Service Provider first delivers the Services to the Council

Contract means the Contract entered into by the Council and the Service Provider embodied in the Conditions of Contract and the Contract Documents

Contract Documents means the Terms and Conditions of Contract, the tender documents and any submissions made by the Service Provider together with the Schedules and any appendices

Contract Standard means such standards as complies in each and every respect with all relevant provisions of the Contract Documents and where to the extent that no criteria are stated in the Contract the standard is to be to the entire satisfaction of the Authorised Officer and in any event to the following standards:

- in a good, safe and efficient manner in accordance with good practice and highest professional standards
- in accordance with all relevant provisions of the Contract Documents;
- in accordance with all applicable statutes, statutory instruments, rules, regulations and bye-laws;
- in a manner which shall not cause the image and reputation of the Council to be diminished in any way;
- in accordance with all applicable standards including the British Standards Institute and equivalent EC standards;

Council	means the Council of the Mayor and Burgesses of the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW
Force majeure	means: <ul style="list-style-type: none"> ▪ acts of war ▪ acts of God ▪ decrees of Government ▪ change of law ▪ riots ▪ civil commotion; and ▪ any event or circumstance beyond the control of, or unpreventable by, the affected party other than any labour dispute between the Service Provider and his staff or the failure to provide the Services by any of the Service Provider's sub-contractors.
Instruction	means a written order to provide the Services or any part thereof as described therein;
Personal Data	means data within the meaning of the Data Protection Act 1998
Pricing Document	means the rates and prices submitted by the Service Provider for the provision of the Services as set out in Schedule 1 and, where relevant, Schedule 3.
Project	the consultancy recruitment service with respect to the appointment of a range of Chief Officer roles
Proposal	means the Service Provider's response to the Council's request for proposal
Schedules	mean the Schedules and any appendices attached to these Conditions
Services	means the deliverables and Services required to provide the Project which shall deliver the outcomes set out in the Specification at Schedule 1 as refined,

	developed and varied by the Council, and which are to be delivered by the Service Provider
Service Provider	has the same meaning as means xx and its staff, agents and sub-contractors
Service Provider's Representative	means the person who is to represent the Service Provider appointed pursuant to Clause 5.1, whose contact details are listed in Schedule 2.
The Tender Brief	sets out the outline specification of the Services as set out in the request for proposal
Term	means the period the Services shall be provided by the Service Provider from the Commencement of the Services to the completion of all work required under the Contract.
Variation	has the meaning ascribed to it in Clause 20

2.2 Interpretation

- a. Words in the singular include the plural and vice versa;
- b. Words in the masculine include words in the feminine and vice versa
- c. Words importing individuals shall be treated as importing corporations and vice versa;
- d. Headings are for ease of reference only and shall not affect the construction of the Contract; and
- e. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to such enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

3 Contract Term

- 3.1 This means the period from the start date to the completion of the Services unless terminated in accordance with Clause 14 of this agreement.
- 3.2 This Contract does not constitute an exclusive agreement between the parties and the Council shall be entitled to employ other persons to provide the Services.

4 The Service Provider's obligations

- 4.1 During the Term the Service Provider shall devote such of his time, attention, and abilities to the provision of the Services as required in these Conditions and Schedules. The Contract is a 'time is of the essence' contract and it is a condition that the Services are delivered strictly to the timetable set out in the Proposal as developed, refined and varied by the Council following commencement of the contract.
- 4.2 The Service Provider shall comply with the reasonable direction of the Authorised Officer and use his best endeavours to provide the Service. The Service Provider shall cooperate with the Council's reasonable demands in its development, refinement and variation of its requirements.

- 4.3 The Service Provider shall at all times comply with the requirements of the Health and Safety at Work, etc Act 1974 and any other statutes or regulations etc pertaining to health and safety. The Service Provider shall also ensure, so far as is reasonably practicable, that members of the public, the Council's servants, agents and contractors are not exposed to risks to their health or safety.
- 4.4 The Service Provider shall own the copyright in all intellectual property that arises or is obtained by or developed by the Service Provider in respect of, or in the course of, or in connection with, the Project. The Service Provider hereby grants to the Council a royalty-free licence in perpetuity to use and reproduce the Intellectual Property Right Work for all purposes relating to the Project. The Council shall also be entitled to grant sub-licences to others. If requested by the Council, the Service Provider shall deliver to the Council all documents produced under the Contract. The Service Provider shall be entitled to retain a copy of all the documents as required by its insurers. The Service Provider shall be liable to the Council in respect of all costs and damages incurred by the Council due to infringements of third party intellectual property rights by the Service Provider in the provision of the Services.
- 4.5 The Service Provider must assign the individuals named in its Proposal to deliver the Services, unless the Authorised Officer consents to any change.
- 4.6 The Service Provider shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other Service Provider or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other service provided by, or on behalf, of or to the Council.
- 4.7 The Service Provider shall include in any sub-contract which it awards in connection with the Services an obligation to pay the sub-contractor in the manner prescribed by Regulation 113(2)(c) of the Public Contracts Regulations 2015.
- 4.8 The Service Provider, upon the formation of the Contract and at all times throughout the Contract Term, warrants and represents to and undertakes with the Council in the terms set out in the Service Provider's Proposal.
- 5 The Service Provider's Representative**
- 5.1 The Service Provider shall appoint a senior person as a representative empowered to act on behalf of the Service Provider for all purposes connected with the Contract. Any notice, information, Instruction or other communication given to the Service Provider's Representative shall be deemed to have been given to the Service Provider.
- 5.2 The Service Provider shall forthwith give notice in writing to the Authorised Officer of the identity, address and telephone numbers of any person authorised to act for any period as deputy for the Service Provider's Representative and when such deputy ceases to be so authorised.
- 5.3 The Service Provider shall ensure that the Service Provider's Representative, or a competent deputy authorised by the Service Provider, is present at all work-places of the Service Provider, where work in connection with the Services is being carried out, and available to meet the Authorised Officer or representatives at all reasonable times.

6 The Council's obligations

6.1 In consideration of the services rendered by the Service Provider under this Contract the Council shall pay the Service Provider in accordance with Schedule 3.

6.2 It is a condition of this Contract that the Council shall pay all properly presented valid invoices within 30 days of validation by the Council, such validation to be completed within 14 days of presentation.

6.2 The Council shall provide clear and accurate instructions to the Service Provider and shall take all reasonable measures to assist the Service Provider to provide the Services to the Contract Standard.

7 The Council's Authorised Officer

7.1 The Authorised Officer shall be the Senior HR Manager - Learning and Development HR and Organisational Development, or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Contract.

7.2 From time to time the Authorised Officer may appoint one or more representatives to act for him/her generally or for specified purposes or periods. Immediately any such appointment is made, the Authorised Officer shall give written notice thereof to the Service Provider.

7.3 The Authorised Officer and his/her deputies shall be entitled to monitor the performance of the Services.

7.4 If any clarification of the powers and duties of individual officers is required by the Service Provider then this shall be sought in writing from the Authorised Officer.

8 VAT

8.1 All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes. If properly chargeable, the Council shall pay VAT at the prevailing rate subject to receipt from the Service Provider of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate item.

9 Confidentiality

9.1 The Service Provider shall not at any time during or after the Term divulge or allow to be divulged to any person any confidential information relating to the functions or affairs of the Council.

10 Indemnity

10.1 Subject to Clause 10.2 and Clause 10.3 the Service Provider shall indemnify and keep indemnified the Council from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this Contract by the Service Provider including:

- (a) any act, neglect or default of the Service Provider or its servants or agents; and
- (b) breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.

- 10.2 Neither party shall be liable to the other for the death of or injury to the Service Provider or its servants or agents or loss or damage to the Service Provider's property unless due to the negligence of the Council or its servants or agents.
- 10.3 Subject to Clause 10.4 neither party shall be liable for any consequential losses, including but not exclusively, loss of profit, earning, income, business, goodwill, savings opportunities, reputation or associated costs to the Service Provider howsoever caused.
- 10.4 Neither party excludes or limits its liability for losses arising out of or in connection with Clause 21 (Data Protection).

11 Insurance

- 11.1 The Service Provider shall maintain at its own cost a policy of insurance, to cover its liability in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Contract in the following minimum sums:
- (a) Employers' liability of £5,000,000 (five million)
 - (b) Public liability of £5,000,000 (five million)
 - (c) Professional indemnity of £500,000 (five hundred thousand)
- 11.2 The Service Provider warrants that it has the insurance policies required by Clause 11.1.

12 Conflict of Interest

- 12.1 Upon becoming aware of any possible conflict of interest that may arise between the interest of the Council and any other of the Service Provider's client, the Service Provider shall notify the Authorised Officer immediately and shall take all reasonable steps to remove or avoid the cause of any such conflict to the satisfaction of the Authorised Officer.

13 Monitoring of the Contract

- 13.1 The Service Provider shall as soon as reasonably practicable provide the Authorised Officer with any information relating to the carrying out of the Services which the Authorised Officer may reasonably request.

14 Termination

- 14.1 The Council may terminate the Contract forthwith if:
- 14.1.1 The Service Provider is in default in the performance or observance of any material term or any condition of the Contract such as, but not limited to:
- (a) The Service Provider has failed to perform the Services specified in the Contract or has failed to do so to the Contract Standard and that such failure is incapable of remedy.
 - (b) The Service Provider has failed to remedy a failure to perform the Services or has failed to remedy a failure to provide the Service to the Contract Standard including the standard required by the Schedules or these Conditions of Contract in the time required to remedy such failure as expressed in writing to the Service Provider.

- (c) The Service Provider has failed to deliver any part of the Services at the agreed time/s, the Contract being a 'time is of the essence' contract.
- (d) The Service Provider or any employee of the Service Provider or any person acting on behalf of the Service Provider has:
 - I. given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
 - II. at any time during the tendering process (i.e. from the date of the publication of the notice seeking expressions of interest to the date of the award of the Contract), directly or indirectly canvassed any member or official of the Council concerning the acceptance of any proposal in respect of the Contract;
 - III. directly or indirectly obtained or attempted to obtain information from any member or official of the Council concerning any other proposal submitted by any other person in respect of the formation of the Contract;
 - IV. committed, or attempted to commit, or failed to prevent, any offence under, but not limited to, the Acts of Parliament listed in Clause 19.2.
- (e) The Service Provider compounds or arranges with his creditors whilst insolvent or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- (f) A mortgagor takes possession of the whole or a substantial part of the Service Provider's property or assets or an administrator is appointed to the same.
- (g) An order is made, or a resolution passed, for the winding up of the Service Provider.

15 Termination consequences

- 15.1 In the event of the Contract being terminated for the reasons contained in Clause 14.1 above the Council will:
- (a) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Service Provider's engagement shall have been calculated; and
 - (b) be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof.
- 15.2 The rights of the Council under this Condition are in addition to and without prejudice to any other rights the Council may have against the Service Provider.
- 15.3 The termination of the Contract, howsoever arising, will be without prejudice to any rights or obligations theretofore accrued or to any provisions which are expressed to be performed after or to survive the termination of this Contract.

16 Delivery up of documents on termination

- 16.1 The Service Provider or his personal representative shall upon the termination of his engagement immediately deliver up to the Council all correspondence documents specification papers and property belonging to the Council which may be in his possession or under his control.

17 Force Majeure

17.1 If an event of force majeure occurs then the Council and the Service Provider shall meet to discuss how best to continue to provide the Services until the force majeure event ceases, which may include the Council providing the Service Provider with assistance, where possible.

18 Status of the Service Provider

18.1 During the Term the Service Provider shall be an independent Service Provider and not an employee of the Council and the Service Provider must not represent to anyone, nor allow any of his employees or agents to represent to anyone, that they are agents or servants of the Council.

18.2 In such capacity the Service Provider shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for his work performed by him under this Contract.

19 Anti-fraud and Corruption

19.1 It is the duty of the Service Provider to be aware of the Council's policies and codes of conduct to combat fraud and corruption perpetuated by employees abusing their position and by others who may attempt to obtain the Council's assets or services to which they are not entitled. In this respect the Service Provider should seek advice from the Chief Internal Auditor, Olive Morris House, Brixton Hill London SW2 1RW.

19.2 The Service Provider shall have adequate procedures in place to prevent fraud, bribery, money-laundering and corruption in line with legislation including, but not limited to, the Terrorism Act 2000, the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007, and the Bribery Act 2010.

19.3 The Service Provider shall maintain adequate procedures, policies and rules on corporate entertainment and gifts, and shall ensure that its staff are adequately trained in relation to those policies and rules.

19.4 The Service Provider shall comply with the conditions of employing foreign nationals under the Asylum and Nationality Act 2006.

20 Variations

20.1 Subject to Clause 20.3 a variation to this Contract (including to the scope and nature of the Services) shall only be valid if it has been agreed in writing and signed by both parties.

20.2 The Service Provider shall not make a variation or supply deliverables or services not specified without the written authority of the Authorised Officer.

20.3 The Parties agree and acknowledge that the Council may wish to develop, refine and vary its requirements and that this will not constitute a variation within the meaning of Clause 20.1 unless the Parties agree a variation in cost.

21 Data Protection and Freedom of Information

21.1 The Service Provider warrants that it will lawfully process in accordance with the provisions of the Data Protection Act 1998 (DPA) any Personal Data that it has or shall obtain under this Contract.

21.2 In relation to personal data provided by the Council to the Service Provider the

Council is the Data Controller of the personal data and the Service Provider is the Data Processor of the personal data and the Service Provider, its servants and sub-contractors shall at all times comply with the instructions of the Council and in accordance with the law.

- (a) Shall only undertake processing of Personal Data reasonably required in connection with the services provided under this Contract and shall not transfer or disclose any Personal Data to any third party other than to the extent required under a court order or by law.
- (b) Subject at all times to Clause 21.2(a), the Service Provider shall not disclose Personal Data to any third party including sub-contractors without express consent of the Authorised Officer.
- (c) Shall bring into effect and maintain all reasonable technical and organisational measures necessary to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction or damage to Personal Data, and
- (d) Shall ensure that any Personal Data it obtains and provides to the Council has been lawfully obtained and complies with the DPA and that the use thereof in accordance with this Contract shall not breach any of the provisions of the DPA.
- (e) Upon notice that the Council is required to provide information to a data subject under the DPA, or other information requested under the Freedom of Information Act 2000 (FOIA) held or under control of the Service Provider, the Service Provider warrants to use all reasonable endeavours to help the Council meet its obligations under the Acts.
- (f) The Service Provider shall take reasonable precautions (having regard to the nature of its obligations under this Contract) to preserve the integrity of any Personal Data.
- (g) On termination of this Contract for any reason the Service Provider shall immediately cease all processing of the Personal Data and shall return to the Council in a format specified by the Council (or destroy as the Council may request in its discretion) all Personal Data processed by it on the Council's behalf.

21.3 The Service Provider shall indemnify the Council against any loss or damage, which the Council may sustain or incur as a result of any breach by the Service Provider of the provisions of this condition.

21.4 The Council has a number of obligations under the Freedom of Information Act 2000 to provide information of its functions where a person has made a request, unless the Freedom of Information Act 2000 exempts the requested information from such provision. The Service Provider and his sub-contractors shall co-operate with the Council in respect of any request affecting or related to the provision of the Services by among other things providing written responses to requests as required by the Authorised Officer.

22 Equal Opportunities

22.1 The Service Provider shall use all reasonable endeavours to comply with all statutory provisions, statutory instruments, rules, regulations and bye-laws relating to equality

and discrimination including, but not limited to, the Equality Act 2010 and shall take all reasonable steps to ensure that its employees or agents do not discriminate against any person because of their sex, marital status, colour, race, nationality or ethnic origin, or on the grounds of their disability.

23 Policy documents

23.1 The Service Provider shall ensure that its staff are fully conversant with and abides by all of the Council's policies which are brought to its attention.

24 Fit and Proper Person

24.1 The Service Provider warrants that he is a fit and proper person to undertake the Services.

25 Complaints in Respect of Service Provision

25.1 The Service Provider shall maintain a robust system for dealing with complaints from members of the public, Council officers and members.

25.2 The Service Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner and shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Service Provider shall notify the Authorised Officer forthwith in writing of all complaints received and of all steps taken in response thereto.

26 Disputes

26.1 If any dispute or difference arises out of this Contract the parties shall meet and attempt to resolve all such disputes or differences. If within 14 days such disputes or differences cannot be resolved then the parties with the assistance of the Centre for Dispute Resolution seek to resolve the dispute or difference amicably by using an alternative dispute resolution (ADR) procedure acceptable to both parties.

26.2 If either party fails or refuses to participate in the ADR procedure or in the event the dispute or difference is not resolved to the satisfaction of both parties within 30 days after it has arisen, the dispute or difference shall be referred to a sole arbiter appointed under the Rules of the Chartered Institute of Arbitrators.

27 Best Value & Policy Themes

27.1 NOT USED.

28 Committee Meetings and other meetings

28.1 The Service Provider shall if required and only to the extent reasonably and proportionately demanded attend Council and committee meetings, meetings of the Executive, meetings with members of task forces and other meetings, including but not limited to Scrutiny Committees.

29 Local Authority Functions

29.1 Nothing in this Contract shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

30 Waiver

30.1 Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any

time subsequently to enforce all terms and conditions of this Contract, nor shall such failure create an estoppel.

31 Supersedes prior agreements

31.1 This Contract supersedes any prior contracts or agreements between the parties to provide the services whether written or oral and any such prior contracts or agreements are cancelled as at the Commencement Date but without prejudice to any rights that have already accrued to either of the parties.

32 Entire Contract

32.1 Each party acknowledges that this Contract, its schedules and any amendments or variations that may be agreed in writing by both parties, contains the whole agreement between parties relating to the subject matter of the Contract save that the Council will develop and refine its requirements on or after the commencement of the Contract.

33 Notices

33.1 Any notice or other communications requiring to be served under or in connection with the Contract shall be in writing and shall be delivered to the registered offices at the addresses stated in the Contract or as otherwise specified in the Contract.

33.2 Any such notice shall be delivered by hand or sent by recorded first class post and shall conclusively be deemed to have been given or received at the time of delivery.

33.3 The parties shall comply with the terms of any notice specifying a breach of the provisions in the Contract and requiring the breach to be remedied.

34 Joint and Several

34.1 Where the Services are being provided by a Consortium each and every member of the Consortium shall be jointly and severally liable under this Contract.

35 Assignment and Sub-Contracting

35.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Service Provider.

35.2 The Service Provider shall not:

- (a) assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;
- (b) sub-contract the provision of the Services or any part thereof to any person.

36 Third Parties

36.1 Neither party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contract (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

37 Governing Law

37.1 This Contract shall be governed by English law.

Signed for and on behalf of the Council (2 officers to sign)

Name..... Name.....

Title..... Title.....

Signature..... Signature.....

Date..... Date.....

Signed for and on behalf of the Service Provider (up to 2)

Name..... Name.....

Title/Office..... Title/Office.....

Signature..... Signature.....

Date..... Date.....

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B. Schedule 1

SERVICE SPECIFICATION

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C. Schedule 2

CONTACT DETAILS

The Service Provider's Representative:

For general queries in the absence of the named officer

The Council's Authorised Officer shall be:

For general queries in absence of the named officer

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D. Schedule 3

PRICING SCHEDULE AND PAYMENT TERMS

Service Provider's Quote

The Service Provider must keep detailed work sheets and produce them on request.

Payment Terms

1. The Council operates an electronic only policy for issuing Purchase Orders and receiving Invoices from Service Providers. Service Providers are therefore required to operate in the same way in order to work with the Council.
2. The Council manages Purchases Orders and Invoices electronically through an electronic portal on the internet currently provided by a third party in partnership with the Council.
3. The electronic portal is currently offered free of charge to a Service Provider by the Council. The Council will direct the third party partner to make contact with the Service Provider for the Service Provider to create an account within the electronic portal to enable them to operate electronically with the Council.
4. The Service Provider will be able to view their Purchase Orders and the status of their Invoices within the electronic portal in real time.
5. Both the Council and the Service Provider shall adhere to the following procedure in respect of invoicing and payments in respect of the Services:
 - (a) The Service Provider shall submit to the Council at the conclusion of the Services (or as otherwise agreed by the Parties in writing) an invoice, by electronic means through the portal only setting out the sums for each type of work together with a record detailing the work carried out, in accordance with the prices tendered and;
 - (b) Once the Council agrees the details of the electronic invoice and the work record it will arrange payment, which will be made within 30 days of invoice date unless disputed by the Council.
 - (c) Where the Council disputes the amounts entered on an invoice the parties shall discuss the differences and the Service Provider shall submit such further information as required by the Council to verify the invoice sum.
 - (d) Once agreed, the Service Provider shall submit a corrected Invoice as agreed pursuant to Condition 5(a), above.
6. Where the Service Provider fails to submit its invoices electronically through the portal the timescale in 5(b) will increase by a further 30 days.