



ROYAL BOROUGH OF GREENWICH

**SERVICES CONTRACT FOR
CAREERS INFORMATION, ADVICE,
GUIDANCE AND TRACKING SERVICE
TERMS AND CONDITIONS**

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SCHEDULES

Schedule 1: Service Specification

Attached as a separate document – [To be reinserted at Award of Contract]

Schedule 2: Correspondence and Acceptance Letter

[Not inserted at present- will be included at Award of Contract]

Schedule 3: Tender Response Documents

Attached as a separate document – [To be reinserted at Award of Contract]

Schedule 4: Staff Confidentiality Undertaking

Attached as a separate document

Schedule 5: Whistle blowing Procedure

Inserted in this document below

Schedule 6: Admissions Agreement

Inserted in this document below – [To be reinserted at Award of Contract]

THIS DEED is made the _____ day of _____ 2015

BETWEEN:

- (1) **ROYAL BOROUGH OF GREENWICH** of Town Hall, Wellington Street, Woolwich, London SE18 6HY ("the Council"); and
- (2) **[NAME OF PROVIDER]** whose registered office is situated at **[ADDRESS]** ("the Service Provider").

WHEREAS:

- A. The Council has a duty to secure and promote young people's access to positive activities.
- B. The Council being subject to above duty wishes to procure Careers Information, Advice Guidance and Tracking Provision and the Service Provider has offered to provide such Service and the Council has accepted the offer, and
- C. The parties have agreed to enter into a Deed incorporating the terms and conditions reached between them.

IT IS NOW AGREED AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. In the Contract Documents the following words and expressions shall have the meanings set out below:-

Phase	Meaning
Acceptance Date	means the date appearing on the Acceptance Letter or if no date appears the date on which it was dispatched by the Council;
Acceptance Letter	means the letter by which the Council notifies the Service Provider of acceptance of its Bid;
Admissions Agreement	means the agreement in the form set out in Schedule 6 to be entered into (if applicable) in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008;
Authorised Officer	means the person or persons (together with any duly authorised deputies) who may be nominated by the Council and notified to the Service Provider in writing from time to time throughout the Contract Period. For the avoidance of

Phase	Meaning
	doubt, where the Council nominates more than one person as Authorised Officer certain Authorised Officers may be subject to limitations on their authority and such limitations shall be set out in the notice notifying the Service Provider of their nomination;
Bid	means the offer submitted by the Service Provider to provide the Service comprising, for the avoidance of doubt, but without limitation, the Service Provider's Bid, value for money document and supporting documents and any post-Bid submissions which augmented, supplemented or amended the Service Provider's offer all of which are scheduled and incorporated in the Contract and are accordingly Contract Documents;
Bid Documents	means those documents supplied by the Council with the Invitation Letter or subsequently issued during the Bid period including, amongst other documents, the Service Specification, Needs Assessment, Staff Information, Property Information, Commissioning Standards and the Guidance to Bidders;
Bidder	means any person who is invited to submit and does submit a Bid to the Council in accordance with the Instructions to Bidders;
Commencement Date	1 st September 2015;
Commissioning Standards	means the standards supplied in the Bid Documents and as agreed by the Service Provider prior to submission of the Bid;
Condition	means a condition forming part of these Conditions including any schedules or annexes thereto and any reference to these Conditions shall be construed accordingly;
Contract	means this agreement entered into between the parties incorporating the Contract Documents;
Contract Document	means these Conditions together with the Schedules attached to these Conditions;
Contract Manager	means the person appointed as Contract Manager in accordance with Condition 21 (or in the event of such Contract Manager's temporary absence from work) that person's deputy also appointed in accordance with

Phase	Meaning
	Condition 21;
Contract Period	means the period beginning on the Commencement Date and continuing for 24 months (2 Contract Years) as set out in the Acceptance Letter subject to the Council's right to extend the Contract Period in accordance with Condition 8.3 or unless terminated sooner in accordance with these Conditions or in accordance with common law or statute;
Contract Price	means the price for providing the Services as set out in the Service Specification;
Contract Standard	means the standard to which the Service is to be provided as defined in Condition 12;
Contract Year	means any continuous period of twelve months during the Contract Period commencing on the Commencement Date or any subsequent anniversary of the Commencement Date;
Council Data	means any data, document or information howsoever stored which is communicated in writing, orally, electronically or by any other means by the Council to the Service Provider or is obtained or gleaned by the Service Provider during the course of the Service Provider providing the Service. Council Data shall further mean any information, data or document which is compiled for the Council by the Service Provider during the course of the Service Provider's provision of the Service;
Council Equipment	means all items provided by the Council or any Fellow Service Provider for use in the provision of the Service or purchased in accordance with Condition 27.2;
Council Guidelines	means relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council or notified to the Service Provider by the Council or an Authorised Officer from time to time, as any of the same may from time to time be amended by the Council and notified to the Service Provider, copies of which are available from the Council's offices on prior notice;
Council's Premises	means a building or location belonging to, leased or licensed by the Council and to which the Service Provider may require access to in the performance of

Phase	Meaning
	the Service;
Critical Performance Default	means a Performance Default which in the reasonable and fair opinion of the Authorised Officer significantly and/or materially affects the Service Provider's provision of the Service to the Contract Standard or undermines the fundamental purpose of the Contract to include but not be limited to safeguarding of Service Users;
Director of Children's Services	means the head of the Council's Children's Services Department;
Effective Date	means the date(s) on which the Service (or any part of the Service) transfer from the Council or former contractor to the Service Provider and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider;
Eligible Employees	means the Transferring Employees or employees of third party employers (including but not limited to former contractors). who are active members of (or are eligible to join) the Local Government Pension Scheme on the date of a Relevant Transfer including the Effective Date;
Environmental Information Regulations	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Fellow Service Provider	means any other service providers or consultant engaged by the Council to carry out works or services on behalf of the Council including those delivering other aspects of the Careers Information, Advice Guidance and Tracking provision;
Final Offer	means the Final Offer detailing the delivery of the Service prepared in accordance with Condition 12.4;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

Phase	Meaning
Force Majeure	means acts of god, fire, tempest, acts of war, terrorism and related matters which are both beyond the control of the Service Provider and are such that the Service Provider with the application of all due diligence and foresight could not prevent or mitigate which causes the cessation of or substantial interference with the performance of the Services;
Guarantee	means a Parent Company Guarantee in the form set out in the Bid Documents duly executed (if the Service Provider is a subsidiary company) by the Service Provider's ultimate parent company or by the Service Provider's parent company with substantial UK assets;
Guarantee Undertaking	means an undertaking duly executed (if the Service Provider is a subsidiary company) by the Service Provider's ultimate parent company or by the Service Provider's parent company with substantial UK assets;
Information	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
Instructions to Bidders	means the terms and conditions of tendering for the Service issued by the Council as set out in the Bid Documents and on which basis the Service Provider submitted its Bid;
Insurance	means the policies of insurance which the Service Provider is obliged to take out and maintain pursuant to Condition 45;
Intellectual Property Rights	means all manner of intellectual property rights (including, without limitation, patents, trade marks and service marks, copyright and design rights) and know-how and the rights of the Council as set out in Condition 32;
Invitation Letter	means the letter from the Council to Bidders inviting them to bid for the Contract and sending out the Bid Documents;
Legislation	means all relevant Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, by-laws and directives and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;

Phase	Meaning
Non Critical Performance Default	means a performance default which is not a Critical Performance Default;
Parent	means the parents, carers or guardian of the Service User;
Partnership Arrangements	means those arrangements agreed with the Council to establish and maintain relationships between the Service Provider and Stakeholders as required to perform the Service;
Performance Default	means any negligent or wilful act or omission, any breach of contract and/or any failure by the Service Provider properly to perform any of the obligations, terms and conditions of the Contract including (without limitation) any failure to perform the Service to the Contract Standard;
Relevant Transfer	means a relevant transfer for the purposes of TUPE;
Review Date	means an anniversary of the Commencement Date;
Reward Payment	means the sum payable to the Service Provider at the Council's discretion in accordance with Condition 34;
Service	means the service, works and obligations of the Service Provider as set out in or reasonably implied by the Contract Documents;
Service Provider	means the Bidder whose Bid is accepted by the Council and with whom the Council accordingly enters into the Contract (or if the context so permits) any of the Bidder's officers, Staff, sub-contractors or agents;
Service Specification	means the specification relating to the provision of the Service as set out in the Contract Documents together with any additional Service or higher standards set out by the Service Provider in its Bid;
Service Provider's Equipment	means all manner of goods, plant, equipment, technology and materials used by the Service Provider in the provision of the Service as such definition is augmented in Condition 26.1;
Service Requirements	means the standard performance targets, benchmarks and outcomes set for the Service Provider in relation to

Phase	Meaning
	the provision of the Service as provided in the Contract Documents specified in the Service Specification including but not limited to any higher standards offered by the Service Provider in its Bid and agreed in the Final Offer;
Service User	means a person who receives or who may receive the Service which the Service Provider shall provide under this Contract;
Stakeholder	means (to include but not be limited to) the Council, Service Users, Parents, Fellow Service Provider, commissioners, other youth providers and schools;
Staff	means all persons engaged, appointed, employed or deployed by the Service Provider in the provision of the Service;
Supervisory Staff	means staff performing a supervisory or managerial function;
Termination	means termination or expiry of the Contract in accordance with its terms, in common law or in statute;
Transferring Employees	means employees of the former contractor whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as updated, amended or replaced from time to time and the European Acquired Rights Directive 77/187 as updated, amended or replaced from time to time;
Variation	means:- <ul style="list-style-type: none"> ▪ an amendment to the terms of the Contract, ▪ a change in Contract Price ▪ a material or substantial amendment change or modification to the Service or part of the Service (including an omission, cessation, suspension of or addition to whole or part of the Service) or ▪ a change in the way in which the Service is to be carried out provided in each case that such Variations are initiated

Phase**Meaning**

by the Council or are rendered necessary by a change, amendment or re-enactment of any Legislation or Council Guideline;

Warranties

means the warranties, representations and undertakings made and given by the Service Provider pursuant to Condition 40;

Working Hours

means 8.30 am to 5.30 pm.

- 1.2. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.3. Words importing individuals shall be deemed also to include reference to incorporated and unincorporated associations and vice versa.
- 1.4. Words importing the masculine shall be deemed also to include the feminine and vice versa.
- 1.5. Headings are included for ease of reference only and shall not affect the construction of the Contract.
- 1.6. References to Staff and Supervisory Staff of the Service Provider shall include references to:-
 - 1.6.1. all persons engaged, employed or appointed by the Service Provider in the performance of the Service; and
 - 1.6.2. (if the context so permits) all Staff and Supervisory Staff of any sub-contractor of the Service Provider.
- 1.7. All references to a statutory provision shall be construed as including references to any statutory modification, consolidation, amendment or re-enactment (whether before or after the date of these Conditions) of such statutory provision and to all statutory instruments or orders made pursuant to such statutory provision for the time being in force.
- 1.8. The expressions "subsidiary" and "holding company" shall have the meanings ascribed thereto in Section 1159 of the Companies Act 2006.
- 1.9. Any references to a "month" or "day" shall be to a calendar month or day respectively.
- 1.10. Any references to a "working days" shall be from 8.30 am to 5.30 pm on any week day, being the day other than Saturdays, Sundays and Public Holidays and "working hours" shall be construed accordingly.
- 1.11. For the avoidance of doubt strikes, industrial action, shut downs or any other actions by the Service Provider's Staff and delay of parts, equipment or any other activity which is under the reasonable control of the Service Provider shall not constitute acts of Force Majeure nor shall they frustrate the performance of the Contract in any way.

2. ENTIRE AGREEMENT

- 2.1. This Contract constitutes the entire agreement and understanding between the parties in relation to the Contract and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the Service.
- 2.2. Each party irrevocably and unconditionally waives any rights it may have to claim damages and/or to rescind the Contract for any misrepresentation or for breach of any warranty not contained in the Contract unless such misrepresentation or warranty was made fraudulently.
- 2.3. The provisions of Conditions 2.1 and 2.2 above shall not apply to any representations, statements or warranties given by the Service Provider to the Council regarding its financial standing, experience or probity pursuant to any short listing process nor to any representations, statements, warranties given by the Service Provider to the Council pursuant to Condition 40.

3. INCONSISTENCY

- 3.1. The Contract Documents shall be read and taken together. However, in the event of any inconsistency the following order of precedence shall apply:-
 - Conditions of Contract
 - Contract Documents
 - Final Offer
 - Service Provider's Bid
 - Other Contract Documents
- 3.2. Except where the Service Provider has set any target, standard, benchmark, method or service in its Bid or as agreed in the Final Offer which is higher, more thorough or more substantial than the Service Specification, the Service Provider's Bid and the Final Offer shall prevail over the Service Specification.

4. AMENDMENTS

- 4.1. No amendment to the Contract shall be binding unless:-
 - 4.1.1. it is in writing and signed by the duly authorised representatives of the Council and of the Service Provider and expressed to be for the purpose of such amendment; or
 - 4.1.2. carried out by the Council unilaterally in accordance with the provisions of the Contract (including without limitation, pursuant to a Variation or as a result of a Performance Default by the Service Provider).

5. SEVERANCE

In the event of any provision of the Contract being invalid in whole or in part the validity of the remaining provisions of this Contract shall remain in full force and effect.

6. LAW AND JURISDICTION

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

7. NOTICES

- 7.1. All notices under this Contract shall be in writing and shall be deemed duly given or made:-
- 7.1.1. 2 (two) working days after being sent by prepaid special delivery post; or
 - 7.1.2. when delivered by hand, and a signature acknowledging its receipt has been obtained; or
 - 7.1.3. when received in the case of a facsimile provided the relevant answer back is obtained.
- 7.2. In each case the notice must:-
- 7.2.1. refer to this Contract; and
 - 7.2.2. be marked for the attention of the appropriate officer or department as notified to the other party in writing. Notices to the Council must be marked for the attention of the Director of Children's Services and copied to the Authorised Officer.
- 7.3. The notices shall be sent to the addresses of each party to the Contract specified at the beginning of this Contract or to such addresses as each party shall notify the other in writing within 5 (five) working days of any change in its address for service.
- 7.4. Any notice served on a non working day or after Working Hours shall be deemed to be served on the following working day.
- 7.5. For the avoidance of doubt, electronic mail shall not constitute a valid form of notice for the purpose of this Contract unless specifically agreed between the parties in writing for an express purpose set out in such agreement.

8. COMMENCEMENT AND CONTRACT PERIOD

- 8.1. The Contract shall commence on the Commencement Date and the Service Provider shall provide the Service to the Contract Standard until the end of the Contract Period unless the Contract is terminated sooner in accordance with Condition 42 or is extended subject to Condition 8.3 of these Conditions or in accordance with common law or statute.
- 8.2. The Service Provider shall execute the Contract promptly and shall not commence the Service nor be entitled to any part of the Contract Price nor any remuneration whatsoever until it has so executed the Contract.
- 8.3. The Council shall be entitled at its absolute discretion subject to full review of the Service Provider's performance being satisfactory and the Council's availability of

funding to extend the Contract Period by any number of periods up to an aggregate of 4 (four) Contract Years. In the event (and on each occasion) that the Council decides to so extend the Contract Period it shall serve written notice to the Service Provider not less than 3 months before the expiry of the Contract Period (or if applicable the Contract Period as previously extended). In such circumstances the definition of Contract Period shall be deemed amended accordingly and the Service Provider shall continue to provide the Services to the Contract Standard at the Contract Price prevailing on the date of the extension as revised from time to time in accordance with Condition 33.

9. NON-EXCLUSIVITY

For the avoidance of doubt this Contract shall not be exclusive. The Council shall be entitled at any time during the Contract Period to carry out any part of the Services or services of a similar nature itself or to instruct or procure a third party to do so.

10. VARIATIONS

- 10.1. Any minor or non-substantial changes to the Contract may be effected by agreement between the parties and shall not be deemed a Variation to the Contract.
- 10.2. The Council may upon giving not less than one calendar month's notice in writing to the Service Provider ("the Variation Notice") impose a Variation.
- 10.3. The Variation Notice shall specify:-
 - 10.3.1. the detail of the Variation; and
 - 10.3.2. the date on which such a Variation is to have effect; and
 - 10.3.3. the time period during which the Variation shall have effect if it is of a temporary nature.
- 10.4. For the avoidance of doubt, the Service Provider hereby acknowledges that any Variation may result in an increase or a decrease in the Contract Price in accordance with the provisions of Condition 33.10.
- 10.5. If either party considers that such increase or decrease is necessary as a result of the Variation, that party shall set out in writing to the other party its proposal for the adjustment or additional payment and shall do so within 14 working days of the issue by the Council of the Variation Notice. Such proposal shall be supported by sufficient documentation and a clear analysis as to how the proposal has been calculated.
- 10.6. In the event that no such proposal is made within 14 days (and unless the other party grants an extension in writing to the 14 day period) both parties shall be deemed satisfied that the Contract Price shall remain unadjusted as a result of the Variation.
- 10.7. For the further avoidance of doubt no increase in the Contract Price shall be made in respect of a Variation if there is either a compensating reduction or re-organisation of any other part of the Service.

- 10.8. The Service Provider shall be bound by any Variation with effect from the date specified in the Variation Notice unless the Council, acting in its absolute discretion, notifies the Service Provider that the Variation is not to take effect until any adjustment to the Contract Price is agreed or determined.
- 10.9. In the event of a dispute as to whether any Variation should give rise to an adjustment to the Contract Price (or the amount thereof) the dispute shall be referred to the dispute resolution procedure in accordance with the provisions of Condition 49.
- 10.10. For the avoidance of doubt, nothing shall prevent the Council from withdrawing a Variation Notice following the outcome of the dispute resolution procedure provided that if the Service Provider has effected the Variation any adjustment to the Contract Price determined by the dispute resolution shall be applied pro-rata for the period between the date on which the Variation took effect and the date on which it is withdrawn.

11. OBLIGATIONS PRIOR TO CONTRACT PERIOD

- 11.1. Within 10 working days of the date of the Acceptance Letter the Service Provider shall arrange a pre-commencement meeting which shall be attended by senior representatives of the Service Provider (including the Contract Manager), any of the Service Provider's sub-contractors in so far as the same will be directly providing any Service, representatives of the Council, representatives of the former contractor (if applicable) and representatives of any Fellow Service Providers as the Council shall determine necessary.
- 11.2. At the pre-commencement meeting the parties shall agree a plan for the implementation and handover necessary for the smooth, seamless and successful transition of the Service. Such a plan shall be agreed by the Authorised Officer and Contract Manager in writing.
- 11.3. The Service Provider shall liaise with Fellow Service Providers to ensure that the handover or delivery of the Services are carried out successfully. In addition, the Service Provider shall attend as many meetings with the Council, the former contractor and any Fellow Service Providers as are reasonably necessary for the successful handover or delivery of the Service.
- 11.4. In addition to the foregoing the Service Provider shall carry out or provide to the Council (as applicable) as soon as reasonably practicable after the Acceptance Letter:-
 - 11.4.1. proof of the insurances held pursuant to Condition 45;
 - 11.4.2. the Guarantee if applicable;
 - 11.4.3. measures to ensure that the Service Provider, its sub-contractors, Staff and agents are fully familiar with the provisions of the Contract, their obligations under the Contract, the Council's computer systems (if applicable) and the identities of all relevant Fellow Service Providers;
 - 11.4.4. actions necessary to comply with its obligations under TUPE;

- 11.4.5. the identities, positions and responsibilities and contact details of all relevant Staff including, in particular, the Contract Manager and authorised deputies together with duly signed confidentiality agreements (as set out in the Contract Documents) by each member of Staff.
- 11.5. The Council shall prior to the Commencement Date:-
- 11.5.1. notify to the Service Provider in writing the names and contact telephone numbers of those persons who are to be Authorised Officer as at the Commencement Date; and
- 11.5.2. subject to Conditions 30 and 31 provide the Service Provider with such Council Data and information in the possession or under the control of the Council as the Service Provider may in the Council's opinion reasonably require in order for it to commence providing the Service.
- 11.6. The Council shall provide all reasonable assistance to the Service Provider prior to the Commencement Date, to include, where possible, the following:-
- 11.6.1. allowing the Service Provider to interview appropriate Council staff; and
- 11.6.2. reporting to the Service Provider on current issues which may affect the Service.

12. THE CONTRACT STANDARD

- 12.1. The Service Provider shall perform the Service using all due skill, care and diligence as would a competent Service Provider carrying out a service of the same scope and nature of the Service in accordance with:
- 12.1.1. the Final Offer and Commissioning Standards;
- 12.1.2. all other provisions of the Contract Documents;
- 12.1.3. the Council Guidelines in particular (but without limitation) to:
- 12.1.3.1. Working Together to Safeguard Children and the London Child Protection Procedures;
- 12.1.3.2. Greenwich Strategy;
- 12.1.3.3. Children and Young People Plan, 2014-17; and
- 12.1.3.4. Customer care policies.
- 12.1.4. the reasonable instructions issued to the Service Provider by any Authorised Officer pursuant to or in connection with the Contract;
- 12.1.5. all Legislation including but not limited to Education Act 1996 and Education and Inspections Act 2006 so as to ensure that the Council fulfils its statutory and common law obligations to the Service Users;

- 12.1.6. the Commissioning Standards by implementing and providing (but without limitation) training and practices for Safeguarding, Safer Recruitment and Integrated Working for Team around the Child (TAC), Common Assessment Framework (CAF) and Lead Professional (LP).

and shall do so;

- 12.1.7. in an efficient, professional and courteous manner;
- 12.1.8. in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council; and
- 12.1.9. in good and full co-operation with Fellow Service Providers.

12.2. The Service Provider must also:

- 12.2.1. have processes in place to comply with Partnership Arrangements agreed with the Council comprising of:
- 12.2.1.1. co-operation, liaison and information sharing (subject to Condition 30.8, where applicable) with Stakeholders;
 - 12.2.1.2. arrangements for any handover necessary from Fellow Service Providers necessary for the smooth, seamless and successful transition of the Service during the Contract Period.
- 12.2.2. have in place mechanisms for:
- 12.2.2.1. Service User, Parent and Stakeholder consultation and/or feedback about the Service delivered forming part of the quality assurance and monitoring requirements (Condition 17);
 - 12.2.2.2. Service Users to be involved with the planning, designing, delivery and evaluating of the Services and processes in place to enable Service Users to chose appropriate Services for their needs and requirements;
 - 12.2.2.3. ensuring this process is communicated in a suitable format to all Stakeholders; and
 - 12.2.2.4. ensuring the details of the process and any results are made available to the Council in accordance with Condition 17.

12.3. The Service shall be carried out by the Service Provider in such manner and with such materials and equipment to achieve the objectives of the Council's Green Strategy (as contained in the Council's Guidelines). Consequently the Service Provider shall prevent any act or omission by the Service Provider's staff which does not achieve the objectives of the Council's Environmental Charter.

12.4. As soon as reasonably practicable after the date of the Acceptance Letter the Service Provider shall review and agree with the Council the Final Offer in

accordance with the Service Specification and the Service Provider's Bid setting out, in practical terms, how the Service Provider intends to provide the Service and to ensure that the Service are provided to the Contract Standard.

- 12.5. The Service Provider shall implement and comply with the Final Offer but, for the avoidance of doubt, the Authorised Officer's approval of the Final Offer shall be entirely without prejudice to the Service Provider's obligation to provide the Service in accordance with the Contract Documents and to the Contract Standard and shall not in any way diminish, obviate or detract from such obligations.
- 12.6. The Service Provider shall ensure the Service is sustainable and offers good value for money which shall include securing external additional funding and resources as stipulated in the Bid.

13. EQUALITY AND DIVERSITY

13.1. The Service Provider must:

- 13.1.1. operate an equal opportunities policy for as long as this Contract is in force;
- 13.1.2. provide the Council with a copy of any such policy at our request; and
- 13.1.3. in providing the Service observe and comply with the Council's Equality Policies contained in the Council Guidelines.

13.2. The Service Provider must comply with all statutory obligations as regards to discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to:

- 13.2.1. decisions made by the Service Provider in the recruitment, training or promotion of Staff employed or to be employed in the provision of the Service;
- 13.2.2. the provision of the Service;
- 13.2.3. providing the Service to the Service Users; and
- 13.2.4. the carrying out the Service Provider's obligations under this Contract.

13.3. In providing the Service, the Service Provider must observe as far as possible with Legislation including, but not limited to the Equality Act 2010 and relevant codes, any updates to the code, or any code which may replace it including but not limited to the Commission for Racial Equality's and Human Rights Code of Practice for Employment.

13.4. If any Court or Tribunal, or the Commission for Racial Equality and Human Rights (or any body which may replace the Commission) makes a finding that the Service Provider has unlawfully discriminated against any person in the provision of the Service then the Service Provider must:

- 13.4.1. take all necessary steps to make sure that the unlawful discrimination does not occur again; and

13.4.2. notify the Council in writing of the finding and the steps taken to prevent its re-occurrence.

13.5. The Service Provider must provide the Council with such information reasonably required in order for the Council to assess the Service Providers compliance with this Condition 13.

13.6. The Service Provider shall assist the Council in meeting the Council's equality duties and agrees to providing the Council with quality assurance and monitoring information the Council may reasonably require in accordance with Condition 17.

14. WHISTLE BLOWING

14.1. The Service Provider shall have regard to the Council's whistle blowing policy contained at Schedule 5 of the Contract and shall ensure that Staff follow this policy through out the Contract Period.

14.2. The Council shall not tolerate the following including but not limited to fraud, corruption or abuse of position for personal gain.

14.3. The Council protects public funds through robust working methods, procedures and promoting an environment that actively encourages the highest principles of honesty and integrity.

14.4. In recognition of the Public Interest Disclosure Act 1998, any employee, volunteer or Board of Trustees member who has a concern about the Service Provider may report directly to the Council, in accordance with Schedule 5 and the Service Provider shall make reasonable endeavours to ensure any employee, volunteer or Board of Trustees member is aware of the rights contained in this Condition.

14.5. In accordance with Condition 14.4 where an individual is victimised for making a disclosure to the Council, any claim they may have under the Public Interest Disclosure Act 1998 is against his or her employer and not against the Council.

15. MARKETING AND PUBLICITY

15.1. The Service Provider shall effectively and regularly advertise, publicise, co-ordinate, promote and market the Service through various methods to Service Users and Parents which may include social networking. However no publicity material shall be made public unless it has been approved by the Council in advance or as agreed in the Final Offer giving due regard to safeguarding issues.

15.2. The Council may from time to time provide guidance on publicising and promoting the Service.

16. COMPLAINTS

- 16.1. The Service Provider shall comply with the Council's complaints policy contained in the Council's Guidelines when dealing with any claims, complaints and enquiries received from the Council, the Service User, Parents, Stakeholders or direct from any member of the public or any other source whatsoever in any way related to this Contract or the provision of the Service by the Service Provider. All claims and complaints received (whether in writing or by telephone or in person) must be reported to an Authorised Officer. An accurate record must be kept of all claims, complaints and responses thereto. This record must be made available to an Authorised Officer upon request and shall be made available to the Council as part of the quality assurance and monitoring requirements specified in Condition 17. The record must contain amongst other details, full details of the claim or complaint including the date, time, name, address and telephone number of the complainant.
- 16.2. Without prejudice to its obligations hereunder to perform the Service to the Contract Standard, the Service Provider shall comply with any reasonable instruction given by an Authorised Officer to the Service Provider in response to a claim, complaint or enquiry received from the Service User, Parents or a member of the public which has been investigated by an Authorised Officer.
- 16.3. The Service Provider shall make reasonable endeavours to ensure Service Users and Parents are made aware of and given access to the Council's complaints policy. Further to this the Service Provider shall ensure where there are sensitive issues which the Service User wishes to discuss the Service Provider shall inform the Service Users and Parents of their availability to contact The Point (the Council's one stop shop for young people in Greenwich) to discuss the matter and log their complaint.

17. QUALITY ASSURANCE AND MONITORING

- 17.1. The Service Provider's performance of the Service shall be measured against the obligations, outcomes, standards, targets and benchmarks set out in Annex 2 of the Service Specification, the Final Offer, Contract Documents, any additional standards and any benchmarks or targets relevant to the provision of the Service published or set by the Chartered Institute of Public Finance and Accountancy and the Council's Auditor.
- 17.2. The Service Provider shall have the capacity, skills and systems required to quality assure and monitor the Service.
- 17.3. The Service Provider shall be required to collect, collate and analyse information required as part of its compliance with this Condition and shall be required where it sub-contracts in accordance with Condition 39 to collect, collate, analyse and integrate information from the sub-contractor with the Service Provider's quality assurance and monitoring requirements in accordance with Condition 17.1.
- 17.4. In addition to any other meetings held between the Authorised Officer and the Contract Manager, the Contract Manager shall attend a meeting at monthly intervals to review the performance of the Service by the Service Provider. These may be, at the Council's discretion, less frequent after the first six months of the Contract Period.

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- 17.5. The Contract Manager shall at the request of an Authorised Officer attend such meetings arranged by the Council in accordance with the Partnership Arrangements, with members of the public, other organisations, Officers, auditors or Members as are concerned with the provision of the Service.
- 17.6. The Council or an Authorised Officer shall have the right at any time when any part of the Service is being provided (and to the extent reasonably necessary) to ensure that the Service is being carried out to the requirements of the Contract, to have access to and/or to inspect:-
- 17.6.1. any location at which the Service is being provided upon twenty-four hours notice save where the same is prevented by unavoidable action by third parties or immediately in an emergency;
 - 17.6.2. any member of Staff for the purpose of interviewing him or her in connection with the carrying out of all or any part of the Service;
 - 17.6.3. any location for the purposes of examining such records and documents in the possession of the Service Provider as the Council may reasonably require to examine upon twenty-four hours notice being given or immediately in an emergency.
- 17.7. In addition to Condition 17.6 the Council may instruct such visits to be undertaken by young persons or mystery shoppers.
- 17.8. The Council may conduct audits for Staff and Service Users and shall provide to the Service Provider 5 Working Days notice prior to such audits being carried out or less notice in an emergency including but not limited to safeguarding and health and safety matters.
- 17.9. The Service Provider shall ensure arrangements are made with sub-contractors to enable the Service Provider to comply with the requirements in this Condition.
- 17.10. The Service Provider shall, as soon as reasonably practicable but in any event within 5 Working Days after a request from an Authorised Officer provide the Authorised Officer with any information relating to the carrying out of the Service which the Authorised Officer may reasonably require.
- 17.11. The Service Provider shall make any facilities, records and documents whatsoever available to the Council at no extra cost.

18. ANNUAL CONTRACT REVIEW

- 18.1. Throughout the Contract Period the parties shall acting reasonably work together to ensure that the Contract and the Service Provider's performance of the Service represent value for money and best value generally for the benefit of the Council having regard at all times to the basis on which the Service Provider's Bid was submitted to the Council and in accordance with the Final Offer.

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- 18.2. Within two months before the beginning of each Contract Year the Service Provider shall prepare a review (the Annual Contract Review). The Annual Contract Review shall contain, amongst other matters and to the extent reasonably possible, the following matters:-
- 18.2.1. an analysis of the Service including outcomes throughout the previous Contract Year, focussing on those outcomes which were particularly successful and those outcomes which were not;
 - 18.2.2. an identification in the Service Provider's view of the reason for the successes and weaknesses referred to in Condition 18.2.1 recognising that some of the matters may be due to the Service Provider's performance of the Service (or that of its sub-contractors, Staff or agents), others may be due to the actions or omissions of the Council, Fellow Service Providers and/or the Council's staff and other matters may be due to external or other circumstances.
- 18.3. The Annual Contract Review prepared by the Service Provider in accordance with Condition 18.2 above shall be undertaken in good faith by the Service Provider.
- 18.4. The Service Provider shall submit the Annual Contract Review to the Authorised Officer who shall consider its contents in a timely and efficient manner and who may present it to members and officers of the Council. Except in so far as the Council may be required by law to disclose the Annual Contract Review (in which case the Council shall give the Service Provider prior written notice of such disclosure) it shall be held by the Council in commercial confidence and it shall not be disclosed to anyone other than the members and officers directly associated with the provision of the Service internal and external auditors of the Council and the Council's solicitors. For the avoidance of doubt the presentation of the Annual Contract Review by the Service Provider to the Council shall be without prejudice to any monitoring, performance review or default measures which may be carried out by the Council under the terms of the Contract.
- 18.5. The Service Provider and the Council shall discuss the Annual Contract Review and the Council, may in its absolute discretion, issue instructions under Condition 10 requiring the Service Provider to implement any measures necessary following the outcome of the Annual Contract Review or any measure which otherwise might reasonably be considered necessary by the Council to ensure best value and value for money.
- 18.6. The Final Offer for the subsequent Contract Year shall incorporate the outcome of the Annual Contract Review and further shall set out:-
- 18.6.1. any revisions or amendments to the Final Offer required or recommended by the Service Provider or the Council;
 - 18.6.2. the key objectives for the next Contract Year;
 - 18.6.3. proposed marketing initiatives;
 - 18.6.4. proposed funding availability in accordance with Condition 12.6; and
 - 18.6.5. training proposals for the next Contract Year.
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19. AUDIT AND INFORMATION

- 19.1. The Service Provider shall ensure the proper maintenance of all records as are reasonably required by the Authorised Officer, the Council and internal or external auditors and which are reasonable necessary to record the nature and quality of all work carried out by the Service Provider in the performance of the Service.
- 19.2. The Service Provider shall ensure the proper maintenance and cataloguing of all books and records to ensure they are properly recorded, identifiable and auditable.
- 19.3. The Service Provider shall at all times both during the currency and following Termination of this Contract allow (or procure for) any Authorised Officer, internal or external auditor, Director of Children's Services (or any person or persons nominated by them) access on reasonable notice to and/or a right of entry to any premises in the possession or under the control of the Service Provider and in any way relating to or used in connection with the provision of the Service.
- 19.4. The Service Provider shall at all times during the currency and following Termination of this Contract allow (or procure for) any Authorised Officer, internal or external auditor or Director of Children's Services (or any person or persons nominated by them):-
 - 19.4.1. immediate access to;
 - 19.4.2. the permission to copy and remove any copies of; and
 - 19.4.3. the permission to remove (if in the opinion of the Authorised Officer reasonably necessary or appropriate) the originals ofany books, records and information in the possession or under the control of the Service Provider or any sub-contractor and in any way relating to or used in connection with the provision of the Service (including, without limitation, any Council Data and such information stored on a computer system used by the Service Provider).
- 19.5. The Service Provider shall make provisions to ensure that the Service Provider, its Staff and sub-contractors participate in discussions and offer explanations when requested from any issues arising.
- 19.6. The Service Provider shall, as soon as reasonably practicable upon request by the Authorised Officer, internal or external auditor or Director of Children's Services (or any person nominated by them) provide all information, documentation, access to Staff and assistance required by the Council or their insurers or auditors in connection with any legal proceedings, insurance claim, third party complaint, potential claim or media interest which has, or may have, arisen out of or during the course of the Service Provider's provision of the Service or the Contract. The Service Provider shall, without prejudice to the generality of Condition 44, indemnify the Council fully and promptly against any costs, losses, damage or expenses to which the Council is put as a result of the Service Provider's failure to provide such information, documentation, access to staff or reasonable assistance in a timely and helpful manner.
- 19.7. The Service Provider shall ensure that all records including all case files, invoices, delivery notes, warranties or any trade documents are retained for a period of at least 6 years or until the end of a period of 9 months following the end of the

Contract Period whichever is the later or in the case of any claim brought within such period until such time as any such claim has been settled. The records must be made available on reasonable notice during every working day for inspection by the Authorised Officer during Working Hours.

20. AUTHORISED OFFICERS

20.1. The Council shall as appropriate during the Contract Period give notice in writing to the Service Provider of:-

20.1.1. the names and contact telephone numbers of any persons who have been appointed as an Authorised Officer; and

20.1.2. the removal of any notified person as an Authorised Officer

and until any such notice shall have been served on the Service Provider by the Council the Service Provider shall be entitled to treat as Authorised Officers only those persons last notified as such to the Service Provider.

20.2. The Council shall throughout the Contract Period ensure that an Authorised Officer is available for consultation with the Service Provider at all reasonable times.

20.3. Except pursuant to Condition 10 (Variations) or unless specifically authorised for that purpose the Authorised Officer does not have authority to amend the Contract in writing or otherwise or to relieve the Service Provider of any express obligations under the Contract.

21. CONTRACT MANAGER

21.1. The Service Provider shall during the Contract Period:-

21.1.1. appoint and give notice of the appointment of a Contract Manager to an Authorised Officer such written notice (unless not reasonably practicable) to be given at least twenty working days prior to the proposed date of the appointment and specifying details of such person's name, office address, qualifications and experience;

21.1.2. give notice in writing to the Council of the removal of any notified person as a Contract Manager

and until such notice shall have been served on the Council by the Service Provider the Council shall be entitled to treat as Contract Manager only those persons last notified as such to the Council.

21.2. The Service Provider shall not appoint any person as the Contract Manager without the Council's prior written approval, such approval shall not be unreasonably withheld or delayed.

21.3. The Contract Manager shall be the authorised representative of the Service Provider and shall as such be deemed to be empowered on behalf of the Service Provider for all purposes connected with the Contract and in particular (but without limitation) any notice, information, instruction or other communication given or made by or to the Contract Manager or his deputy shall be deemed to have been given or made by or to the Service Provider.

21.4. The Service Provider shall ensure that throughout the Contract Period the Contract Manager:-

- 21.4.1. is available to be contacted by an Authorised Officer during Working Hours. Out of Working Hours telephone numbers and mobile telephone numbers must be made available and an Authorised Officer notified of the normal contact person is on holiday or sick leave together with the name and telephone number of any such substitute contact;
- 21.4.2. consults an Authorised Officer (and such other of the Council's supervisory staff as may be specified by an Authorised Officer) as often as may reasonably be necessary to ensure a continuous and efficient provision of the Service in accordance with the Contract Documents;
- 21.4.3. attends any meetings reasonably requested by the Council including Committee meetings outside Working Hours;
- 21.4.4. follows and complies with any instructions or directions given or issued by any Authorised Officer in connection with the performance of the Service.

22. LIVING WAGE

22.1. It is a condition of this Contract that for the duration of this Contract the Service Provider shall:

- 22.1.1. pay all Staff who are employed by the Service Provider not less than the London Living Wage as set annually by the Greater London Authority (or, if agreed by London Citizens, the rate of the London Living Wage which was set for the year immediately preceding the date of this Contract);
- 22.1.2. The Service Provider agrees to increase the amount which it pays to Staff by the same amount as any increase to the Living Wage, within 12 months of the date on which any increase in the Living Wage is announced by the Greater London Authority;
- 22.1.3. Pay each member of Staff (*other than any Staff who is under a probationary period of 6 months or less*) pay the Staff usual daily wage in respect of the first 10 days in each year when the Staff is unable to work through illness;
- 22.1.4. allow each member of Staff to have four weeks' paid holiday per annum, in addition to public holidays; and
- 22.1.5. allow each member of Staff fair and unfettered access to a trade union

22.2. If the Service Provider sub-contracts all or part of the provision of the Services to a sub-contractor pursuant to Condition 39, the Service Provider shall procure that the

terms contained in 22.1.1 to 22.1.5 shall apply to all Staff who are employed by the sub-contractor to perform the Services (or part of them).

- 22.3. For the avoidance of doubt and without prejudice to any other rights and remedies which the Council may have a breach by the Service Provider (or any sub-contractor to whom the Service Provider sub-contracts all or part of the provision of the Services pursuant to this Condition shall constitute a material breach by the Service Provider entitling the Council to terminate this Contract.

23. STAFF

- 23.1. The Service Provider shall employ sufficient, fully and suitably trained, briefed, qualified and experienced Staff to ensure that the Service is throughout the Contract Period provided to the Contract Standard, including (without limitation) during periods of absence of its Staff due to sickness, maternity leave, Staff holidays, Staff training or otherwise. The Service Provider shall ensure that all Staff engaged in providing the Service sign a Staff Confidentiality Agreement as set out in the Schedule 4.

- 23.2. The Service Provider shall:-

- 23.2.1. employ or engage in and about the provision of the Service only persons who are careful, honest, skilled, competent and experienced in the work relevant to that which they are to perform;
- 23.2.2. ensure that every member of Staff engaged by the Service Provider in and about the provision of the Service is and at all times remains properly and sufficiently trained, skilled and instructed with regard to:-
- 23.2.2.1. the duty or duties which that person has to perform; and
- 23.2.2.2. the rules, procedures and statutory and regulatory requirements concerning health and safety at work and all other rules and procedures relevant to the duties and all other rules and procedures which that person has to perform;
- 23.2.3. comply with any law that prohibits discrimination in relation to employment, including the provision of training and promotion on grounds of gender, disability, sexual orientation, age, colour, race, ethnic or national origin or religion;
- 23.2.4. ensure that its Staff comply with all relevant rules, codes, policies, procedures and standards of the Council which are current or which may be notified to the Service Provider by the Council from time to time and with all relevant statutes, statutory orders and regulations;
- 23.2.5. implement such Staff training schemes and make necessary arrangements for developing the skills of Staff throughout the Contract Period as are necessary to ensure the performance of the Service to the Contract Standard;

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- 23.2.6. regularly and adequately supervise the Staff and carrying out of performance appraisals by competent Supervisory Staff; and
- 23.2.7. regularly organise meetings between Supervisory Staff and other Staff.
- 23.3. No member of Staff shall commence their duties until the Service Provider has provided evidence to the Council that a satisfactory enhanced Criminal Record Certificate has been issued by the Criminal Records Bureau.
- 23.4. The Council or an Authorised Officer may to the extent reasonably necessary to protect the standards and reputation of the Council, following consultation with the Service Provider, request the Service Provider to take disciplinary action or other action (including their removal from the Service or relevant part) against any person employed in or about the provision of the Service by the Service Provider including the Contract Manager or his deputy and the Service Provider shall forthwith comply with such request. The Council shall not in any circumstances be liable to the Service Provider or any of its employees in relation to any such disciplinary removal or other action and the Service Provider shall fully and promptly indemnify the Council in respect of any claims brought by any such employee arising therefrom.
- 23.5. The Service Provider shall at all times during the Contract Period provide a sufficient complement of Supervisory Staff (in addition to the Contract Manager) to ensure that the Service Provider's Staff engaged in the provision of the Service are at all times adequately supervised and able to perform their duties to the Contract Standard.
- 23.6. Neither the Service Provider nor any of its Staff may in any circumstances solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge from any person in connection with the provision of all or part of the Service other than pursuant to the terms of the Contract.
- 23.7. Any breach by the Service Provider or any of its Staff of Condition 23.6 will be regarded by the Council as a matter of serious misconduct. Without prejudice to any of its rights hereunder an Authorised Officer may require the removal from the provision of the Service of Staff found to be in breach of Condition 23.6.
- 23.8. Notwithstanding any industrial action by Staff, it remains the Service Provider's responsibility to meet the requirements of this Contract. The Service Provider must inform an Authorised Officer immediately of any intending or actual dispute which may affect the Service Provider's ability to provide the Service to the Contract Standard.
- 23.9. In the event of industrial disputes by persons employed directly by the Council or Fellow Service Provider which affect the provision of the Service, the Service Provider will be required to co-operate with the Council or its duly authorised representative to ensure the continued provision of the Service or to agree the level of the Service deemed by the Council to be satisfactory during such dispute.
- 23.10. The Council may from time to time provide free training to Staff including but not limited to training on safeguarding and safer recruitment, integrated working and Children's Services workforce induction as agreed with the Service Provider, which Staff shall be required to attend.
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23.11. The Service Provider shall ensure the safe and secure storage of information relating to Service Users is complied with by Staff and authorisation of access (including computer access) is limited to certain Staff depending on the sensitivity of the information for the Service User including whether it is Personal Data or Sensitive Personal Data and the requirement of such disclosure.

24. TUPE AND PENSIONS

Transfer of Staff to the Service Provider

- 24.1. The Service Provider will have stated in its Bid whether its Bid is made on the basis of TUPE and applying or not applying and the Council shall have accepted the Bid on such basis unless the parties have expressly agreed otherwise in correspondence incorporated into the Contract. The Service Provider shall be deemed to have taken its own professional advice in such regard and shall fully and promptly indemnify the Council and hold the Council harmless against any claim by an employee of the Council, former contractor or former sub-contractor made in relation to the applicability or otherwise of TUPE. The Service Provider shall be responsible for undertaking all necessary consultations in respect of TUPE following the Acceptance Date. The Council does not guarantee or warrant the accuracy or completeness of any Workforce Information provided to the Service Provider if the same was provided by the former contractor or sub-contractor and the Service Provider shall be deemed to take and bear any risk in this respect.
- 24.2. Subject to Condition 24.3, the Service Provider shall keep the Council indemnified against all proceedings, claims, damages, demands, fines, penalties, expenses, compensation, court or tribunal orders (including any order for re-instatement or re-engagement), awards, costs and all other liabilities whatsoever payable or incurred by the Council or the former contractor which arise out of or are connected with the Contract and which in any way relate to:-
- 24.2.1. the employment or engagement (or otherwise) by the Service Provider of any individual who was prior to the Commencement Date an employee or appointee of the Council or an employee of the former contractor;
 - 24.2.2. the termination of such employment or engagement (or otherwise) by the Council, the former contractor or the Service Provider as a result of the Service Provider stating in its Bid or subsequently that TUPE does or does not apply;
 - 24.2.3. the applicability or otherwise of TUPE and the Service Provider's compliance or otherwise with TUPE and employment Legislation generally.
- 24.3. The Service Provider shall not be responsible for and the indemnity in Condition 24.2 shall not apply to any redundancy payments which the Council or the former contractor would be legally required to pay (but for this Condition) to any employee or past employee who is fairly dismissed by reason of redundancy nor to any claims, costs, demands, fines or damages payable by the Council or a former contractor in respect of matters arising prior to but not connected with the transfer.

- 24.4. The Council shall keep the Service Provider indemnified against all proceedings, claims, damages, demands, fines, penalties, expenses, compensation, court or tribunal orders (including any order for re-instatement or reengagement), awards, costs and all other liabilities whatsoever payable or incurred by the Service Provider which arise out of or are connected with the Contract and which relate to any acts or omissions which constitute a breach of its obligations under TUPE or any other Act of Parliament committed by the Council prior to the TUPE transfer.

Application of TUPE on Termination of Contract

- 24.5. It is acknowledged by the Service Provider and the Council that TUPE may apply upon Termination of the Contract or any part thereof. The Service Provider shall provide immediately upon request by the Council a list of Staff engaged on provision of the Service and information about such Staff including terms and conditions of employment and such other relevant information as may be reasonably required for disclosure to third parties intending to submit Bids for any subsequent contract for the provision of the Service (The Workforce Information). The Service Provider shall warrant the accuracy and completeness of the Workforce Information.
- 24.6. If the Service Provider fails to provide this information the Service Provider may not be permitted to Bid for the subsequent contract.
- 24.7. The Service Provider shall advise the Council immediately of any changes to these details between the date on which they are provided and the Contract expiry date and shall ensure that the information disclosed is accurate and up to date as at the expiry date and that all known existing liabilities relating to such Staff have been discharged.
- 24.8. The Service Provider shall indemnify the Council and a person to whom the undertaking represented by the Service transfers against all claims, costs, damages, compensation, and other liabilities resulting from any failure on the part of the Service Provider to fulfil its obligations relating to:-
- 24.8.1. the provision of complete, up to date and accurate Workforce Information;
 - 24.8.2. any necessary consultation with such employees or their representatives.
- 24.9. The Service Provider shall, if required by the Council, provide an undertaking and warranty to any person to whom the Service Provider's Staff may transfer pursuant to TUPE to the effect that the Workforce Information is complete and accurate and that the Service Provider has discharged all its obligations as employer.
- 24.10. The Council shall not be liable for any failure to provide any information to or consult any employees of the Service Provider or the former contractor or their representative, whether or not such employees are engaged on the provision of the Service and the Service Provider shall indemnify the Council in respect of any such liability.
- 24.11. In this Condition, the expression "former contractor" shall mean any company, firm or individual who has been engaged on the provision of the Service under a contract between that company, firm or individual and the Council.

Pensions - Admissions Agreement

- 24.12. The Service Provider shall and shall procure that any relevant sub-contractor shall ensure that all Eligible Employees are offered appropriate pension provision with effect from the Commencement Date up to and including the date of the termination or expiry of this Contract through either:
- 24.12.1. Admission to the Local Government Pension Scheme (LGPS);
or
 - 24.12.2. through the Contractor's own pensions provision.
- 24.13. Where the Service Provider or sub-contractor wishes to offer the Eligible Employees membership of the LGPS, the Service Provider shall or shall procure that it and/or each relevant sub-contractor shall enter into an Admission Agreement to have effect from and including the Commencement Date or, if the transfer occurs after the Commencement Date, from and including the date of that Relevant Transfer.
- 24.14. The Service Provider shall indemnify and keep indemnified the Council and/or any new contractor and, in each case, their contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Service Provider or sub-contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this agreement.
- 24.15. The Service Provider shall and shall procure that it and any sub-contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or bond required in accordance with the Admission Agreement.
- 24.16. The Service Provider shall and shall procure that any relevant sub-contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

Pensions - Contractor Pension Scheme

- 24.17. Where the Service Provider or sub-contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, the Service Provider shall or shall procure that any relevant sub-contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:
- 24.17.1. established no later than three months prior to the date of the Relevant Transfer; and
 - 24.17.2. certified by the Government Actuary's Department as providing benefits that are broadly comparable to those provided by the Local

Government Pension Scheme (Royal Borough of Greenwich Pension Fund);

- 24.17.3. the Service Provider shall produce evidence of compliance with this to the Council prior to the date of the Relevant Transfer.

24.18. The Council's actuary shall determine the terms for bulk transfers from the Local Government Pension Scheme (Royal Borough of Greenwich Pension Fund) to the Service Provider's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.

25. HEALTH AND SAFETY

25.1. The Service Provider shall in performing the Service ensure that its Staff, or any other person acting on behalf of the Service Provider:-

- 25.1.1. adopt safe methods of work in order to protect the health and safety of the Service Provider's Staff, Council staff, staff employed by sub-contractors, Service Users and any other persons including (without limitation) members of the public;
- 25.1.2. comply with all relevant parts of the Council's Guidelines relating to health and safety.

25.2. The Service Provider shall:-

- 25.2.1. maintain and review its health and safety policy and safe working procedures as often as may be necessary in the light of changing Legislation, working practices or any other factor, and shall notify the Council in writing of such revisions;
- 25.2.2. comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Service Provider's health and safety procedures; and
- 25.2.3. have in place at all times during the operation of the Contract emergency operating procedures, including accident procedures, which procedures are to be communicated to all Staff and periodically tested, such testing to be formally recorded.

25.3. For the avoidance of doubt the Council shall not be obliged to make and the Service Provider shall not be entitled to receive any additional payment by reason of:-

- 25.3.1. any steps which the Council requires the Service Provider to take for health or safety reasons (including at the Council's request, the appointment by an independent health and safety adviser to review the Service Provider's working procedures); and
- 25.3.2. a decision to suspend the Services partially or wholly in the event of non-compliance by the Provider with any of the health and safety requirements of the Contract. The Provider shall not resume provision of the Services until the Authorised Officer is satisfied that non-compliance has been rectified.

26. SERVICE PROVIDER'S EQUIPMENT

- 26.1. The Service Provider shall ensure that throughout the Contract Period it supplies or makes available in good condition and in working order and all such resources and equipment as may be necessary and/or desirable for the proper provision of the Service to the Contract Standard. For the avoidance of doubt the provision by the Council of any Council Equipment shall be without prejudice to the obligation of the Service Provider set out in this Condition.
- 26.2. The Service Provider shall further ensure that it obtains (and pays all fees, royalties and similar expenses relating to) all necessary consents and licences including any such consents or licences in respect of Intellectual Property Rights.
- 26.3. The Service Provider shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Service are paid and up to date throughout the Contract Period and that the Service Provider's Equipment is properly maintained and replaced when necessary.

27. COUNCIL'S EQUIPMENT

- 27.1. Insofar as the Service Provider will use in connection with the provision of the Service any Council's Equipment offered by the Council, the Council shall make such Council's Equipment available for free of charge or if subject to a charge such charge shall be agreed by Parties but in no circumstances may any Council's Equipment be moved to any premises other than the Council's Premises in which it is situated without the Authorised Officer's written consent.
- 27.2. Should the Service Provider purchase equipment using the Contract Price, it shall obtain consent from the Council for purchases over £500 (five hundred pounds). The purchase and use of such equipment shall in be in accordance with this Condition.
- 27.3. The Service Provider shall use the Council's Equipment solely in connection with the provision of the Service (except with the written consent of the Authorised Officer) and shall make good any damage to the Council's Equipment caused by the Service Provider, its sub-contractors, Staff, servants or agents. Any damage shall be remedied by the Service Provider, in accordance with reasonable instructions given by the Authorised Officer, and all costs incurred in complying with this Condition shall be borne by the Service Provider. The Service Provider shall inform an Authorised Officer immediately of any act of vandalism or damage to the Council's Equipment observed by the Service Provider or its Staff or sub-contractors while performing the Service and the Service Provider shall use its reasonable endeavours to ensure that the vandalism or damage ceases to ascertain the identity of the perpetrators and to inform the Authorised Officer immediately and the Police or fire brigade, if appropriate, of the same.
- 27.4. The Council does not guarantee, warrant or give any assurances as to the age, condition or state of repair of any item of Council's Equipment and the Service Provider shall be deemed to have carried out its own inspections and made its own

assessment of the Council's Equipment and to accept the Council's Equipment as seen.

- 27.5. The Service Provider shall be responsible for the maintenance of the Council's Equipment at its own expense except where it is agreed that any such maintenance shall be carried out at Council's expense. In such circumstances and for the avoidance of doubt the Council shall cease to maintain any item of Council's Equipment when it considers, acting in its absolute discretion, that such Council's Equipment has reached the end of its useful life and is no longer economically viable to maintain.
- 27.6. The Service Provider shall purchase and maintain at the Service Provider's own expense any replacement, equipment or new equipment necessary in order for the Service Provider to provide the Service at the Commencement Date and throughout the Contract Period. The provision by the Council of Council's Equipment shall not diminish or vary the obligation of the Service Provider to provide sufficient Service Provider's Equipment.
- 27.7. The Council's Equipment shall remain the property of the Council and shall be delivered up at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment that was not Council Equipment shall remain the property and responsibility of the Service Provider or relevant third party and shall not be delivered up to the Council at the end of the Contract Period.
- 27.8. At the end of the Contract Period or earlier termination, the Service Provider shall offer for sale at a fair market value any Service Provider's Equipment which is either situated at the Council's Premises or is situated at the Service Provider's premises but is used solely in connection with the provision of the Service. The Council shall be under no obligation to purchase such Service Provider's Equipment and such purchases shall be at the Council's absolute discretion.

28. COUNCIL PREMISES

- 28.1. As soon as reasonably practicable after the Commencement Date the Service Provider shall be granted a lease or licence in respect of the Council Premises if required for the purposes only of carrying out the Service.
- 28.2. The Service Provider shall keep the Council Premises in good and substantial repair and condition except insofar as any maintenance is the responsibility of the Council which shall be specified in the lease or licence.
- 28.3. The leases or licences shall expire immediately on termination or expiry of the Contract in whole or relevant part and the Service Provider shall vacate the Council Premises forthwith.
- 28.4. The Service Provider shall not use the Council Premises for any purpose other than the performance of the Service and breach of this condition shall be a Critical Performance Default.
- 28.5. The Service Provider must ensure that the Council Premises facilities and Service are clean and tidy at all times.

- 28.6. Access to or use of any of the Council Premises, facilities and Service by the Service Provider or any of its Staff will not create a tenancy of any nature whatsoever in favour of the Service Provider or its Staff or agents.
- 28.7. The Service Provider will indemnify the Council from and against the cost of maintenance and repair to any Council Premises to which the Service Provider has been granted access insofar as any works of maintenance, repair or re-building of the Council Premises (if any) are necessary following any act, neglect, default or negligence of the Service Provider or its Staff, sub-contractors and agents.
- 28.8. In the event that and to the extent that the Service Provider is to provide for all or any part of the Service from its own premises, the Service Provider shall ensure that such premises are safe, secure and suitable for the provision of the Service. Any Council Equipment or Council Data situated at the Service Provider's premises shall be clearly marked the property of the Royal Borough of Greenwich and shall be stored separately from the Service Provider's Equipment. The Service Provider shall afford the Council access upon reasonable notice to inspect the Service Provider's premises including any security, fire protection and disabled access systems. The Service Provider shall not provide all or any part of the Service nor store any Council Data at any premises which has not been approved by the Authorised Officer.

29. SERVICE PROVIDER'S COMPUTER SYSTEMS

- 29.1. In relation to any computer system which the Service Provider uses in connection with its provision of the Service, the Service Provider shall at its own cost but subject to the Council's satisfaction ensure that such a computer system is at all times through the Contract Period such as to enable the Service Provider to comply with its obligations under the Contract and in particular (but without limitation) to perform the Service to the Contract Standard. Should the Council so require, the Service Provider must ensure that such computer system is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's relevant computer system.
- 29.2. The Service Provider shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Council in accordance with the provisions of the Contract) adequate disaster recovery arrangements are in place for the event of the partial or total failure of the Service Provider's computer system which arrangements shall enable the Service Provider to continue without interruption to comply with its remaining obligations under this Condition.
- 29.3. The Council shall ensure that any software licences in relation to software to be used in connection with the provision of the Service allow for the software to be tested by the Council on a machine at a location to be determined by the Council and allow the Council to so test all such software before it is used operationally by the Service Provider if it so requests.
- 29.4. The Council shall free of charge either in hard copy or in computerised form (as appropriate) provide the Service Provider with such Council Data as is necessary in its opinion for the Service Provider to perform the Service.

- 29.5. The Service Provider shall ensure all times during the Contract Period that its Staff and any Service Users who are in receipt of the Services are not subjected directly or indirectly to unsuitable, offensive or inappropriate electronic or internet based images, information or materials.

30. SECURITY

- 30.1. The Service Provider, its Staff and any invitees of the Service Provider will only be allowed access to Council Premises in connection with the provision of the Service (save as may otherwise be agreed between an Authorised Officer and the Contract Manager), such access being exercised jointly with an Authorised Officer and any of the Council's licensees or agents.
- 30.2. The Council may from time to time stipulate reasonable additional requirements relating to the safety and security of its Council Premise and the Service Provider, sub-contractors, its staff and any invitees of the Service Provider will at all times during the Contract Period comply with such requirements or such other security requirements as the Council may from time to time reasonably direct.
- 30.3. The Service Provider shall ensure the following shall be returned to the Service Provider forthwith upon such Staff ceasing to be employed by the Service Provider in connection with the provision of the Service:
- 30.3.1. the Staff safely returns to the Service Provider all information and access rights it has including but not limited to case details and identity passes; and
 - 30.3.2. the Service Provider cancel's access rights to information, computer systems and premise.
- 30.4. The Service Provider shall act as the bailee of any Council Data which may at any time be in the Service Provider's possession or under its control and shall store such Council Data safely and separately from any data not relating to the Service and in a manner which makes it readily identifiable as Council Data relating to the Service.
- 30.5. Without prejudice to the Service Provider's general obligations to provide data and information to the Council on request, the Council shall be entitled to request, and the Service Provider shall provide within a reasonable time, employment and relevant personal information in relation to the Service Provider's Staff for the purposes of anti-fraud measures such as data matching. The Service Provider shall ensure that it takes any measures necessary pursuant to the Data Protection Act 1998 and any other relevant Legislation to facilitate such disclosure lawfully and fairly.
- 30.6. In relation to all Personal Data and Sensitive Personal Data as defined in the Data Protection Act 1998 (the DPA), the Service Provider shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Service.

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- 30.7. The Service Provider shall only undertake processing of Personal Data and Sensitive Personal Data reasonably required in connection with the Service and shall not transfer any Personal Data or Sensitive Personal Data to any country or territory outside the European Economic Area.
- 30.8. The Service Provider shall prior to collecting and sharing Personal Data and Sensitive Personal Data seek consent of the effected Service Users and Parents.
- 30.9. The Service Provider shall not disclose Personal Data or Sensitive Personal Data to any third parties other than:-
- 30.9.1. to the Council;
 - 30.9.2. to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Service Provider to carry out the Service;
 - 30.9.3. To the extent required under law;
 - 30.9.4. To the extent required for child safeguarding investigations including disclosure to but not limited to Ofsted, subject to agreement with the Council; or
 - 30.9.5. to the extent required under a court order.
- provided that disclosure under Condition 30.9.2 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Condition and that the Service Provider shall give notice in writing to the Council of any disclosure of Personal Data or Sensitive Personal Data it is required to make under Condition 30.9.5 immediately when it is aware of such a requirement.
- 30.10. The Service Provider shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data or Sensitive Personal Data measures to include safe storage, prevention of unauthorised access, accidental loss, destruction of, or damage to, Personal Data or Sensitive Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data or Sensitive Personal Data.
- 30.11. The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider. Within 30 days of such a request the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine whether or not, in connection with Personal Data or Sensitive Personal Data, it is compliant with the DPA.
- 30.12. The Service Provider shall:
- 30.12.1. Report any breaches of this Condition to the Authorised Officer including responses to mitigate any harm done, or to prevent or reduce the risk of any future similar occurrences.
 - 30.12.2. Implement appropriate technical and organisational measures (including but not limited to safe storage) to protect Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure.
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30.12.3. Measures shall be appropriate to the harm which may result and having regard to:

- 30.12.3.1. the Personal Data which is to be protected;
- 30.12.3.2. use all reasonable endeavours to ensure that their employees, agents and subcontractors; and
- 30.12.3.3. keep information confidential and do not make any disclosure of Confidential Information to any third Party without their written consent and only in connection with the performance of the Contract.

30.13. The Service Provider shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Condition by the Service Provider and/or any act or omission of any sub-contractor.

31. CONFIDENTIALITY AND ANNOUNCEMENTS

31.1. Each party ("Covenantor") shall both during the currency of the Contract and at all times following Termination keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) save as provided by the Contract any confidential information about the business of and/or belonging to the other Party which has come to its attention as a result of or in connection with the Contract, in particular (but without prejudice to the generality of the foregoing) confidential information relating to the Service provided always that this obligation shall not relate to any such information which:-

- 31.1.1. comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenantor or any other person to whom the Covenantor is permitted to disclose such information under the Contract); or
- 31.1.2. is required to be disclosed by law; or
- 31.1.3. enables or facilitates compliance by the Council with its obligations under The Freedom of Information Act 2000 and all other legally binding legislation and codes of practice relating to the disclosure of information; or
- 31.1.4. was already in the possession of the Covenantor (without restrictions as to its use) on the date of receipt.

31.2. The Service Provider shall not make any public statement or issue any press release or publish any other public document relating, connected with or arising out of the Contract or the matters contained therein without obtaining the Council's prior approval as to the contents thereof and the manner of its presentation and publication.

31.3. The Service Provider shall indemnify and keep indemnified the Council against all actions, demands, proceedings, damages, costs, Contract Price and expenses

whatsoever in respect of any breach by the Service Provider of this Condition 31, such indemnity shall be without prejudice to any other rights the Council may have.

- 31.4. The Service Provider shall procure from each member of Staff a confidentiality undertaking in the form set out in the Contract Documents.

32. INTELLECTUAL PROPERTY RIGHTS AND THIRD PARTY DISPUTES

- 32.1. The Service Provider hereby expressly acknowledges that:-

32.1.1. the Council alone has (subject to such third party rights as may at any time be notified to the Service Provider by the Council) exclusive ownership and ultimate control of:-

32.1.1.1. the format and content of the documentation comprising the Contract;

32.1.1.2. the Council's logos, insignia and letter heads;

32.1.1.3. Council Data however and wherever stored and processed by the Service Provider; and

32.1.1.4. any Intellectual Property Rights pertaining to any of 32.1.1.1 to 32.1.1.3 above.

32.1.2. any goodwill pertaining to or arising from the use of such Intellectual Property Rights shall at all times enure and accrue to the exclusive benefit of the Council absolutely.

- 32.2. The Service Provider shall at the request of the Council promptly execute such documents and take or desist from such action as the Council may require in order to assure to the Council the full benefit of its Intellectual Property Rights and/or to confirm the Council's title thereto.

- 32.3. The Service Provider shall make use of the Intellectual Property Rights solely:-

32.3.1. to the extent and upon the terms provided by the Contract; and

32.3.2. for the purposes of performing the Service for the Council.

- 32.4. The Service Provider shall notify the Council on becoming aware of:-

32.4.1. any information prejudicial to and/or actual, threatened or suspected complaint or proceedings brought by any third party (including, without limitation, by any Service User or member of the public) in any way connected with the Service and relating to the Council, the Service Provider, any Fellow Service Provider or sub-contractor; or

32.4.2. any actual, threatened, attempted or suspected infringement by any third party of any of the Council's Intellectual Property Rights including (without limitation) any seizure of or other interference with Data (Claim).

- 32.5. Insofar as possible the Service Provider shall use its best endeavours to assist, cooperate with and follow the instructions of the Council in relation to any such Claim, including (without limitation) in protecting and/or defending the Intellectual Property

Rights against any infringing party; and at the Council's request or the request of the Council's insurers the Service Provider shall entrust the conduct of any proceedings in relation to any such Claim to the Council.

33. CONTRACT PRICE

- 33.1. The Council shall pay the Service Provider to fulfil its obligations under the Contract and in consideration of the Service Provider properly performing the Service in accordance with Condition 33.2.
- 33.2. The Council shall pay the instalments of 90% of the Contract Price in advance within 30 (thirty) calendar days of receipt of a correct invoice from the Service Provider for each Contract Year in accordance with the following:
 - 33.2.1. 25% of the Contract Price in April
 - 33.2.2. 50% of the Contract Price in July
 - 33.2.3. 15% of the Contract Price in October
- 33.3. The Council may make a Reward Payment to the Service Provider in accordance with Condition 34.
- 33.4. The Contract Price shall include all costs of providing the Service howsoever incurred as a result of or in connection with the Service Provider's performance of its obligations under the Contract including, without prejudice to the generality of the forgoing, the costs of all the Service Provider's Equipment, Staff, reasonably incurred disbursements for the purpose of performance of the Contract.
- 33.5. Payment shall be made by automated payment mechanism (BACS) unless other payment mechanisms are agreed between the Council and the Service Provider.
- 33.6. In the event that any undisputed invoice correctly rendered by the Service Provider remains unpaid by the Council after 30 days the Service Provider shall notify the Council in writing giving the Council 15 further days to pay such an invoice. In the event of the invoice remaining unpaid, the Service Provider shall be entitled to charge interest from the date on which the 15 day period expired at a rate of 4% above the base lending rate published by the Co-operative Bank and the parties agree that this constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts Act 1998.
- 33.7. In addition to the Contract Price, the Council shall subject to receipt of a properly drawn tax invoice, pay to the Service Provider such value added tax (if any) as may be properly chargeable by the Service Provider in connection with the provision of the Service under legislation from time to time in force.
- 33.8. In the event of the Service Provider committing a Performance Default the Council shall be entitled to withhold or reduce any instalment of the Contract Price or make deductions in accordance with Condition 41.
- 33.9. The Council reserves the right to review the Contract Price during the Contract Period and may increase or decrease the Contract Price, such Variation shall be agreed in accordance with Condition 10.

33.10. In the event of a Variation the Council may also (subject to the provisions of Condition 10) vary the Contract Price (upwardly or downwardly or as a one off payment) by such an amount calculated in accordance with the Contract Price as the Council reasonably considers and certifies properly and fairly reflecting the nature and extent of the Variation in all the prevailing circumstances in which event:-

33.10.1. the Council shall send a certificate certifying the amount of the Contract Price variation to the Service Provider ("Variation Certificate"); and

33.10.2. the Contract Price variation shall be made with effect from the date specified by the Council in the Variation Notice issued pursuant to Condition 10.

33.11. The Service Provider shall upon request provide the Council with such information and documents as the Council may reasonably require to enable it to calculate the Contract Price variation.

33.12. In the event of a dispute between the parties as to:-

33.12.1. whether any Variation pursuant to Condition 10 should give rise to any Contract Price variation and/or;

33.12.2. the amount thereof

such dispute may within fourteen days of the date of the Variation Certificate be referred by either party to the dispute resolution procedure under Condition 49, however in the absence of any such referral to the dispute resolution procedure within the fourteen days, the Variation Certificate shall be conclusive and binding upon the parties; and pending any such determination and subject to any consequent adjustment, the Service Provider shall be obliged to accept the Contract Price variation as shown in the Variation Certificate.

34. REWARD PAYMENT

34.1. The Council may in its absolute discretion make a Reward Payment to the Service Provider for good performance in accordance with the Final Offer up to the sum of 10% of the Contract Price at the end of the Contract Year.

34.2. The Council in considering the amount payable shall do so in accordance with Condition 17 (Quality Assurance and Monitoring).

34.3. The Council may in its absolute discretion increase or decrease the sum referred to in 33.1.

34.4. The Service Provider shall submit information reasonably requested by the Council to enable the Council to assess the amount payable.

35. CHARGING SERVICE USERS FOR ADDITIONAL COURSES

35.1. The Service Provider may, with the agreement of the Council, charge Service Users for specialist courses ('Courses') in accordance with the provisions of this Condition 35.

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- 35.2. The Service Provider will submit proposals for Courses and charges to the Authorised Officer, stipulating the time by which a response is required. The Service Provider will provide any supporting information requested by the Council.
- 35.3. The Authorised Officer will:
- 35.3.1. agree some or all of the proposed Courses and charges; or
 - 35.3.2. not agree the proposed Courses and charges; or
 - 35.3.3. amend the Courses and charges subject to agreement of the Service Provider.
- 35.4. The Service Provider shall provide the Council details of the Courses provided and the charges obtained from Service Users in accordance with Condition 17.

36. SUFFICIENCY OF INFORMATION

- 36.1. The Service Provider shall be deemed to have satisfied itself before entering into this Contract as to the accuracy and sufficiency of the Contract Price and other financial information stated by the Service Provider in the Service Provider's Bid which shall (except in so far as is otherwise provided in the Contract) cover all the Service Provider's obligations under the Contract and the Service Provider shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider's Bid.
- 36.2. Except as may be expressly set out in the Contract, the Council does not warrant the accuracy of any representation or statement of fact or law (including without limitation the frequencies or volumes set out in the Service Specification or other Bid document) given to the Service Provider by the Council, its servants or agents at any time before the execution of this Contract. The Council shall not be liable to the Service Provider for any loss or damage which the Service Provider may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement, information or advice was made or given fraudulently by the Council, its servants or agents acting in the course of their employment.

37. RIGHT OF SET OFF

- 37.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Service Provider to the Council, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter due to the Service Provider under the Contract or under any other contract between the Service Provider and the Council.
- 37.2. The Council shall be entitled to interest at a rate of 4% above the base lending rate published by the Co-operative Bank on any sum properly due from the Service Provider to the Council and which remains unpaid for a period of 15 days from the issuing by the Council of an invoice and the parties agree that this constitutes a

substantial remedy for the purposes of the Late Payment of Commercial Debts Act 1998.

38. NO AGENCY PARTNERSHIP OR EMPLOYMENT

38.1. Save as expressly provided otherwise in this Contract or where a statutory provision otherwise requires, the Service Provider shall not in any way whatsoever:-

- 38.1.1. be, act or hold itself out as an agent of the Council; nor
- 38.1.2. make any representations or give any warranties to third parties on behalf or in respect of the Council; nor
- 38.1.3. bind or hold itself out as having authority or power to bind the Council.

38.2. Nothing in this Contract shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties nor any landlord and tenant relationship.

39. ASSIGNMENT AND SUB-CONTRACTING

39.1. The Service Provider shall not:-

- 39.1.1. assign, charge or otherwise deal with its rights or obligations arising under the Contract or any part thereof; without the previous written consent of the Council;
- 39.1.2. sub-contract the provision of the Service or any part thereof without the previous written consent of the Council which consent
 - 39.1.2.1. the Council shall in its absolute discretion be entitled to withhold; and
 - 39.1.2.2. (if given) shall not (except with express written permission of the Council to such effect) relieve the Service Provider from any liability or obligation under the Contract so that the Service Provider shall be responsible for the acts, defaults or neglect of any sub-contractor or its agents, staff or own sub-contractor in all respects as if they were the acts, defaults or neglect of the Service Provider or its agents or staff (notwithstanding that the Council may as a condition of giving its consent to the Service Provider to sub-contracting require such sub-contractor to enter into any manner of direct warranties, undertakings, guarantees or indemnities from such sub-contractor concerning the provision of the Service and its compliance with the Contract in all respects).

39.2. Should the Service Provider wish to sub-contract the Service or any part thereof the Service Provider shall submit a satisfactory Pre Qualification Questionnaire (as supplied by the Council) to the Council for approval.

- 39.3. The Service Provider in procuring sub contracts shall comply with and ensure that sub-contractors can comply with the Council's Commissioning Standards.
- 39.4. The Service Provider shall properly manage, supervise and review the performance of sub-contractors and shall ensure sub-contractors are able to comply with the Contract Standard.
- 39.5. The Service Provider shall contract on similar terms to this Contract with the sub-contractors.
- 39.6. Where the Service Provider enters into a sub-contract for the provision of any part of the Services, the Service Provider shall ensure that a term is included in the sub-contract which requires the Service Provider to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice and in advance as defined by the terms of that sub-contract.
- 39.7. The Service Provider shall as part of the quality assurance and monitoring requirements specified in Condition 17 provide to the Council evidence of the Service Provider's compliance with 39.3-39.6.
- 39.8. The Council may in its absolute discretion assign the Contract or any part thereof and will give written notice of any assignment to the Service Provider. This Condition in the Contract executed by the Service Provider shall stand as the Service Provider's consent to the assignment of the benefit burden or whole contract by the Council.

40. WARRANTIES

- 40.1. The Service Provider, from the Acceptance Date and throughout the Contract Period, warrants and represents to and undertakes with the Council that:-
 - 40.1.1. it has in all respects complied with the Instructions to Bidders and in particular (but without prejudice to the generality of the foregoing) that it has not done any of the acts or matters prohibited by the Instructions to Bidders;
 - 40.1.2. it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract including the Service Specification, the Contract Price and these Conditions and that it has not submitted its Bid and has not entered into this Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council;
 - 40.1.3. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Service Provider in connection with or arising out its Bid are true, complete and accurate in all respects;
 - 40.1.4. it has full power and authority to enter into the Contract and thereafter to perform the Service;
 - 40.1.5. it is of sound financial standing and the Service Provider is not aware of any circumstances (other than such circumstances as

expressly disclosed by the Service Provider when submitting its Bid) which may adversely affect such financial standing in future;

- 40.1.6. it has or has made arrangements to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Service in accordance with the Contract Standard;
- 40.1.7. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Service and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to carry out the Service;
- 40.1.8. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Service so as to assess the full scope and volume of the work involved in performing the Service to the Contract Standard; and
- 40.1.9. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed or controlled by the Council and which is for the time being in the possession of the Service Provider.

40.2. The Service Provider shall:-

- 40.2.1. alert the Council to the risk or the existence of any reason which may prevent the Service Provider from performing the Service as required either in part or at all (the "Cause of Default") as long in advance and as soon and as fully as reasonably practicable in the circumstances; and
- 40.2.2. as soon as reasonably practicable in the circumstances submit to the Council for its approval written recommendations suggesting ways to and to take all such steps as the Council may have approved or directed in order for the Service Provider to avoid, either partially or entirely, and/or to mitigate any loss or damage to the Council arising out of any Cause of Default as soon as reasonably practicable and (for the avoidance of doubt) any failure strictly to comply with the provisions of this Condition 40 shall in itself constitute a Performance Default.

41. PERFORMANCE DEFAULTS

- 41.1. A Performance Default means any failure by the Service Provider to perform properly or comply with any of the Conditions of the Contract including, without limitation any failure of the Service Provider to perform the Service to the Contract Standard.
- 41.2. The provisions of this Condition 41 are without prejudice to the obligations of the Service Provider as set out in the Contract Documents to provide help and assistance and to apply the agreed targets, outputs and outcomes in the Final

Offer. It is understood and accepted by the Service Provider that the overriding objective of this Contract is to ensure that the Service is provided such as to ensure that the Council shall comply with the legal duty to provide careers information, advice, guidance and tracking provision. Accordingly, the Service Provider shall use its reasonable endeavours to ensure any failure (however significant or insignificant) is rectified as swiftly and as efficiently as possible. The purpose of this Condition is to afford the Council remedies in the event of a Performance Default but any decision by the Council from time to time not to implement any such remedy shall not obviate the necessity of the Service Provider to remain pro-active in its own endeavours to remedy such Performance Defaults in order to achieve the overall objectives set out in this Condition 41 and in the Contract Documents.

- 41.3. In the event of a Performance Default the Council shall issue a notice (a Default Notice) to the Service Provider which shall state on its face whether the Performance Default is Critical or Non-Critical.

Critical Performance Defaults

- 41.4. In the event that a Default Notice states that a Performance Default is Critical, it shall also state a time within which the Service Provider shall remedy, make good or mitigate the Performance Default. Such a time period shall be fair, reasonable and commensurate with the nature of the Performance Default and the effect that such Performance Default had or continues to have on the provision of the Service and the service provided by Fellow Service Providers:-

- 41.4.1. On receipt of a Default Notice stating that the Performance Default is Critical the Service Provider shall take the action required by the Default Notice at its cost and own expense within the time period set out in the Default Notice. The Service Provider shall, in addition, attend a meeting with the Authorised Officer to discuss the way in which the Service Provider shall remedy the Performance Default and the Contract Manager shall give an assurance in writing to the Authorised Officer that the Performance Default shall be remedied, made good or mitigated within the time scale set out in the Default Notice.
- 41.4.2. In the event that the Service Provider considers that the time or measures stated in the Default Notice to remedy, make good or mitigate a Critical Performance Default is unreasonable or impossible the Contract Manager shall notify the Authorised Officer within 24 hours of receipt of the Default Notice and the parties shall attend a meeting at a Chief Officer and Director level to discuss the matter and to agree a time period in which and measures by which the Performance Default shall be remedied, made good or mitigated. In the event that there is any dispute between the Council and the Service Provider the matter shall be referred to the dispute resolution procedure in accordance with Condition 49.
- 41.4.3. If the Service Provider fails to remedy a Critical Performance Default within the time period set out in the Default Notice (or subsequently agreed between the Chief Officer and Director) the Council may, in its absolute discretion, terminate the whole or any

part of the Service in accordance with the provisions of Condition 42.

Non-Critical Performance Defaults

- 41.5. In the event that a Default Notice states that a Performance Default is Non-Critical, the Service Provider shall, within five working days of receipt, prepare a plan setting out the measures (an Action Plan) which the Service Provider shall carry out to ensure that the Performance Default is remedied, to ensure that it does not occur again and the timescales within which such an Action Plan shall be implemented. Such a plan shall be known as an Action Plan. The Action Plan shall be submitted to the Authorised Officer for his approval which shall not be unreasonably withheld or delayed. The Authorised Officer shall be entitled to suggest reasonable amendments to the Action Plan which the Service Provider shall incorporate. The Service Provider shall implement the approved Action Plan at its cost and own expense within the time period set out in the Action Plan.

Escalation

- 41.6. In the event that:-

- 41.6.1. the Service Provider fails to remedy a Non-Critical Performance Default in accordance with an Action Plan; or
- 41.6.2. any Critical Default having been remedied, occurs again; or
- 41.6.3. more than two Default Notices (whether Critical or Non-Critical and not necessarily relating to the same breach or failure) have been issued to the Service Provider in any Contract Year;

the Authorised Officer shall be entitled to serve a warning notice (a Warning Notice). The Warning Notice shall state on its face that it is a Warning Notice and shall set out the measures which the Authorised Officer requires the Service Provider to take to ensure that the Performance Default or Performance Defaults are remedied, do not occur again and the time scales within which the Service Provider is to affect such measures. The Service Provider shall comply with the terms of the Warning Notice.

- 41.7. In the event that the Authorised Officer issues more than two Warning Notices within any Contract Year the Council shall be entitled to terminate the Contract in whole or in part in accordance with the provisions of Condition 42.

Other Remedies

- 41.8. In addition to the matters set out above, in the event the Service Provider commits a Performance Default (whether Critical or Non-Critical) the Council shall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute, to:-

recover as a debt any reasonable, justifiable and demonstrable losses, costs and expenses of the Council or any Fellow Service Provider occasioned directly as a result of the Service Provider's Performance Default together with an administration charge of 10% of such sum or sums (a Deduction). For the avoidance of doubt such losses, costs and expenses shall include any additional monitoring costs occurred as a result

of the Service Provider's Performance Default and long term monitoring costs for persistent Performance Default. In the event that there is any dispute between the Council and the Service Provider as to the amount of such Deduction, the matter shall be referred to the dispute resolution procedure in accordance with Condition 49 and pending the final ascertainment or agreement between the parties or determination of the mediation the Deduction shall be made in the amount that the Council in its absolute discretion may reasonably and fairly consider to be a bona fide estimate. Such estimate shall be binding and conclusive upon the Service Provider until final ascertainment, agreement or determination in accordance with Condition 49.

- 41.9. The provision of the Condition are without prejudice to any other right or remedy of the Council.
- 41.10. Without prejudice to the remainder of this Condition, the Service Provider shall at its own expense put into effect the disaster recovery plan whenever the same is necessary whether through the Service Provider's default, the acts and omissions of the Council or its Fellow Service Provider or other circumstances including Force Majeure.

42. TERMINATION

- 42.1. If any one or more of the following occurs the provisions of Condition 42.2 shall apply:-
- 42.1.1. The Service Provider or any of its employees, (whether with or without the Service Provider's knowledge) shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other contract with the Council; or
- 42.1.2. In relation to any contract with the Council, the Service Provider or any of its employees shall:-
- 42.1.2.1. have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
- 42.1.2.2. have given any Contract Price or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
- 42.1.3. The Service Provider:-
- 42.1.3.1. committing an act of fraud or bankruptcy; or
- 42.1.3.2. suffering any step to be taken by any person for or with a view to the winding up of the Service Provider; or
- 42.1.3.3. going into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or re-construction); or
- 42.1.3.4. suffering an order to be made for a moratorium on any of its indebtedness; or

-
- 42.1.3.5. passing a resolution to reduce, redeem or purchase its share capital or (if applicable) convening a meeting as required by Section 656 of the Companies Act 2006; or
 - 42.1.3.6. stopping, suspending or threatening to stop or suspend payment to any of its creditors; or
 - 42.1.3.7. taking or attempting to take proceedings with a view to re-adjustment, re-scheduling or deferment of any indebtedness owed to its creditors; or
 - 42.1.3.8. becoming insolvent or unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (but with the omission of the words "to the satisfaction of the Court" in Sections 123(1)(e) and 123(2) thereof); or
 - 42.1.3.9. proposing or convening a meeting of or entering or proposing to enter into any kind of general assignment, arrangement or composition with or for the benefit of its creditors (including, without limitation, making a proposal under Parts I or VIII (as the case may be) of the Insolvency Act 1986); or
 - 42.1.3.10. applying for or consenting to or convening a meeting for the purpose of approving an application for or consenting to the appointment of a receiver, trustee, liquidator, administrator, administrative receiver or similar officer of itself or of all or substantial part of its assets or suffering any such receiver, trustee, liquidator, administrator, administrative receiver or similar officer being appointed or any steps being taken which are intended to lead to such an appointment; or
 - 42.1.3.11. suffering an encumbrancer to take possession or to exercise or attempt to exercise any power of sale over any of the Service Provider's property; or
 - 42.1.3.12. suffering an inspector being appointed to investigate its affairs pursuant to Section 431 or 432 of the Companies Act 1985; or
 - 42.1.3.13. having substantial distress attachment execution or other legal process levied, enforced, sued or threatened upon any of its property; or
 - 42.1.3.14. having any substantial judgment or order made against it which remains unsatisfied for more than seven days; or
 - 42.1.3.15. suffering any defaults (or having any payment or any other obligation accelerated) under any trust deed, loan agreement, debenture or other agreement or obligation whatsoever or howsoever incurred relating to

borrowing or financing (including without limitation, conditional sale or factoring agreements or any other arrangements whatsoever which facilitate or are designed to facilitate the provision of finance or working capital to the Service Provider) under any guarantee or any other kind of contingent liability entered into or undertaken by the Service Provider; or

42.1.3.16. the Service Provider being in material breach of any of the Warranties; or

42.1.3.17. the Service Provider challenging and/or misusing any of the Council's property rights and Intellectual Property Rights; or

42.1.3.18. any change occurring in the control of the Service Provider (excluding changes to members/trustees of the Service Provider) or (where the Service Provider is a subsidiary company) its ultimate holding company; or

42.1.3.19. the Service Provider failing to comply with an Urgency Notice served upon the Service Provider pursuant to Condition 42.2 below either fully or at all.

42.1.4. The matters set out in Conditions 22, 41.4.3, 41.7 and 41.8.

42.2. In the circumstances set out in Condition 42.1 the Council may in its discretion and without prejudice to any of its rights or remedies under the Contract:-

42.2.1. serve a written notice ("Urgency Notice") on the Service Provider which Urgency Notice shall:-

42.2.1.1. state on its face that it is an Urgency Notice;

42.2.1.2. set out in general terms the matter or matters giving rise to such Urgency Notice;

42.2.1.3. state the course of action (if any) which the Council requires the Service Provider to take in response to the issue of such Urgency Notice ("Urgent Action") together with the date by which such action is to be taken ("Urgency Date"); and

42.2.1.4. be signed by the Director of Children's Services;

whereupon the Service Provider shall perform any Urgent Action required by the Council as soon as reasonably practicable and in any event by the Urgency Date; or

42.2.2. serve a written notice on the Service Provider terminating the Contract in whole or in part ("Termination Notice"), which termination notice shall:-

42.2.2.1. state on its face that it is a Termination Notice;

42.2.2.2. set out in general terms the matter or matters giving rise to such Termination Notice;

- 42.2.2.3. state the date of Termination; and
 - 42.2.2.4. be signed by the Director of Children's Services.
- 42.3. The rights of the Council under this Condition 42 are in addition and without prejudice to any other right the Council may have to claim the amount of any loss or damage suffered by the Council on account of acts or omissions of the Service Provider whether pursuant to the Guarantee and indemnity given in accordance with the Guarantee Undertaking or otherwise.
- 42.4. The remedies of the Council under this Condition 42 may be exercised successively in respect of any one or more default by the Service Provider.

43. CONSEQUENCES OF TERMINATION

- 43.1. Termination shall be without prejudice to the rights and remedies of the Service Provider and the Council accrued before such Termination or expiration and nothing in the Contract shall prejudice the right of either party to recover any amount outstanding as at the date of such Termination or expiry.
- 43.2. Upon Termination (for whatever reason) the Service Provider shall:-
- 43.2.1. forthwith cease to provide the Service;
 - 43.2.1.1. cease to make use of the Intellectual Property Rights in any way whatsoever;
 - 43.2.1.2. cease to make use of and vacate the Council Premises;
 - 43.2.1.3. within seven days of Termination or, in the case of expiry of the Contract Period, no later than three months prior to such expiry, submit to the Council at the Service Provider's own cost a comprehensive status report which shall be current as at the date of submission relating to the Service;
 - 43.2.1.4. without prejudice to the Council's other rights under these Conditions within ten days of Termination at the Service Provider's own cost return to the Council or otherwise dispose of in accordance with the Council's instructions all and any:-
 - (a) documents and other information and materials relating to the Service;
 - (b) Council Data (which data shall if necessary upon the Council's request be transferred in compatible form on to such computer system as the Council may request);
 - (c) other property and software belonging to the Council which may be in the possession or under the control of the Service Provider; and
 - (d) make good to the Council any accounting discrepancy and/or loss or damage attributable to a Performance Default by the Service

Provider, its staff, sub-contractors and agents, such payment to be made directly into the Council's bank account, details of which the Service Provider shall obtain from the Council;

- 43.3. all provisions which are expressed to survive termination of this Contract shall continue in force in accordance with their terms; and
- 43.4. subject as otherwise provided in the Contract neither party shall have any further obligation to the other under the Contract.
- 43.5. Prior to and at the end of the Contract Period the Service Provider shall co-operate with the Council and any replacement contractor nominated by the Council ("the New Service Provider") in ensuring the smooth hand-over and continued running of the Service during such hand-over and in particular without limitation the Service Provider shall, to the extent required by the Council:-
- 43.5.1. allow the Council and any New Service Provider reasonable right of access to the Service Provider's and sub-contractor's Council Premises, systems, procedures and staff, where appropriate; and
 - 43.5.2. deliver to the Council upon request and in a form approved by the Council all information, materials and documents relating to the Service in its possession or under its control or in the possession or under the control of any permitted sub-contractors and in default of compliance with this provision the Council may recover possession thereof and the Service Provider grant a licence to the Council or its appointed agents to enter for the purpose of any such recovery any Council Premises of the Service Provider or its permitted sub-contractors where any such documents, information or materials may be held.

44. LIABILITY AND INDEMNITY

- 44.1. The Service Provider shall be liable for and shall fully and promptly indemnify the Council, its employees, agents and other contractors, against all liabilities, damages, costs, claims, losses, expenses, duties, taxes, statutory deductions, demands and proceedings whatsoever and howsoever arising whether directly, indirectly or in relation to any third party liabilities out of or in connection with:-
- 44.1.1. the Service Provider's failure to provide all or any part of the Service in accordance with the Contract Standard or at all;
 - 44.1.2. any breach by the Service Provider of any of the provisions of the Contract;
 - 44.1.3. the use or occupation by the Service Provider of any of the Council's Premises or of any premises for which the Council has any legal responsibility;
 - 44.1.4. the use by the Service Provider of any equipment or asset owned by the Council for which the Council has any legal responsibility;
 - 44.1.5. any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Service Provider;

For the purposes of Condition 44.1 above, references to the Service Provider shall include any employee, agent or sub-contractor of the Service Provider and for the purposes of Condition 44.1 "third party liabilities" shall mean any demands made by third parties against the Council and all liabilities of the Council to third parties.

- 44.2. Without prejudice to the generality of Condition 44.1 the Service Provider's liability to the Council in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse the Council all costs and expenses reasonably incurred by the Council in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.
- 44.3. The Service Provider's liability to the Council pursuant to Condition 44.1 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Council whether under the common law principles of contract equity or tort, under statute or as expressly provided in this Contract and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever any Guarantee or sub-contractors warranty.
- 44.4. In no circumstances shall the Service Provider be liable for consequential loss (as opposed to indirect loss for which the Service Provider shall be liable).
- 44.5. Save as provided by Condition 44.6 below the Council shall not under any circumstances be liable to the Service Provider, whether in contract, tort, under statute or otherwise for any loss, damage, liabilities, costs, claims, expenses, demands and proceedings howsoever caused or arising out of or in the course of or in connection with provision by the Service Provider of the Service or of the access to or use of any Council Premises or Council Equipment made available to the Service Provider in order for the Service Provider to provide the Service.
- 44.6. Condition 44.5 shall not apply in relation to:-
- 44.6.1. any failure by the Council to make proper payments to the Service Provider in accordance with the terms of the Contract; and
 - 44.6.2. any negligent act or omission or breach of contract giving rise to death or personal injury or fraudulent misrepresentation by the Council or its staff in the course of their employment.
- 44.7. In any event or notwithstanding anything contained in this Contract, the Council's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused to the Service Provider by the negligence of the Council or its employees acting in the course of their employment) shall be limited in aggregate to £1,000,000 (one million pounds) per Contract Year.
- 44.8. The Council shall not in any event be liable to the Service Provider in contract, tort or otherwise for consequential loss whatever and however caused.
- 44.9. The indemnities contained in Condition 44.1 are without prejudice to and in addition to any warranties or other remedies and rights provided to the Council in common law, statute or equity.

45. INSURANCE

45.1. Without prejudice to the Council's rights under the Contract, the Service Provider shall throughout the Contract Period take out and maintain with reputable insurers such policies of insurance as may be necessary to insure the Service Provider against all manner of risks which might arise in connection with the Service Provider's performance of its obligations under the Contract including (without limitation) in respect of the following risks:-

- 45.1.1. employers' liability including (without limitation) personal injury or death of any person arising under a contract of service with the Service Provider and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance cover shall be not less than £5,000,000 (five million pounds) in respect of any one incident;
- 45.1.2. public liability and occupiers' liability; such insurance cover shall be not less than £5,000,000 (five million pounds) in respect of any one incident;
- 45.1.3. loss or destruction by reason of accident, burglary, theft, fire or otherwise of all equipment, assets, software and any premises owned or under the legal responsibility of the Service Provider (including any Council property, Council's Equipment at the Service Provider's own premises) and such insurance shall be sufficient to cover the full replacement value;
- 45.1.4. such other risks as may from time to time be required by the Council

and such insurance cover in respect of 45.1.1 and 45.1.2 above shall include an indemnity to principal clause.

45.2. The Service Provider shall use its best endeavours to ensure that the Council's interest at all times during the Contract Period is and remains noted on the insurance.

45.3. The Service Provider shall at appropriate times during the Contract Period submit to an Authorised Officer a copy of the then current insurance, together with documentary evidence that such insurance remains properly maintained.

45.4. If the Service Provider fails to comply with its obligations under this Condition 45 either fully or at all, the Council shall be entitled:-

- 45.4.1. itself to provide the Insurance in place of the Service Provider; and
- 45.4.2. to charge the cost of such substitute Insurance together with an administration charge of 10% (ten per cent) of such cost, to the Service Provider by way of (in the Council's discretion) either:-
 - 45.4.2.1. deduction from any sums payable by the Council to the Service Provider under the terms of the Contract; or

45.4.2.2. recovering the same as a debt due to the Council from the Service Provider.

45.5. The Service Provider shall ensure that any sub-contractor of the Service Provider maintain like insurance cover to that covered by the Insurance required to be provided by the Service Provider under this Condition 45.

46. SPECIFIC PERFORMANCE

The parties acknowledge that in the event of a Performance Default the loss or damage suffered by the Council may be such that damages are not an adequate remedy. In such circumstances the Council shall have the right to specific performance of the Service Provider's obligations. Such remedy shall be in addition to, and not in lieu or limitation of, other remedies provided to the Council under the Contract, at law or in equity.

47. WAIVER AND CUMULATION OF REMEDIES

47.1. Failure by the Council at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the Service Provider of any of the provisions of the Contract shall not:-

- 47.1.1. constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of the Contract; nor
- 47.1.2. affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.
- 47.1.3. The provisions of this Contract, and the rights and remedies of the parties under this Contract are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity; no exercise by a party of any one right or remedy under this Service Provider, or at law or in equity, shall (save to the extent, if any, provided expressly in this Contract or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

48. BUSINESS CONTINUITY

48.1. The Service Provider must have standards and policies in place covering as a minimum the following elements:

- Issues arising around Service interruption including notification to the Council, Service Users and Parents
- Issues arising around safeguarding or issues affecting young people
- Command and control
- Identification of critical and key activities including prioritisation
- Staff shortage (including pandemic planning)
- Premises denial or damage

- ICT – including data, systems, applications and communications
 - Suppliers and clients
- 48.2. The Service Provider shall comply with the provisions of the above and the Service Provider shall ensure that it is able to implement the standards and policies. The standards and policies should cover the activities undertaken directly for or on behalf of the Council, and those that indirectly impact on the delivery of the Services (e.g. data management, transport issues, etc).
- 48.3. Should any of the above circumstances occur the Service Provider shall immediately notify the Council of such occurrences and any action proposed to resolve the matter and shall agree such action with the Council.
- 48.4. The Service Provider shall undertake regular risk assessments and/or business impact analysis in relation to the provision of the Service not less than once every six months and shall provide the results of, and any recommendations in relation to those risk assessments or business impact analysis to the Council promptly in writing following each review.

49. DISPUTE RESOLUTION AND EXPERT DETERMINATION

- 49.1. In the event that any dispute arises between the parties in connection with this Contract, the parties shall, in the first instance, use their reasonable endeavours to resolve it amicably between them.
- 49.2. If the dispute is not resolved between the Authorised Officer and Contract Manager is not resolved within 15 working days, the matter shall be referred to senior levels in both organisations and subsequently to Director of Children's Services and Director of Finance level if necessary. Disputes remaining unresolved following such referral shall, if the parties agree (and such agreement shall not be unreasonably withheld) be referred to non-binding mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure").
- 49.3. To initiate a mediation, a party must give notice in writing ("Mediation Notice") to the other party to the dispute addressed to its Director of Children's Services requesting a mediation in accordance with Condition 49.1. A copy of the request should be sent to CEDR Solve.
- 49.4. The procedure in the Model Procedure will be amended to take account of:
- 49.4.1. any relevant provisions in this Contract; or
 - 49.4.2. any other agreement which the parties may enter into in relation to the conduct of the mediation ("Mediation Agreement").
- 49.5. If there is any point on the conduct of the mediation (including as to the nominator of the mediator) upon which the parties cannot agree within 14 days from the date of the Mediation Notice, CEDR Solve will, at the request of any party, provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice save as to costs basis and shall not be used in evidence in any proceedings relating to the dispute with out the prior written consent of the parties except in relation to a determination of a costs award by a court.

- 49.6. In the event that the parties proceed to mediation they shall each bear their own costs and they shall each pay one half of the mediator's reasonable fees.
- 49.7. The mediation will start not later than 28 days from the date of the Mediation Notice.
- 49.8. Neither party may terminate the mediation until each party has made its opening presentation and the mediator has met each party separately for at least 1 hour.
- 49.9. If the parties have not settled the dispute by the mediation within 42 days from the date of the Mediation Notice, either party may litigate the dispute.
- 49.10. Either party shall be entitled to commence litigation before or during the mediation where there is a genuine emergency which only the courts have jurisdiction to resolve (a list of emergencies includes but shall not be limited to a situation where a party seeks a remedy of specific performance, injunctive relief or where a party is at risk of breaching a statutory duty or another contract.).
- 49.11. Should disputes arise in accordance with this Condition, the Service Provider shall ensure the Service continues to be provided to the Service Users in accordance with this Contract.

50. HUMAN RIGHTS

The Service Provider shall comply with the Human Rights Act 1998 including the rights set out in the Second Schedule thereto as if it were a public authority for the purposes of that Act.

51. FREEDOM OF INFORMATION

- 51.1. The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in this Condition 51. The Service Provider may wish to review the Information Commissioners Guidance available here:

http://www.ico.gov.uk/for_organisations.aspx

- 51.2. Where the Council receives a Request for Information in relation to Information that the Service Provider is holding on behalf of the Council and which the Council does not hold itself, the Council shall refer to the Service Provider such Request for Information that it or the Council receives as soon as practicable and in any event within five working days of receiving a Request for Information, and the Service Provider shall:-

- 51.2.1. provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within ten working days (or such other period as the Council acting reasonably may specify) of the Council's request; and
- 51.2.2. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of

the FOIA or Regulation 5 of the Environmental Information Regulations.

51.3. Following notification under Condition 51.2., and up until such time as the Service Provider has provided the Council with all the Information specified in Condition 51.2.1, the Service Provider may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:-

- 51.3.1. whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- 51.3.2. whether Information is to be disclosed in response to a Request for Information,

and in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

51.4. The Service Provider acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the FOIA Code), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Service Provider, the Services or the Contract:-

- 51.4.1. in certain circumstances without consulting the Service Provider; or
- 51.4.2. following consultation with the Service Provider and having taken its views into account.

51.5. The Service Provider shall ensure that all Information held on behalf of the Council is retained for disclosure for at least six years (from the date it is acquired) and shall permit the Council to inspect such Information as requested from time to time.

51.6. The Service Provider shall transfer to the Council any Request for Information received by the Service Provider as soon as practicable and in any event within 2 working days of receiving it.

51.7. The Service Provider acknowledges that any lists provided by it listing or outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Condition 51.4.

51.8. In the event of a request from the Council pursuant to Condition 51.2 above, the Service Provider shall as soon as practicable, and in any event within 5 working days of receipt of such request, inform the Council of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Council shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with

the request and where it does require the Service Provider to comply with the request the 10 working days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under Section 10 of the FOIA. In such case, the Council shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

52. LAW AND JURISDICTION

52.1. This Contract shall in all respects be construed and interpreted in accordance with the laws of England. Each party agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Contract or the performance of the Services.

53. THIRD PARTY RIGHTS

This Contract shall not create any warranty enforceable by any person nor shall any term purport to confer a benefit on any person not a party to this Contract. For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties have not agreed that any third party benefit from this Contract.

IN WITNESS whereof the parties have caused this Contract to be executed as a deed by their duly authorised representatives the day and year first above written.

EXECUTED AS A DEED as

**THE COMMON SEAL OF ROYAL
BOROUGH OF GREENWICH was
Hereunto affixed in the presence of:-**

Principal Lawyer

EXECUTED AS A DEED)
)
for and on behalf of the Service Provider)
(Director/Company Secretary)

EXECUTED AS A DEED)
)
for and on behalf of the Service Provider)
(Director)



SCHEDULE 5: WHISTLEBLOWING PROCEDURE

WHISTLEBLOWING PROCEDURE

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1. Introduction

- 1.1 Royal Greenwich is committed to high standards of openness, probity and accountability. In line with this commitment Royal Greenwich encourages all employees with serious concerns about any aspect of work to come forward and raise their concerns without fear of being disloyal or suffering harassment or victimisation as a result.
- 1.2 It is important not to ignore concerns or suspicion of malpractice. Royal Greenwich recognises that certain cases will have to proceed on a confidential basis so that the position of the 'whistleblower' can be protected.
- 1.3 This procedure provides a safe route to raise concerns within Royal Greenwich at an early stage without fear of victimisation, discrimination or disadvantage. It is in everyone's interest that potential failings and malpractice are identified early so that Royal Greenwich can take appropriate action.
- 1.4 Where service users and members of the public have serious concerns, they should raise any issues through the Royal Greenwich Complaint's procedure.

2. Aims and Scope

- 2.1 This procedure aims to encourage the raising of concerns in a confidential manner and to reassure employees that they will be protected from harassment or victimisation for whistleblowing in the reasonable belief that making the disclosure is made in the public interest.
- 2.2 This procedure applies to all employees and those contractors working for Royal Greenwich or on its premises, for example agency staff. It covers those providing services under contract with Royal Greenwich on their own premises, for example, care homes. It also applies to any person who undertakes to do or perform (or otherwise) any work or service for Royal Greenwich such as casual workers and freelancers.

3. Key Principles

- 3.1 Royal Greenwich makes it clear that no employee will be subject to victimisation or other detriment by reporting concerns which they reasonably believe to be true.
- 3.2 Any issue reported will be taken seriously and investigated. This may involve interviews or an investigation to establish the facts.
- 3.3 Royal Greenwich prefers matters to be raised where suspicion first arises rather than waiting for or searching for proof.
- 3.4 Concerns raised will be treated in a confidential manner and feedback will be given on any action taken.
- 3.5 Employees should put their names to any allegation wherever possible.
- 3.6 A complainant will need to demonstrate that there are reasonable grounds for the concern, and will be expected to co-operate with any investigation that takes place.
- 3.7 If any meeting or interview is arranged, there is a right to be accompanied by a trade union representative or workplace colleague.
- 3.8 This procedure will be supported by management culture.

4. What concerns can be reported using this procedure?

- 4.1 This procedure can be used where there are serious concerns such as:
- Child protection issues
 - Conduct which is an offence or breach of law
 - Miscarriages of justice
 - Risks to health and safety
 - Damage to the environment
 - Unauthorised use of public funds
 - Financial malpractice, fraud and corruption

- Abuse of clients
 - Other unethical conduct, (including any attempts to cover up the above or any offence likely to be committed).
- 4.2 Within the context of Royal Greenwich's work, the above could include serious concerns about service provision, the conduct of officers, or others acting on behalf of Royal Greenwich, which fall below established standards of practice or legal requirements such as financial regulations.
- 4.3 If you are not sure if this is the right procedure or want confidential advice, the Confidential Reporting Hotline can provide advice. This is a free phone number 0800 169 6975 or they can be emailed at fraud@greenwich.gov.uk.

5. Matters outside the scope of this procedure

- 5.1 This procedure is not intended to cover concerns that can be progressed under Human Resource policies and procedures. Royal Greenwich has a [Grievance Procedure](#) for dealing with employment related complaints. Employees are not able to “blow the whistle about breaches of their own employment contract. However, complaints about such breaches should be raised under the Grievance procedure
- 5.2 Some Directorates have separate procedures specifically relating to services. If you are not sure, check with the Confidential Reporting Hotline above. With issues relating to protection of children and vulnerable adults using this procedure will ensure your concerns are addressed.

6. Employee responsibilities

- 6.1 All employees have a duty of confidentiality to Royal Greenwich and therefore it is important that this procedure is used and not ignored. It will very rarely, if ever, be appropriate to make any disclosure externally to the press or media. Taking such steps could result in disciplinary action. The Public Interest Disclosure Act 1988 does provide protection to individuals who make certain disclosures of information in the public interest but anyone wishing to make an external disclosure is strongly advised to seek legal advice before doing so as they may put their employment at risk.

- 6.2 Business ethics are increasingly seen as an issue that can build or damage an organisation's reputation and public trust. Therefore all staff have a general responsibility to report all suspected concerns using this procedure for the positive benefit of all.

7. Safeguards

- 7.1 Where malpractice is shown to have occurred this may reflect badly on management, systems, or on individual managers. Whistleblowers may fear that management will be tempted to 'shoot the messenger'. It is important for employees to understand that there will be no adverse repercussions for raising reasonable concerns. The following safeguards exist when following this procedure:

7.2 Harassment and Victimisation.

Royal Greenwich recognises that the decision to report a concern can be a difficult one to make, especially if the issue involves another employee, a senior manager or someone in authority. If concerns are raised out of a reasonable belief, there will be nothing to fear because whistleblowers raising matters of concern are protected from harassment, victimisation, and disciplinary action. No staff member or worker is to subject an employee who has blown the whistle to any form of mistreatment as a result and managers must ensure there is no harassment or victimisation.

7.3 Confidentiality.

It is recognised that raising a concern will require this to be done in confidence under this procedure. Royal Greenwich will try and protect the identity of employees who raise a serious concern and do not want their identity to be disclosed. However, it should be recognised that in some instances, it may not be able to resolve the concern without revealing identity (for instance because a statement from an employee may be required as supporting evidence). In these circumstances the employee will be advised on how the investigation will proceed.

- 7.4 If a whistleblower is required to give evidence in criminal or disciplinary proceedings, Royal Greenwich will arrange for them to receive advice and support.

8. How to Raise a Concern

8.1 The matter has to be kept strictly confidential and therefore only told to someone in authority. Failure to do so could result in allegations of spreading unsubstantiated rumours or gossip invoking the disciplinary procedure. As a first step, concerns should be raised with the line manager or supervisor because the issue causing concern could be immediately clarified. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the alleged wrongdoing or malpractice.

8.2 If the employee believes that the manager or supervisor is involved or they believe that the matter may not be dealt with properly, the employees can raise their concerns with their Director, Chief Executive or straight to Internal Audit and Anti-Fraud who have responsibility for investigating issues.

8.3 Concerns are better raised in writing and clearly marked 'confidential' as in the example below:

Confidential
Head of Internal Audit and Anti-Fraud
3rd Floor
The Woolwich Centre
35 Wellington Street
Woolwich, London
SE18 6HQ

8.4 Employees should set out the background of the concern, giving names, dates, times and places where possible, and the reason why they are particularly concerned about the situation so this can be registered. If an employee feels that they are not able to raise the concern in writing, they may raise the matter with the Head of Internal Audit and Anti-Fraud or a member of the Internal Audit and Anti-Fraud team (tel:0208 9215239). Employees may also arrange to meet with Internal Audit and Anti-Fraud as it recognised that discussing concerns in person is often a great relief and removes some of the pressure of not being able to talk about the issue to anyone else.

8.5 When emailing concerns, this should be sent to one person only, such as the Head of Internal Audit and Anti-Fraud, and not copied to anyone else (otherwise the motive for raising the issue may be open to question).

8.6 Employees are not expected to provide proof of an allegation but they should demonstrate when providing information that there are sufficient grounds for the concern.

8.7 Anonymous correspondence

Royal Greenwich will treat all anonymous allegations seriously but a concern expressed anonymously is much less powerful and can prove difficult to investigate where all the facts are not known or further information is required and the person cannot be contacted to provide further details. For this reason, it may not be possible for Royal Greenwich to conduct a full investigation.

9. How Royal Greenwich will respond

9.1 The action taken by Royal Greenwich will depend on the nature of the concerns raised. The matters raised will normally be investigated internally. However, in appropriate cases the concerns may be referred to a regulatory body or the Police in criminal matters.

9.2 In order to protect the employee, Royal Greenwich and also those accused of possible

wrong doing or malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form the investigation should take. The overriding principle is that of the public interest. Concerns or allegations that fall within the scope of specific procedures will normally be referred for consideration under those procedures.

9.3 Some concerns may be resolved by immediate agreed action without the need for a full investigation e.g. repairs that may present a Health and Safety risk.

9.4 If urgent action is required, this will be taken before any investigation is conducted.

9.5 Within ten working days of a concern being received, where the identity of the employee is known, Royal Greenwich will write to the employee:

- acknowledging that the concern has been received;
- indicating how it proposes to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- telling the employee whether any initial enquiries have been made, and
- telling the employee whether further investigations will take place, and if not, why not.

9.6 Royal Greenwich will take steps to minimise any difficulties that employees may experience as a result of raising a concern. For instance, if it becomes necessary to give evidence in criminal or disciplinary proceedings, Royal Greenwich will provide the necessary advice about the procedure and give whatever practical support that is possible.

9.7 Royal Greenwich accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to any legal constraints, employees will normally receive feedback about the outcome of any investigation.

9.8 The Director of Finance has overall responsibility for the maintenance and operation of this procedure and will ensure that a register of concerns is maintained by Internal Audit and Anti-Fraud together with the results of any investigations carried out.

9.9 Information will be kept in the strictest confidence, in a secure location and in accordance with the Data Protection Act. The Director of Finance will report as necessary on the operation of the procedure, but not on individual cases, to the Royal Greenwich's Audit and Risk Management Panel.

9.10 False Allegations

If an employee makes an allegation in reasonable belief and on the balance of probabilities this is confirmed by an investigation, no action will be taken against the employee. If, however, an employee makes an allegation for an ulterior motive, e.g. for a malicious reason and evidence support this, disciplinary action will be taken against that employee which could result in dismissal.

10. Check-list

10.1 If you are thinking of raising a concern, here are a few things to remember:

YES : PLEASE DO...	NO : PLEASE DO NOT
Raise the matter as soon as possible if you reasonably feel your concerns are warranted.	Do nothing. Royal Greenwich would prefer you to raise your concerns so that we can carry out a full and fair investigation.
Tell your suspicions or concerns to someone who has the appropriate authority to deal with them.	Be afraid of raising your concerns. Royal Greenwich has safeguards in place to protect staff who raise a concern.
Be assured that Royal Greenwich will take seriously concerns raised based on honest and reasonable suspicions.	Try to investigate the matter yourself. This may complicate any later enquiries, particularly if a criminal investigation becomes necessary.
Familiarise yourself with the whistle blowing procedure.	Approach or accuse any individuals directly.
Consider writing down the key points and details as to why you are concerned.	Tell your suspicions or concerns to anyone other than those with the proper authority.

10.2 If you receive a concern as a line manager or supervisor:

YES : PLEASE DO...	NO : PLEASE DO NOT
Be fully responsive to staff concerns	Ridicule or ignore the concerns raised.
Respect the fact that staff can raise a concern confidentially.	Approach or accuse any individuals directly.
Take detailed notes of the information provided; including details such as who, what, where, when, why and how in relation to the matter of concern.	Tell your suspicions or concerns to anyone other than those with the proper authority.
Evaluate the allegation objectively	Try to investigate the matter yourself. This may complicate any later enquiries, particularly if a criminal investigation becomes necessary.
Advise the appropriate person, whether that is your line manager or an individual in another Directorate, such as the Head of the Internal Audit and Anti-Fraud Team.	Do nothing. Royal Greenwich is committed to a culture of openness in which staff feel able to communicate their concerns freely and in confidence
Deal with the matter promptly and as a matter of priority.	Delay. The speed of response may be important.

II. Further information

- II.1 For further information on the operation of this procedure, please contact the Head of Internal Audit and Anti-Fraud.

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SCHEDULE 6: ADMISSIONS AGREEMENT

AN ADMISSION AGREEMENT made this _____

BETWEEN

- (1) **THE ROYAL BOROUGH OF GREENWICH** of Town Hall Wellington Street London SE18 6PW ('the Administering Authority');and
- (2) **[NAME OF TRANSFEREE ADMISSION BODY]** whose registered office is situated at **[ADDRESS]** ("the transferee admission body").

WHEREAS: -

- (a) The Administering Authority means the Royal Borough of Greenwich which is an administering authority within the meaning of the Regulations and administers the Scheme and maintains the Royal Borough of Greenwich Pension Fund (" the Pension Fund ")
- (b) The Administering Authority is also a Scheme employer within the meaning of the Regulations.
- (c) The Transferee Admission Body is not a community admission body within the meaning of the Administration Regulations
- (d) The Transferee Admission Body is a body that is providing the Service in connection with the exercise of a function of the Administering Authority as a result of the transfer of the Service by means of the Contract.
- (e) Under the powers contained in the legislation, the Administering Authority and the Admission Body have agreed to enter into this Agreement to enable the employees as set out in this Agreement to remain or become members of the Scheme and to participate in the Pension Fund on the following terms and conditions.

NOW THIS DEED WITNESSETH as follows: -

1. **Interpretation**

- 1.1 Eligible Employees means the persons named in the Schedule, for so long as they are employed by the Transferee Admission Body in connection with the

provision of the Service and otherwise satisfy the requirements of the Regulations concerning membership of the Scheme and are not members of another occupational pension scheme (within the meaning of Section 150(5) of the Finance Act 2004) in relation to the employment in respect of which they would otherwise be eligible to be designated for Scheme membership.

- 1.2 The Regulations means the Local Government Pension Scheme (Administration) Regulations 2008, (the “Administration Regulations”) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, “the Benefits Regulations 2) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (“the Transitional Provisions Regulations”) and to the extent still applicable the Local Government Pension Scheme Regulations 1997.
- 1.3 The Scheme is the Local Government Pension Scheme constituted by the Regulations made pursuant to sections 7 and 12 of the Superannuation Act 1972.
- 1.4 The Contract means the contract between the Administering Authority and the Transferee Admission Body dated
- 1.5 The Service means the at .
- 1.6 For the purposes of this Agreement the words “employed in connection with” shall mean the employee spends all their working hours on duties which relate to the Services.
- 1.7 The Fund Actuary means the actuary appointed by the Administering Authority.
- 1.8 The actuarial valuations, assessments, and certificates referred to in clauses 4 and 6 shall, be those provided to the Administering Authority by the Fund Actuary calculated in accordance with then current good professional standards;
- 1.9 Business Day means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.
- 1.10 Save as aforesaid the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires.
- 1.11 In this Agreement where the context so admits:-

- 1.11.1 words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations unincorporated associations and partnerships;
- 1.11.2 reference to any statutory provisions shall be deemed to include reference to any such provisions as from time to time amended varied replaced extended or re-enacted and any regulations under such provisions unless the context otherwise requires;
- 1.11.3 reference to Clauses or Schedules shall be deemed to be references to a Clause or a Schedule to this Agreement and references to a sub-Clause shall be deemed to be a reference to a sub-Clause of the Clause in which the reference appears; and
- 1.11.4 headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

2. **Admission**

- 2.1 This Agreement shall have effect from the _____ (the “Commencement Date “)
- 2.2 The Administering Authority shall from the Commencement Date admit the Eligible Employees to membership of the Scheme and permit them to participate in the benefits of the Pension Fund.

3. **Participation**

- 3.1 The provisions of the Regulations shall apply for determining the rights and obligations of and the action which is to be taken by each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly.
- 3.2 The provisions of the Regulations shall apply to the Eligible Employees in the same way as if the Transferee Admission Body were a Scheme employer within the meaning of the Regulations.

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- 3.3 The Transferee Admission Body warrants and represents to the Administering Authority that every Eligible Employee is employed in connection with the provision of the Service.
- 3.4 The Transferee Admission Body undertakes that it will promptly notify the Administering Authority and in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for Eligible Employees, and of any terminations of employment by virtue of ill health, redundancy or business efficiency.
- 3.5 The Transferee Admission Body undertakes that it will promptly notify the Administering Authority in writing if any Eligible Employee ceases to be such in consequence of failing to be employed in connection with the provision of the Service or failing to satisfy the requirements of the Regulations concerning membership of the Scheme or becomes ineligible for any other reason under the Regulations.
- 3.6 The Transferee Admission Body undertakes that it will promptly and in any event on a monthly basis, notify the Administering Authority in writing of changes to the number of hours an Eligible Employee works each week.

4. **Payment**

- 4.1 The Transferee Admissions Body will pay to the Administering Authority, monthly in arrears for credit to the Fund, such contributions and payments as are due in respect of Eligible Employees from time to time to meet the burden which will be imposed on the Scheme by reason of the admission to participate in the benefits thereof of the Eligible Employees.
- 4.2 The payments to be made by the Transferee Admission Body referred to in clause 4.1. shall include, but shall not be limited to, the Administering Authority's common rate of employer's contribution from time to time, adjusted by:
- 4.2.1 any individual adjustments (if appropriate); or
- 4.2.2 in accordance with a certificate provided by the Fund Actuary under Clause 6.1
- 4.3 The Transferee Admissions Body shall be responsible for collecting and paying to the Administering Authority the employee's contribution payment by the Eligible Employees.

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- 4.4 The Transferee Admissions Body will pay to the Administering Authority for credit to the Pension Fund the employee and employer pension contributions on a monthly basis in arrears, and no later than the date specified in Regulations made under the Pensions Act 1995. Each payment is to be supported by a schedule of Eligible Employees' pension data as specified by the Administering Authority.
- 4.5 The Transferee Admission Body will pay to the Administering Authority for credit to the Pension Fund any revised contributions due under clause 6.3 or clause 6.6 within 30 days of receipt of a written request from the Administering Authority.
- 4.6 Where the Transferee Admission Body certifies that:
- 4.6.1 an Eligible Employee who is aged 55 or more and who is retiring by reason of redundancy or business efficiency, or
 - 4.6.2 an Eligible Employee is retiring voluntarily or otherwise taking benefits early with the consent of the Transferee Admissions Body on or after age 55, or
 - 4.6.3 an Eligible Employee is retiring early on the grounds of permanent ill health or permanent infirmity of mind or body, or
 - 4.6.4 the deferred benefit of an Eligible Employee or former Eligible Employee is brought into early payment with the consent of the Transferee Admissions Body on or after age 55, or
 - 4.6.5 the deferred benefit of an Eligible Employee or former Eligible Employee is brought into early payment on the grounds of permanent ill health or permanent infirmity of mind or body,
- and immediate benefits are payable under the Regulations, the Transferee Admissions Body will pay to the Administering Authority for credit to the Pension Fund the sum notified to them in writing by the Administering Authority as representing the actuarial strain on the Pension Fund, as certified by the Fund Actuary of the immediate payment of benefits but only, in the case of sub-sections 4.6.3 or 4.6.5, to the extent that the strain is not met through the Transferee Admissions Body's employer contribution rate, such sum to be paid within 30 days of receipt of the written notification.
- 4.7 Any financial penalty incurred by the Pension Fund arising from the failure of the Transferee Admissions Body to comply with the terms of this Agreement will be
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repaid to the Pension Fund by the Transferee Admissions Body within 30 days of receiving a written request from the Administering Authority.

- 4.8 If any sum payable under the Regulations or this Agreement by the Transferee Admissions Body to the Administering Authority or to the Pension Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations the Administering Authority will require the Transferee Admissions Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid or, in respect of sums under clause 4.6 to pay interest calculated at 2% over Base Rate on a day to day basis.
- 4.9 If any sum payable under the Regulations or this Agreement by the Transferee Admissions Body to the Administering Authority or to the Pension Fund has not been paid within one month after the date on which it becomes due under the Regulations or this Agreement, the Administering Authority may set off against any payments due to the Transferee Admissions Body the sum due (including any interest due in accordance with clause 4.8)
- 4.10 The Transferee Admissions Authority shall pay to the Administering Authority in addition to the other sums payable under this Agreement an amount in respect of the Pension Fund administration costs as recommended by the Fund Actuary

5. **The Transferee Admissions Body's Undertakings**

The Transferee Admission Body undertakes:-

- 5.1 to promptly provide or procure to be provided such information relating to their participation in the Scheme under this Admission Agreement and the Eligible Employees' participation in the Scheme as is reasonably required by the Administering Authority;
- 5.2 to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996;
- 5.3 to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and, subject to clause 5.4, in any employer's guide published by the Administering Authority and provided by the Administering Authority to the Transferee Admission Body;

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- 5.4 to formulate and publish within 3 months of the date of this Agreement a Statement concerning its policy on the exercise of its discretions under the Regulations and to keep such policies under review, and to inform the Administering Authority of any proposed changes.
 - 5.5 to pay any additional employer contributions determined by the Fund Actuary as a result of change in policies under 5.4
 - 5.6 in considering the potential early retirement or redundancy of Eligible Employees, to seek advice from the Administering Authority as to the potential costs employed and to comply with its policies and procedures current at the relevant time.
 - 5.7 to notify the Administering Authority and of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;
 - 5.8 without prejudice to the requirements of the Regulations and any employer's guide published by the Administering Authority and provided to the Transferee Admissions Body, to notify forthwith the Administering Authority and in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affect entitlement to benefits under the Regulations and of any termination of employment by virtue of ill health, redundancy or business efficiency or for any other reason;
 - 5.9 that it shall not grant an additional period of membership or additional pension to an Eligible Employee or former Eligible Employee under the Regulations save to the extent that the appropriate sum is paid to the Administering Authority for credit to the Pension Fund before the expiry of the relevant period within the meaning of the Regulations;
 - 5.10 not to do any act, omission or thing which would prejudice the status of the Scheme as registered pension scheme within the meaning of the Finance Act 2004;
 - 5.11 to notify the Administering Authority immediately of any matter which may affect, or is likely to affect, its participation in the Scheme and the Pension Fund and give immediate notice to the Administering Authority of any actual or proposed change in its status which may give rise to a termination of the Arrangement, including but not limited to take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.

6. Periodic Valuations

- 6.1. The Administering Authority may periodically obtain from the Fund Actuary a certificate specifying, in the case of the Transferee Admission Body the percentage or amount by which, in the actuary's opinion, the contribution rate at the common rate or any prior individual adjustment within the meaning of the Regulations should be increased or reduced. This is with a view to ensuring that, as far as is reasonably possible the value of assets of the Pension Fund in respect of the Eligible Employees and former Eligible Employees is neither materially more nor materially less than the anticipated liabilities of the Pension Fund in respect of the Eligible Employees and former Eligible Employees at the date the Agreement is due to end.
- 6.2 When this Agreement is terminated, the Authority will obtain:-
- 6.2.1 an actuarial valuation as at the termination date of the liabilities of the Pension Fund in respect of Eligible Employees and former Eligible Employees, of the Transferee Admissions Body;
- 6.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from the Transferee Admission Body and
- 6.3 The Transferee Admission Body shall pay the revised contributions to the Administering Authority.
- 6.4 The Administering Authority and the Transferee Admission Body agree that this Agreement may make such provision relating to the termination of the Agreement or otherwise as the parties consider appropriate. The parties agree that notwithstanding the termination of this Agreement the Transferee Admission Body shall remain liable to meet the funding obligations to the Pension Fund in respect of former Eligible Employees of the Transferee Admission Body and that the provisions of this Clause and, in particular Sub Clauses 6.5 and 6.6 shall apply;
- 6.5 After termination of this Agreement on any subsequent actuarial valuation of the Pension Fund the Administering Authority may obtain;
- 6.5.1 an actuarial valuation of the liabilities of the Pension Fund in respect of former Eligible Employees and
- 6.5.2 a revision of any rates and adjustments certificate showing the revised contributions due from the Transferee Admission Body

6.6 The Transferee Admission Body shall pay the revised contributions due under clause 6.5.2 to the Administering Authority.

7. **Bond or Indemnity**

7.1 The Administering Authority has carried out an assessment, taking account of actuarial advice, of the level of risk arising on the premature termination of the provision of the service or assets by reason of insolvency, winding up or liquidation of the Transferee Admission Body.

7.2 The level of risk identified by this assessment is £ and therefore the Transferee Admission Body is required to enter into an indemnity or bond to meet that level of risk identified.

7.3 The Transferee Admission Body warrants that it has or will have provided by the commencement date specified in Clause 2 a bond or indemnity in an approved form to meet the level of risk identified in clause 7.2.

7.4 The indemnity or bond must be with:-

7.4.1 a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect and carry out contracts of general insurance;

7.4.2 an EEA firm of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or

7.4.3 a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

7.5 Where the bond under Clause 7.2 is not for the full period of this Agreement the Transferee Admission Body shall renew the bond to meet the level of risk exposure which has, prior to the renewal of the bond, been actuarially assessed to the satisfaction of the Administering Authority.

7.6 The sum of the bond shall be reviewed at 12 monthly intervals from the Commencement Date specified in Clause 2 to ensure that it still covers a level of risk exposure which has been actuarially assessed to the satisfaction of the Administering Authority.

7.7 The Transferee Admission Body warrants that it will not make any representations or fail to make any disclosure to do or omit to do any act which would entitle the guarantor specified in the bond to rescind or avoid the bond nor will it do anything or fail to do anything which would give the guarantor the right to bring its obligations under the bond to an end before the expiry date referred to in the bond.

8. **Termination**

8.1 Subject to clauses 8.2 and 8.3, this Agreement will terminate upon either party giving a minimum of three months notice to terminate this agreement to the other;

8.2 This Agreement will automatically terminate on the earlier of:-

8.2.1 the date the Transferee Admission Body ceases to provide the Service; or

8.2.2 the date the Transferee Admission Body ceases to be an admission body for the purposes of the Regulations.

8.3 This Agreement may be terminated with immediate effect by the Administering Authority by notice in writing to the Transferee Admission Body in the event of:-

8.3.1 any breach by the Transferee Admission Body of any of its obligations under this Agreement PROVIDED THAT if the breach is capable of remedy the Administering Authority will first afford to the Transferee Admission Body

the opportunity of remedying that breach within such reasonable period as the Administering Authority may specify;

8.3.2 the insolvency, winding up or liquidation of the Transferee Admission Body ;
and

8.3.3 the failure by the Transferee Admission Body to pay any sum due to the Administering Authority or to the Pension Fund within seven days of the periods specified in clauses 4.4, 4.6 and 4.7 or, in any other case, within 28 days of receipt of a notice from the Administering Authority requiring them to do so PROVIDED THAT the Administering Authority will first afford to the Transferee Admission Body the opportunity of remedying the failure within such reasonable period as the Administering Authority may specify.

8.3.4 the failure by the Transferee Admission Body to ensure the approved bond or indemnity is in place or to renew or adjust the level of bond or indemnity in accordance with Clause 7 .3 or 7.4

8.4 Expiry or termination of this Agreement does not affect the Administering Authority's, Transferee Admission Body's accrued rights and obligations under this Agreement or the Regulations prior to or at the time of expiry or termination.

8.5 For the avoidance of doubt the clauses of this Agreement which expressly or implied have effect after termination and shall continue to be enforceable after termination. In particular Clauses 4 and 6 of this Agreement shall survive its termination.

9. **Notification**

9.1 The Administering Authority undertakes to inform the Secretary of State promptly of the date on which this Agreement takes effect and of the Transferee Admissions Body's name and address where required by the Regulations

10. **Notices**

10.1 Any notice to be given under this Agreement must be in writing and will be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the registered office of the Transferee Admission Body or the Town Hall of the Administering Authority (as the case may be) and will be deemed to have been duly given or made (i) if delivered by hand, upon delivery at the address provided for in this clause unless such delivery occurs on a day which is not a Business Day or after

4pm on a Business Day, in which case it will be deemed to have been given at 9am on the next Business Day; or (ii) if sent by prepaid first class post on the second Business Day after the date of posting.

11. **Public Inspection**

11.1 Subject to the Schedule being removed to protect personal data, as defined in the Data Protection Act 1998, this Agreement shall be made available for public inspection by the Administering Authority.

12. **Disputes**

12.1 Any question which may arise between the parties to this Agreement relating to its construction or to the rights and obligations under the Agreement will be referred in writing to the Secretary of State for determination. Any other dispute which may arise between the Administering Authority and the Transferee Admission Body shall be subject to the provisions of Clause 12

13. **Applicable Law**

13.1 This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

14. **Enforceability of Provisions**

14.1 If any provision of this Agreement is held by any competent authority to be invalid unlawful or unenforceable in whole or in part the validity lawfulness and enforceability of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.

15. **Rights of Third Parties**

15.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it other than the Eligible Employees or former Eligible Employees.

16 **Amendments**

- 16.1 No amendment to this Agreement shall be binding unless in writing and signed by the Director of Finance on behalf of the Administering Authority and by the Authorised representative of the Transferee Admission Body.

17. **Costs**

- 17.1 The Transferee Admission Body shall pay all reasonable costs of the Administering Authority (including actuarial and legal costs) in connection with the preparation of this Agreement.

18. **Execution**

- 18.1 This Agreement may be executed in more than one counterpart, which together constitute one Agreement. When each signatory to this Agreement has executed at least one part of it, it will be as effective as if all the signatories to it had executed all of the counterparts. Each counterpart Agreement will be treated as an original

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written.

**EXECUTED AS A DEED as
THE COMMON SEAL OF ROYAL
BOROUGH OF GREENWICH was
Hereunto affixed in the presence of:-**

Principal Lawyer

EXECUTED AS A DEED)
)
for and on behalf of the **[COMPANY NAME]**)
(Director/Company Secretary)

EXECUTED AS A DEED)
)
for and on behalf of the **[COMPANY NAME]**)
(Director)

EXECUTED AS A DEED)
for and on behalf of the **[COMPANY**)
NAME])
(Director)

SCHEDULE

LIST OF ELIGIBLE EMPLOYEES

Name Date of Birth