

London Borough of Southwark

Authority for the Voluntary Sector
(CVS), Infrastructure and
Volunteering Service Tender

Section 3

Contract Particulars, Conditions of Contract including Schedules

CONTRACT PARTICULARS

Commencement Date:	1 April 2016
Contract Year:	a period of 12 months, commencing on the Commencement Date
Initial Term:	the period commencing on the Commencement Date and ending on the 31 March 2019.
Extension Period:	Not used.
Specific Consents:	Shall include without limitation the following specific consents – NONE.
The following clauses DO NOT APPLY	
Clause 19.2 & Schedule 8	Benchmarking
Clause 10 & Schedule 6	Disaster Recovery
Clause 12 & Schedule 2 Part 2	Service Credits
Schedule 9	Exit
Schedule 11	Commercially Sensitive Information
Schedule 12	Authority and Provider's Premises and Assets
Schedule 14	Work related road risk

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1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 2).

Asbo: an anti-social behaviour order as defined in the Crime and Disorder Act 1998.

Associated Company: any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Authority and the Provider, the first such persons being set out in Schedule 5.

Barred List: the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable Service which are substantially similar to the Service or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure

- (a) any action by the Provider, whether in relation to the Service and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.
- (b) a failure by the Provider to carry out all of the Service for 24 hours and/or a failure by the Provider to carry out any part of the Service for 30 consecutive days or 60 non-consecutive days in any Contract Year (except where relieved of the obligation to do so by express provisions of the agreement).

Change: any change to this agreement including to any of the Service.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 7.

Charges: the charges which shall become due and payable by the Authority to the Provider in respect of the Service in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date: the date included in the Contract Particulars.

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss.

Consistent Failure: shall have the meaning set out in Part 1 of Schedule 2.

Contract Year: as set out in the Contract Particulars.

Convictions: other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Service as identified in Schedule 12.

Authority's Premises: the premises identified in Schedule 12 and which are to be made available for use by the Provider for the provision of the Service on the terms set out in this agreement.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject: shall have the same meaning as set out in the Data Protection Act 1998.

Default Notice: is defined in clause 5.2.

Disclosure and Barring Scheme: the disclosure and barring scheme operated by the Disclosure and Barring Service.

Dispute Resolution Procedure: the procedure set out in clause 20.

Equalities Legislation: all legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any preceding, successor or amending Legislation concerning the same.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

General Change in Law: any change in law which impacts on the performance of the Service and comes into force after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which affects or relates to the supply of Service to another customer of the Provider that are the same or similar to the Service.

Information: has the meaning given under section 84 of FOIA.

Information Legislation: the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004, the Aarhus Convention and Audit Commission Act 1998 and all applicable laws and regulations relating to Requests for Information and any subordinate legislation 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 legislation.

Initial Term: the period set out in the Contract Particulars.

Intellectual Property Rights or IPR : any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings,

logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 13.

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 17 and Schedule 5 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all specific consents set out in the Contract Particulars.

Payment Plan: the plan for payment of the Charges as set out in Schedule 4.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Process: has the meaning given to it under the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing and "Processing" and "Processed" shall be construed accordingly.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Provider Party: the Provider's agents and contractors, including each Sub-Contractor.

Provider's Personnel: all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Service from time to time.

Provider's Tender: the tender submitted by the Provider and other associated documentation set out in Schedule 3.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Authority in accordance with clause 30.1(a).

Replacement Service: any Service that are identical or substantially similar to any of the Service and which the Authority receives in substitution for any of the Service following the termination or partial termination or expiry of this agreement, whether those Service are provided by the Authority internally or by any Replacement Provider.

Replacement Provider: any third party supplier of Replacement Service appointed by the Authority from time to time (or where the Authority is providing Replacement Service for its own account, the Authority).

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Information Legislation.

Service Credits: the sums attributable to a Service Failure as specified in Part 2 of Schedule 2.

Service Failure: a failure by the Provider to provide the Service in accordance with any individual Service Level measured on a monthly basis.

Service Levels: the service levels to which the Service are to be provided, as set out in Schedule 2.

Service: the Service to be delivered by or on behalf of the Provider under this agreement, as more particularly described in Schedule 1 (Specification).

Specific Change in Law: a change in law which impacts on the performance of the Service which comes into force after the Commencement Date that relates specifically to the business of the Authority and would not affect the supply of Service to another customer of the Provider that are the same or similar to the Service.

Sub-Contract: any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Service from that third party.

Sub-Contractor: the contractors or Providers that enter into a Sub-Contract with the Provider.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

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

Termination Payment Default: is defined in Schedule 4.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or other regulations implementing the Acquired Rights Directive.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 No review, comment or approval by the Authority under the provisions of the agreement shall operate to exclude or limit the Provider's obligations or liabilities under the agreement or the Authority's rights under the agreement.
- 1.14 Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to the maximum period set out in the Contract

Particulars (Extension Period). If the Authority wishes to extend this agreement, it shall give the Provider at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.

- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

4. CONSENTS, BONDS, GUARANTEES, PROVIDER'S WARRANTY AND DUE DILIGENCE

- 4.1 The Provider shall ensure that all Necessary Consents are in place to provide the Service and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 The Provider acknowledges and confirms that:
 - (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Service and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Service in accordance with the terms of this agreement;
 - (b) it has received all information requested by it from the Authority pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Service in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.3(b);
 - (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.3 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.4 The Provider:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Service or meet any Service Levels.
- (c) warrants and represents to and undertakes with the Authority in the terms set out in the conditions of tendering.

4.5 The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.6 As soon as reasonably practical after a request by the Authority, and in any event not later than fifteen (15) Working Days after such request or prior to the Commencement Date (whichever shall be the earliest), the Provider shall (as applicable):

- (a) procure that the bank or insurance company which has provided the Provider's bond confirmation will execute and deliver to the Authority the performance bond in the form included in the tender documents;
- (b) procure that the Provider's holding company (as described in the Companies Act 2006) which has executed the guarantee undertaking will execute and deliver to the Authority the parent company guarantee in the form included in the tender documents; and/or
- (c) deliver to the Authority any collateral warranties required from any Sub-Contractor in the form included in the tender documents.

4.7 The Authority shall be entitled to pay 20% less than any payment due to the Provider under clause 11 until the Provider has complied with clause 4.7.

- 4.8 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE SERVICE

5. SUPPLY OF SERVICE

- 5.1 The Provider shall provide the Service to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**) as detailed in Schedule 2 Part 3.
- 5.3 For the avoidance of doubt this agreement shall not be exclusive. The Authority shall be entitled at any time from the Commencement Date and thereafter throughout the Term to carry out any part of the Service or Service of a similar nature itself or to procure a third party to do so.

6. SERVICE LEVELS

- 6.1 Where any Service is stated in Schedule 2 to be subject to a specific Service Level, the Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 As existing Service are varied and new Service are added, Service Levels for the same will be determined and included within Schedule 2.
- 6.3 The Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 17.
- 6.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Authority may have:-
- (a) where this amounts to a Consistent Failure, the Authority may serve a suspension notice upon the Provider in accordance with the provisions of clause 30A; and
 - (b) the provisions of clause 12 shall apply.

7. SERVICE STANDARDS

7.1 Without prejudice to clause 6, the Provider shall provide the Service, or procure that they are provided:

- (a) in accordance with this agreement including the Specification, any method statements and programme;
- (b) in a good, safe and competent manner and free from dishonesty and corruption;
- (c) with reasonable skill and care and in accordance with the Best Industry Practice applicable from time to time;
- (d) in a manner which is not, and is not likely to become injurious to health or detrimental to the environment or to any property in the area where the Service are being performed;
- (e) in a manner which shall promote and enhance the image and reputation of the Authority;
- (f) in all respects in accordance with all the Authority's relevant rules, codes, policies, procedures and standards notified from time to time during the Term by the Authority to the Provider, including in particular the Authority's financial regulations and standing orders;
- (g) in accordance with all relevant Acts of Parliament, statutory regulations, orders and codes of practice; and
- (h) in a spirit of co-operation with the Authority and its other contractors to deliver a high quality service.

7.2 Without limiting the general obligation set out in clause 7.1, the Provider shall (and shall procure that the Provider's Personnel shall):

- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
- (b) not unlawfully discriminate within the meaning and scope of any Equalities Legislation and will ensure that all Provider's Personnel and Sub-Contractors do not unlawfully discriminate, and will comply with all relevant codes of practice issued by the Equalities and Human Rights Commission or any comparable body and so far as practicable operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice; and

- (c) comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations) and shall ensure that it will not during the Term be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the Provider in breach of the Blacklists Regulations.

8. HEALTH AND SAFETY

- 8.1 The Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement. The Authority shall promptly notify the Provider of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Provider in the performance of the agreement.
- 8.2 While on the Authority's Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 8.3 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons in the performance of the agreement.
- 8.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

9. PREMISES AND ASSETS

- 9.1 The Authority shall, subject to clause 8 and clause 14 and the provisions of any lease or licence set out in Schedule 12, provide the Provider (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Provider reasonably requires for the purposes only of properly providing the Service.

- 9.2 The Authority shall provide the Provider with such accommodation and facilities in the Authority's Premises as is specified in Schedule 12 or which is otherwise agreed by the parties from time to time.
- 9.3 Subject to the requirements of clause 34 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Provider with such access as the Provider reasonably requires to the Authority's Premises to remove any of the Provider's equipment. All such equipment shall be promptly removed by the Provider.
- 9.4 The Provider shall ensure that:
- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Provider's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Service, do so; and
 - (c) any Authority Assets used by the Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative.
- 9.5 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Provider or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Provider as a debt.
- 9.6 The Provider shall notify the Authority immediately on becoming aware of any damage caused by the Provider, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Service in the course of providing the Service.
- 9.7 Provider's Premises:
- (a) The Provider shall ensure that it has access to sufficient safe, secure and suitable premises throughout the Term to provide the Service to the service standards. The Provider shall ensure that the Provider's premises are at all times suitable for their intended purpose, comply

with all relevant health and safety requirements, including the installation of sufficient equipment, layout and provisions required under the Equalities Legislation.

- (b) The Provider shall allow the Authority access upon reasonable notice to inspect the Provider's premises including the inspection of any security, fire protection and disabled access systems.

10. DISASTER RECOVERY - NOT USED

CHARGES AND PAYMENT

11. PAYMENT

- 11.1 In consideration of the provision of the Service by the Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Provider in accordance with the Payment Plan.
- 11.2 The Provider shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Authority's Authorised Representative and shall be in a format agreed with the Authority, identifying the amount payable. Any such invoices shall take into account any Service Credits which have been accrued in the previous period, identify any additions or deductions and the Service provided.
- 11.3 The Authority shall pay the Charges which have become payable in accordance with the Payment Plan within thirty (30) days of receipt of an undisputed invoice from the Provider.
- 11.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 11.5 Subject to clause 11.4, interest may be payable on the late payment of any undisputed Charges properly invoiced under this agreement at four (4)% above the base rate of the National Westminster Bank plc in force at that time from the day following the end of the specified payment period until payment

is made. The Provider shall not suspend the supply of the Service if any payment is overdue.

- 11.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this agreement.
- 11.7 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for twelve (12) years from the end of the Contract Year to which the records relate.
- 11.8 Where the Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.9 The Authority may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under this agreement, the Admission Agreement, or any other agreement pursuant to which the Provider or any Associated Company of the Provider provides goods or Service to the Authority.
- 11.10 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

12. SERVICE CREDITS – NOT USED

STAFF

13. KEY PERSONNEL

- 13.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Service and who shall be retained on the implementation and/or operation of the Service for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 13.2 The Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Service in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Provider; or
 - (e) the Provider obtains the prior written consent of the Authority.
- 13.3 The Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 5 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 13.4 The Provider shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 30 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider or the Authority becoming aware of the role becoming vacant.
- 13.5 The Authority may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be

unsatisfactory for any reason which has a material impact on such person's responsibilities.

- 13.6 If the Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Provider.

14. OTHER PERSONNEL USED TO PROVIDE THE SERVICE

- 14.1 At all times, the Provider shall ensure that:
- (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Service in respect of which they are engaged;
 - (b) there is an adequate number of Provider's Personnel to provide the Service properly;
 - (c) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Service; and
 - (d) all of the Provider's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
- 14.2 The Authority may refuse to grant access to, and remove from the Authority's Premises, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Provider shall replace any of the Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Service.
- 14.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Service and, on request, provide reasonable information to the Authority on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or

management of the Service is at least as good at the prevailing industry norm for similar Service, locations and environments.

- 14.6 The Provider confirms that their Authorised Representative is authorised as a person to whom the Provider's staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of the Provider's Personnel making a protected disclosure (as defined by the said Act) shall not be subject to any detriment. The Provider further declares that any provision in any agreement purporting to preclude a member of its staff from making a protected disclosure is void.

14A LONDON LIVING WAGE

- 14A.1 For the purposes of this clause:

Relevant Staff: shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Service for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.

Equivalent Hourly Wage: shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act).

the London Living Wage: shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure.

- 14A.2 The Provider shall:

- (a) ensure that all Relevant Staff employed or engaged by the Provider are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;

- (c) provide to the Authority such information concerning the London Living Wage and the performance of its obligations under this clause 14A as the Authority may reasonably require and within the deadlines it reasonably imposes;
- (d) co-operate and provide all reasonable assistance to the Authority in monitoring the effects of the London Living Wage including without limitation assisting the Authority in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

14A.3 For the avoidance of doubt, any breach by the Provider of this clause 14A will be a breach of a material obligation in relation to which the Authority is entitled to rely upon its termination rights under clause 30.1 of this agreement.

15. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS – DISCLOSURE AND BARRING

- 15.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 15.2 The Provider shall procure that prior to carrying out any Regulated Activity any Provider's Personnel or potential Personnel will be questioned as to whether he or she has any Convictions or Asbos and will be subject to a valid enhanced disclosure check under taken through the Disclosure and Barring Service ("DBS") including a check against the adult Barred List or the children's Barred List, as appropriate.
- 15.3 to the extent permitted by legislation, a copy of the results of the DBS checks shall be notified to the Authority.
- 15.4 The Provider shall procure that:
 - (a) no person who appears on a Barred List following the results of a DBS check shall be employed or engaged in the performance of Regulated Activity; and
 - (b) it shall and shall procure that all sub-contractors shall comply with all reporting requirements to the DBS.
 - (c) no person who discloses any Convictions, or Asbos, or who is found to have any Convictions following the results of a DBS check, is employed or engaged in carrying out any part of any Regulated Activity without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

- (d) In so far as permitted by law, the Provider shall procure that the Authority is kept advised at all times of any Provider's Personnel involved in the provision of the Regulated Activity who:
 - (i) is engaged in the carrying out of any Regulated Activity, and
 - (ii) subsequent to his/her commencement of employment, receives a Conviction or Asbo which becomes known to the Provider or whose previous Convictions or Asbos become known to the Provider, or
 - (iii) in respect of which information is referred to the DBS by the Provider pursuant to the Disclosure and Barring Scheme, or
 - (iv) is placed on a Barred List pursuant to the Disclosure and Barring Scheme which become known to the Provider.
- (e) In the event that any Provider's Personnel involved in the provision of a Regulated Activity is added to a Barred List, the Provider shall procure that such Provider's Personnel shall cease to be engaged in the Regulated Activity.
- (f) Save to the extent prescribed otherwise pursuant to the Disclosure and Barring Scheme, this clause 15 shall not apply to those individuals who shall be required by the Provider to provide emergency reactive Service. In the case of such individuals, the Provider shall ensure that such individuals are accompanied at all times by Provider's Personnel who have been properly employed or engaged in accordance with clause 15.

15.5 The Provider shall also comply with the Authority's Safeguarding policies attached in Schedule 13.

16. TUPE

The parties agree that the provisions of Schedule 10 shall apply generally and specifically to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

- 17.1 The Provider shall provide the management reports in the form and at the intervals set out in Schedule 5.
- 17.2 The Provider shall implement such systems as shall be necessary to eliminate, so far as practicable, and protect the Authority from fraud, corruption, error and mistake by the Provider or its staff. The Provider shall

notify the Authority immediately if fraud, corruption or substantial errors are suspected, and shall permit the Authority to audit such systems and shall provide the Authority with all necessary access and facilities for that purpose.

- 17.3 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Provider shall, at each meeting, present its previously circulated Management Reports and Financial Reports (if required) in the format set out in that Schedule.

18. MONITORING

- 18.1 The Authority may monitor the performance of the Service by the Provider.
- 18.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Authority.

19. CHANGE CONTROL, BENCHMARKING , CONTINUOUS IMPROVEMENT AND CHANGE IN THE LAW

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 19.2 NOT USED.
- 19.3 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Service. As part of this obligation the Provider shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Service;
 - (b) new or potential improvements to the Service including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support Service in relation to the Service;
 - (c) new or potential improvements to the interfaces or integration of the Service with other Service provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Service to be delivered at lower costs and/or at greater benefits to the Authority.

- 19.4 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 19.3 shall be addressed by the parties using the Change Control Procedure.
- 19.5 The Provider is neither relieved of its obligations to supply the Service in accordance with the terms of this agreement nor entitled to an increase in the Charges as the result of a General Change in Law or a Specific Change in Law where the effect of that Specific Change in Law on the Service is known at the Commencement Date.
- 19.6 If a Specific Change in Law occurs or will occur during the Term (other than those where the effect on the Service is known at the Commencement Date) the Provider shall notify the Authority of the likely effects of that change, including:
- (a) whether any Change is required to the Service, the Charges or this agreement; and
 - (b) whether any relief from compliance with the Provider's obligations is required, including any obligation to meet the Service Levels at any time.
- 19.7 As soon as practicable after any notification in accordance with clause 19.6 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Specific Change in Law including:
- (a) providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (b) demonstrating that a foreseeable Specific Change, had been taken into account by the Provider before it occurred;
 - (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Service; and
 - (d) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 19.3: Continuous Improvement, has been taken into account in amending the Charges.
- 19.8 Any increase in the Charges or relief from the Provider's obligations agreed by the parties pursuant to clause 19.6 and 19.7 shall be implemented in accordance with the Change Control Procedure.

20. DISPUTE RESOLUTION

- 20.1 Either party may call an extraordinary meeting of the parties by service of not less than five (5 days') written notice and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this clause.
- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the relevant Strategic Director of the Authority and a senior partner or director of the Provider who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties will enter into an alternative Dispute Resolution Procedure with the assistance of a mediator appointed by the Centre for Dispute Resolution.
- 20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally unless the mediator determines otherwise.

- 20.7 While the Dispute Resolution Procedure referred to in this clause 20 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

21. SUB-CONTRACTING AND ASSIGNMENT

- 21.1 Subject to clause 21.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority.
- 21.2 In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
 - (d) Provide, at no charge to the Authority, of any collateral warranty required by the Authority in the form included in the tender documents.
- 21.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

LIABILITY

22. INDEMNITIES

The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its representatives (excluding any Provider's Personnel).

23. LIMITATION OF LIABILITY

23.1 Subject to clause 23.5 and clause 23.6, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

23.3 Subject to clause 23.6, the Authority's total aggregate liability:

- (a) in respect of the indemnities given by the Authority in Schedule 10 is unlimited; and
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed £1m in each Contract Year of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

23.4 Subject to clause 23.5 and clause 23.6, the Provider's total aggregate liability:

- (a) in respect of the indemnities given by the Provider in clause 29.2 and Schedule 10 is unlimited;

- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed £10m in each Contract Year of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

23.5 Any clause limiting the Provider's liability does not apply in relation to the breach of clause 25 Information Requests, clauses 26 Data Protection and clause 27 Confidentiality.

23.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

24. **INSURANCE**

24.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Service hold and maintain appropriate cover.

(the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

- 24.2 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.
- 24.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

25. INFORMATION REQUESTS

- 25.1 The Provider acknowledges that the Authority is subject to the requirements of the Information Legislation and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with its information disclosure obligations.
- 25.2 The Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer all Requests for Information that it receives to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in the Information Legislation.
- 25.3 The Authority shall be responsible for determining at its absolute discretion, and notwithstanding any other provision in this agreement or any other agreement, whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the Information Legislation; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 25.5 The Provider acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the Information Legislation to disclose Information concerning the Provider or the Service:
 - (a) In certain circumstances without consulting with the Provider; or
 - (b) following consultation with the Provider and having taken their views into account,

provided always that where clause 25.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 25.6 The Provider shall ensure that all Information acquired or produced in the course of the agreement or relating to the agreement is safely retained and available for disclosure during the Term and for six (6) years afterwards and shall permit the Authority, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Authority may recover possession of such materials and the Provider shall permit the Authority or its approved agents to enter for those purposes any premises of the Provider where any such materials may be held.
- 25.7 The Provider acknowledges that any lists or Schedules provided by it outlining Commercially Sensitive Information is of indicative value only and that the Authority may nevertheless be obliged to disclose it in accordance with clause 25.5.
- 25.8 Where the Authority requires any Information from the Provider relating to any potential or actual claim by a third party against the Authority, the Provider shall ensure that any Information requested by the Authority is supplied to the Authority in sufficient time to enable the Authority to comply with any relevant procedural rules.

26. DATA PROTECTION

- 26.1 The Provider shall (and shall procure that any of its Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the agreement,
- 26.2 Notwithstanding the general obligation in clause 26.1, where the Provider is processing Personal Data as a Data Processor for the Authority, the Provider shall:
- (a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by the Authority to the Provider during the Term);
 - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Service or as is required by law or any regulatory body;
 - (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and/or reputational damage which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (d) take all necessary steps to ensure the reliability of any Provider's Personnel who have access to the Personal Data;
 - (e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors for the provision of the Service;
 - (f) ensure that all of the Provider's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 26.2;
 - (g) ensure that none of the Provider's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
 - (h) notify the Authority (within two Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or

- (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- (i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;
- (j) permit the Authority or their Authorised Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Provider's Data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider is in full compliance with its obligations under this agreement;
- (k) provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Authority);
- (l) not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Provider (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area the Provider shall submit a request under the Change Control Procedure in Schedule 7;
- (m) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 26.2; and
- (n) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

26.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

27. CONFIDENTIALITY

27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives and Personnel from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the Information Legislation;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
- (e) to enable a determination to be made under clause 20;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government, including the District Auditor;
- (h) by the Authority in accordance with any Authority or Government initiative or policy on open data, transparency and public accountability, including publishing a copy of the contract (redacting any Commercially Sensitive Information) following execution; and
- (i) by the Authority relating to this agreement and in respect of which the Provider has given its prior written consent to disclosure.

27.3 The Provider shall keep proper security arrangements against the destruction, loss or unauthorised use or alteration of Information. Such arrangements shall ensure that access to Information is only obtained by such officers of the Authority as are specifically designated by the Authority. The Provider shall restore at its own expense Information which is destroyed or in respect of which an unauthorised alteration is made.

27.4 On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

28. AUDIT, ENQUIRY OR INVESTIGATION

28.1 During the Term and for a period of six (6) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Service at the level of detail agreed in Schedule 4 (Payment), or as otherwise required by the Authority;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Provider's compliance with the Information Legislation, in accordance with clause 26 (Data Protection) and clause 25 (Information Requests) and any other legislation applicable to the Service;
- (d) to review any records created during the provision of the Service;
- (e) to review any books of account kept by the Provider in connection with the provision of the Service;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 and/or sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

28.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.

28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Service.

28.4 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;

- (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Service; and/or
 - (c) access to the Provider's Personnel.
- 28.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
 - (a) the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
 - (c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 days.
- 28.8 The Provider shall at all times during the Term and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or relates to the Service. Such enquiry or investigation may include, inter alia:-
 - (a) the Authority's Cabinet and the Authority's Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;

- (b) an investigation by the Authority into a complaint about the acts or omissions of the Provider, the Provider's Personnel or agents made under the Equalities Legislation;
- (c) the Authority's auditors (whether internal or external);
- (d) the Local Government Ombudsman.

28.9 Such co-operation shall include (but not be limited to the following):-

- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
- (b) providing access to the Provider's premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Provider in the performance of the Service;
- (c) providing access to the Provider's Personnel (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- (d) maintaining the confidentiality of the enquiry or investigation when required to do so;
- (e) making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Authority's standing orders and financial regulations and statutory provisions relating to the agreement are being complied with.

29. INTELLECTUAL PROPERTY

29.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider;

- (a) in the course of performing the Service; or
- (b) exclusively for the purpose of performing the Service,

shall vest in the Authority on creation.

29.2 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by

reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Service, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

29A COMPLAINTS AND CORRESPONDENCE

29A.1 The Provider shall maintain a register of any complaints and adverse comments received by the Provider about the performance of the Service.

29A.2 The Provider shall provide to the Authority's Authorised Representative copies of all complaints and adverse comments relating to the performance of the Service by the Provider and provide such statistical information as the Authority may from time to time reasonably require. Such information shall be provided within five (5) Working Days of receipt of the complaint or adverse comment.

29A.3 The Provider shall co-operate with the Authority in connection with any investigations undertaken by the Authority or a third party acting on its behalf.

TERMINATION AND SUSPENSION

30. TERMINATION FOR BREACH

30.1 The Authority may terminate this agreement in whole or part with immediate effect, or by such other period as the Authority determines, by the service of written notice on the Provider in the following circumstances:

- (a) if the Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 30.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if, in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the ability of the Provider to supply the Service under this agreement. This may be evidenced by, inter alia, a proposed compromise with creditors or a proposed voluntary arrangement within the Insolvency Act 1986, the consideration by shareholders or presentation of a winding up

petition or the application for the appointment of a provisional liquidator;

- (e) if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- (f) if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (g) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Provider to which the Authority reasonably objects.

30.2 The Authority may terminate this agreement in accordance with the provisions of clause 32 (Force Majeure) and 33.6 (Prevention of Bribery).

30.3 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

30.4 The Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

30A SUSPENSION

30A.1 Without prejudice to its right to terminate this agreement under clause 30, upon the occurrence of one or more of the events listed in clause 30.1, the Authority may do any one or more of the following:

30A.2 Issue a suspension notice to the Provider stating that the Authority will provide or procure the provision of the whole or any part of the Service until such time as the Provider's Authorised Representative shall demonstrate to the reasonable satisfaction of the Authority's Authorised Representative that the Provider will be able to resume performance of such part of the Service to the Service Standards whereupon a resumption notice will be issued. During such period, the Provider's performance of the whole or any part of the Service and the Authority's payment to the Provider for such whole or part of the Service shall be suspended;

30A.3 The Authority may charge the Provider any costs reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of any part of the Service by the Authority or a third party in the circumstances set out in this clause 30A, to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Service;

30A.4 Suspend payment to the Provider of any payments due under this agreement, retain any amount due to the Provider from the Authority or make such deduction from any payment to be made to the Provider under this agreement as may reasonably reflect sums paid or sums which would otherwise be payable in respect of such of the Service to which the Provider's breach relates.

31. TERMINATION ON NOTICE

The Authority may terminate this agreement at any by giving three (3) months written notice to the Provider.

32. FORCE MAJEURE

32.1 Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

32.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 32.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Service and which continues for more than sixty (60) Working Days.

33. PREVENTION OF BRIBERY

- 33.1 The Provider:
- (a) shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.
- 33.2 The Provider shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any

relevant jurisdiction for the purpose of compliance with the Bribery Act;

- (b) within fifteen (15) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 33 by the Provider and all persons associated with it or other persons who are supplying goods or Service in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

33.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.

33.4 If any breach of clause 33.1 is suspected or known, the Provider must notify the Authority immediately.

33.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 33.1, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for six (6) years following the expiry or termination of this agreement.

33.6 The Authority may terminate this agreement by written notice with immediate effect (or such other period as the Authority determines) if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

- 33.7 Any notice of termination under clause 33.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which this agreement will terminate.
- 33.8 Despite clause 20 (Dispute resolution), any dispute relating to:
- (a) the interpretation of clause 33; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

34. CONSEQUENCES OF TERMINATION

- 34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason:
- (a) the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Authority to ensure an orderly migration of the Service to the Authority or, at the Authority's request, a Replacement Provider;
 - (b) the Authority shall have the right to require the Provider to provide free of charge for three (3) months following the date of termination of the agreement such advice, assistance and co-operation as the Authority may reasonably require to enable the Authority to provide or procure the provision of the Service or part of them;
 - (c) the Authority shall have the right to require the Provider to use its best endeavours to assign to the Authority or to any Replacement Provider any contract to which the Provider is a party and which relates to the Service or part of them.
- 34.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Service), shall be

delivered to the Authority forthwith and the Provider's Authorised Representative shall certify full compliance with this clause.

- 34.3 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit, Enquiry or Investigation), clause 30 (Termination for Breach), clause 35 (non-solicitation) this clause 34 (Consequences of termination) and any other clause which by implication should continue, shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

35. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement[, and for a period of one year thereafter,] solicit the Service of any senior staff of the other party who have been engaged in the provision of the Service or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open public recruitment and not specifically targeted at such staff of the other party.

36. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Provider in respect of the Service or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Service in accordance with the provisions of this agreement.

37. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39. PARTNERSHIP OR AGENCY

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

40. THIRD PARTY RIGHTS

- 40.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

41. PUBLICITY

The Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority[, which shall not be unreasonably withheld or delayed.

42. NOTICES

- 42.1 Any notice required to be given to the Authority under this agreement shall be in writing and may be served:

- by delivering the notice by hand to the Authority's Director of Communities at 160 Tooley Street, London, SE1 2QH in which case the notice shall be deemed to have been served at the time it is so delivered provided a receipt is obtained; or
- by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Authority and marked clearly for the attention of the Director of Communities at London Borough of Southwark, PO Box 64529, London, SE1P 5LX, in which case the notice shall be deemed

to have been duly served when a signature acknowledging its receipt has been obtained;

42.2 Any notice required to be given to the Provider under this agreement shall be in writing and may be served:

- by delivering the notice by hand to the Provider at the Provider's last known place or abode or business or, if the Provider is a company, at the registered office of the company in which case the notice shall be deemed to have been duly served at the time it is so delivered; or
- by posting the notice in a pre-paid envelope sent recorded delivery addressed to the Provider at the Provider's last known place of abode or business or, if the Provider is a company, at the registered office of the company in which case the notice shall be deemed to have been duly served the day following posting.

43. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

44. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

45. GOVERNING LAW AND JURISDICTION

45.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

45.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

Schedule 1 - Specification

Attached as a separate document under Section 4 of the ITT documents.

Schedule 2 - Service levels

Part 1. Service Levels

1. THE SERVICE LEVELS

Service	Method of calculating service delivery	Service level
CVS, infrastructure and volunteering service – contract monitoring and review	Performance information provided beforehand and quarterly monitoring meetings take place within 4 weeks of end of each quarter	100%
CVS, infrastructure and volunteering service – customer satisfaction	Annual member's survey shows % satisfaction with provider	80%
CVS, infrastructure and volunteering service - volunteering	Volunteering conversion rate % (percentage of applicants successfully going on to volunteer roles)	30%
CVS, infrastructure and volunteering service – training	% of participants saying they felt more confident in the subject matter after attending training than before	90%

2. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean:

- (a) a failure rate of at least 15% in meeting 3 or more Service Levels in a rolling 6 month period.

AND/OR

- (b) the Authority serving 2 Default Notices in a rolling 18 month period.

Part 2. Service credits – not used

Part 3. Default and Remediation Notice Procedure

- 1.1. A Default Notice (1) issued in accordance with clause 5.2 of this agreement shall be specific to a task or group of tasks, or a breach of this agreement and shall specify the failure or defect in performance or breach of agreement, the remedy required and the time within which it shall be carried out.
- 1.2. The Provider shall notify the Authority's Authorised Representative when it considers it has complied with the Default Notice (1).
- 1.3. A Default Notice (2) may be issued by the Authority where the Provider has failed to comply with a Default Notice (1).
- 1.4. The Authority shall be entitled to levy a £25.00 administration charge for each Default Notice (1) and (2) issued.
- 1.5. A Remediation Notice may be issued by the Authority in accordance with clause 30.1(a) of this agreement where the Provider is in breach of any material obligation and shall specify the failure or defect in performance, the remedy required and the time within which it shall be carried out.
- 1.6. If the Provider on receipt of a Default Notice (1), Default Notice (2) or Remediation Notice from the Authority disagrees with the contents of the notice the Provider will within 5 Working Days of receipt of the same advise the Authority in writing of this fact by the issue of a counter notice;
- 1.7. In the event the Authority and the Provider fail to agree the contents of the issued notice within 5 Working Days of issue of the counter notice, the matter will be referred by either party to the dispute resolution procedure detailed in Clause 20.

Schedule 3 - Provider's Tender

[Service Provider's Tender to be included at award]

Schedule 4 - Charges and payment

1. CHARGES BASED ON A FIXED PRICE

Service	Quarterly cost (£)
CVS, infrastructure and volunteering service	
TOTAL	

2. PAYMENT PLAN

The Provider will invoice the Authority quarterly in advance. Each invoice will be paid on the first day of each quarter.

3. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of the quarterly payment amount has been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.

4. ANNUAL INDEXATION

Charges shall be fixed for the Term.

Schedule 5 - Contract management

1. AUTHORISED REPRESENTATIVES

- 1.1 The Authority's initial Authorised Representative: Angus Lyon, Commissioning Officer
- 1.2 The Provider's initial Authorised Representative: [*To be included at award*]

2. KEY PERSONNEL

Commissioning Officers within the communities' team.

3. MEETINGS

- 3.1 The Provider shall comply with its obligations under paragraph 4.4 of the Specification.

4. REPORTS

- 4.1 The Provider shall comply with its obligations under paragraph 4.5 of the Specification.

Schedule 6 - Disaster recovery – not used

Schedule 7 - Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Provider sees a need to change this agreement, the Authority may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Provider.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The

Authority shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Provider.

2.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or
 - (iii) notify the Provider of the rejection of the Change Control Note.

- 2.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this agreement.

Schedule 8 - Benchmarking – not used

Schedule 9 - Exit – not used

Schedule 10 - TUPE

Part 1. Transfer of employees

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Directive: the EC Authority Directive 2001/23 as amended.

Effective Date: the date(s) on which the Service (or any part of the Service) transfer from the Third Party Employer to the Provider or Sub-Contractor, 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 Provider or Sub-Contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims, without limitation, for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine,

loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Provider by virtue of the application of TUPE.

Replacement Provider: any third party supplier of Service which are identical or substantially similar to the Service appointed by the Authority following the termination or expiry of this agreement.

Provider's Final Staff List: the list of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Service or any part of the Service at the Service Transfer Date.

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Service or any part of the Service at the date of the preparation of the list.

Provider's Pension Scheme: the pension scheme(s) provided by the Provider or Sub-contractor in respect of any person engaged or employed by the Provider or any Sub-contractor in the provision of the Service.

Service Transfer Date: the date on which the Service (or any part of the Service), transfer from the Provider or Sub-contractor to the Authority or any Replacement Provider.

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Service.

Third Party Agreement: an agreement between the Authority and a Third Party Employer

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of TUPE as listed in Part 2 of this Schedule 10.

Third Party Employer: a Provider engaged by the Authority to provide all or some of the Service to the Authority and whose employees will transfer to the Provider on the Effective Date.

2. TRANSFER OF EMPLOYEES TO THE PROVIDER

- 2.1 The Authority and the Provider agree that where the identity of the provider of any of the Service changes, this shall constitute a Relevant Transfer and the contracts of employment (and any collective agreement) of any Third Party Employees shall transfer to the Provider or Sub-Contractor. On the occasion of each Relevant Transfer the Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE and the Directive. The first Relevant Transfer shall occur on the Effective Date. The Authority shall use its reasonable endeavours to procure that any Third Party Employer shall comply with their obligations under TUPE.
- 2.2 Not used.
- 2.3 Not used.
- 2.4 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
 - (b) any of the employees informing the Authority and any Third Party Employer they object to being employed by the Provider or Sub-Contractor; and
 - (c) any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.
- 2.5 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Service, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.6 The Provider shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Third Party

Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

- 2.7 The Provider shall, and shall procure that any Sub-Contractor shall, in accordance with TUPE recognise the trade unions representing the Relevant Employees after the transfer to the same extent as they were recognised by the Authority, or Third Party Employer before the Effective Date.
- 2.8 Not used.
- 2.9 To the extent permitted by legislation from time to time in force and by any Third Party Agreement, the Authority agrees to assign on an equitable basis to the Provider the benefit of indemnities given by the Third Party Employer under the relevant Third Party Agreement.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This agreement envisages that subsequent to the Commencement Date, the identity of the provider of the Service (or any part of the Service) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Service in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Service, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Provider shall notify the Authority of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Provider:

- (a) the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees,
 - (b) Pay slip data for the most recent month,
 - (c) cumulative pay for tax and pension purposes,
 - (d) cumulative tax paid,
 - (e) tax code,
 - (f) voluntary deductions from pay,
 - (g) bank or building society account details for payroll purposes.
- 3.4 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any Service that are substantially the same type of Service as (or any part of) the Service.
- 3.5 The Provider warrants to the Authority and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Service other than those included on the Provider's Final Staff List.
- 3.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them. This will include any changes to the make up and number of employees on the Provider's Provisional Staff List. In relation to employees already listed on the Provider's Provisional Staff List changes to be notified will include:
- (a) Any changes to make up and number of employees,
 - (b) Changes to terms and conditions of employment ,
 - (c) Increasing the proportion of working time spent on the Service,

- (d) Introduction of any new contractual or customary practice concerning the making of a lump sum payment on termination of employment,
- (e) Termination of employment.

3.8 The Provider shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Provider against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Service; or
- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.10 If any person claims or it is determined that his contract of employment has been transferred from the Provider or any Sub-Contractor to the Authority or the Replacement Provider pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, the Authority or the Replacement Provider will, within seven (7) days of becoming aware of that fact, give notice in writing to the Provider. The Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty-one (21) days of the notification by the Authority or the Replacement Contractor. If such offer is accepted, the Authority or the Replacement Contractor shall immediately release the person from his employment. If after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Employer or the Replacement Provider may, within seven (7) days, give notice to terminate the employment of such person. Subject to the Authority or the Replacement Provider acting in this way or in such other way as may be agreed between the Provider and the Authority or the Replacement Provider, the Provider will indemnify the Authority against all Employment Liabilities arising out of such termination. If such person is neither reemployed by the

Provider or any Sub-Contractor within the time scales set out in this clause such person will be treated as a Relevant Employee.

- 3.11 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.10, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.12 Despite paragraph 3.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 3.13 In the event of a Subsequent Transfer to which TUPE does not apply, the following provisions shall apply:
- (a) The Authority or the Replacement Provider can, at its discretion, make an offer, in writing of employment under a new contract of employment to take effect at the earliest reasonable opportunity to any of the employees listed on the Provider's Provisional Staff List or to any Provider's or Sub-Contractor's Personnel assigned to the Service,
 - (b) When the offer has been made by the Authority or the Replacement Provider and accepted by any employee or worker, the Provider shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave his employment, as soon as practicable depending on the business needs of the Provider which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.
 - (c) If the employee does not accept an offer of employment made by the Authority or the Replacement Provider, the employee shall remain employed by the Provider (or Sub-Contractor as the case may be) and liability for all Employment Liabilities in relation to that employee shall remain with the Provider or the relevant Sub-Contractor,
 - (d) If the Authority or the Replacement Provider does not make an offer to an employee on the Provider's Provisional Staff List or any Provider's Personnel, then those employees and all Employment Liabilities in relation to those employees remain with the Provider.

- 3.14 The Authority regards compliance with this clause as fundamental to the agreement. In particular, failure to comply with clause 3.2 and clause 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this clause 3.14 shall not exceed an amount equivalent to the Charges that would be payable in the [three] month period following the Service Provider's failure to comply with clause 3.2 or clause 3.3, as the case may be.

4. PENSIONS

- 4.1 The Provider shall or shall procure that any relevant Sub-Contractor shall comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder in relation to the Third Party Employees from the Effective Date up to and including the date of the termination or expiry of this agreement..

5. NOT USED

6. NOT USED

7. NOT USED

8. CLAIMS FROM EMPLOYEES OR TRADE UNIONS

- 8.1 The Provider hereby indemnifies the Authority and/or any Replacement Provider and, in each case, their Sub-Contractors from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by the Provider's Personnel or by any trade unions, elected employee representatives or staff associations in respect of all or any such Provider's Personnel which losses:

- (a) Relate to pension rights in respect of periods of employment on or after the Effective Date or other relevant Transfer Date until the date of termination or expiry of this Agreement; or
- (b) Arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of this Schedule before the date of termination or expiry of this Agreement,

Save to the extent that such losses have been caused by any act and/or omission of the Authority.

9. NOT USED

10. PENSION ISSUES ON EXPIRY OR TERMINATION

10.1 The Provider shall and shall procure that any relevant Sub-Contractor shall:

- (a) Maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Service on the expiry or termination of this Agreement,
- (b) Promptly provide to the Authority such documents and information mentioned in clause 10.1(a) which the Authority may reasonably request in advance of the expiry or termination of this Agreement, and
- (c) Fully co-operate (and shall use best endeavours to procure that the trustees of any Provider's Pension Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Service on the expiry or termination of this Agreement.

Part 2. Third party employees

Third Party Employees

Part 3. Admission agreement and Bond – not used

Part 4. Bulk Transfer Terms – not used

**Schedule 11 - Commercially sensitive information –
not used**

**Schedule 12 - Authority's Premises and Assets –
not used**

Schedule 13 - Safeguarding Policies

Attached as separate PDF documents.

Schedule 14 – Work related road risk – not used