

ROYAL BOROUGH OF GREENWICH

**SERVICE CONTRACT FOR
EARLY YEARS & EARLY HELP
MANAGEMENT INFORMATION SYSTEM
TERMS & CONDITIONS**

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SCHEDULE 1 - SPECIFICATION

THIS DEED is made the _____ day of _____ 2013

BETWEEN:

- (1) **ROYAL BOROUGH OF GREENWICH** of Town Hall, Wellington Street, Woolwich, London. SE18 6PW ("the Council"); and
- (2) **[NAME OF PROVIDER]** whose registered office is situated at **[ADDRESS]** (Company Number 4301654)("the Contractor").

WHEREAS:

- (A) The Council sought proposals for the provision of an Early Years Management Information System by means of a tender exercise. The Council has through a competitive process, selected the Contractor to provide the Service.
- (B) The Contractor has offered to provide the Service and the Council has accepted the offer and the parties have agreed to enter into a Deed incorporating the terms and conditions reached between them, and

IT IS NOW AGREED AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATIONS

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

Acceptance Letter	letter accepting the Contractor's Quotation;
Admissions	the agreement in the form set out in Schedule 5 to be entered into (if applicable) in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008;
Annual Operational Plan	plan prepared each year by the Contractor in accordance with Condition 24.6;
Authorised Officer	person authorised to act on behalf of the Council for the purposes of this Contract;
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.
Business Continuity Management Plan	plan prepared by the Contractor in accordance with Condition 43;
Commencement Date	1 st April 2016
Condition	a condition forming part of this Contract including any schedules or annexes and any reference to these conditions shall be construed accordingly;
Contract	this agreement entered into between the parties incorporating the Contract Documents;
Contract Document	these Conditions together with the Schedules attached to these Conditions;
Contract Manager	person appointed in accordance with Condition 17.2;
Contract Period	period beginning on the Commencement Date and continuing for three Contract Years subject to the Council's right to extend the Contract Period in accordance with Condition 3 or unless terminated sooner in accordance with these Conditions or in accordance with common law or statute;
Contract Price	Contractor's price for providing the Services as set out in Schedule 2;
Contract Standard	standard of Service to be provided as defined in Condition 8.1;
Contract Year	any continuous period of twelve months during the Contract Period commencing on the Commencement Date or any subsequent anniversary of the Commencement Date;
Contractor's Equipment	all manner of goods, plant, equipment, technology and materials used by the Contractor in the provision of the Service as defined in Condition 11.1;
Contractor's Premise	owned or leased by the Contractor for the provision of the Service;
Council Data	any data, document or information however stored which is communicated in writing, orally, electronically or by any other means by the Council to the Contractor or is obtained or assembled by the Contractor during the course of the Contract. Council Data shall further mean any information, data or document which is compiled for the

	Council by the Contractor during the course of the Contractor's provision of the Service;
Council Equipment	all items provided by the Council or any Fellow Contractor to be used for the Service;
Council Guidelines	relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council as notified to the Contractor by the Council including any subsequent amendments notified to the Contractor;
Council Premises	a building or location belonging to, leased or licensed by the Council and which the Contractor may require access for the performance of the Service;
Critical Performance Default	a Performance Default which in the reasonable and fair opinion of the Authorised Officer significantly and/or materially affects the Contractor's provision of the Service to the Contract Standard or undermines the fundamental purpose of the Contract;
Default Notice	issued under Condition 34.1.5;
Director of Service	Senior Manager, responsible for managing a Council department, which includes responsibility for the Services;
Effective Date	the date(s) on which the Services (or any part of the Services) transfer from the Council or Former Contractor to the 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 Contractor;
Eligible Employees:	the Transferring Employees or employees of third party employers (including but not limited to Former Contractors). who are active members of (or are eligible to join) the Local Government Pension Scheme on the date of a Relevant Transfer including the Effective Date;
Environmental Information Regulations	Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Fellow Contractor	any other contractor or consultant engaged by the Council to carry out works or services on behalf of the Council;

FOIA	Freedom of Information Act 2000 and any subordinate legislation made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
Force Majeure Event	acts of god, fire, tempest, acts of war, terrorism, flood, storm, malicious persons, loss or destruction by reason of accident, burglary, theft, falling aircraft and related matters which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent or mitigate which causes the cessation of or substantial interference with the performance of the Services;
Former Contractor	any company, firm or individual who has previously been engaged on the provision of the Service under a contract between that company, firm or individual and the Council;
Guarantee	Parent Company Guarantee in the form set out in the Tender Documents duly executed (if the Contractor is a subsidiary company) by the Contractor's ultimate parent company or by the Contractor's parent company with substantial UK assets;
Guarantee Undertaking	an undertaking duly executed (if the Contractor is a subsidiary company) by the Contractor's ultimate parent company or by the Contractor's parent company with substantial UK assets provided in the Tender Documents;
Information	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
Instructions to Tenderers	terms and conditions of tendering for the Service issued by the Council as set out in the Tender Documents and the basis the Contractor submitted its Tender;
Insurance	policies of insurance which the Contractor is obliged to take out and maintain pursuant to Condition 37;
Intellectual Property	any and all intellectual property rights of any nature 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 and as set out in Condition 32;
Legislation	relevant Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, by-laws and directives and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;
Method Statement	the written plan and proposals submitted by the Contractor in its Tender, augmented in accordance with Condition 8.3 and reviewed from time to time in accordance with Condition 24.6;
Non Critical Performance Default	a performance default which is not a Critical Performance Default;
Performance Default	any negligent or wilful act or omission, any breach of contract and/or any failure by the Contractor properly to perform any of the obligations, terms and conditions of the Contract including (without limitation) any failure to perform the Service to the Contract Standard;
Prohibited Act:	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council, a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any</p>

	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 Council; or
	(iv) defrauding, attempting to defraud or conspiring to defraud the Council.
Quality	the quality system of the Contractor prepared in accordance with
Development Plan	Condition 23;
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	shall have the same meaning as set out in section 6 of the Safeguarding
Provider	Vulnerable Groups Act 2006;
Relevant Transfer	a relevant transfer for the purposes of TUPE;
Replacement	any third party supplier of any service that are identical or substantially
Contractor	similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of the Contract;
Request for	a request for information or an apparent request under the Code of
Information	Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Review Date	an anniversary of the Commencement Date;
Service	the services to be delivered by the Contractor under this Contract, as more particularly described in Schedule 1 (Specification);

Specification	the Specification relating to the provision of the Service as set out in the Schedule 1 together with any additional Service or higher standards set out in the Contractor's Tender;
Staff	all persons engaged, appointed, employed or deployed by the Contractor in the provision of the Service;
Sub-Contract	any contract between the Contractor and a third party for the provision of any part of the Service from a third party;
Sub-Contractor	a contractor employed by the Contractor pursuant to a Sub Contract;
Tender	the offer submitted by the Contractor to provide the Service and any post-Tender submissions which augmented, supplemented or amended the Contractor's offer all of which are scheduled in Schedule 3;
Tender Documents	those documents supplied by the Council during the Tender process including the Specification, Instructions to Bidders and the Response Document;
Transferring Employees	employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Contractor by virtue of the application of TUPE;
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006 as updated, amended or replaced from time to time and the European Acquired Rights Directive 77/187 as updated, amended or replaced from time to time;
Variation	a variation made under Condition 16;
Warranties	warranties, representations and undertakings made and given by the Contractor pursuant to Condition 6;
Working Hours	means 8.30 am to 5.30 pm.

- 1.2. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.3. Words importing individuals shall be deemed also to include reference to incorporated and unincorporated associations and vice versa.
- 1.4. Words importing the masculine shall be deemed also to include the feminine and vice versa.

- 1.5. Headings are included for ease of reference only and shall not affect the construction of the Contract.
- 1.6. References to Staff of the Contractor shall include references to:-
 - 1.6.1. all persons engaged, employed or appointed by the Contractor in the performance of the Service; and
 - 1.6.2. (if the context so permits) all Staff of any Sub-Contractor of the Contractor.
- 1.7. All references to a statutory provision shall be construed as including references to any statutory modification, consolidation, amendment or re-enactment (whether before or after the date of these Conditions) of statutory provision and to all statutory instruments or orders made pursuant to statutory provision for the time being in force.
- 1.8. The expressions “subsidiary” and “holding company” shall have the meanings ascribed thereto in Section 1159 of the Companies Act 2006.
- 1.9. Any references to a “month” or “day” shall be to a calendar month or day respectively.
- 1.10. Any references to a “working days” shall be from 8.30 am to 5.30 pm on any week day, being the day other than Saturdays, Sundays and Public Holidays and “working hours” shall be construed accordingly.
- 1.11. for the avoidance of doubt strikes, industrial action, shut downs or any other actions by the Contractor’s Staff and delay of parts, equipment or any other activity which is under the reasonable control of the Contractor shall not constitute acts of a Force Majeure Event nor shall they frustrate the performance of the Contract in any way.
- 1.12. The Contract Documents shall be read and taken together. However, in the event of any inconsistency the following order of precedence shall apply:-
 - 1.12.1. Conditions of Contract;
 - 1.12.2. Specification;
 - 1.12.3. Contractor’s Tender; and
 - 1.12.4. other documents referred to in this Contract.

2. COMMENCEMENT AND CONTRACT PERIOD

- 2.1. The Contract shall commence on the Commencement Date for the Contract Period unless the Contract is terminated sooner in accordance with Condition 39 or in accordance with common law or statute.

3. EXTENDING CONTRACT PERIOD

- 3.1. The Council shall be entitled at its absolute discretion to extend the Contract Period up to an aggregate of 2 Contract Years.

3.2. If the Council decides to extend the Contract Period it shall serve written notice to the Contractor not less than 3 months before the expiry of the Contract Period.

3.3. In such circumstances the definition of Contract Period shall be deemed amended at the Contract Price prevailing on the date of the extension as revised from time to time in accordance with Condition 16.

4. NON-EXCLUSIVITY

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

5. OBLIGATIONS PRIOR TO COMMENCEMENT DATE

5.1. The Contractor shall carry out or provide to the Council as soon as reasonably practicable after the Acceptance Letter:-

5.1.1. proof of the insurances held pursuant to Condition 37;

5.1.2. the Guarantee if applicable;

5.1.3. measures to ensure that the Contractor, Sub-Contractors, Staff and agents are fully familiar with the provisions of the Contract, their obligations under the Contract, the Council's computer systems (if applicable) and the identities of all relevant Fellow Contractors;

5.1.4. actions necessary to comply with its obligations under TUPE;

5.1.5. the identities, positions, responsibilities and contact details of all relevant Staff and the Contract Manager;

5.1.6. obtain all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service; and

5.1.7. prior to the Commencement Date attend pre-commencement meetings requested by the Council to agree a Service implementation plan with Fellow Contractors (if applicable) and to assist with handover from Former Contractors (if applicable) to ensure a smooth, seamless and successful transition of the Service.

5.2. The Council shall prior to the Commencement Date:-

5.2.1. notify the Contractor of the Authorised Officer's and other person's contact details as required for the purposes of the Service; and

5.2.2. subject to Conditions 29 and 31 provide the Contractor with Council Data and information in the possession or under the control of the Council where in the opinion

of the Council, the Council Data is reasonably required in order for it to commence providing the Service.

6. WARRANTIES

6.1. The Contractor, from the date of the Acceptance Letter and throughout the Contract Period, warrants and represents to and undertakes to the Council that:-

- 6.1.1. it has in all respects complied with the Instructions to Tenderers and in particular (but without prejudice to the generality of the foregoing) that it has not done any of the acts or matters prohibited by the Instructions to Tenderers;
- 6.1.2. it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract including the Specification, the Contract Price and these Conditions and that it has not submitted its Tender and has not entered into this Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council;
- 6.1.3. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Contractor in connection with or arising out of its Tender are true, complete and accurate in all respects;
- 6.1.4. it has full power and authority to enter into the Contract and thereafter to perform the Service;
- 6.1.5. it is of sound financial standing and the Contractor is not aware of any circumstances (other than circumstances as expressly disclosed by the Contractor when submitting its Tender) which may adversely affect such financial standing in the future;
- 6.1.6. it has or has made arrangements to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Service in accordance with the Contract Standard;
- 6.1.7. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Service and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to carry out the Service;
- 6.1.8. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Service so as to assess the full scope and volume of the work involved in performing the Service to the Contract Standard; and
- 6.1.9. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed

or controlled by the Council and which is for the time being in the possession of the Contractor.

6.2. The Contractor shall:-

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

7. SUFFICIENCY OF INFORMATION

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

8. THE CONTRACT STANDARD

- 8.1. The Contractor shall perform the Service to the following Contract Standard:-
 - 8.1.1. Using all due skill, care and diligence as would a competent contractor carrying out a service of the same scope and nature of the Service;

- 8.1.2. the Specification, the Method Statement, the Quality Development Plan and Annual Operational Plan;
- 8.1.3. all other provisions of the Contract Documents;
- 8.1.4. the Council Guidelines copies of which are available from the Council on prior notice; in particular (but without limitation) those relating to customer care;
- 8.1.5. the reasonable instructions issued to the Contractor by any Authorised Officer pursuant to or in connection with the Contract;
- 8.1.6. all Legislation;
- 8.1.7. Council's Green Strategy.
- 8.2. and shall do so;
 - 8.2.1. in an efficient, professional and courteous manner;
 - 8.2.2. in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council; and
 - 8.2.3. in good and full co-operation with Fellow Contractors.
- 8.3. As soon as reasonably practicable after the date of the Acceptance Letter the Contractor shall review and consider any inconsistencies and, if necessary, amend its Method Statement to include and agree the inconsistencies with the Council.
- 8.4. The Contractor shall have regard to the Council's whistle blowing policy attached as Schedule 4 to the Agreement and the Contractor shall ensure that if it is necessary to do so its Staff follows this policy throughout the Contract Period.

9. EQUALITY AND DIVERSITY

- 9.1. The Contractor must:
 - 9.1.1. operate an equal opportunities policy during the Contract Period;
 - 9.1.2. provide the Council with a copy of any such policy at our request; and
 - 9.1.3. maintain and update the equality opportunities policy.
- 9.2. The Council may suggest amendments to the equality opportunities policy to bring the Contractor's equality policy in line with the Council's equality policy and standards.
- 9.3. The Contractor must comply with all statutory obligations with regards to discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to:
 - 9.3.1. decisions made by the Contractor in the recruitment, training or promotion of Staff employed or to be employed in the provision of the Service;
 - 9.3.2. providing the Service; and
 - 9.3.3. the carrying out the Contractor's obligations under this Contract.

- 9.4. In providing the Service, the Contractor must observe as far as possible with Legislation including, but not limited to the Equality Act 2010 and relevant codes, any updates to the code, or any code which may replace it including but not limited to the Commission for Equality and Human Rights Code of Practice for Employment.
- 9.5. If any Court or Tribunal, or the Commission for Equality and Human Rights (or any body which may replace the Commission) makes a finding that the Contractor has unlawfully discriminated against any person in the provision of the Service then the Contractor must:
- 9.5.1. take all necessary steps to make sure that the unlawful discrimination does not occur again; and
- 9.5.2. notify the Council in writing of the finding and the steps taken to prevent its re-occurrence.
- 9.6. The Contractor must provide the Council with information reasonably required in order for the Council to assess the Contractors and Sub- Contractors compliance with this Condition.
- 9.7. The Contractor shall assist the Council in meeting the Council's equality duties and agrees to provide the Council with monitoring information required to ensure the Contractor's and Sub- Contractor's compliance with this Condition.

10. HEALTH AND SAFETY

- 10.1. The Contractor shall in performing the Service ensure that its Staff, or any other person acting on behalf of the Contractor:-
- 10.1.1. adopts safe methods of work in order to protect the health and safety of the Contractor's Staff, Council staff, staff employed by Sub-Contractors and any other persons including (without limitation) members of the public;
- 10.1.2. comply with all relevant parts of the Council's Guidelines relating to health and safety.
- 10.2. The Contractor shall:-
- 10.2.1. maintain and review its health and safety policy and safe working procedures as often as may be necessary in the light of changing Legislation, working practices or any other factor, and shall notify the Council in writing of such revisions; and
- 10.2.2. comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Contractor's health and safety procedures; and
- 10.2.3. have in place at all times during the operation of the Contract emergency operating procedures, including accident procedures, which procedures are to be communicated to all Staff and periodically tested, such testing to be formally recorded.

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

10.3.1. any steps which the Council requires the Contractor to take for health or safety reasons (including at the Council's request, the appointment by an independent health and safety adviser to review the Contractor's working procedures); and/or

10.3.2. any part of the Service being omitted because of a stoppage required by the Council due to health or safety reasons.

11. CONTRACTOR'S EQUIPMENT

11.1. The Contractor shall ensure that throughout the Contract Period it supplies or makes available in good condition and in working order and all such resources and equipment as may be necessary and/or desirable for the proper provision of the Service to the Contract Standard.

11.2. For the avoidance of doubt the provision by the Council of any Council Equipment shall be without prejudice to the obligation of the Contractor set out Condition 11.1.

11.3. The Contractor shall further ensure that it obtains (and pays all fees, royalties and similar expenses relating to) all necessary consents and licences including any such consents or licences in respect of Intellectual Property rights.

11.4. The Contractor shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Service are paid and up to date throughout the Contract Period and that the Contractor's Equipment is properly maintained and replaced when necessary.

11.5. At the end of the Contract Period or earlier termination, the Contractor may offer for sale at a fair market value any Contractor Equipment which is either situated at the Council's Premises or is situated at the Contractor's Premises but is used solely in connection with the provision of the Service. The Council shall be under no obligation to purchase Contractor's Equipment and such purchases shall be at the Council's absolute discretion.

12. COUNCIL'S EQUIPMENT

12.1. Insofar as the Contractor will use in connection with the provision of the Service any Council Equipment offered by the Council, the Council shall make Council Equipment available free of charge to the Contractor but in no circumstances may any Council Equipment be moved to any premises other than the Council Premises in which it is situated without the Authorised Officer's written consent.

12.2. The Contractor shall use the Council's Equipment solely in connection with the provision of the Service (except with the written consent of the Authorised Officer) and shall make good any damage to the Council's Equipment caused by the Contractor, its Sub-Contractors, Staff, servants or agents.

- 12.3. Any damage shall be remedied by the Contractor, in accordance with reasonable instructions given by the Authorised Officer, and all costs incurred in complying with this Condition shall be borne by the Contractor.
- 12.4. The Contractor shall inform an Authorised Officer immediately of any act of vandalism or damage to the Council Equipment observed by the Contractor or its Staff or Sub-Contractors while performing the Service and the Contractor shall use its reasonable endeavours to ensure that the vandalism or damage ceases to ascertain the identity of the perpetrators and to inform the Authorised Officer immediately and the Police or fire brigade, if appropriate, of the same.
- 12.5. The Council does not guarantee, warrant or give any assurances as to the age, condition or state of repair of any item of Council Equipment and the Contractor shall be deemed to have carried out its own inspections and made its own assessment of the Council Equipment prior to acceptance and to accept the Council Equipment as seen.
- 12.6. The Contractor shall be responsible for the maintenance of the Council Equipment at its own expense unless agreed with the Council that any such maintenance shall be carried out at Council's expense. In such circumstances and for the avoidance of doubt the Council shall cease to maintain any item of Council Equipment when it considers, acting in its absolute discretion, that such Council Equipment has reached the end of its useful life and is no longer economically viable to maintain.
- 12.7. The Contractor shall purchase and maintain at the Contractor's own expense any replacement, equipment or new equipment necessary in order for the Contractor to provide the Service at the Commencement Date and throughout the Contract Period. The provision by the Council of Council Equipment shall not diminish or vary the obligation of the Contractor to provide sufficient Contractor's Equipment.
- 12.8. An asset register of the Council's Equipment shall be kept by the Contractor and reviewed by the Council at the commencement of the Contract and updated as required.
- 12.9. The Council Equipment shall remain the property of the Council and shall be delivered up at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of.

13. COUNCIL PREMISES

- 13.1. Prior to the Commencement Date or as soon as reasonably practicable after the Commencement Date the Contractor shall (if applicable) be granted a lease or licence subject to such conditions contained therein in respect of the Premises in the form set out in the Tender Documents.
- 13.2. The leases or licences shall expire immediately on termination or expiry of the Contract in whole or relevant part and the Contractor shall vacate the Council Premise immediately.

- 13.3. The Contractor shall not use the Council Premise for any purpose other than the performance of the Service and breach of this condition shall be a Critical Performance Default.
- 13.4. The Contractor must ensure that the Council's Premises facilities and Service are clean and tidy at all times.
- 13.5. The Contractor will indemnify the Council from and against the cost of maintenance and repair to any Council Premises to which the Contractor has been granted access insofar as any works of maintenance, repair or re-building of the Council Premises (if any) are necessary following any act, neglect, default or negligence of the Contractor or its Staff, Sub-Contractors and agents.
- 13.6. The Contractor, its Staff and any invitees of the Contractor will only be allowed access to Council Premises in connection with the provision of the Service (save as may otherwise be agreed between an Authorised Officer and the Contract Manager), such access being exercised jointly with an Authorised Officer and any of the Council's licensees or agents.
- 13.7. The Council may from time to time stipulate reasonable additional requirements relating to the safety and security of the Council Premise and the Contractor, its Staff and any invitees of the Contractor will at all times during the Contract Period comply with such requirements or such other security requirements as the Council may from time to time reasonably direct.
- 13.8. The Contractor must ensure that any identity pass carried by and any key issued to any of its Staff are returned to the Contractor immediately upon such Staff ceasing to be employed by the Contractor in connection with the provision of the Service.

14. CONTRACTOR'S PREMISE

- 14.1. In the event that the Contractor is to provide for all or any part of the Service from its own premises, the Contractor shall ensure that the Contractor's Premises are safe, secure and suitable for the provision of the Service.
- 14.2. Any Council Equipment or Council Data situated at the Contractor's Premises shall be clearly marked the property of the Royal Borough of Greenwich and shall be stored separately from the Contractor's Equipment.
- 14.3. The Contractor shall afford the Council access upon reasonable notice to inspect the Contractor's Premises including any security, fire protection and disabled access systems.
- 14.4. The Contractor shall not provide all or any part of the Service nor store any Council Data at any premises which has not been approved by the Authorised Officer.

15. CONTRACT PRICE

- 15.1. Subject to the Contractor fulfilling its obligations under the Contract and in consideration of the Contractor properly performing the Service, the Council shall pay to the Contractor the Contract Price.
- 15.2. The Contract Price shall be deemed to accrue on a daily basis and shall be payable to the Contractor monthly in arrears within 30 (thirty) calendar days of receipt of a correct invoice. Payment shall be made by automated payment mechanism (BACS) unless other payment mechanisms are agreed between the Council and the Contractor.
- 15.3. In the event that any undisputed invoice correctly rendered by the Contractor remains unpaid by the Council after 30 days the Contractor shall be entitled to charge interest from the date on which the 30 days period expired at a rate of 8% above the Bank of England reference rate and the parties agree that this constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts Act 1998. The Contractor shall not suspend the supply of the Services if any payment is overdue.
- 15.4. In addition to the Contract Price, the Council shall subject to receipt of a properly drawn tax invoice, pay to the Contractor such value added tax (if any) as may be properly chargeable by the Contractor in connection with the provision of the Service under legislation from time to time in force.
- 15.5. In the event of the Contractor committing a Performance Default, the Council shall be entitled to withhold or reduce any instalment of the Contract Price or make Deductions in accordance with Condition 34.5.1.
- 15.6. The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for 12 years from the end of the Contract Year to which the records relate to.
- 15.7. The Contractor shall ensure the provisions of this clause are mirrored in the terms and conditions of any sub-contractor involved in the delivery of this Contract.

16. VARIATIONS

- 16.1. The Parties may agree minor or non-substantial changes to the Contract which shall not be deemed a Variation to the Contract.

- 16.2. A Variation may be initiated by the Council and shall include an amendment to the terms of the Contract resulting in:-
- 16.2.1. a material or substantial amendment, change or modification to the Service or part of the Service (including an omission, cessation, suspension of or an addition to whole or part of the Service); or
 - 16.2.2. a change in the way in which the Service is to be carried out.
- 16.3. The Council may upon giving not less than 1 (one) calendar months' notice in writing to the Contractor ("the Variation Notice") impose a Variation, which shall specify:
- 16.3.1. the detail of the Variation;
 - 16.3.2. the date on which a Variation is to have effect;
 - 16.3.3. the time period during which the Variation shall have effect if it is of a temporary nature; and
 - 16.3.4. details of the Contract Price Variation (if applicable).
- 16.4. The Contractor shall confirm its acceptance of the Variation, within 14 days of the date of the Variation Notice, which shall become effective from the date specified in the Variation Notice.
- 16.5. In the event of a dispute of any proposed Variation the dispute shall be referred to the dispute resolution procedure in accordance with the provisions of Condition 33.

17. AUTHORISED OFFICERS

- 17.1. The Council shall as appropriate during the Contract Period give notice in writing to the Contractor of:-
- 17.1.1. the names and contact telephone numbers of any persons who have been appointed as an Authorised Officer; and
 - 17.1.2. the removal of any notified person as an Authorised Officer
- and until any such notice shall have been served on the Contractor by the Council the Contractor shall be entitled to treat as Authorised Officers only those persons last notified as such to the Contractor.
- 17.2. Except pursuant to Condition 16 (Variations) or unless specifically authorised for that purpose the Authorised Officer does not have authority to amend the Contract in writing or otherwise or to relieve the Contractor of any express obligations under the Contract.

18. CONTRACT MANAGER

18.1. The Contractor shall during the Contract Period:-

- 18.1.1. provide the name and contact telephone number of any person who has been appointed as a Contract Manager; and
- 18.1.2. give notice in writing to the Council of the removal of any notified person as a Contract Manager

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

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

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

18.4. The Contractor shall ensure that throughout the Contract Period the Contract Manager:-

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

19. STAFF

19.1. The Contractor shall employ sufficient, fully and suitably trained, briefed, qualified and experienced Staff to ensure that the Service is throughout the Contract Period provided to the

- Contract Standard, including (without limitation) during periods of absence of its Staff due to sickness, maternity leave, Staff holidays, Staff training or otherwise.
- 19.2. The Contractor shall ensure that all Staff engaged in providing the Service sign a confidentiality agreement as set out in the Contract Documents if requested by the Council.
- 19.3. The Contractor shall:-
- 19.3.1. employ or engage in and about the provision of the Service only persons who are careful, honest, skilled, competent and experienced in the work relevant to that which they are to perform;
 - 19.3.2. ensure that every member of Staff engaged by the Contractor in and about the provision of the Service is and at all times remains properly and sufficiently trained, skilled and instructed with regard to:-
 - 19.3.2.1. the duty or duties which that person has to perform; and
 - 19.3.2.2. the rules, procedures, statutory and regulatory requirements concerning health and safety at work and all other rules and procedures relevant to the duties and all other rules and procedures which that person has to perform;
 - 19.3.3. comply with any law that prohibits discrimination in relation to employment, including the provision of training and promotion on grounds of gender, disability, sexual orientation, age, colour, race, ethnic or national origin or religion;
 - 19.3.4. ensure that its Staff comply with all relevant rules, codes, policies, procedures and standards of the Council which are current or which may be notified to the Contractor by the Council from time to time and with all relevant statutes, statutory orders and regulations;
 - 19.3.5. implement such Staff training schemes throughout the Contract Period as are necessary to ensure the performance of the Service to the Contract Standard.
- 19.4. The Council or an Authorised Officer may to the extent reasonably necessary to protect the standards and reputation of the Council, following consultation with the Contractor, request the Contractor to take disciplinary action or other action (including their removal from the Service or relevant part) against any person employed in or about the provision of the Service by the Contractor including the Contract Manager or his deputy and the Contractor shall immediately comply with such request.
- 19.5. Further to Condition 19.4 the Council shall not in any circumstances be liable to the Contractor or any of its employees in relation to any such disciplinary removal or other action and the Contractor shall fully and promptly indemnify the Council in respect of any claims brought by any such employee arising therefrom.
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- 19.6. The Contractor shall at all times during the Contract Period provide a sufficient complement of management Staff (in addition to the Contract Manager) to ensure that the Contractor's Staff engaged in the provision of the Service are at all times adequately supervised and able to perform their duties to the Contract Standard.
- 19.7. Neither the Contractor nor any of its Staff may in any circumstances solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge from any person in connection with the provision of all or part of the Service other than pursuant to the terms of the Contract.
- 19.8. Any breach by the Contractor or any of its Staff of Condition 19.7 will be regarded by the Council as a matter of serious misconduct. Without prejudice to any of its rights hereunder an Authorised Officer may require the removal from the provision of the Service of Staff found to be in breach of Condition 19.7.
- 19.9. Notwithstanding any industrial action by Staff, it remains the Contractor's responsibility to meet the requirements of this Contract. The Contractor must inform an Authorised Officer immediately of any intending or actual dispute which may affect the Contractor's ability to provide the Service to the Contract Standard.
- 19.10. In the event of industrial disputes by persons employed directly by the Council or other contractors which affect the provision of the Service, the Contractor will be required to co-operate with the Council or its duly authorised representative to ensure the continued provision of the Service or to agree the level of the Service deemed by the Council to be satisfactory during such dispute.
- 19.11. If the Contractor wants to award a pay rise to its Staff in the final Contract Year, the Contractor must obtain the Council's agreement in writing to the level of such pay rise before it is implemented. In default of agreement, either party may refer such matter to the dispute resolution procedure in accordance with the provisions of Condition 35.

20. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 20.1. The parties acknowledge that the Contractor 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.
- 20.2. The Contractor shall ensure that all individuals engaged in the provision of the Services are:
- 20.2.1. subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and

- 20.2.2. the Contractor shall monitor the level and validity of the checks under this Condition 20.2 for each member of staff.
- 20.3. The Contractor warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 20.4. The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Condition 20 have been met.
- 20.5. The Contractor shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 20.6. The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

21. TUPE AND PENSIONS

21.1. TRANSFER OF STAFF TO THE CONTRACTOR

- 21.1.1. The Contractor will have stated in its Tender whether its Tender is made on the basis of TUPE applying or not applying and the Council shall have accepted the Tender on such basis unless the parties have expressly agreed otherwise in correspondence incorporated into the Contract.
- 21.1.2. The Contractor shall be deemed to have taken its own professional advice in such regard and shall fully and promptly indemnify the Council and hold the Council harmless against any claim by an employee of the Council, Former Contractor or former sub-contractor made in relation to the applicability or otherwise of TUPE.
- 21.1.3. The Contractor shall be responsible for undertaking all necessary consultations in respect of TUPE following the Acceptance Letter. The Council does not guarantee or warrant the accuracy or completeness of any workforce information provided to the Contractor if the same was provided by the Former Contractor or Sub-Contractor and the Contractor shall be deemed to take and bear any risk in this respect.
- 21.1.4. Subject to Condition 22.1.5, the Contractor shall keep the Council indemnified against all proceedings, claims, damages, demands, fines, penalties, expenses,

compensation, court or tribunal orders (including any order for re-instatement or re-engagement), awards, costs and all other liabilities whatsoever payable or incurred by the Council or the Former Contractor which arise out of or are connected with the Contract and which in any way relate to:-

- 21.1.4.1. the employment or engagement (or otherwise) by the Contractor of any individual who was prior to the Commencement Date an employee or appointee of the Council or an employee of the Former Contractor;
- 21.1.4.2. the termination of such employment or engagement (or otherwise) by the Council, the Former Contractor or the Contractor as a result of the Contractor stating in its Tender or subsequently that TUPE did or does not apply;
- 21.1.4.3. the applicability or otherwise of TUPE and the Contractor's compliance or otherwise with TUPE and employment Legislation generally.
- 21.1.5. The Contractor shall not be responsible for and the indemnity in Condition 21.1.4 shall not apply to any redundancy payments which the Council or the Former Contractor would be legally required to pay (but for this Condition) to any employee or past employee who is fairly dismissed by reason of redundancy nor to any claims, costs, demands, fines or damages payable by the Council or a Former Contractor in respect of matters arising prior to but not connected with the transfer.

21.2. APPLICATION OF TUPE ON TERMINATION OF CONTRACT

- 21.2.1. It is acknowledged by the Contractor and the Council that TUPE may apply upon Termination of the Contract or any part thereof.
- 21.2.2. The Contractor shall provide immediately upon request by the Council a list of Staff engaged on provision of the Service and information about such Staff including terms and conditions of employment and such other relevant information as may be reasonably required for disclosure to third parties intending to submit tenders for any subsequent contract for the provision of the Service (The Workforce Information). The Contractor shall warrant the accuracy and completeness of the Workforce Information.
- 21.2.3. If the Contractor fails to provide this information the Contractor may not be permitted to Tender for the subsequent contract.
- 21.2.4. The Contractor shall advise the Council immediately of any changes to these details between the date on which they are provided and the Contract expiry date and shall ensure that the information disclosed is accurate and up to date as at the expiry date and that all known existing liabilities relating to such Staff have been discharged.

21.2.5. The Contractor shall indemnify the Council and a person to whom the undertaking represented by the Service transfers against all claims, costs, damages, compensation, and other liabilities resulting from any failure on the part of the Contractor to fulfil its obligations relating to:-

21.2.5.1. the provision of complete, up to date and accurate Workforce Information;

21.2.5.2. any necessary consultation with such employees or their representatives.

21.2.6. The Contractor shall, if required by the Council, provide an undertaking and warranty to any person to whom the Contractor's Staff may transfer pursuant to TUPE to the effect that the Workforce Information is complete and accurate and that the Contractor has discharged all its obligations as employer.

21.2.7. The Council shall not be liable for any failure to provide any information to or consult any employees of the Contractor or the Former Contractor or their representative, whether or not such employees are engaged on the provision of the Service and the Contractor shall indemnify the Council in respect of any such liability.

21.3. PENSIONS- ADMISSIONS AGREEMENT

21.3.1. The Contractor shall and shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered appropriate pension provision with effect from the Commencement Date up to and including the date of the termination or expiry of this Contract through either:

21.3.1.1. Admission to the Local Government Pension Scheme (LGPS); or

21.3.1.2. through the Contractor's own pensions provision.

21.3.2. Where the Contractor or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Contractor shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Commencement Date or, if the transfer occurs after the Commencement Date, from and including the date of that Relevant Transfer.

21.3.3. The Contractor shall indemnify and keep indemnified the Council and/or any new contractor and, in each case, their Contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Contractor or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this agreement.

21.3.4. The Contractor shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and

including the date of that Relevant Transfer, obtain any indemnity or bond required in accordance with the Admission Agreement.

- 21.3.5. The Contractor shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The Contractor shall be responsible for meeting all costs associated with the award of such benefits.

21.4. PENSIONS- CONTRACTOR PENSION SCHEME

- 21.4.1. Where the Contractor or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, the Contractor shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

21.4.1.1. established no later than three months prior to the date of the Relevant Transfer; and

21.4.1.2. certified by the Government Actuary's Department as providing benefits that are broadly comparable to those provided by the Local Government Pension Scheme (Royal Borough of Greenwich Pension Fund)/Local Government Pension Scheme (London Pension Fund);

21.4.1.3. the Contractor shall produce evidence of compliance with this to the Council prior to the date of the Relevant Transfer.

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

22. MONITORING

- 22.1. The Contractor's performance of the Service shall be measured against the obligations, standards, targets and benchmarks set out in the Contract Documents, and any additional standards, targets and benchmarks in the Contractor's Annual Operational Plan and any benchmarks or targets relevant to the provision of the Service published or set by the Chartered Institute of Public Finance and Accountancy and the Council's auditor.

- 22.2. In addition to any other meetings held between the Authorised Officer and the Contract Manager, the Contract Manager shall attend a formal meeting at agreed intervals to review the performance of the Service by the Contractor.
- 22.3. The Contract Manager shall at the request of an Authorised Officer attend such meetings arranged by the Council with members of the public, other organisations, officers, auditors or members as are concerned with the provision of the Service.
- 22.4. The Parties shall ensure records and meetings of the minutes are made and supplied to the other party following the meeting.
- 22.5. The Council or an Authorised Officer shall have the right at any time when any part of the Service is being provided (and to the extent reasonably necessary) to ensure that the Service is being carried out to the requirements of the Contract, to have access to and/or to inspect:-
- 22.5.1. any location at which the Service is being provided upon twenty-four hours notice save where the same is prevented by unavoidable action by third parties;
- 22.5.2. any member of Staff for the purpose of interviewing him or her in connection with the carrying out of all or any part of the Service;
- 22.5.3. any location for the purposes of examining such records and documents in the possession of the Contractor as the Council may reasonably require to examine upon twenty-four hours notice being given.
- 22.6. The Contractor shall, as soon as reasonably practicable but in any event within five working days after a request from an Authorised Officer provide any information relating to the carrying out of the Service reasonably requested.
- 22.7. The Contractor shall ensure access to facilities, records and documents are available at no extra cost to the Council.

23. QUALITY ASSURANCE

- 23.1. The provisions of this Condition are without prejudice to the Council's monitoring procedures, the default provisions set out in these Conditions, the Contractor's obligations pursuant to the Contract and any other right or remedy available to the Council in contract or in common law.
- 23.2. Prior to the Commencement Date or as soon as reasonably practicable after the Commencement Date the Contractor shall draft, prepare and submit to the Authorised Officer a Quality Development Plan for approval. The Authorised Officer shall be entitled to propose reasonable amendments to the plan and the Contractor shall revise the plan in accordance with such amendments. Once approved by the Authorised Officer (such approval not to be unreasonably withheld or delayed) the plan shall be known as the Quality Development Plan.

- 23.3. The Contractor shall implement the Quality Development Plan throughout the Contract Period and shall ensure that its Staff and Sub-Contractors are fully familiar with it.
- 23.4. If the Contractor has a quality system approved by the British Standards Agency or by the Contractor's professional body and/or is ISO 9002 accredited in respect of any part of the Contractor's business, the Contractor shall use its reasonable endeavours to apply the same quality system to the provision of the Service as part of the Quality Development Plan.
- 23.5. The Quality Development Plan shall include at least the following:-
- 23.5.1. Regular supervision of the Staff and Sub-Contractors;
 - 23.5.2. Frequent checks to ensure compliance with the Contract Documents;
 - 23.5.3. Regular meetings between Staff;
 - 23.5.4. Proper management of Sub-Contractors;
 - 23.5.5. Prompt and helpful response to correspondence and telephone queries from the Council and Fellow Contractors;
 - 23.5.6. The proper maintenance of all records as are reasonably required by the Authorised Officer, the Council's internal or external auditors and which are reasonably necessary to record the nature and quality of all work carried out by the Contractor in the performance of the Service;
 - 23.5.7. The maintenance and cataloguing of all books and records to ensure they are properly recorded, identifiable and auditable;
 - 23.5.8. Provisions to ensure that all records including all case files, invoices, delivery notes, warranties or any trade documents are retained for a period of at least 12 years following the end of the Contract Period or in the case of any claim brought within such period until such time as any such claim has been settled.
 - 23.5.9. The records must be made available on reasonable notice during every working day for inspection by the Authorised Officer during Working Hours;
 - 23.5.10. Provisions to ensure that the Contractor, its Staff and Sub-Contractors participate in discussions and offer explanations when requested on issues arising from any inspection of documents.
- 23.6. In the event of any reasonable recommendation concerning the modification of the Quality Development Plan being made by any Authorised Officer from time to time, such recommendation shall as soon as reasonably practicable, be incorporated and implemented by the Contractor.

24. ANNUAL CONTRACT REVIEW

- 24.1. Throughout the Contract Period, the parties shall acting reasonably shall work together to ensure that the Contract and the Contractor's performance of the Service represent value for money and best value generally for the benefit of the Council having regard at all times to the basis on which the Contractor's Tender was submitted to the Council.
- 24.2. Within two months before the beginning of each Contract Year the Contractor shall prepare a review (the Annual Contract Review) and an Annual Operational Plan. The Annual Contract Review shall contain, inter alia and to the extent reasonably possible, the following matters:-
- 24.2.1. an analysis of the Service throughout the previous Contract Year, focussing on those areas which were particularly successful and those areas where the Service might have been improved;
 - 24.2.2. an identification in the Contractor's view of the reason for the successes and weaknesses referred to in Condition 24.2.1 recognising that some of the matters may be due to the Contractor's performance of the Service (or that of its Sub-Contractors, Staff or agents), others may be due to the actions or omissions of the Council, Fellow Contractors and/or the Council's staff and other matters may be due to other circumstances;
 - 24.2.3. a comparison of the Service benchmarked against substantially similar service to the Service performed by the Contractor for other local authorities (to the extent that the Contractor is not precluded by the confidentiality obligations with other such local authorities from so disclosing) and to the extent publicly known, by other contractors for other local authorities;
 - 24.2.4. an action plan setting out the Contractor's suggestion of measures that might be taken by the Contractor, the Council or Fellow Contractors to further improve on the Service.
 - 24.2.5. Against any measure which it considers might be taken by the Contractor itself the Contractor shall set out whether the implementation of such measure would result in an upward or downward amendment to the Contract Price if the measure were to be implemented under the provisions of Condition 16 recognising that if a measure is to be taken as a direct result of the Contractor's breach of Contract that no upward amendment to the Contract Price will be agreed by the Council regardless as to whether the Contractor would be put to extra expense if the measure was implemented.
- 24.3. The Annual Contract Review prepared by the Contractor in accordance with Condition 24.2 above shall be undertaken in good faith by the Contractor.

- 24.4. The Contractor shall submit the Annual Contract Review to the Authorised Officer, who shall consider its contents in a timely and efficient manner and who may present it to members and officers of the Council.
- 24.5. Except in so far as the Council may be required by law to disclose the Annual Contract Review (in which case the Council shall give the Contractor prior written notice of such disclosure) it shall be held by the Council in commercial confidence and it shall not be disclosed to anyone other than the members and officers directly associated with the provision of the Service internal and external auditors of the Council and the Council's solicitors. For the avoidance of doubt the presentation of the Annual Contract Review by the Contractor to the Council shall be without prejudice to any monitoring requirements, performance review or default measures which may be carried out by the Council under the terms of the Contract.
- 24.6. The Contractor and the Council shall discuss the Annual Contract Review and the Council, may in its absolute discretion, issue instructions under Condition 16 requiring the Contractor to implement any measure set out in the Annual Contract Review or any measure which otherwise might reasonably be considered necessary by the Council to ensure best value and value for money.

25. ANNUAL OPERATIONAL PLAN

- 25.1. The Annual Operational Plan shall incorporate the outcome of the Annual Contract Review and shall further set out:-
- 25.1.1. any revisions or amendments to the Method Statement required or recommended by the Contractor or the Council;
 - 25.1.2. the key objectives for the next Contract Year;
 - 25.1.3. proposed marketing initiatives; and
 - 25.1.4. training proposals for the next Contract Year.
- 25.2. The Annual Operational Plan shall be submitted to the Authorised Officer for approval by each anniversary of the Commencement Date and such approval shall, subject to the adoption by the Contractor of any amendments reasonably required by the Authorised Officer not be unreasonably withheld or delayed. Following approval by the Authorised Officer the Contractor shall adopt and implement the Annual Operational Plan.
- 25.3. At any time during the Contract Period the Council shall be entitled to carry out itself (or to engage an independent third party) a thorough review of the Contract including a value for money review. The Contractor shall offer all reasonable assistance to the Council and any independent third party in the carrying out of this review and shall attend such meetings and provide such documents as may be reasonably necessary for this purpose.

26. COMPLAINTS

- 26.1. The Contractor shall comply with the Council's complaints policy contained in the Council's Guidelines when dealing with claims, complaints and enquiries received from the Council, directly from any member of the public or any other source relating to the Contract.
- 26.2. All claims and complaints received must be reported to an Authorised Officer. An accurate record must be kept of all claims, complaints (including full details of the claim or complaint including the date, time, name, address and telephone number of the complainant) and the responses supplied by the Contractor.
- 26.3. The records shall be made available to an Authorised Officer upon request.
- 26.4. The Contractor shall comply with reasonable instructions given by an Authorised Officer to the Contractor in response to a claim, complaint or enquiry received from a member of the public which has been investigated by an Authorised Officer.

27. AUDIT AND INFORMATION

- 27.1. The Contractor shall at all times both during the currency and following Termination of this Contract allow (or procure for) any Authorised Officer, internal or external auditor, or Director of Service access on reasonable notice to and/or a right of entry to any premises in the possession or under the control of the Contractor and in any way relating to or used in connection with the provision of the Service.
- 27.2. The Contractor shall at all times during the currency and following Termination of this Contract allow (or procure for) any Authorised Officer, internal or external auditor or Director of Service (or any person or persons nominated by them):-
 - 27.2.1. immediate access to;
 - 27.2.2. the permission to copy and remove any copies of; and
 - 27.2.3. (if in the opinion of the Authorised Officer reasonably necessary or appropriate) the permission to remove the originals of

any books, records and information in the possession or under the control of the Contractor or any Sub-Contractor and in any way relating to or used in connection with the provision of the Service (including, without limitation, any Council Data and such information stored on a computer system used by the Contractor).
- 27.3. The Contractor shall, as soon as reasonably practicable upon request by the Authorised Officer, internal or external auditor or Director of Service (or any person nominated by them) provide all information, documentation, access to Staff and assistance required by the Council or their

insurers or auditors in connection with any legal proceedings, insurance claim, third party complaint, potential claim or media interest which has, or may have, arisen out of or during the course of the Contractor's provision of the Service or the Contract.

- 27.4. The Contractor shall, without prejudice to the generality of Condition 36, indemnify the Council fully and promptly against any costs, losses, damage or expenses incurred by the as a result of the Contractor's failure to provide such information, documentation, access to staff or reasonable assistance in a timely and helpful manner.

28. CONTRACTOR'S COMPUTER SYSTEMS

- 28.1. In relation to any computer system which the Contractor uses in connection with its provision of the Service, the Contractor shall at its own cost but subject to the Council's satisfaction ensure that such a computer system is at all times through the Contract Period such as to enable the Contractor to comply with its obligations under the Contract and in particular (but without limitation) to perform the Service to the Contract Standard.
- 28.2. Should the Council so require, the Contractor must ensure that such computer system is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's relevant computer system.
- 28.3. The Contractor shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Council in accordance with the provisions of the Contract) adequate disaster recovery arrangements are in place for the event of the partial or total failure of the Contractor's computer system which arrangements shall enable the Contractor to continue without interruption to comply with its remaining obligations under this Condition.
- 28.4. The Contractor shall ensure that any software licences in relation to software to be used in connection with the provision of the Service allow for the software to be tested by the Council on a machine at a location to be determined by the Council and allow the Council to so test all such software before it is used operationally by the Contractor if it so requests.
- 28.5. The Council shall free of charge either in hard copy or in computerised form (as appropriate) provide the Contractor with such Council Data as is necessary in its opinion for the Contractor to perform the Service.
- 28.6. The Contractor shall ensure that its Staff comply at all times during the Contract Period with the Council's policy on the acceptable use of email and the internet at work so as to ensure that no children/vulnerable people who are in receipt of the Services are subjected directly or indirectly to unsuitable, offensive or inappropriate electronic or internet based images, information or materials.

29. PROTECTION OF PERSONAL DATA

- 29.1. The Contractor shall act as the bailee of any Council Data which may at any time be in the Contractor's possession or under its control and shall store such Council Data safely and separately from any data not relating to the Service and in a manner which makes it readily identifiable as Council Data relating to the Service.
- 29.2. Without prejudice to the Contractor's general obligations to provide data and information to the Council on request, the Council shall be entitled to request, and the Contractor shall provide within a reasonable time, employment and relevant personal information in relation to the Contractor's Staff for the purposes of anti-fraud measures such as data matching.
- 29.3. The Contractor shall ensure that it takes any measures necessary pursuant to the Data Protection Act 1998 (the DPA) and any other relevant Legislation to facilitate such disclosure lawfully and fairly.
- 29.4. In relation to all Personal Data and Sensitive Personal Data as defined in the DPA the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Service.
- 29.5. The Contractor shall only undertake processing of Personal Data and Sensitive Personal Data reasonably required in connection with the Service and shall not transfer any Personal Data or Sensitive Personal Data to any country or territory outside the European Economic Area.
- 29.6. The Contractor shall not disclose Personal Data or Sensitive Personal Data to any third parties other than:-
- 29.6.1. to Staff and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Service; or
- 29.6.2. to the extent required under a court order

provided that disclosure under Condition 29.6.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Condition and that the Contractor shall give notice in writing to the Council of any disclosure of Personal Data or Sensitive Personal Data it is required to make under Condition 29.6.2 immediately it is aware of such a requirement.

- 29.7. The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data or Sensitive Personal Data and accidental loss or destruction of, or damage to, Personal Data or Sensitive Personal Data

including but not limited to take reasonable steps to ensure the reliability of Staff having access to the Personal Data or Sensitive Personal Data.

29.8. The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor. Within 30 days of such a request the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine whether or not, in connection with Personal Data or Sensitive Personal Data, it is compliant with the DPA.

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

30. FREEDOM OF INFORMATION ACT 2000 (FOIA) AND THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.

30.1. The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in this Condition30(Freedom of Information).

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

30.2.1. provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and by such date specified by the Council acting reasonably may specify; and

30.2.2. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 (1) of the Freedom of Information Act 2000 or Regulation 5 (1) of the Environmental Information Regulations 2004.

30.3. Following notification under Condition 30.2 and up until such time as the Contractor has provided the Council with all the Information specified in Condition 30.2.1, the Contractor may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided

in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:-

30.3.1. whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; or

30.3.2. whether Information is to be disclosed in response to a Request for Information,

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

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

30.4.1. in certain circumstances without consulting the Contractor; or

30.4.2. following consultation with the Contractor and having taken its views into account.

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

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

30.7. The Contractor acknowledges that any lists provided by it, listing or outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Condition 30.4.

30.8. In the event of a request from the Council pursuant to Condition 30.2 above, the Contractor shall as soon as practicable, and in any event within 5 working days of receipt of such request:

30.8.1. inform the Council of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under Section 12(1) of the FOIA and the Fees Regulations;

30.8.2. where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Council shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request; and

30.8.3. where it does require the Contractor to comply with the request the 10 working days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under Section 10 of the FOIA.

30.8.4. In the event of an extension in Condition 30.8.3, the Council shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

31. CONFIDENTIALITY AND ANNOUNCEMENTS

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

31.1.1. comes into the public domain or is subsequently disclosed to the public (not through default of the disclosing party); or

31.1.2. is required to be disclosed by law and codes of practices including but not limited to the Freedom of Information Act 2000 or Environmental Information Regulations 2004 disclosure requirements; or

31.1.3. was already in the possession of the disclosing party (without restrictions as to its use) on the date of receipt.

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

31.3. The Contractor shall indemnify and keep indemnified the Council against all actions, demands, proceedings, damages, costs, Contract Price and expenses whatsoever in respect of any breach by the Contractor of this Condition, such indemnity shall be without prejudice to any other rights the Council may have.

32. INTELLECTUAL PROPERTY

32.1. The Contractor hereby expressly acknowledges that:-

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

32.1.1.1. created by the Contractor, its employees, agents and Sub-Contractors during the course of performing the Services or created exclusively for the Service;

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

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

32.1.1.4. Council Data however and wherever stored and processed by the Contractor.

32.2. The Council shall have the benefit of any good will pertaining to or arising from the use of the Intellectual Property and shall at all times accrue to the exclusive benefit of the Council absolutely.

32.3. The Contractor shall at the request of the Council promptly execute such documents and take or cease such action as the Council may require in order to assure to the Council the full benefit of its Intellectual Property and/or to confirm the Council's title thereto.

32.4. The Contractor shall make use of the Intellectual Property solely:-

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

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

32.5. The Contractor shall notify the Council on becoming aware of:-

32.5.1. any information prejudicial to and/or actual, threatened or suspected complaint or proceedings brought by any third party (including, without limitation, by any Child in Need) in any way connected with the Service and relating to the Council, the Contractor, any Fellow Contractor, Former Contractor or Sub-Contractor; or

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

32.6. Insofar as possible the Contractor shall use its reasonable endeavours to:

32.6.1. assist, co-operate with and follow the instructions of the Council in relation to any such Claim, including (without limitation) in protecting and/or defending the Intellectual Property against any infringing party; and

- 32.6.2. at the Council's request or the request of the Council's insurers the Contractor shall entrust the conduct of any proceedings in relation to any such Claim to the Council.

33. ASSIGNMENT AND SUB-CONTRACTING

33.1. The Contractor shall not:-

- 33.1.1. assign, charge or otherwise deal with its rights or obligations arising under the Contract or any part thereof; without the previous written consent of the Council;
- 33.1.2. sub-contract the provision of the Service or any part thereof without the previous written consent of the Council which consent
- 33.1.2.1. the Council shall in its absolute discretion be entitled to withhold; and
- 33.1.2.2. (if given) shall not (except with express written permission of the Council to such effect) relieve the Contractor from any liability or obligation under the Contract so that the Contractor shall be responsible for the acts, defaults or neglect of any Sub-Contractor, staff or its agents in all respects as if they were the acts, defaults or neglect of the Contractor or its agents or staff (notwithstanding that the Council may as a condition of giving its consent to the Contractor to sub-contract require the Sub-Contractor to enter into direct warranties, undertakings, guarantees or indemnities for the provision of the Service and its compliance with the Contract in all respects).
- 33.1.3. Should the Contractor wish to Sub-Contract the Service or any part thereof the Contractor shall submit information as requested by the Council for approval.
- 33.1.4. The Contractor remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and neglect of its Sub-Contractors;
- 33.1.5. The Contractor shall properly manage, supervise and review the performance of Sub-Contractors and shall ensure Sub-Contractors are able to comply with the Contract Standard.
- 33.1.6. The Contractor shall contract on similar terms to this Contract with the Sub-Contractors and provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request by the Council.
- 33.1.7. Where the Contractor enters into a Sub-Contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the Sub-Contract which requires the Contractor to pay all sums due to the Sub-Contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice and in accordance with the terms of that Sub-Contract.

- 33.2. The Council may in its absolute discretion assign the Contract or any part thereof and will give written notice of any assignment to the Contractor. This Condition in the Contract executed by the Contractor shall stand as the Contractor's consent to the assignment of the benefit burden or whole contract by the Council.

34. DEFAULTS

34.1. PERFORMANCE DEFAULT

- 34.1.1. A Performance Default means any failure by the Contractor to perform properly or comply with any of the Conditions of the Contract including, without limitation any failure of the Contractor to perform the Service to the Contract Standard.
- 34.1.2. The provisions of this Condition are without prejudice to the obligations of the Contractor as set out in the Contract Documents to provide help and assistance and to apply the Quality Development Plan.
- 34.1.3. The Contractor shall use its reasonable endeavours to ensure any failure (however significant or insignificant) is rectified as swiftly and as efficiently as possible.
- 34.1.4. The purpose of this Condition is to afford the Council remedies in the event of a Performance Default but any decision by the Council from time to time not to implement any such remedy shall not obviate the necessity of the Contractor to remain pro-active in its own endeavours to remedy such Performance Defaults in order to achieve the overall objectives set out in this Condition and in the Contract Documents.
- 34.1.5. In the event of a Performance Default the Council shall issue a Default Notice to the Contractor which shall state on its face whether the Performance Default is a:
- 34.1.5.1. Critical Performance Default; or
- 34.1.5.2. Non-Critical Default.

34.2. CRITICAL PERFORMANCE DEFAULT

- 34.2.1. In the event of a Critical Performance Default, the notice shall state a time within which the Contractor shall remedy, make good or mitigate the Critical Performance Default.
- 34.2.2. Such a time period shall be fair, reasonable and commensurate with the nature of the Critical Performance Default and the effect that such Critical Performance Default had or continues to have on the provision of the Service.
- 34.2.3. On receipt of the Default Notice the Contractor shall take the action required under the notice at its cost and own expense within the time period set out in the notice.
- 34.2.4. The Contractor shall, attend a meeting with the Authorised Officer to discuss the way in which the Contractor shall remedy the Critical Performance Default and the Contract

Manager shall give an assurance in writing to the Authorised Officer that the Critical Performance Default shall be remedied, made good or mitigated within the time scale set out in the Default Notice.

34.2.5. In the event that the Contractor considers that the time or measures stated in the Default Notice to remedy, make good or mitigate a Critical Performance Default is unreasonable or impossible the Contract Manager shall notify the Authorised Officer within 24 hours of receipt of the Default Notice and the parties shall attend a meeting at Director level to discuss the matter and to agree a time period in which and measures by which the Performance Default shall be remedied, made good or mitigated.

34.2.6. If the Contractor fails to remedy a Critical Performance Default within the time period set out in the Default Notice or such alternate date agreed Council may, in its absolute discretion, terminate the whole or any part of the Service in accordance with the provisions of Condition 39.

34.3. NON-CRITICAL PERFORMANCE DEFAULT

34.3.1. In the event that a Non- Critical Performance Default Notice is issued the Contractor shall, within five working days of receipt, prepare a plan setting out the measures (an Action Plan) which the Contractor shall carry out to ensure that the Non-Critical Performance Default is remedied, to ensure that it does not occur again and the time scales within which such an action plan shall be implemented. Such a plan shall be known as an Action Plan.

34.3.2. The Action Plan shall be submitted to the Authorised Officer for his approval which shall not be unreasonably withheld or delayed. The Authorised Officer shall be entitled to suggest reasonable amendments to the Action Plan which the Contractor shall incorporate. The Contractor shall implement the approved Action Plan at its cost and own expense within the time period set out in the Action Plan.

34.4. ESCALATION FOLLOWING DEFAULT NOTICE

34.4.1. In the event that:-

34.4.1.1. the Contractor fails to remedy a Non-Critical Performance Default in accordance with an Action Plan or;

34.4.1.2. any Critical Default having been remedied, occurs again or;

34.4.1.3. more than three Default Notices (whether Critical or Non-Critical and not necessarily relating to the same breach or failure) have been issued to the Contractor in any continuous two month period

the Council shall be entitled to:

- (a) Terminate the Contract in accordance with Condition 39; or
- (b) the Authorised Officer shall be entitled to serve a warning notice (a Warning Notice), which shall set out the measures which the Authorised Officer requires the Contractor to take to ensure that the Performance Default/s are remedied, do not occur again and the time scales within which the Contractor is to affect such measures. The Contractor shall comply with the terms of the Warning Notice. In the event that the Authorised Officer issues a Warning Notice during the Contract Period the Council shall be entitled to terminate the Contract in whole or in part in accordance with the provisions of Condition 39.

34.5. FURTHER REMEDIES

- 34.5.1. In addition to the matters set out above, in the event the Contractor commits a Performance Default (whether Critical or Non-Critical) the Council shall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute, to recover as a debt any reasonable, justifiable and demonstrable losses, costs and expenses of the Council or any Fellow Contractor occasioned directly as a result of the Contractor's Performance Default together with an administration charge of 10% of such sum or sums (a Deduction).
- 34.5.2. For the avoidance of doubt such losses, costs and expenses shall include any additional monitoring costs occurred as a result of the Contractor's Performance Default and long term monitoring costs for persistent Performance Default
- 34.5.3. In the event that there is any dispute between the Council and the Contractor as to the amount of such Deduction, the matter shall be referred to the dispute resolution procedure in accordance with Condition 35 and pending the final ascertainment or agreement between the parties or determination of the mediation the Deduction shall be made in the amount that the Council in its absolute discretion may reasonably and fairly consider to be a bona fide estimate. Such estimate shall be binding and conclusive upon the Contractor until final ascertainment, agreement or determination in accordance with Condition 35.
- 34.5.4. The provision of the Condition are without prejudice to any other right or remedy of the Council.

- 34.5.5. Without prejudice to the remainder of this Condition, the Contractor shall at its own expense put into effect the disaster recovery plan set out in its Tender whenever the same is necessary whether through the Contractor's default, the acts and omissions of the Council or its Fellow Contractors or other circumstances including a Force Majeure Event.

35. DISPUTE RESOLUTION AND EXPERT DETERMINATION

- 35.1. In the event that any dispute arises between the parties in connection with this Contract, the parties shall, in the first instance, use their reasonable endeavours to resolve it amicably between them.
- 35.2. If the dispute is not resolved between the Authorised Officer and Contract Manager, the matter shall be referred to senior levels in both organisations and subsequently to Director of Service if necessary.
- 35.3. Disputes remaining unresolved following a referral under Condition 35.2, if the parties agree (and such agreement shall not be unreasonably withheld) be referred to non-binding mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure").
- 35.4. To initiate a mediation, a party must give notice in writing ("Mediation Notice") to the other party to the dispute addressed to its Chief Executive requesting a mediation in accordance with Condition 35.3. A copy of the request should be sent to CEDR Solve.
- 35.5. The procedure in the Model Procedure will be amended to take account of:
- 35.5.1. any relevant provisions in this Agreement; or
 - 35.5.2. any other agreement which the parties may enter into in relation to the conduct of the mediation ("Mediation Agreement").
- 35.6. If there is any point on the conduct of the mediation (including as to the nominator of the mediator) upon which the parties cannot agree within 14 days from the date of the Mediation Notice, CEDR Solve will, at the request of any party, provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice save as to costs basis and shall not be used in evidence in any proceedings relating to the dispute with out the prior written consent of the parties except in relation to a determination of a costs award by a court.
- 35.7. In the event that the parties proceed to mediation they shall each bear their own costs and they shall each pay one half of the mediator's reasonable fees.
- 35.8. The mediation will start no later than 28 days from the date of the Mediation Notice.

- 35.9. Neither party may terminate the mediation until each party has made its opening presentation and the mediator has met each party separately for at least 1 hour.
- 35.10. If the parties have not settled the dispute by the mediation within 42 days from the date of the Mediation Notice, either party may litigate the dispute.
- 35.11. Either party shall be entitled to commence litigation before or during the mediation where there is a genuine emergency which only the courts have jurisdiction to resolve (a list of emergencies includes but shall not be limited to a situation where a party seeks a remedy of specific performance, injunctive relief or where a party is at risk of breaching a statutory duty or another contract).

36. LIABILITY AND INDEMNITY

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

For the purposes of Condition 36.1 above, references to the Contractor shall include any employee, agent or Sub-Contractor of the Contractor and for the purposes of Condition 36.1 "third party liabilities" shall mean any demands made by third parties against the Council and all liabilities of the Council to third parties.

- 36.2. Without prejudice to the generality of Condition 36.1 the Contractor's liability to the Council in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse the Council all costs and expenses reasonably incurred by the Council in the re-

- instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.
- 36.3. The Contractor's liability to the Council pursuant to Condition 36.1 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Council whether under the common law principles of contract equity or tort, under statute or as expressly provided in this Contract and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever any Guarantee or sub-contractor warranty.
- 36.4. In no circumstances shall the Contractor be liable for consequential loss (as opposed to indirect loss for which the Contractor shall be liable).
- 36.5. Save as provided by Condition 36.6 below the Council shall not under any circumstances be liable to the Contractor, whether in contract, tort, under statute or otherwise for any loss, damage, liabilities, costs, claims, expenses, demands and proceedings howsoever caused or arising out of or in the course of or in connection with provision by the Contractor of the Service or of the access to or use of any Council Premises or Council Equipment made available to the Contractor in order for the Contractor to provide the Service.
- 36.6. Condition 36.5 shall not apply in relation to:-
- 36.6.1. any failure by the Council to make proper payments to the Contractor in accordance with the terms of the Contract; and
 - 36.6.2. any negligent act or omission or breach of contract giving rise to death or personal injury or fraudulent misrepresentation by the Council or its staff in the course of their employment.
- 36.7. In any event or notwithstanding anything contained in this Contract, the Council's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused to the Contractor by the negligence of the Council or its employees acting in the course of their employment) shall be limited in aggregate to £1,000,000 (one million pounds) per Contract Year.
- 36.8. The Council shall not in any event be liable to the Contractor in contract, tort or otherwise for consequential loss whatever and however caused.
- 36.9. The indemnities contained in Condition 36.1 are without prejudice to and in addition to any warranties or other remedies and rights provided to the Council in common law, statute or equity.

37. INSURANCE

- 37.1. Without prejudice to the Council's rights under the Contract, the Contractor shall throughout the Contract Period take out and maintain with reputable insurers such policies of insurance as may be necessary to insure the Contractor against all manner of risks which might arise in connection with the Contractor's performance of its obligations under the Contract including (without limitation) in respect of the following risks:-
- 37.1.1. employers' liability including (without limitation) personal injury or death of any person arising under a contract of service with the Contractor and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance cover shall be not less five million pounds
 - 37.1.2. public liability and occupiers' liability; such insurance cover shall be not less than five million pounds in respect of any one incident;
 - 37.1.3. loss or destruction by reason of accident, burglary, theft, fire or otherwise of all equipment, assets, software and any premises owned or under the legal responsibility of the Contractor (including any Council Data and Council's Equipment at the Contractor's Premise) and such insurance shall be sufficient to cover the full replacement value.
 - 37.1.4. such other risks as may from time to time be required by the Council and such insurance cover in respect of Condition 37.1.1 - 37.1.3 above shall include an indemnity to principal clause.
- 37.2. The Contractor shall use its best endeavours to ensure that the Council's interest at all times during the Contract Period is and remains noted on the insurance.
- 37.3. The Contractor shall at appropriate times during the Contract Period submit to an Authorised Officer a copy of the insurance policy, together with documentary evidence that such insurance remains properly maintained.
- 37.4. If the Contractor fails to comply with its obligations under this Condition either fully or at all, the Council shall be entitled:-
- 37.4.1. itself to provide the Insurance in place of the Contractor; and
 - 37.4.2. to charge the cost of such substitute Insurance together with an administration charge of 10% (ten per cent) of such cost, to the Contractor by way of (in the Council's discretion) either:-
 - 37.4.2.1. deduction from any sums payable by the Council to the Contractor under the terms of the Contract; or

37.4.2.2. recovering the same as a debt due to the Council from the Contractor.

37.5. The Contractor shall ensure that any Sub-Contractor maintains insurance cover as required by the Contractor under this Condition.

38. SPECIFIC PERFORMANCE

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

39. TERMINATION

39.1. If any one or more of the following occurs the provisions of Condition 39.2 shall apply:-

- 39.1.1. the Contractor being in material breach of any of the Warranties;
- 39.1.2. the matters set out in Conditions 34.2.6, 34.4 and 42.6 occur;
- 39.1.3. the Contractor challenging and/or misusing any of the Council's Intellectual Property;
- 39.1.4. any change occurring in the control of the Contractor or (where the Contractor is a subsidiary company) its ultimate holding company;
- 39.1.5. the Contractor or any of its employees, (whether with or without the Contractor's knowledge) shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other contract with the Council;
- 39.1.6. in relation to any contract with the Council, the Contractor or any of its employees shall:-
 - 39.1.6.1. have committed any offence under the Bribery Act 2010; or
 - 39.1.6.2. have given any Contract Price or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 39.1.7. the Contractor committing an act of fraud or bankruptcy;
- 39.1.8. suffering any step to be taken by any person for or with a view to the winding up of the Contractor;
- 39.1.9. going into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or re-construction);
- 39.1.10. suffering an order to be made for a moratorium on any of its indebtedness;

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

39.2. In the circumstances set out in Condition 39.1 the Council may in its discretion and without prejudice to any of its rights or remedies under the Contract:-

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

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

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

39.2.1.3. state the date of Termination.

39.3. The rights of the Council under this Condition are in addition and without prejudice to any other right the Council may have to claim the amount of any loss or damage suffered by the Council on account of acts or omissions of the Contractor whether pursuant to the Guarantee and indemnity given in accordance with the Guarantee Undertaking or otherwise.

39.4. The remedies of the Council under this Condition may be exercised successively in respect of any one or more default by the Contractor.

40. CONSEQUENCES OF TERMINATION

40.1. Termination shall be without prejudice to the rights and remedies of the Contractor and the Council accrued before such Termination or expiration and nothing in the Contract shall prejudice the right of either party to recover any amount outstanding as at the date of such Termination or expiry.

40.2. Upon Termination (for whatever reason) the Contractor shall:-

40.2.1. immediately cease to provide the Service;

40.2.2. cease to make use of the Intellectual Property rights in any way whatsoever;

40.2.3. cease to make use of and vacate the Council Premises;

40.2.4. within seven days of Termination or, in the case of expiry of the Contract Period, no later than three months prior to such expiry, submit to the Council at the Contractor's own cost a comprehensive status report which shall be current as at the date of submission relating to the Service.

40.3. Within ten days of Termination at the Contractor's own cost return to the Council or otherwise dispose of in accordance with the Council's instructions all and any:-

40.3.1. documents and other information and materials relating to the Service;

40.3.2. Council Data (which data shall if necessary upon the Council's request be transferred in compatible form on to such computer system as the Council may request); and

40.3.3. other property and software belonging to the Council which may be in the possession or under the control of the Contractor;

- 40.3.4. make good to the Council any accounting discrepancy and/or loss or damage attributable to a Performance Default by the Contractor, its staff, Sub-Contractors and agents, such payment to be made directly into the Council's bank account, details of which the Contractor shall obtain from the Council;
- 40.4. All provisions which are expressed to survive termination of this Contract shall continue in force in accordance with their terms.
- 40.5. Subject as otherwise provided in the Contract neither party shall have any further obligation to the other under the Contract.
- 40.6. Prior to and at the end of the Contract Period the Contractor shall co-operate with the Council and any Replacement Contractor nominated by the Council in ensuring the smooth hand-over and continued running of the Service during such hand-over.
- 40.7. The Contractor shall without limitation, to the extent required by the Council:-
 - 40.7.1. allow the Council and any Replacement Contractor reasonable right of access to the Contractor's and Sub-Contractor's premises, systems, procedures and staff, where appropriate; and
 - 40.7.2. deliver to the Council upon request and in a form approved by the Council all information, materials and documents relating to the Service in its possession or under its control or in the possession or under the control of any permitted Sub-Contractors;
 - 40.7.3. In default of compliance with Condition 40.7.2 the Council may recover possession thereof and the Contractor grant a licence to the Council or its appointed agents to enter for the purpose of any such recovery any Contractor Premises or its permitted Sub-Contractors where any such documents, information or materials may be held.

41. FORCE MAJEURE

- 41.1. Subject to the remaining provisions of this Condition, 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.
- 41.2. 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:
 - 41.2.1. 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;
 - 41.2.2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

41.2.3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

42.3 The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable contractor should have foreseen and provided for the cause in question.

42.4 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 Contractor 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.

42.5 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.

42.6 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Contractor if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

42. PREVENTION OF BRIBERY

42.1. The Contractor:

42.1.1. shall not, and shall procure that its employees, agents and Sub-Contractors shall not, in connection with this Contract commit a Prohibited Act;

42.1.2. 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 Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council prior to execution of this Contract.

42.2. The Contractor shall:

42.2.1. if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant

government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

42.2.2. within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by a director of the Contractor) compliance with this Condition by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

42.3. The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent Staff, agents and Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

42.4. If any breach of 42.1 is suspected or known, the Contractor must notify the Council immediately.

42.5. If the Contractor notifies the Council that it suspects or knows that there may be a breach of 42.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 12 years following the expiry or termination of this Contract.

42.6. The Council may terminate this Contract by written notice with immediate effect if the Contractor, Staff, agents or Sub-Contracts (in all cases whether or not acting with the Contractor's knowledge) breaches Condition 42.1.

42.7. Should the Council exercise the right under Condition 42.6 the Termination Notice issued under Condition 39.2 shall also specify:

42.7.1. the nature of the Prohibited Act; and

42.7.2. the identity of the party whom the Council believes has committed the Prohibited Act.

42.8. Despite Condition 35, any dispute relating to:

42.8.1. the interpretation of Condition 42; or

42.8.2. the amount or value of any gift, consideration or commission,
shall be determined by the Council and its decision shall be final and conclusive.

42.9. Any termination under Condition 42.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

43. BUSINESS CONTINUITY

- 43.1. The Contractor shall have a Business Continuity Management Plan that has been agreed with the Council within three months of the Acceptance Letter.
- 43.2. The Business Continuity Management Plan must (but not limited to) contain provision for resilience covering the following elements:
 - 43.2.1. Command and control;
 - 43.2.2. Identification of critical and key activities including prioritisation;
 - 43.2.3. Staff shortage (including pandemic planning);
 - 43.2.4. Premises denial or damage;
 - 43.2.5. ICT – including data, systems, applications and communications;
 - 43.2.6. Suppliers and clients; and
 - 43.2.7. Extreme weather conditions including fire, flood and loss of power.
- 43.3. The Business Continuity Management Plans should cover direct and indirect impact of the Service delivered on behalf of the Council.
- 43.4. The Contractor shall comply with the provisions of the Business Continuity Management Plan and the Contractor shall ensure that it is able to implement the Business Continuity Management Plan at any time in accordance with its terms.
- 43.5. The Contractor shall exercise the Business Continuity Management Plan on a regular basis (and in any event not less than once every 12 month period).
- 43.6. The Council may require the Contractor to conduct additional tests of the Business Continuity Management Plan where the Council considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Management Plan.
- 43.7. The Council reserves the right to attend any Business Continuity Management Plan test or exercise undertaken by the Contractor and the Contractor shall notify the Council of when such tests or exercises are scheduled on reasonable notice.
- 43.8. Following each test, the Contractor shall send to the Council a written report summarising the contents, participants and results of the test and shall promptly (within three months of the exercise) implement any actions or remedial measures which the exercise has identified as required or that the Council considers to be necessary as a result of those tests. An updated

version of the Business Continuity Management Plan should be forwarded to the Council within three months of completion of any exercise.

43.9. This will constitute part of the annual review of the Business Continuity Management Plan. Other elements of the annual review must include checking contact details and Sub-Contractors business continuity management arrangements.

43.10. The Contractor shall undertake regular risk assessments and/or business impact analysis in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to those risk assessments or business impact analysis to the Council promptly in writing following each review.

44. RIGHT OF SET OFF

44.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter due to the Contractor under the Contract or under any other contract between the Contractor and the Council.

44.2. The Council shall be entitled to interest at a rate of 8% above the base lending rate published by the Bank of England on any sum properly due from the Contractor to the Council and which remains unpaid for a period of 30 days from the issuing by the Council of an invoice and the parties agree that this constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts Act 1998.

45. NO AGENCY PARTNERSHIP OR EMPLOYMENT

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

45.1.1. be, act or hold itself out as an agent of the Council; nor

45.1.2. make any representations or give any warranties to third parties on behalf or in respect of the Council; nor

45.1.3. bind or hold itself out as having authority or power to bind the Council.

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

46. WAIVER AND CUMULATION OF REMEDIES

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

46.1.1. constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of the Contract; nor

46.1.2. affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

46.1.3. The provisions of this Contract, and the rights and remedies of the parties under this Contract are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity; no exercise by a party of any one right or remedy under this Contractor, or at law or in equity, shall (save to the extent, if any, provided expressly in this Contract or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

47. HUMAN RIGHTS

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

48. SEVERANCE

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

49. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

50. ENTIRE AGREEMENT

50.1. This Contract constitutes the entire agreement and understanding between the parties in relation to the Contract and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the Service unless such misrepresentation or warranty was made fraudulently.

50.2. Condition 50.1 shall not apply to any representations, statements or warranties given by the Contractor to the Council regarding its financial standing, experience or probity pursuant to any

short listing process nor to any representations, statements, warranties given by the Contractor to the Council pursuant to Condition 6.

51. LAW AND JURISDICTION

51.1. This Contract shall in all respects be construed and interpreted in accordance with the laws of England. Subject to Condition 35 above each party agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Contract or the performance of the Services.

52. THIRD PARTY RIGHTS

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

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

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

Principal Lawyer

EXECUTED AS A DEED
for and on behalf of the Contractor

(Director/Company Secretary)

EXECUTED AS A DEED
for and on behalf of the Contractor

(Director)

SCHEDULES

Schedule One

Specification

Schedule Two

Pricing Schedule

Schedule Three

Specification

Schedule Four

Whistle Blowing Policy

SCHEDULE ONE

SPECIFICATION

SCHEDULE TWO

PRICING SCHEDULE

SCHEDULE THREE

CONTRACTORS TENDER

SCHEDULE FOUR
WHISTLE BLOWING PROCEDURE

25 June 2013

HUMAN RESOURCES

WHISTLEBLOWING PROCEDURE



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1. Introduction

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

2. Aims and Scope

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

3. Key Principles

- 3.1 Royal Greenwich makes it clear that no employee will be subject to victimisation or other detriment by reporting concerns which they reasonably believe to be true.
- 3.2 Any issue reported will be taken seriously and investigated. This may involve interviews or an investigation to establish the facts.

- 3.3 Royal Greenwich prefers matters to be raised where suspicion first arises rather than waiting for or searching for proof.
- 3.4 Concerns raised will be treated in a confidential manner and feedback will be given on any action taken.
- 3.5 Employees should put their names to any allegation wherever possible.
- 3.6 A complainant will need to demonstrate that there are reasonable grounds for the concern, and will be expected to co-operate with any investigation that takes place.
- 3.7 If any meeting or interview is arranged, there is a right to be accompanied by a trade union representative or workplace colleague.
- 3.8 This procedure will be supported by management culture.

4. What concerns can be reported using this procedure?

- 4.1 This procedure can be used where there are serious concerns such as:
- Child protection issues
 - Conduct which is an offence or breach of law
 - Miscarriages of justice
 - Risks to health and safety
 - Damage to the environment
 - Unauthorised use of public funds
 - Financial malpractice, fraud and corruption
 - Abuse of clients
 - Other unethical conduct, (including any attempts to cover up the above or any offence likely to be committed).
- 4.2 Within the context of Royal Greenwich's work, the above could include serious concerns about service provision, the conduct of officers, or others acting on behalf of Royal Greenwich, which fall below established standards of practice or legal requirements such as financial regulations.
- 4.3 If you are not sure if this is the right procedure or want confidential advice, the Confidential Reporting Hotline can provide advice. This is a free phone number 0800 169 6975 or they can be emailed at fraud@greenwich.gov.uk.

5. Matters outside the scope of this procedure

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

6. Employee responsibilities

- 6.1 All employees have a duty of confidentiality to Royal Greenwich and therefore it is important that this procedure is used and not ignored. It will very rarely, if ever, be appropriate to make any disclosure externally to the press or media. Taking such steps could result in disciplinary action. The Public Interest Disclosure Act 1988 does provide protection to individuals who make certain disclosures of information in the public interest but anyone wishing to make an external disclosure is strongly advised to seek legal advice before doing so as they may put their employment at risk.
- 6.2 Business ethics are increasingly seen as an issue that can build or damage an organisation’s reputation and public trust. Therefore all staff have a general responsibility to report all suspected concerns using this procedure for the positive benefit of all.

7. Safeguards

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

7.2 Harassment and Victimisation.

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

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

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

8. How to Raise a Concern

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

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

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

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

8.4 Employees should set out the background of the concern, giving names, dates, times and places where possible, and the reason why they are particularly concerned about the situation so this can be registered. If an employee feels that they are not able to

raise the concern in writing, they may raise the matter with the Head of Internal Audit and Anti-Fraud or a member of the Internal Audit and Anti-Fraud team (tel:0208 9215239). Employees may also arrange to meet with Internal Audit and Anti-Fraud as it recognised that discussing concerns in person is often a great relief and removes some of the pressure of not being able to talk about the issue to anyone else.

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

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

8.7 Anonymous correspondence

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

9. How Royal Greenwich will respond

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

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

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

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

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

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

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

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

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

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

9.10 False Allegations

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

10. Check-list

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

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

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

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

11. Further information

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

SCHEDULE 5
ADMISSIONS AGREEMENT

AN ADMISSION AGREEMENT made this

BETWEEN

THE ROYAL BOROUGH OF GREENWICH of Town Hall Wellington Street London SE18 6PW ('the Administering Authority');and

(company number) whose registered office is at (the transferee admission body')

WHEREAS: -

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

NOW THIS DEED WITNESSETH as follows: -

1. **Interpretation**

- 1.1 Eligible Employees means the persons named in the Schedule, for so long as they are employed by the Transferee Admission Body in connection with the provision of the Service and otherwise satisfy the requirements of the Regulations concerning membership of the Scheme and are not members of another occupational pension scheme (within the meaning of Section 150(5) of the Finance Act 2004) in relation to the employment in respect of which they would otherwise be eligible to be designated for Scheme membership.
- 1.2 The Regulations means the Local Government Pension Scheme (Administration) Regulations 2008, (the "Administration Regulations") the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, "the Benefits Regulations 2) the

Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (“the Transitional Provisions Regulations”) and to the extent still applicable the Local Government Pension Scheme Regulations 1997.

- I.3 The Scheme is the Local Government Pension Scheme constituted by the Regulations made pursuant to sections 7 and 12 of the Superannuation Act 1972.
- I.4 The Contract means the contract between the Administering Authority and the Transferee Admission Body dated
- I.5 The Service means the at .
- I.6 For the purposes of this Agreement the words “employed in connection with” shall mean the employee spends all their working hours on duties which relate to the Services.
- I.7 The Fund Actuary means the actuary appointed by the Administering Authority.
- I.8 The actuarial valuations, assessments, and certificates referred to in clauses 4 and 6 shall, be those provided to the Administering Authority by the Fund Actuary calculated in accordance with then current good professional standards;
- I.9 Business Day means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.
- I.10 Save as aforesaid the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires.
- I.11 In this Agreement where the context so admits:-
 - I.11.1 words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations unincorporated associations and partnerships;
 - I.11.2 reference to any statutory provisions shall be deemed to include reference to any such provisions as from time to time amended varied replaced extended or re-enacted and any regulations under such provisions unless the context otherwise requires;
 - I.11.3 reference to Clauses or Schedules shall be deemed to be references to a Clause or a Schedule to this Agreement and references to a sub-Clause shall be deemed to be a reference to a sub-Clause of the Clause in which the reference appears; and
 - I.11.4 headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

2. **Admission**

2.1 This Agreement shall have effect from the (the
“Commencement Date “)

2.2 The Administering Authority shall from the Commencement Date admit the Eligible Employees to membership of the Scheme and permit them to participate in the benefits of the Pension Fund.

3. **Participation**

3.1 The provisions of the Regulations shall apply for determining the rights and obligations of and the action which is to be taken by each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly.

3.2 The provisions of the Regulations shall apply to the Eligible Employees in the same way as if the Transferee Admission Body were a Scheme employer within the meaning of the Regulations.

3.3 The Transferee Admission Body warrants and represents to the Administering Authority that every Eligible Employee is employed in connection with the provision of the Service.

3.4 The Transferee Admission Body undertakes that it will promptly notify the Administering Authority and in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for Eligible Employees, and of any terminations of employment by virtue of ill health, redundancy or business efficiency.

3.5 The Transferee Admission Body undertakes that it will promptly notify the Administering Authority in writing if any Eligible Employee ceases to be such in consequence of failing to be employed in connection with the provision of the Service or failing to satisfy the requirements of the Regulations concerning membership of the Scheme or becomes ineligible for any other reason under the Regulations.

3.6 The Transferee Admission Body undertakes that it will promptly and in any event on a monthly basis, notify the Administering Authority in writing of changes to the number of hours an Eligible Employee works each week.

4. **Payment**

4.1 The Transferee Admissions Body will pay to the Administering Authority, monthly in arrears for credit to the Fund, such contributions and payments as are due in respect of Eligible

Employees from time to time to meet the burden which will be imposed on the Scheme by reason of the admission to participate in the benefits thereof of the Eligible Employees.

- 4.2 The payments to be made by the Transferee Admission Body referred to in clause 4.1. shall include, but shall not be limited to, the Administering Authority's common rate of employer's contribution from time to time, adjusted by:

4.2.1 any individual adjustments (if appropriate); or

4.2.2 in accordance with a certificate provided by the Fund Actuary under Clause 6.1

- 4.3 The Transferee Admissions Body shall be responsible for collecting and paying to the Administering Authority the employee's contribution payment by the Eligible Employees.

- 4.4 The Transferee Admissions Body will pay to the Administering Authority for credit to the Pension Fund the employee and employer pension contributions on a monthly basis in arrears, and no later than the date specified in Regulations made under the Pensions Act 1995. Each payment is to be supported by a schedule of Eligible Employees' pension data as specified by the Administering Authority.

- 4.5 The Transferee Admission Body will pay to the Administering Authority for credit to the Pension Fund any revised contributions due under clause 6.3 or clause 6.6 within 30 days of receipt of a written request from the Administering Authority.

- 4.6 Where the Transferee Admission Body certifies that:

4.6.1 an Eligible Employee who is aged 55 or more and who is retiring by reason of redundancy or business efficiency, or

4.6.2 an Eligible Employee is retiring voluntarily or otherwise taking benefits early with the consent of the Transferee Admissions Body on or after age 55, or

4.6.3 an Eligible Employee is retiring early on the grounds of permanent ill health or permanent infirmity of mind or body, or

4.6.4 the deferred benefit of an Eligible Employee or former Eligible Employee is brought into early payment with the consent of the Transferee Admissions Body on or after age 55, or

4.6.5 the deferred benefit of an Eligible Employee or former Eligible Employee is brought into early payment on the grounds of permanent ill health or permanent infirmity of mind or body,

and immediate benefits are payable under the Regulations, the Transferee Admissions Body will pay to the Administering Authority for credit to the Pension Fund the sum notified to

them in writing by the Administering Authority as representing the actuarial strain on the Pension Fund, as certified by the Fund Actuary of the immediate payment of benefits but only, in the case of sub-sections 4.6.3 or 4.6.5, to the extent that the strain is not met through the Transferee Admissions Body's employer contribution rate, such sum to be paid within 30 days of receipt of the written notification.

- 4.7 Any financial penalty incurred by the Pension Fund arising from the failure of the Transferee Admissions Body to comply with the terms of this Agreement will be repaid to the Pension Fund by the Transferee Admissions Body within 30 days of receiving a written request from the Administering Authority.
- 4.8 If any sum payable under the Regulations or this Agreement by the Transferee Admissions Body to the Administering Authority or to the Pension Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations the Administering Authority will require the Transferee Admissions Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid or, in respect of sums under clause 4.6 to pay interest calculated at 2% over Base Rate on a day to day basis.
- 4.9 If any sum payable under the Regulations or this Agreement by the Transferee Admissions Body to the Administering Authority or to the Pension Fund has not been paid within one month after the date on which it becomes due under the Regulations or this Agreement, the Administering Authority may set off against any payments due to the Transferee Admissions Body the sum due (including any interest due in accordance with clause 4.8)
- 4.10 The Transferee Admissions Authority shall pay to the Administering Authority in addition to the other sums payable under this Agreement an amount in respect of the Pension Fund administration costs as recommended by the Fund Actuary

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

The Transferee Admission Body undertakes:-

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

Administering Authority and provided by the Administering Authority to the Transferee Admission Body;

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

6. Periodic Valuations

- 6.1. The Administering Authority may periodically obtain from the Fund Actuary a certificate specifying, in the case of the Transferee Admission Body the percentage or amount by

which, in the actuary's opinion, the contribution rate at the common rate or any prior individual adjustment within the meaning of the Regulations should be increased or reduced. This is with a view to ensuring that, as far as is reasonably possible the value of assets of the Pension Fund in respect of the Eligible Employees and former Eligible Employees is neither materially more nor materially less than the anticipated liabilities of the Pension Fund in respect of the Eligible Employees and former Eligible Employees at the date the Agreement is due to end.

6.2 When this Agreement is terminated, the Authority will obtain:-

6.2.1 an actuarial valuation as at the termination date of the liabilities of the Pension Fund in respect of Eligible Employees and former Eligible Employees, of the Transferee Admissions Body;

6.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from the Transferee Admission Body and

6.3 The Transferee Admission Body shall pay the revised contributions to the Administering Authority.

6.4 The Administering Authority and the Transferee Admission Body agree that this Agreement may make such provision relating to the termination of the Agreement or otherwise as the parties consider appropriate. The parties agree that notwithstanding the termination of this Agreement the Transferee Admission Body shall remain liable to meet the funding obligations to the Pension Fund in respect of former Eligible Employees of the Transferee Admission Body and that the provisions of this Clause and, in particular Sub Clauses 6.5 and 6.6 shall apply;

6.5 After termination of this Agreement on any subsequent actuarial valuation of the Pension Fund the Administering Authority may obtain;

6.5.1 an actuarial valuation of the liabilities of the Pension Fund in respect of former Eligible Employees and

6.5.2 a revision of any rates and adjustments certificate showing the revised contributions due from the Transferee Admission Body

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

7. **Bond or Indemnity**

- 7.1 The Administering Authority has carried out an assessment, taking account of actuarial advice, of the level of risk arising on the premature termination of the provision of the service or assets by reason of insolvency, winding up or liquidation of the Transferee Admission Body.
- 7.2 The level of risk identified by this assessment is £ and therefore the Transferee Admission Body is required to enter into an indemnity or bond to meet that level of risk identified.
- 7.3 The Transferee Admission Body warrants that it has or will have provided by the commencement date specified in Clause 2 a bond or indemnity in an approved form to meet the level of risk identified in clause 7.2.
- 7.4 The indemnity or bond must be with:-
- 7.4.1 a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect and carry out contracts of general insurance;
 - 7.4.2 an EEA firm of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
 - 7.4.3 a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
- 7.5 Where the bond under Clause 7.2 is not for the full period of this Agreement the Transferee Admission Body shall renew the bond to meet the level of risk exposure which has, prior to the renewal of the bond, been actuarially assessed to the satisfaction of the Administering Authority.
- 7.6 The sum of the bond shall be reviewed at 12 monthly intervals from the Commencement Date specified in Clause 2 to ensure that it still covers a level of risk exposure which has been actuarially assessed to the satisfaction of the Administering Authority.

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

8. Termination

- 8.1 Subject to clauses 8.2 and 8.3, this Agreement will terminate upon either party giving a minimum of three months notice to terminate this agreement to the other;
- 8.2 This Agreement will automatically terminate on the earlier of:-
- 8.2.1 the date the Transferee Admission Body ceases to provide the Service; or
 - 8.2.2 the date the Transferee Admission Body ceases to be an admission body for the purposes of the Regulations.
- 8.3 This Agreement may be terminated with immediate effect by the Administering Authority by notice in writing to the Transferee Admission Body in the event of:-
- 8.3.1 any breach by the Transferee Admission Body of any of its obligations under this Agreement PROVIDED THAT if the breach is capable of remedy the Administering Authority will first afford to the Transferee Admission Body the opportunity of remedying that breach within such reasonable period as the Administering Authority may specify;
 - 8.3.2 the insolvency, winding up or liquidation of the Transferee Admission Body ; and
 - 8.3.3 the failure by the Transferee Admission Body to pay any sum due to the Administering Authority or to the Pension Fund within seven days of the periods specified in clauses 4.4, 4.6 and 4.7 or, in any other case, within 28 days of receipt of a notice from the Administering Authority requiring them to do so PROVIDED THAT the Administering Authority will first afford to the Transferee Admission Body the opportunity of remedying the failure within such reasonable period as the Administering Authority may specify.
 - 8.3.4 the failure by the Transferee Admission Body to ensure the approved bond or indemnity is in place or to renew or adjust the level of bond or indemnity in accordance with Clause 7.3 or 7.4

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

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

9. **Notification**

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

10. **Notices**

10.1 Any notice to be given under this Agreement must be in writing and will be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the registered office of the Transferee Admission Body or the Town Hall of the Administering Authority (as the case may be) and will be deemed to have been duly given or made (i) if delivered by hand, upon delivery at the address provided for in this clause unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day, in which case it will be deemed to have been given at 9am on the next Business Day; or (ii) if sent by prepaid first class post on the second Business Day after the date of posting.

11. **Public Inspection**

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

12. **Disputes**

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

13. **Applicable Law**

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

14. Enforceability of Provisions

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

15. Rights of Third Parties

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

16. Amendments

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

17. Costs

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

18. Execution

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

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

THE COMMON SEAL OF

THE ROYAL BOROUGH OF GREENWICH

was Hereunto affixed in the presence of:-

EXECUTED AS A DEED)

for and on behalf of the Contractor)

(Director/Company Secretary))

EXECUTED AS A DEED)

for and on behalf of the Contractor)

(Director))

SCHEDULE

LIST OF ELIGIBLE EMPLOYEES

Name

Date of Birth