

LONDON BOROUGH OF RICHMOND UPON THAMES

DRAFT CONTRACT FOR THE SUPPLY OF SERVICES AND WORKS

The Council are in the process of reviewing all their Templates used for the Supply of Goods, Works and Services or a Combination. Where a JCT/NEC (construction contracts) is not required for works/ services, a template such as this may be used.

This template is drafted to reflect both Services and Works in a basic form. When reviewing this document, bear in mind that it is a template only and will require further drafting to reflect the exact nature of the Service.

Where possible the Council has tried to balance the needs of Commercial Organisations (regardless of Size) and the Third Sector.

Depending on the nature of the Service and Levels of Risk involved, the Contract terms may be amended.

Where additional clauses are required, they will be inserted into the Agreement either in a Schedule which forms part of the Contract or additional numbering.

Example, Intellectual Property – there may be a need to have robust Intellectual Property provisions contained within the document.

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- 41. Schedule 3: Pricing
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¹ The template is not an exhaustive document. There maybe other pertinent clauses which need to form part of the agreement. This will be reviewed by Legal and the Client, once the nature of the Service is known. The supplementry clauses form part of the terms and conditions.

² The Schedules are not set as marked, they are for illustration purposes only.

ARTICLES OF AGREEMENT

THIS CONTRACT is made the [] day of [] 20[] **BETWEEN**
THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF of the

("the Council") of the one part and

[] whose registered office is situated at [] ("the Contractor") of the other part.

WHEREAS³

1. As part of its programme of strategic procurement the Council wishes to have provided the Service set out in the Contract and has received tenders for the Service.
2. The Contractor is willing to perform such Service in accordance with the provisions of the Contract in an open and transparent manner with its day to day operations open to scrutiny and independent audit.
3. The Council has received from the Contractor a tender ("the Tender") which it has accepted to provide the Service during the Contract Period as hereinafter provided.

NOW IT IS AGREED between the Council and the Contractor as follows:

1. This Contract constitutes the sole contract or agreement between the Council and the Contractor for the performance by the Contractor of the Service.
2. The Contractor shall provide the Service fully in accordance with the provisions of the Contract to the standards required during the Contract Period.
3. So long as the Contractor shall continue to so provide the Service the Council shall make to the Contractor the payments provided by the Contract on the terms contained therein.

³ The recitals as currently drafted are for illustrated purposes and can be amended to reflect the relevant narrative.

CONDITIONS OF CONTRACT

1 DEFINITIONS AND INTERPRETATION⁴

1.1 In the Contract the following words shall where the context so admits have the following meanings.

"Authorised Officer"	referenced in Condition 3 and as named in Schedule [] or such representative appointed by the Council to act in the name of the Council for the purposes of the Contract.
"Commencement Date"	2 nd July 2012
"Conditions"	These Conditions of Contract and any modifications thereto made in accordance with the Conditions.
"Consumables"	all materials consumed in the performance of the Service.
"Contract"	the contract between the Council and the Contractor for the supply of Services in accordance with these Conditions.
"Contract Documents"	The Contract Documents are: the Form of Agreement incorporating the Contract Documents
"Contract Manager"	referenced in Condition 4 and as nominated by the Contractor (with the approval of the Council) from time to time.
"Contract Period"	the period commencing on the Commencement Date and expiring on the Expiry Date

⁴ The Definitions can be amended to reflect the Service. Further definitions may need to be added where relevant or deleted. In this template not all the definitions are relevant, they are for guidance purposes only (For Officer use)

“Contract Price”	a sum of money payable by the Council to the Contractor as outlined in Condition ...Schedule.
The “Contract Standard”	means such standard as complies in each and every respect with all relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract the standard is to be to the reasonable satisfaction of the Authorised Officer.
“Con ⁵ tractor”
“Council”
“Customer(s)”	means any individual(s) receiving the Services
“Default Notice”	a notice issued in accordance with Condition 11 and Schedule []
“Eligible Employees”	means (a) the Transferring Employees who are active members of the (or eligible to join) LGPS on a Relevant Transfer Date; (b) The Transferring Original Employees who are active members of (or eligible to join) either LGPS on a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date; (c) Any other individual nominated by the Contractor or Sub-Contractor (as appropriate).
“Employee Liability Information”	means the information in respect of Relevant Employees as set out in Schedule [] to the Contract.
“Expiry Date”	1 st July 2014 subject to earlier termination or an extension of time made pursuant to the provisions of these Conditions

⁵ The term Contractor can be amended by the relevant Legal person to reflect the type of Organisation providing the Service where necessary.

“FOIA”

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or Codes of Practice issued by the Information Commissioner in relation to such legislation.

“Force Majeure Event“

means war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lockout which is limited to the Contractor Representatives), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have been reasonably foreseen or avoided, but excluding:

- (i) any industrial action occurring within the Contractor’s or any sub-Contractor’s organisation;
- (ii) the failure of any sub-Contractor to perform its obligations under any sub-contract.

“First Contractor⁶”

means the person with whom the Council initially contracted for the provision of services which are similar to the Services.

“Future Contractor”

means any person contracted to provide service to the Council, the same as or similar to the Service at any time in substitution of the Contractor or any sub-Contractor (in whole or part) whether or not after expiry or termination of this Contract.

“Index”⁷

the "All Items" Index of Retail Prices published by the Office for National Statistics or any

⁶ This term can be amended if necessary.

government department upon which duties in connection with the compilation and maintenance of such Index shall have devolved.

"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000.
"Intellectual Property Rights" ⁸	means any and all patents, inventions, trade marks, logos, service marks, domain names, registered designs, utility models, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or individual property rights whether or not registered or capable of registration and whether or in future residing in the UK or any other part of the world together with all or any goodwill and accrued rights of action.
"Key Personnel"	means the Contractor's main personnel employed on this contract.
"Local Government Pension Scheme (LGPS)"	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time.
"Location"	means the place where the Service or any part thereof is to be performed by the Contractor or where documents or records are held or stored by or on behalf of the Contractor in connection with the provision of the Service.
"Method Statements"	Descriptions of how the Contractor will undertake the work required within the contract (including Annual Work Plan, if applicable)

⁷ This should be amended to reflect the relevant Index - Legal should be consulted.

“Monthly Payment Statement ⁹ ”	means the statement issued by the Council to the Contractor confirming or certifying the amount is properly due to the Contractor.
“Necessary Consents”	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all planning permissions and waste management licence.
“New Employees”	means those new employees employed by the Contractor to provide the Services who will be working alongside the transferring employees.
“Notice of Termination”	accordance with condition...
“Original Employee”	means that employee of the Council who as a result of the application of TUPE, in relation to what was done for the purposes of carrying out the contract between the Council and the first Contractor, became employees of someone other than the Council.
“Personal Data”	means personal data as defined in the Data Protection Act 1998 as amended that is processed by the Contractor in connection with the Service;
“Pricing Schedule”	means the Pricing Schedule enclosed as Schedule [] in the Tender and completed by the Contractor.
"Rectification Notice"	a notice issued in accordance with Condition 11 and Schedule []
"Relevant Employees"	means the employees who are the subject of a Relevant Transfer.

⁸ There is no clause dealing with Intellectual Property Rights as this is very much Service Specific. Its addition here is for review purposes.

“Relevant Transfer”	means a relevant transfer for the purposes of TUPE.
“Relevant Transfer Date”	means the date on which an Eligible Employee transfers to the Contractor and/or Sub-Contractor pursuant to a Relevant Transfer.
“Representative”	means any employee, officer, worker, agent or Contractor, engaged by a party in connection with the Service including any Sub-Contractor.
“Request for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice issued under Section 45 of the FOIA.
"Schedule"	means a Schedule hereto.
"Service"	means the whole of the obligations to be performed and to be supplied pursuant to and in accordance with the Contract, and any variation(s) thereto made pursuant to these Conditions.
“Service User”	means a person receiving the Service as defined in the Specification.
"Specification"	means the Council's Service Specification for the provision of the Services and any variation thereof pursuant to Condition 26 and in the event of difference of interpretation between the Conditions and the Specification the Conditions shall prevail.
“Staff”	means any person used by the Contractor in the provision of the Service whether self-employed or employed by the Contractor, agency Staff or Sub-Contractors.

⁹ This may be amended, if payments are not issued in this manner

“Sub-Contractor”	means a person to whom the Contractor sub-contracts any of its obligations under this Contract.
"Tender"	means the Tender for the provision of the Service submitted by the Contractor including the Pricing Schedule and all supporting documents required to be submitted with the Tender and accepted by the Council.
“The Council”	or any successor thereto
“Transfer Date”	means the date the Transferring Employees are transferred to the employment of the Contractor and the date that the Transferring Original Employees are transferred to the employment of a subsequent Contractor;
"Transferring Employee"	means an employee of the Council whose contract of employment becomes, by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) in relation to what is done for the purposes of carrying out this Contract between the Council and the Contractor, a contract of employment with someone other than the Council;
“Transferring Original Employee”	means an Original Employee <ul style="list-style-type: none"> (a) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out a contract between the Council and the Contractor, a contract of employment with someone other than his existing employer, and (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the

Intervening Contract, a contract of employment with someone other than his existing employer.

“VAT”

Value Added Tax

“Working Day”

means any day save for Saturday, Sunday and a public holiday in England.

1.2 Interpretation

1.2.1 The headings for each section throughout this document are provided for ease of reference only and do not affect the context.

1.2.2 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa as appropriate

1.2.3 Reference to any Act of Parliament and to any orders regulations or rules made pursuant to that Act shall include reference to any modifications re-enactment or replacement

1.2.4 Unless otherwise stated reference to a condition sub-condition schedule or paragraph is reference to a condition sub-condition schedule or paragraph in the Contract

2 AGREEMENT AND DURATION

2.1 During the Contract Period the Contractor shall provide the Service in accordance with the provisions of the Contract.

2.2 The Agreement shall commence of the Commencement Date and expire on the Expiry date unless extended in accordance with 2.3

2.3 The Council may during the final year of the Contract Period and entirely at its own discretion request the Contractor to extend the Expiry Date for a period up to []

3 AUTHORISED OFFICER

The functions, rights and powers conferred by the Contract upon the Council shall be exercised by the Authorised Officer and the Authorised Officer shall act reasonably at all times in the exercise of these functions rights and powers in respect of any decisions, instructions or other actions taken pursuant to or in connection with this Contract. The name of any person authorised by the Authorised Officer to act on his behalf and the duties and extent of such authority will be given by notice in writing to the Contractor

4 CONTRACT MANAGER¹⁰

- 4.1 The Contractor shall ensure that it has a Contract Manager at all times during the Contract Period.
- 4.2 The Contract Manager shall be the authorised representative of the Contractor for all purposes connected with the Contract. For the avoidance of doubt the Contract Manager shall have power to bind the Contractor
- 4.3 The Contractor shall by a written notice notify the Authorised Officer of the identity, address and telephone numbers of the person appointed as Contract Manager from time to time. Such notice must be served on or before the day of the relevant appointment.
- 4.4 The Contract Manager shall be available during the normal working hours of the service and at such other times as may be agreed with the Council
- 4.5 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.
- 4.6 The Contract Manager shall consult with the Authorised Officer or his representative as often as may reasonably be necessary for the efficient provision of the Service.
- 4.7 The Contract Manager shall notify the Authorised Officer promptly and in writing of any situation or envisaged development which will influence the ability of the Contractor to carry out the Service over the Contract Period.

5 COUNCIL'S OBLIGATIONS

- 5.1 During the Contract Period the Council shall:
 - 5.1.1 Pay to the Contractor all sums of money payable pursuant to the provisions of the Contract subject to the Contractor complying with its obligations hereunder; and
 - 5.1.2 Comply with the terms of this Contract.

6 CONTRACTOR'S OBLIGATIONS

- 6.1 During the Contract Period the Contractor shall:
 - 6.1.1 Pay all sums due to the Council by the Contractor pursuant to the provisions of the Contract;
 - 6.1.2 Perform the Service in a proper and workmanlike manner providing all appropriate staff resources.;
 - 6.1.3 Comply with all the relevant Acts of Parliament, Statutory Regulations, Codes of Practice relating to the Service;

¹⁰ This can be amended to reflect the requirement of the Service

- 6.1.4 Comply with all relevant rules, codes, policies, procedures and standards of the Council which may be referred to in the Specification and/or notified to the Contractor by the Authorised Officer from time to time ;
- 6.1.5 Ensure that the Contract Manager or other representative of the Contractor as agreed with the Authorised Officer attends meetings [] as the Authorised Officer shall require;
- 6.1.6 Ensure that the Contract Manager notify the Council in the event of a change in circumstances were the change has an impact on the sustainability and delivery of service;
- 6.1.7 If the Contractor is a company, to notify the Council in the event of a change in control of the Contractor or (where the Contractor is a subsidiary company) its ultimate holding company and/or a reduction in the capital of that company¹¹; and
- 6.1.8 If the Contractor is a charity, to notify the Council in the event of a change to its unrestricted reserves

7 SUPERVISION OF STAFF¹²

- 7.1 The Contractor shall provide sufficient supervisory staff, in addition to the Contract Manager, to ensure that the Contractor's staff engaged in and about the provision of the Service are at all times adequately supervised and properly perform their duties.
- 7.2 The Contractor's staff engaged in and about the provision of the Service shall primarily be under the control and direction of the Contractor's own supervisory staff.

8 CONTRACTOR'S EMPLOYEES¹³

- 8.1 The Contractor shall at all times during the Contract Period:-
 - (i) be entirely responsible for the employment and conditions of service of its Staff employed in the Contract;
 - (ii) employ and assign to the Service, sufficient persons to ensure the performance of the Service to the Contract Standard and which the

¹¹ This particular clause will be amended for a charity to reflect the need for information relating to its overall financial position.

¹² This area may be expanded depending on the needs of the Service.

¹³ This may not be relevant to a Charity and would be amended if necessary. There have to be additional provisions to reflect volunteers, if required.

Contractor holds out as having sufficient skill and expertise for the proper performance of the Service to the Contract Standard; and

- (iii) ensure that a sufficient reserve of Staff meeting the standard required in (ii) above is available to provide the Service to the Contract Standard during Staff holidays or absences due to sickness or otherwise or any other unforeseen circumstances at no additional cost to the Council;
- (iv) in the event of industrial action by the Contractor's Staff it remains its responsibility to meet the requirements of this Contract and the Contractor shall meet at its own expense any additional costs incurred in providing the Service;
- (v) in the event of industrial action by the Council's Staff the Contractor shall as far as reasonably practicable comply with the Authorised Officer's requirements to ensure the continued provision of the Service.
- (vi) at all times ensure that the Contractor and Staff are fully in compliance with the provisions of the Immigration, Asylum and Nationality Act 2006 or any amendments thereto and any regulations and/or immigration rules, guidelines etc thereunder in context of their right to work in UK.

8.2 The Contractor shall not employ or use any person in the provision of the Service where the Contractor has reason to believe:

- (i) that such person is likely to bring the Council into disrepute or is an unsuitable person to work; or
- (ii) that such person has been convicted of a serious criminal offence (subject to the provisions of the Rehabilitation of Offenders Act 1974);
or
- (iii) that such person is not authorised to work in the United Kingdom under the Immigration, Asylum and Nationality Act 2006 or any other similar enactments affecting immigration and right to work in the United Kingdom and any regulations and/or immigration rules, guidelines etc thereunder.

8.3 The Authorised Officer shall be entitled but not unreasonably or vexatiously to require the Contractor, by notice in writing, to remove from the provision of the Service any Staff specified in such notice, including the Contract Manager. The Contractor shall

forthwith remove such person from the provision of the Service and shall immediately provide a replacement at no additional cost to the Council, and for the avoidance of doubt the Council will not be liable either to the Contractor or any Representative in respect of any liability, loss or damage occasioned by the operation of this Condition.

8.4 The Council shall in no circumstances be liable either to the Contractor or to the Staff in respect of any liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Council against any claim made by such person.

8.5 The Contractor shall immediately inform all relevant trades unions representing the Contractor's workforce of the award of the Contract and Commencement Date and undertake all necessary consultations in relation to TUPE (if applicable) and shall confirm compliance with this Condition in writing to the Authorised Officer prior to the Commencement Date.

9. TUPE COMPLIANCE EMPLOYEES AND EMPLOYMENT MATTERS ¹⁴

9.1 GENERAL

8.1.1 Application of TUPE

9.1.1.1 The Council and the Contractor agree that where the identity of a Contractor of any service which constitutes or which will constitute one of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.

9.1.1.2 On the occasion of each Relevant Transfer except a Relevant Transfer upon termination of this Contract, the Contractor shall and shall procure that any new Contractor of the relevant service shall comply with all of its obligations under TUPE and the Directive in respect of the Relevant Employees.

9.1.2 Emoluments and outgoings

9.1.2.1 The Contractor shall be responsible for or shall procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant

¹⁴ The TUPE provisions apply in all are standard terms, they have been reviewed by the Employment Lawyer. There maybe instances where this provision can be shortened. In a smaller agreement it may not be necessary to have TUPE inserted. This will be reviewed on a case by case basis.

Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.

9.1.2.2 The Contractor shall be responsible for or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Relevant Transfer.

9.1.3 Provision of information

Any information received by the Council from the current service Contractors relating to the Relevant Employees will be included in a Schedule to this Contract (such information to be updated to take account of any changes as needed). The Council gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Council or any previous provider.

9.1.4 Contractor to inform Council of any Measures

The Contractor shall within ten (10) Working Days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of TUPE and the Directive) that the Contractor intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

9.1.5. Indemnities

9.1.5.1 The Council shall indemnify the Contractor from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Contractor shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Council in relation to any Relevant

Employee prior to the date of the Relevant Transfer and any such claim is not in connection with the Relevant Transfer.

9.1.5.2 The Contractor shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Contractor in relation to any Relevant Employee, on or after the date of the Relevant Transfer.

9.1.5.3 The Contractor shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 10 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

9.1.5.4 The Contractor shall indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Contractor or Sub-Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Contractor or any Sub-Contractor or any proposed measures of the Contractor or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

9.1.6 **Commencement of Employment**

Save in relation to any benefit under the Local Government Pension Scheme, except for injury benefits, the Contractor shall treat the date of commencement

of employment of the Employees with the Contractor as the date of commencement of employment with the Council.

9.2 TUPE COMPLIANCE ON TERMINATION

9.2.1 Handover on termination

9.2.1.1 During the eighteen (18) months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council, and within fifteen (15) Working Days of being so requested by the Council, the Contractor shall fully and accurately disclose to the Council any and all information in relation to all personnel engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Council may request, in particular but not necessarily restricted to any of the following:

- (a) a list of employees employed by the Contractor;
- (b) a list of agency workers, agents and independent Contractors engaged by the Contractor;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- (d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement;
- (e) details of any disciplinary procedure taken against any of the Relevant Employee and any grievance procedure taken by any Relevant Employee within the previous two years in circumstances where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation)

Act 1992 which relates exclusively or primarily to the resolution of disputes applies;

- (f) details of any court or tribunal case, claim or action brought by any Relevant Employee against the Contractor within the previous two years and any court or tribunal case, claim or action that the Contractor has reasonable grounds to believe that a Relevant Employee may bring against a Future Contractor arising out of that employee's employment with the Contractor; and
- (g) details of any collective agreement which will have effect after the Relevant Transfer, in its application in relation to any Relevant Employees, pursuant to Regulation 5 (a).
- (h) Condition 9.2.1.1 a – g does not apply to unpaid volunteers

9.2.1.2 The Contractor shall provide the Council with all requested employee information provided and shall warrant the accuracy and completeness of all the information provided to the Council pursuant to Condition 9.2.1.1, and shall indemnify the Council for all or any direct or indirect losses, costs, damages or expenses resulting from the provision of inadequate, incomplete or inaccurate information. Furthermore the Contractor authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

9.2.1.3 During the twelve (12) months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request.

9.2.1.4 During the twelve (12) months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) materially increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

9.2.2 **Indemnities**

The Contractor shall indemnify the Council and any new Contractor appointed by the Council and keep the Council and any new Contractor appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any new Contractor appointed by the Council shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any new Contractor appointed by the Council as a result of or in connection with the employment or termination of employment of any employee of the Contractor during any period prior to the date of expiry or termination of this Contract or arising from the provision of information or the failure to provide information by the Contractor under Condition 8.2.1.1.

9.2.3 **Sub-Contractors**

In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Condition 8 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

9.2.4 **Claim by transferred Employees**

If the Contractor shall cease (for whatever reason) to provide (either directly or indirectly) any of the Services under this Contract and should any contract of employment of any person (including an Employee) thereupon have effect as a result of the Transfer TUPE or as a result of the Directive as if originally made

between such person (a “**Transferred Employee**”) and the Council, the Contractor shall indemnify and keep indemnified the Council against any claim or claims by or on behalf of any Transferred Employee made against the Council at any time arising out of or in connection with any acts or omissions of the Contractor which occurred prior to the date of any Relevant Transfer, including claims for breach of contract, loss of office, unfair dismissal, redundancy, sex discrimination or disability or race discrimination, personal injury, loss of earnings or otherwise (and all costs and expenses thereof).

9.2.5 **Pension Benefits**

The Contractor shall ensure that all Transferring Employees and/or Transferring Original Employees are offered membership of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date or are afforded pension rights which are certified by the Government Actuary Department or by a professionally qualified actuary as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date.

9.2.6 **Admitted Body Status to the Local Government Pension Fund**

9.2.6.1 Where the Contractor or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS and the Council is able to procure such access, 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 Service Transfer Date. The Contractor or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer’s contribution rate in respect of any Eligible Employee who elects to join the LGPS after the Service Transfer Date.

9.2.6.2 The Contractor shall indemnify and keep indemnified the Council and/or any Future Contractor and, in each case, their Sub-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 Contract.

10 REVIEW MEETINGS¹⁵

- 10.1 Regular meetings will be held between the Authorised Officer and the Contract Manager to review the performance of the Contract. Review Meetings will be held monthly or at such times as the Authorised Officer may reasonably deem necessary.
- 10.2 The terms of reference and agenda of the regular Review Meetings will be decided by the Authorised Officer in advance of each meeting.

11 DEFAULT RECTIFICATION PROCEDURE¹⁶

- 11.1 If the Contractor defaults, omits to perform or fails to perform properly any part of the Service in accordance with this Contract, the Authorised Officer may issue a Rectification Notice in accordance with Schedule []
- 11.2 The Rectification and Default procedures are not a substitute for partnership working and are meant to be applied if the Contractor fails to perform. Every effort will be made to work together with the Contractor to resolve service difficulties; however it is the Contractor's sole responsibility to perform all services to the requirements of the specification. The application of the rectification and default process will be at the discretion of the Authorised Officer
- 11.3 If the Contractor does not agree with the assessment that there has been an omission or failure to perform any part of the Service as set out in the Rectification Notice the matter shall be referred to the Dispute Resolution Procedure in Condition 23.

12 URGENT WORK¹⁷

Without prejudice to condition 11 and schedule [] if in the opinion of the Authorised Officer urgent remedial work is required to be performed by the Contractor pursuant to the terms of the Contract the Authorised Officer shall serve a written notice on the Contractor specifying the work which is required to be carried out. If the Contractor is unable or unwilling to carry out such work immediately then the Council, its servants or agents may carry out such work on the Contractor's behalf and at the Contractor's expense. The cost of the work carried out by the Council, its servants or agents shall

¹⁵ Depending on the Service, further information on Contract Monitoring can be found in the Specification. This section can be expanded to reflect the needs of the Service. This clause may be altered to reflect the needs of the Service.

¹⁶ The standard template has the Default provisions contained within a Schedule due to the length. This section explains that they exist and that they may be used.

¹⁷ This template is written so that it can be easily amended to reflect the nature of the Service. Where this clause is not relevant it will not be used.

be a debt due to the Council and the Council may deduct the debt from monies due to the Contractor from the Council.

13 PAYMENT AND REVIEW¹⁸

- 13.1 The price for the Services shall be set out in Schedule..., and shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 13.2 The price will be paid in accordance with Schedule [].
- 13.3 In consideration of the supply of Services by the Contractor, the Council shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Contractor.
- 13.4 All amounts payable by the Council under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the Council, the Council shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of Services.
- 13.5 If the Council without just excuse fails to pay any amount properly due and payable by it under the Contract, the Contractor shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 13.6¹⁹ The Contractor shall maintain complete and accurate records of the time spent providing the Services, and the Contractor shall allow the Council to inspect such records at all reasonable times on request.
- 13.7 The Contract Price, shall be reviewed on [] and thereafter on [] in every year during the Contract Period.²⁰
- 13.8 The Contract Price shall be increased in accordance with RPI current at each review.²¹

¹⁸ The Council will review its payment provision depending on the nature of the Service. Detailed information will be contained in the pricing Schedule and will be cross-referenced with this section to ensure that there are no discrepancies. The issues around Payment are a Policy decision.

¹⁹ This provision is dependent on the type of Service

²⁰ This provision is dependent on the type of Service

- 13.9 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Contract or any other contract with the Council.

14 TERMINATION

- 14.1 This Contract shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of the Conditions of Contract. For the avoidance of doubt the Contractor shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor if:

14.1.1 the Contractor commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;

14.1.2²² the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

14.1.3 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor];

14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;

14.1.5 the Contractor (being an individual) is the subject of a bankruptcy petition order;

14.1.6 a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;

²¹ This can be amended to reflect the Index used and further expanded, if relevant.

- 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Contractor (being a company);
 - 14.1.8 a floating charge holder over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.9 a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
 - 14.1.10 any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.10 (inclusive);
 - 14.1.11 the Contractor suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
 - 14.1.12 the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation;
 - 14.1.13 makes an assignment of this Contract in breach of Condition 27.3 (Assignment);
 - 14.1.14 breaches any of its obligations under Condition 17 (Insurance);
 - 14.1.15 breaches any of its obligations under Condition 11 and Schedule []
 - 14.1.15 fails to provide the Service during a continuous period of seven (7) days or for a total period of ten (10) days in any three (3) month period during the Contract Period other than as a result of a Force Majeure Event.
- 14.2 Without limiting its other rights or remedies, the Council may terminate the Contract in respect of the supply of Services, by giving the Contractor [] weeks/months written notice.²³

15 CONSEQUENCES OF TERMINATION

- 15.1 Upon the occurrence of any of the events of termination of the Contract pursuant to condition 14 or Schedule [] the Council may without prejudice to any of its remedies under the Contract and without prejudice to any rights of action which shall accrue or shall have already accrued to the Council do all or any of the following:
- 15.1.1 suspend payment of any sums due to the Contractor from the Council;
 - 15.1.2 retain any amount due to the Contractor from the Council howsoever arising;
 - 15.1.3 without determining the whole of the Contract, determine the Contract by notice in writing to the Contractor having immediate effect in respect of such part of the

²² The majority of the Termination provisions apply to a Company. Where a Charity is successful, the provision will be amended to reflect compliance with Charity Law or other such applicable laws.

²³ The contract may include a Mutual Right to terminate the agreement where there is a strong business case, and will depend on factors such as the nature of the market, service and associated risks. If a Mutual Right to terminate is included the notice periods may not necessarily mirror each Party. The notice required will reflect the nature of the Service

Service as may be specified in such notice, whereupon a corresponding reduction representing the cost to the Council of such part of the Service shall be made as if such determination was a variation;

15.1.4 determine the Contract by notice in writing to the Contractor having immediate effect from the date specified in the notice

15.2 The rights of the Council under this condition are in addition to 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 the acts or omissions of the Contractor whether pursuant to the bond or guarantee and indemnity given in accordance with the bond undertaking and guarantee undertaking or otherwise.

15.3 Upon such termination, in addition to such consequences as are set out in any other provisions of the Contract:

15.3.1 the Contractor shall forthwith cease to perform the Service;

15.3.2 the Contractor shall fully and promptly indemnify the Council in respect of the cost of causing to be performed the Service as would have been performed by the Contractor during the remainder of the Contract Period or the period of twelve (12) months commencing on the date of termination whichever period is shorter ("the Period") to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing the Service. The Council shall be at liberty to have the Service performed by any persons (whether or not servants of the Council) as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method;

15.3.3 the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under the Contract or to deduct therefrom any sum due to the Contractor under the Contract.

16 WARRANTIES²⁴

16.1 The Contractor warrants and represents to and undertakes with the Council that:

16.1.1 it has full power and authority to enter into the Contract;

16.1.2 it is of sound financial standing and has sufficient working capital available to carry out the Service for the Contract Period;

16.1.3 the latest set of audited accounts and balance sheet available at the date hereof show a true and fair view of the Contractor's financial position and the

²⁴ Some of this Provisions are not relevant to a charity and would be amended to reflect the Charity status where applicable

Contractor's financial position has not materially worsened since the date of the accounts.

16.2 The Council warrants and represents to and undertakes with the Contractor that:

16.2.1 it is fully satisfied as to the accuracy and sufficiency of the rates, prices and information provided to the Contractor prior to the Contract which might reasonably influence or affect the Contract Price.

17 INSURANCE AND INDEMNITY

17.1 PROVIDED THAT the Council uses its reasonable endeavours to contain and mitigate its liability, loss or claim (as the case may be) the Contractor shall be liable for and shall indemnify the Council against any expense liability loss claim or proceedings whatsoever (except to the extent that the same is due to any act or neglect of the Council or persons employed by the Council) as follows:

17.1.1 In respect of accidental injury to or death of any person arising out of or in the course of or caused by the carrying out of the Service

17.1.2 In respect of any damage to any property arising out of or in the course of or caused by the carrying out of the Service

17.1.3 In respect of damage caused by any employee or agent of the Contractor where such damage is caused by negligence of the Contractor to any land building or chattel in the ownership occupation or possession of the Council arising out of or in the course of or caused by the carrying out of the Service.

17.2 The Contractor shall at all times maintain the following insurance:²⁵

17.2.1 Public Liability Insurance in such sums and in respect of such coverage as the Contractor shall deem fit but for not less than £[] for each and every claim with an unlimited cover in any one period of insurance

17.2.2 Employers Liability Insurance in a sum not less than £[] for each and every claim with an unlimited cover in any one period of insurance. Such insurance will cover, inter alia, any sub-contractors who may be employed in connection with the Service.

²⁵ The Council have a standard requirement re Insurance Coverage, however depending on the Service and levels of risk, the levels and types of insurance will be reviewed.

- 17.2.3 Professional Indemnity Insurance in such sums and in respect of such coverage as the Contractor shall deem fit but for not less than £[]
- 17.3 The policy or policies of insurance required to be maintained by the Contractor shall be taken out with reputable insurers or underwriters approved by the Council.
- 17.4 The Contractor shall on the relevant renewal dates of the said policies and at such other times as the Authorised Officer may require, supply the Authorised Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to satisfy the Authorised Officer that the Contractor is complying with the provisions of this condition or such other evidence of insurance cover which is acceptable to the Authorised Officer.
- 17.5 The Contractor shall notify the Authorised Officer as soon as possible and in any event within 48 hours of any claim demand or proceedings and shall supply such particulars or details thereof as the Authorised Officer shall reasonably require.
- 17.6 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with this condition and to require the Contractor to effect such insurances as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may either effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Council plus 20% of the total cost of the work to cover administration costs incurred by the Council from monies due or which may become due to the Contractor or recover the same as a debt from the Contractor.
- 18 CONFIDENTIALITY²⁶**
- 18.1 The Contractor shall not without the written consent of the Authorised Officer during the Contract Period or at any time thereafter make use of for its own purposes or disclose to any person (except as may be required by law), the provisions of the Contract which shall be deemed confidential.
- 18.2 The Contractor shall not and shall ensure that his employees do not divulge to any third party any information relating to the provision of the Service without the express written permission of the Council other than as may be permitted by the terms of the Contract
- 18.3 The Contractor's duty of disclosure shall be subject to any legal requirements to the contrary.

18.4 The Contractor shall fully and promptly indemnify and keep fully indemnified the Council against all actions, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Condition. Such indemnity shall be without prejudice to any other rights of the Council.

19 DATA PROTECTION²⁷

19.1 The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of the Contract.

20 FREEDOM OF INFORMATION²⁸

20.1 The Contractor shall comply in all respects with the provisions of the Freedom of Information Act 2000 as if it were a public body, and shall indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Council for breach of statutory duty under the said Act which arises as result of a breach of statutory duty by the Contractor, the Contractor's personnel, servants and agents.

20.2 If the Council receives a request for the disclosure of information under the Freedom of Information Act 2000 and the information is in the possession (or is likely to come into the possession) of the Contractor then the Contractor shall make available the information to the Council within a reasonable period to be specified by a notice in writing. Failure to do so may constitute a breach of contract and the Council reserves its rights should this occur.

21 PREVENTION OF BRIBERY²⁹

21.1 The Contractor:

21.1.1 shall not, and shall procure that any Contractor Party and all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;

21.1.2 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 Agreement, excluding any arrangement of which full details

²⁶ Depending on the nature of the Service the Confidentiality Provision will be expanded to reflect Data Sharing etc.

²⁷ Please see point 25.

have been disclosed in writing to the Council before execution of this Agreement.

21.2 The Contractor shall:

- 21.2.1 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;
- 21.2.2 within [NUMBER] Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 21 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.
- 21.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 21.4 If any breach of clause 21.1 is suspected or known, the Contractor must notify the Council immediately.
- 21.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 21.1, 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 [NUMBER] years following the expiry or termination of this Agreement.]
- 21.6 The Council may terminate this Agreement by written notice with immediate effect if the Contractor, Contractor Party or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 21.1. [In determining whether to exercise the right of termination under this clause 21.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:
- 21.6.1 with the Council; or,
- 21.6.2 with the actual knowledge;

²⁹ Depending upon the nature of the Service, the Contracting Party, this section maybe altered to reflect the circumstances. Example, onus to refer to the Bribery Act, rather than have a policy.

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

21.6.3 in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.]

21.7 Any notice of termination under clause 21.6 must specify:

21.7.1 the nature of the Prohibited Act;

21.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

21.7.3 the date on which this Agreement will terminate.

21.8 Despite condition 23 (Disputes), any dispute relating to:

21.8.1 the interpretation of clause 21; or

21.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

21.9 Any termination under clause 21.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

22 EQUALITY AND DIVERSITY³⁰

22.1 The Contractor's equalities policy shall be notified to all members of the Contractor's staff involved in the delivery of the Service under this Contract.

22.2 The Contractor may be required to provide to the Council copies of such instructions, documents, advertisements and other literature and details of monitoring applicants and employees for the purpose of assessing the Contractor's compliance with this Condition 40.

22.3 The Contractor warrants that its policy complies with the statutory obligations set down in the all current equalities legislation including but not limited to the Equalities Act 2010 and that it shall not treat one group of people less favourably than others because of any protected characteristic in relation to the provision of the Service or to decisions to recruit, train, promote, discipline or dismiss staff, and such policy must also specify that the Contractor will not tolerate behaviour, which is inconsistent with it and the detailed measures it will take if this occurs. The Contractor shall also take all reasonable steps to ensure that all staff, suppliers and sub-Contractors meet their obligations under the Equality Act.

- 22.4 The Contractor shall observe as far as possible the Equality & Human Rights Commission's Code of Practice on Employment and non statutory guidance which gives practical guidance to employers and others on equalities issues. The Contractor shall provide such information as the Council may reasonably require to enable it to assess the Contractors compliance with the said Code of Practice and guidance.
- 22.5 The Contractor shall support the Council in observing the requirements of all equalities legislation and policy relating to equalities and the Public Sector Equality Duty and the requirement for public bodies to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations across all aspects of equality protected by the Equality Act. [The Contractor shall also comply with the Law Society Practice Rules and Code of Practice on Anti-Discrimination Measures and with all other rules and codes of practice of other relevant professional bodies.]
- 22.6 If any court or tribunal, or the Commission for Equality and Human Rights, should make any finding of unlawful discrimination against the Contractor, then the Contractor shall immediately notify the Contract Manager and take all necessary steps to prevent recurrence of such unlawful discrimination. The Council may require the Contractor to provide full details of the steps taken to prevent such recurrence.
- 22.7 In the performance of the Service and in its dealings with service users, Council employees and members of the general public, the Contractor shall comply and shall ensure that its Representatives comply with the Human Rights Act 1998 as if the Contractor were a public body, and all Laws relating to equal opportunities.
- 22.8 The Contractor shall indemnify and keep the Council so indemnified against all direct and indirect claims, costs, losses and expenses arising out of a breach of any of the provisions of this Condition 22.

23 Dispute Resolution

During any dispute, including but not limited to any dispute as to the validity of this Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract unless the Council requests in writing that the Contractor ceases performance.

- 23.1 If any dispute arises out of or in connection with the Contract, the parties shall promptly notify each other of the matter in dispute ("**Dispute**"), which shall in the first instance be referred to the Authorised Officer and the Contractor's Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all parties

³⁰ See Note 25

and consider all solutions proposed and use their reasonable endeavours with the objective of resolving the dispute and achieving an agreed solution.

- 23.2 If a dispute arises between the Council and the Contractor in relation to any matter that cannot be resolved by the Authorised Officer and the Contract Manager, or where the Authorised Officer and the Contractor's Manager do not achieve within fourteen (14) days of notification of a Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, they may refer such Dispute to the Dispute Resolution Procedure. In the first instance each of the Council and the Contractor shall within a maximum of [28] Working Days of the Dispute being unresolved by the Authorised Officer and the Contract Manager, arrange for more senior representatives of both parties shall meet promptly and solely to in order to resolve the matter in dispute. Such meeting(s) shall take place as soon as practicable and in any event within [40] days of notification of the dispute, in good faith to discuss and seek to resolve the Dispute.
- 23.4 The persons named in Condition 23.2 above may, at their discretion, in the light of what is appropriate to the dispute, seek written or personal representations from the Authorised Officer and the Contract Manager and any other involved persons/parties if appropriate.
- 23.5 If the dispute cannot be resolved by the persons named in Condition 23.2 above within a maximum of ten (10) Working Days of the dispute being referred to them the dispute shall be then referred to a nominated Strategic Director of the Council (or his or her successor in title) and a nominated director of the Contractor for resolution.
- 23.6 If the dispute cannot be resolved by the persons named in Condition 23.5 within fifteen (15) Working Days of the dispute being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("the Mediation Notice") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to the CEDR. The mediation will start not later than ten (10) Working Days after the date of the Mediation Notice, and the costs of such mediation shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances, or if the adjudicator makes no such determination by the Parties in equal proportions.
- 23.7 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

24 PERFORMANCE BOND AND PARENT COMPANY GUARANTEE³¹

- 24.1 Within 14 days of the date of the Contract the Contractor shall produce a duly executed Performance Bond for a sum equal to 10% of the annual value of the contract.
- 24.2 If required by the Council where the Contractor is a subsidiary company the Contractor shall produce within 14 days of the date of the Contract a parent company to guarantee the performance of the Contractor .

25 DISCREPANCIES

- 25.1 In the event of any ambiguity or inconsistency between the Contract Documents the Conditions shall apply.
- 25.2 Where the Contractor identifies an ambiguity or discrepancy between the Contract Documents which is not dealt with by condition 25.1 he shall advise the Authorised Officer in writing, the Authorised Officer shall explain or adjust the same and this shall be regarded as a variation pursuant to condition 25.

26 VARIATIONS³²

- 26.1 The Authorised Officer may from time to time require changes to these Conditions and or the Specification and may upon giving reasonable written prior notice thereof to the Contractor add to, delete from or otherwise amend in any way the provisions of the Specification. The Contractor shall be bound by any such variation.
- 26.2 Reasonable notice shall be deemed to have been given if it is either a minimum of:
- 26.2.1 Twenty-eight days' notice for major changes to the Specification which will result in more or less staff being required by the Contractor or significantly more costs being incurred by the Contractor, or
 - 26.2.2 Three hours' notice where the work is deemed to be of an urgent or emergency nature; or
 - 26.2.3 Seven days' notice in any other case.
- 26.3 If the Authorised Officer requires a significant change to the Specification pursuant to Condition 26.1 resulting in a cost saving or additional costs the Contract Price may be adjusted.

³¹ If this is not relevant to the Service it will not be used

³² This provision can be reflected to reflect the nature of the Service. If a PART A or B Service under the EU Procurement Rules, the Council are limited somewhat with regards to variations

- 26.4 No increase in payment shall be made to the Contractor in respect of a variation of the Service if there is a compensating reduction or reorganisation of any other part of the service.
- 26.5 No variation to these Conditions shall be valid or have any effect unless it is agreed in writing. Subject to condition 26.1, no variation to these Conditions shall be valid or have any effect unless it is signed by the Authorised Officer (or in accordance with the Council's Constitution, if different) and by a duly authorised representative of the Contractor.
- 26.6 In the event of the Contractor proposing amendments to the Programme, such proposals must be submitted in writing for the written approval of the Authorised Officer at least 21 days prior to the proposed implementation date of the proposed amendment.
- 26.7 In the event of the Authorised Officer withholding approval for any proposed amendment, a full written explanation of his decision shall be given to the Contractor within 7 days of such a proposal being received and the proposed amendment shall not be implemented.

27 ASSIGNMENT AND SUB-LETTING

- 27.1 The Contractor shall not assign or sub-let the whole of the Service
- 27.2 The Contractor shall not assign or sub-let any part of the Service without the prior written consent of the Council. Such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and it shall be responsible for the acts defaults and neglects of any Sub-Contractor his agents or employees as fully as if they were the acts defaults or neglects of the Contractor his agents or employees.
- 27.3 As a condition of giving a consent to any sub contractor the Council shall require a direct warranty and undertaking from the sub-contractor to comply with the provisions of the Contract in so far as they relate to that part of the Service which has been sub-let.
- 27.4 The Council shall be entitled to assign the benefit of the Contract or part thereof to a statutory or other public body and shall give written notice of any assignment to the Contractor

28 VALUE ADDED TAX

VAT or any other tax or duty additional to or replacing the same during the Contract Period, where applicable, will apply at the rate(s) then in force.

29 CORRUPT GIFTS

- 29.1 The Council shall be entitled to cancel this Contract and recover from the Contractor any loss resulting from the cancellation where:
- 29.2 the Contractor has offered or given any gift or other consideration to any person as an inducement to take (or fail to take) any action in relation to obtaining or executing that, or any other, contract with the Council;
- 29.3 the Contractor has shown (or failed to show) any favour or disfavour to any person in relation to the Contract;
- 29.4 any employee of the Contractor acts in the fashion described in these Condition 29 and Condition 30;
- 29.5 the Contractor or any employee of the Contractor commits any offence under the Prevention of Corruption Acts 1889 to 1916, or any subsequent amendments to these Acts; and
- 29.6 the Contractor or any employee of the Contractor shall have given any fee or reward which is an offence under Section 117 subsection (2) of the Local Government Act 1972

30 GRATUITIES

The Contractor shall not, whether by himself or by any person employed by him to perform the Service, solicit or accept any gratuity or tip or any other form of money taking or reward, collection or charge for any of the Service other than bona fide charges approved by the Council.

31 ENTIRE AGREEMENT

The Contract and Contract Documents contain the full and complete understanding between the parties and supersede all prior arrangements and understandings, whether written or oral, relating to the subject matter of this Contract

32 WAIVER

Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not 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

33 NOTICES

33.1 Any notice to be given to the Contractor under the Contract shall be served by sending it by pre-paid post, delivering by hand, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business marked for the attention of []; or sent by fax to the other party's main fax number or email,

33.2 Any notice to be given to the Council under the Contract shall be served by sending it by pre-paid post, delivering by hand, recorded delivery or by commercial courier, at its principal place of business or (in any other case) marked for the attention of []; or sent by fax to the other party's main fax number or email,

33.3 Any notice shall be deemed served:

33.3.1 If delivered by hand at the time of such delivery and

33.3.2 If sent through the post 48 hours after the time of despatch

34 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing in the Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it

35 FORCE MAJEURE

35.1 If any party is delayed in or prevented from performing any of its obligations under the Contract by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligations to the extent it is so delayed or prevented, and the time for performance of such obligation shall be delayed accordingly.

35.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. Such notification shall contain details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.

35.3 As soon as practicable following such notification, the parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued performance of the Contract.

35.4 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected party from complying with its obligations under the Contract. Following such notification (subject to

termination under Condition 35.6), the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

35.5 For the duration of any suspension of the Contractor's obligations under this clause 35, the Council shall only be liable to pay the Contractor an amount that reflects the reduced Service (if any) being performed.

35.6 If a Force Majeure Event prevents either party from performing its obligations under the Contract in any material respect for a period of 3 (three) consecutive months then, provided the notification requirements set out above have been met, without prejudice to any accrued rights or remedies under the Contract, either party may terminate the Contract by notice in writing to the other party having immediate effect.

36 DECLARATIONS

36.1 Nothing contained in the Contract shall create a partnership between the parties thereto or the relationship of principal and agent or the relationship of employer and employee between the parties.

36.2 The Contractor shall not hold itself out as being the servant or agent of the Council. The employees of the Contractor are not, shall not hold themselves out to be and shall not be held out by the Contractor as being the servants or agents of the Council for any purposes whatsoever

36.3 Should any part of the Contract become or be declared by a Court of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not impair or affect the other provisions which shall remain in full force and effect.

36.4 All rights and duties which the Council has as a Local Authority or which the Council's officers have as Local Authority officers are expressly reserved.

37 LEGAL FEES

Each party shall bear its own legal and other fees in relation to preparation of the Contract

38 JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of England and the Contractor irrevocably submits to the jurisdiction of the English courts.

IN WITNESS WHEREOF the Council and the Contractor have hereunto caused their respective Common Seals to be affixed and this deed is delivered the day and year first before written.

THE COMMON SEAL of THE MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF RICHMOND UPON THAMES was)
hereunto affixed in the presence of:-)

Authorised Officer

THE COMMON SEAL OF [)
] was hereunto affixed)
in the presence of:-)

Director

Secretary

DRAFT