

LONDON BOROUGH OF BARNET
STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PURCHASE OF GOODS AND SERVICES

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1.0 Definitions

1.1 Terms and expressions used in this Contract shall have the meanings ascribed to them in this clause unless otherwise indicated:

“Admitted Body” means a body admitted to the LGPS;

“Admission Agreement” the agreement in the form set out in Schedule [] to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by [the administering authority,] the Authority and the Contractor or any Contractor Party, as appropriate;

“Best Value” means the duty imposed on the Council by Part 1 of the Local Government Act 1999 Act and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the Local Government 1999 Act;

“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 Event” means an event of a type for which the Contractor’s Business Continuity Arrangements make provision and allow for the continuation of the Services;

“Commencement Date” means [];

“Commercial Sensitive Information” means the information listed in Schedule [];

“Conditions” means the terms and conditions set out in this document and any other special terms and conditions agreed in writing between the Contractor and the Council;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information;

“Contract” means this document and any Purchase Orders Quotations Specifications and any other documents expressly incorporated herein by written reference;

“Contract Term” means the term of [] years commencing on the Commencement Date;

“The Contractor” means the person who supplies or agrees to supply goods or services to the Council;

“Contractor Party” the Contractor's agents and contractors, including each Sub-Contractor;

“Contractor Personnel” all employees, agents, consultants and contractors of the Contractor or of any Contractor Party;

“Contractor Scheme” has the meaning given in clause 33.3.6;

"The Council" means The Mayor and Burgesses of the London Borough of Barnet;

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;

“Eligible Employees” the Transferring Employees [or employees of Third Party Employers] who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Commencement Date, or any other individuals nominated by the Contractor or Contractor Party (as appropriate).

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

“FOIA” means the Freedom of Information Act 2000;

“Force Majeure Event” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor Personnel or any Business Continuity Event;

“Intellectual Property Rights” or **IPR** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply;

“LGPS” Local Government Pension Scheme.

“New Contract” means a contract between the Council and another provider which still come into effect, with respect to provisions of services/goods following termination or expiring of this contract

“New Contractors” means the people who is party together with the council to a New Contract.

“Party” means a party to this Contract, and “Parties” shall be construed accordingly.

"The Price" means the price to be paid by the Council to the Contractor for the Services exclusive of Value Added Tax;

“Purchase Order(s)” means an order for services issued by the Council to the Contractor.

“Premises” means the location where the Services are to be performed, as specified in the

Specification;

“**Quotation**” means the quotation submitted by the Contractor.

“**Relevant Transfer**” has the meaning given in **Clause** 36.1.2;

“**Request(s) for Information**” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

“**Services**” means the services together with any Goods which the Contractor agrees to provide to the Council under this Contract;

“**Specification**” means the detailed description of the Services contained in Schedule [];

“**Sub-Contract**” any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;

“**Sub-Contractor**” the third parties that enter into a Sub-Contract with the Contractor;

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

“**Transferring Employees**” means employees of the Council whose contracts of employment transfer with effect from the Commencement Date to the Contractor or any Contractor Party by virtue of the application of TUPE;

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

2.0 General

- 2.1 A reference to any Act of Parliament or to any order, regulation, statutory instrument or the like shall include a reference to any amendment or re-enactment thereof;
- 2.2 Paragraph headings are inserted for convenience only and do not define limit or otherwise affect the interpretation thereof.
- 2.3 Under the Council's constitution the Council has delegated to particular officers the power to act for the purposes of the Contract. Upon written request the Council shall provide to the Contractor the names of officers so empowered.

3.0 Conditions Applicable

- 3.1 The Conditions shall apply to all Contracts for the provision of Services to the Council by the Contractor to the exclusion of all other terms and conditions including any terms or conditions which the Contractor or the Council may purport to apply under any sales offer or similar document.
- 3.2 Provision of the Services by the Contractor to the Council shall be deemed conclusive evidence of the Contractor's acceptance of these Conditions.
- 3.3 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be of no effect unless agreed in writing between the parties.

4.0 Price and Payment

- 4.1 The Price shall be the Contractor's quoted price or the price agreed by the parties. The Price is exclusive of VAT which shall be due at the rate prevailing on the date of the Contractor's invoice.
- 4.2 Unless otherwise agreed payment of the Price and VAT shall be due 30 days from receipt of the Contractor's "invoice" or 30 days from when the Services are delivered/provided whichever is the later, such payment shall be made by the Council to the Contractor via bank transfer.
- 4.3 The Price shall be "net" i.e. it shall include the cost of any packaging, addressing, labelling, loading and delivery to the address specified by the Council. The amount of any VAT payable and any early settlement discounts shall be shown separately in the Invoice.
- 4.4 The Council may set off against the Price (including any applicable VAT payable) any amounts lawfully due from the Contractor to the Council whether under this Contract or otherwise.
- 4.5 All Invoices shall record the Services provided in the period to which the invoice relates and calculated in accordance with the Price quoted or agreed by the Parties and shall be clearly marked with the Council's Purchase Order Number, invoice number, invoice date, the Contract reference number (if detailed on the Purchase Order), a sufficiently detailed description of the Services provided to enable the Council to ascertain in respect of which Services the Invoice has been rendered and any further particulars requested in the Purchase Order or Contract failing which the Council will not make payment to the Contractor. Without limiting the generality of the foregoing:
- 4.5.1 Where the Parties agree any other means of payment application the purchase order number must be quoted as a minimum. The purchase order number shall also be quoted as a minimum on delivery notes.
- 4.6 Except for reasons beyond the Council's control where the Council has not made payment to the Contractor by the due date set out in **Clause 4.2** above the Council shall upon written request by the Contractor pay interest to the Contractor on any amount outstanding at a rate of 2% above the base rate of the Bank of England (which the parties agree is a substantial contractual remedy for the purposes of The Late Payment of Commercial Debts (Interest) Act 1998) and such interest shall be payable from the due date of payment until payment is actually made.

5.0 The Services

- 5.1 The Contract shall commence on the Commencement Date and shall continue throughout the Contract Term unless terminated in accordance with its terms or by operation of Law.
- 5.2 The Contractor shall provide the Services strictly in accordance with any Specification issued by the Council. Where the Contractor has provided a written quotation which the Council has accepted in writing then the nature and extent of the Services to be provided shall be as set out in any such quotation.
- 5.3 All representations statements or warranties made or given by the Contractor its servants and agents to the Council before the conclusion of the Contract (whether orally in writing or in any of the Contractor's brochures catalogues and advertisements) regarding the quality and fitness for purpose of the Services shall be deemed to be express conditions of the Contract.

6.0 Reasonable Care and Skill

- 6.1 All Services provided under the Contract must be provided with reasonable care and skill and to the reasonable satisfaction of the Council.

7.0 Provision of Services

- 7.1 Where any time is stipulated by the Council for the provision of Service under the Contract the time for provision of such Services shall be of the essence. Where no time is stipulated by the Council for the Provision of Services delivery shall be made within ten working days of receipt of an order by the Contractor or within such other time as may be agreed between the parties.

- 7.2 If the Contractor fails to deliver all of the Services in accordance with the Contract then without prejudice to any of the Council's other rights or remedies under this Contract:

7.2.1 The Council may terminate the Contract.

7.2.2 The Council may in its absolute discretion accept a quantity of Goods corresponding to the Contract which has been delivered and recover from the Contractor damages for breach of Contract in respect of the failure to deliver the total quantity of Goods.

8.0 Indemnity

- 8.1 Without prejudice to its liability for breach of contract the Contractor shall be liable for and shall indemnify the Council against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under the Contract, any Law or at common law in respect of:

8.1.1 Any loss of or damage to Council property (whether real or personal); and

8.1.2 Any injury to or death of any person in consequence of or in any way arising from the provision of the Services under the Contract except insofar as such loss damage or injury shall have been caused by the negligence of the Council its servants or agents not being the Contractor.

9.0 Insurance

- 9.1 The Contractor shall insure against its full liability under **Clause 8** and maintain all statutory required insurance policies including public liability insurance, employers liability insurance and motor insurance (if applicable) for the duration of the Contract.

- 9.2 Public liability insurance cover shall be in the minimum sum of £[] in respect of any one incident and the number of incidents covered shall be unlimited. Employers liability in the minimum sum of £[] in respect of one incident and the number of incidents covered shall be unlimited.

- 9.3 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all Contractor Parties involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this **Clause 9**, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any Contractor Party involved in the performance of Services has a limit of indemnity of not less than [£2 million] for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.]

- 9.4 The Contractor shall upon request by the Council produce to the Council satisfactory documentary evidence that the insurance required under this clause is properly maintained.
- 9.5 Should the Contractor fail to insure in accordance with this clause the Council may itself effect such insurance and may charge the cost of so doing together with an administrative charge of 5% the premium to the Contractor.

10.0 Intellectual Property

- 10.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- 10.1.1 furnished to or made available to the Contractor by the Council shall remain the property of the Council;
 - 10.1.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract shall belong to the Council and the Contractor shall not, and shall procure that the Contractor Parties shall not, (except when necessary for the implementation of the Contract) without prior approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.
- 10.2 The Contractor shall obtain approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 10.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:
- 10.3.1 designs furnished by the Council;
 - 10.3.2 the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.
- 10.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held, including any back-up media.
- 10.5 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

11.0 Freedom of Information

- 11.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council to enable the Council to comply with information disclosure obligations.
- 11.2 The Contractor shall and shall procure that any sub-contractors shall:
- 11.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two [2] Working Days of receiving a Request for Information;
 - 11.2.2 provide the Council with a copy of all information in its possession, or power in the form that the Council require within five [5] Working Days (or such other period as the Council may specify) of the Council's request; and
 - 11.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 11.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 11.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council
- 11.5 The Contractor acknowledges that (notwithstanding the provisions of **Clause 11**) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:
- 11.5.1 without consulting the Contractor; or
 - 11.5.2 following consultation with the Contractor and having taken their views into account;
- provided always that where **Clause 11.5(a)** applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 11.6 The Contractor shall ensure that all information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 11.7 The Contractor acknowledges that the Commercially Sensitive Information listed in schedule [] is of indicative value only and that the Council may be obliged to disclose it in accordance with **Clause 11.5**.

12.0 Data Protection

- 12.1 The Contractor shall (and shall procure that any of the Contractor Personnel involved in the provision of the Contract) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 12.2 Notwithstanding the general obligation in **Clause 11A.1**, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the seventh data protection principle in schedule 1 to the DPA; and
- 12.2.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
- 12.2.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to **Clause 12.2**; and
- 12.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- 12.3 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

13.0 Confidentiality

- 13.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
- 13.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- 13.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 13.2 **Clause 13.1** shall not apply to the extent that:
- 13.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 11 (Freedom of Information);
- 13.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 13.2.3 such information was obtained from a third party without obligation of confidentiality;
- 13.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 13.2.5 it is independently developed without access to the other party's Confidential Information.

- 13.3 The Contractor may only disclose the Council's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 13.4 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 13.5 The Contractor may only disclose the Council's Confidential Information to the Contractor Personnel who need to know the information, and shall ensure that such Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Council as the Council may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 13.6 At the written request of the Council, the Contractor shall procure that those members of Contractor Personnel identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 13.7 Nothing in this Contract shall prevent the Council from disclosing the Contractor's Confidential Information:
- 13.7.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 13.7.2 to any consultant, contractor or other person engaged by the Council and/or relevant participating boroughs or any person conducting an Office of Government Commerce gateway review;
 - 13.7.3 for the purpose of the examination and certification of the Council's accounts; or
 - 13.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council have used resources.
- 13.8 The Council shall use all reasonable endeavours to ensure that any government department, contracting authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to **Clause** 12.7 is made aware of the Council's obligations of confidentiality.
- 13.9 Nothing in this **Clause** 12.9 shall prevent the parties from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal

business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

14.0 Prevention of Bribery/Corruption

14.1 For the purpose of this section "Prohibited Acts" shall be construed as:

14.1.1 to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

14.1.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

14.1.3 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 Contract or any other contract with the Council;
- (iv) defrauding, attempting to defraud or conspiring to defraud the Council; or
- (v) where the Contractor gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

14.2 The Contractor:

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

14.2.2 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 Authority, 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 before execution of this Contract.

14.3 The Contractor shall:

14.3.1 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;

14.3.2 within 10 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** 14 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.

- 14.4 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 14.5 If any breach of **Clause** 14.2 is suspected or known, the Contractor must notify the Council immediately.
- 14.6 If the Contractor notifies the Council that it suspects or knows that there may be a breach of **Clause** 14.2, the Contractor must respond promptly to the Council's enquiries, cooperate with any investigation, and allow the Council to audit books, records and any other relevant documentation. [This obligation shall continue for 2 years following the expiry or termination of this Contract.]
- 14.7 The Council may terminate this Contract 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** 14.2. In determining whether to exercise the right of termination under this **Clause** 14.7, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract 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:
- 14.7.1 with the authority; or,
- 14.7.2 with the actual knowledge;
- of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- 14.7.3 in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
- 14.8 Any notice of termination under **Clause** 14.7 must specify:
- 14.8.1 the nature of the Prohibited Act;
- 14.8.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 14.8.3 the date on which this Contract will terminate.
- 14.9 Despite **Clause** 18 (Disputes), any dispute relating to:
- 14.9.1 the interpretation of **Clause** 14; or
- 14.9.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 14.10 Any termination under **Clause** 14.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

15.0 Audit

- 15.1 The Contractor shall keep and maintain until [six years] after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives or the Audit Commission (or such similar external governmental body as may from time to time be appointed to audit local authorities) such access to those records as may be required in connection with the Contract.
- 15.2 The Council shall be entitled to inspect any premises at which the Services are being delivered at any time on any Working Day between the hours of 9.00am and 5.00pm.

16.0 Damages and Sureties

- 16.1 If the Contractor [fails to provide service or is in breach of this Contract], the Contractor shall pay the Council on demand £[AMOUNT] or the Council may deduct £[AMOUNT] from its payments to the Contractor as liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of the Council's loss.
- 16.2 Where the cost of the Services to be supplied under the Contract is greater than £300,000 the Contractor shall be required to provide the Council with a sufficient surety (for example a Contract Guarantee Bond) for due performance of the Contract.
- 16.3 If the Contractor is a subsidiary company or a member of a group of companies then the Council may require its parent company or another company in the group whose assets are sufficient to guarantee performance and indemnify the Council against loss from any Default or breach of this Contract.

17.0 Bankruptcy/Insolvency

- 17.1 The Council may at any time by notice in writing summarily determine the Contract without compensation to the Contractor in any of the following events:
- 17.1.1 if the Contractor being an individual or where the Contractor is a firm any partner in that firm shall at any time become bankrupt or shall have a receiving order or administration order made against him/her or shall make any composition or arrangement with or for the benefit of his/her creditors or shall make any conveyance or assignment for the benefit of his/her creditors or shall purport to do so or if in Scotland s/he shall become insolvent or bankrupt or any application shall be made under any Bankruptcy Act for the time being in force for sequestration of his/her estate or a trust deed shall be granted by him/her for the benefit of his/her creditors; or
- 17.1.2 if the Contractor being a company shall pass a resolution or the Court shall make an order that the company shall be wound up or if a receiver or manager on behalf of creditors shall be appointed or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order;

provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

18.0 Disputes

- 18.1 Any dispute that arises between the Parties as to this Contract or the performance of the Parties' respective obligations under this Contract, shall first be discussed, and if possible resolved, between the representatives.
- 18.2 If the Representatives fail to resolve the dispute then either Party, by notice in writing to the other, may refer the dispute to senior officers of the Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then by written agreement between the parties the matter may (without prejudice to the rights of either Party to refer the matter to the courts) be referred to a person (referred to in this clause as an "Independent Third Party") to be agreed upon by the Parties within 14 days of agreement to appoint such Independent Third Party (or in default of agreement as to the Independent Third Party to be appointed at the request of either party by the President for the time being of the Law Society) for final determination as an expert and not as arbitrator, in which case **Clause 18.3** shall apply.
- 18.3 Unless otherwise so directed by the Independent Third Party:
- 18.3.1 not more than 14 days after the appointment of the Independent Third Party, the parties shall each submit a written report to the Independent Third Party and to each other regarding the dispute;
- 18.3.2 the parties shall have 7 days from the date of receipt of the other's written report in which to submit any written response to the Independent Third Party and to the other that they wish to make to the other's written report. Any responses received by the Independent Third Party after such time may, in the sole discretion of the Independent Third Party, be disregarded by the Independent Third Party;
- 18.3.3 the parties shall comply with all reasonable requests for information by the Independent Third Party and shall attend such hearings as the Independent Third Party reasonably deems necessary; and
- 18.3.3 the Independent Third Party shall be instructed to deliver his determination to the parties within 14 days after submission of the written reports pursuant to **Clause 18.3.1**.
- 18.4 Subject to **Clause 39**, the decision of the Independent Third Party shall be final and binding on both parties as to both the dispute and the payment of the costs of the procedure and of the parties.
- 18.5 The Independent Third Party shall have the same powers to require any party to produce any documents or information to him as an arbitrator has and each party shall supply to him information which it has and which is material to the matter to be resolved and which it could be required to produce on disclosure of documents.
- 18.6 Services to be provided under this Contract shall not cease or be delayed by this dispute resolution procedure.
- 19.0 Transfer and Sub-Contracting**
- 19.1 The Contractor shall not transfer or sub-contract its obligations under this Contract without the previous consent in writing of the Council.
- 19.2 Such consent shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall remain responsible for the acts, defaults and neglects of all Contractor Parties as though they were the acts, defaults and neglects of the Contractor

itself.

20.0 Default

- 20.1 Where in the opinion of the Council the Contractor is in Default of any requirement of the Contract without prejudice to any other rights or remedies which the Council has under this Contract the Council shall be entitled to issue a written notice ("Notice of Default" giving full details of the Default and the rectification if any required of the Contractor together with the time within which such rectification is to be effected by the Contractor.
- 20.2 If the Contractor fails to comply with the terms of the Notice of Default or where rectification is to required by the Council the Council shall be entitled to recover any costs reasonably incurred by the Council as a consequence of such Default from the Contractor and may deduct such costs from any monies due or that become due to the Contractor.
- 20.3 Where rectification is required by the Council and the Contractor complies with the Notice of Default to the satisfaction of the Council the Council shall not recover the costs pursuant to **Clause 20.2**.

21.0 Termination

- 21.1 The Council may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:
- 21.1.1 the Contractor has not remedied the Default to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 21.1.2 the Default is not, in the opinion of the Council, capable of remedy; or
- 21.1.3 the Default is a material breach of the Contract.
- 21.2 The council may also terminate this contract at any time by giving reasonable written notice to the contractor of its intention to do so.

22.0 Conduct of Contractor's Employees

- 22.1 The Contractor shall ensure that the Contractor Personnel maintain high standards of courtesy and behave in an acceptable manner while engaged in supplying Services to the Council whenever they have contact with members of the public or with the Council's own employees.
- 22.2 The Contractor shall ensure that the Contractor Personnel cause minimum disruption to the Council and its employees while providing Services to the Council having regard always to the nature and extent of the Services being provided.
- 22.3 The Contractor Personnel shall not smoke whilst on Council premises.
- 22.4 The Contractor Personnel shall at all times whilst on Council premises wear an identification badge clearly showing the person's name and the name of the Contractor.
- 22.5 The Council (acting reasonably and for good cause) shall be entitled to direct the Contractor, by notice in writing, to remove from the delivery of the Services any member of the Contractor Personnel. On receipt of such notice, the Contractor shall ensure that such person is promptly removed from the delivery of the Services and the Contractor shall

indemnify the Council in respect of all claims, demands, costs, losses or liabilities whatsoever or howsoever arising by reason of the removal of such person from the delivery of the Services.

23.0 Safeguarding

23.1. The Council places a high priority on safeguarding and protecting children and vulnerable adults in the community. Organisations and Individuals have a statutory duty under Section 11 of the Children Act 2004 to ensure that their functions are discharged with regard to the need to safeguard and promote the needs of children. In order to discharge these duties effectively the Contractor agrees;

23.1.1 to complete and submit the Council's Safeguarding Standards self assessment form within 14 days of being requested to do so by the Council.

23.1.2 to ensure that all personnel in their organisation including agency workers and volunteers meet level 1 of the Council's Safeguarding Standards according the Council's Safeguarding Standards self-assessment form.

23.1.3 to ensure that all personnel who have access to vulnerable groups and are perceived to be in a position of trust meet level 2 of the Council's Safeguarding Standards and update the self-assessment form six monthly.

23.2 Without prejudice to the generality of the foregoing the Contractor shall comply with the Staff Vetting Procedures (as defined in **Clause 23.6** below) in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

23.3 The Contractor shall procure that in respect of all potential employees or other persons employed or engaged by the Contractor assigned to the performance of the Services (each a "**Named Employee**"):

23.3.1 each Named Employee is questioned as to whether he or she has any convictions; and

23.3.2 the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in accordance with Part V of the Police Act 1997. The check for each Named Employee shall include:

(i) a search of the list held pursuant to the Protection of Children Act 1999 where the supply of the Services may involve contact with children; and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the supply of Services may involve contact with vulnerable adults (as defined in that Act); and

23.3.3 a copy of the results of such checks are notified to the Council.

23.4 The Contractor shall procure that no person who discloses any convictions or who is found to have any convictions following the results of a Criminal Records Bureau check is employed or engaged by the Contractor or on the Contractor's behalf in connection with the Services without the Council's prior written consent.

23.5 The Contractor shall procure that the Council is notified of any employee or person engaged in the Services who, subsequent to his/her commencement of employment or

engagement, receives a conviction or whose previous convictions become known to the Contractor. The Parties agree that where such notification is made it shall be reasonable for the Council to request for such person to be removed immediately from the provision of the Services.

23.6 **“Staff Vetting Procedure”** means the procedures for the vetting of personnel as advertised to the Contractor by the Council.

24.0 Health and Safety

24.1 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Council’s premises and which may affect the Contractor in the performance of the Contract.

24.2 While on the Council’s Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Contractor Personnel and other persons working on those Premises.

24.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Council’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

24.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Contractor Personnel and other persons working on the Premises in the performance of the Contract.

24.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

25.0 Equal Opportunities

25.1 In providing the Services, the Contractor shall to the same extent as if it were a public authority within the meaning of the Equality Act 2010 (“the 2010 Act”) (or any European equivalent) comply with the 2010 Act together with all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (the “Equalities Provisions”) and shall in particular comply with the public sector equality duty under Section 149 and shall have due regard to the need to:

25.1.1 eliminate discrimination (whether direct or indirect), harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;

25.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

25.1.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

25.2 The Contractor shall take all reasonable steps to ensure that the Contractor Personnel shall carry out the Services in accordance with the obligations imposed on the Contractor by Condition 25.1.

25.3 Where in connection with this Contract, the Contractor and the Contractor’s Personnel engaged in or about the execution of the Contract are required to provide the Services on

the Council's premises where the Council's employees are required to carry out work, the Contractor shall comply with the Council's own employment policy and codes of practice relating to racial discrimination and equal opportunities, copies of which may be obtained from the Council.

25.4 The Contractor shall notify the Council immediately in writing upon becoming aware of any investigation or proceedings brought against the Contractor under the 2010 Act or related Law.

25.5 If requested to do so by the Council, the Contractor shall fully co-operate with the Council at its own expense in connection with any legal proceedings, ombudsman inquiries or arbitration in which the Council may become involved arising from any breach of the Council's duties under the 2010 Act or related Law due to the alleged acts or omissions of the Contractor or the Contractor's Personnel employed in and about the provision of the Services.

26.0 Severance

26.1 If any provision of this Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable this shall not in any way impair or affect any other provision of this Contract all of which shall remain in full force and effect to the extent permitted by Law.

27.0 Notices

27.1 Any notices to be served by either party under this Contract shall be sufficiently served:-

27.1.1 if served personally on the Contractor or its Authorised Representative;

27.1.2 if sent by pre-paid first class post by facsimile transmission to the last known address or place of business of the party to be served or by electronic mail (email).

27.2 Any notices sent in accordance with sub-paragraph 27.1.2 shall subject to proof to the contrary be deemed to have been received by the addressee on the second day of business after the date of posting or on successful transmission in the case of facsimile and/or email as the case may be.

28.0 Waiver

28.1 No waiver or forbearance by the Council whether express or implied in enforcing any of its rights under this Contract shall prejudice its right to enforce the Contract in the future.

29.0 Force Majeure

29.1 Neither party shall be liable for any default or failure to deliver its obligations under this Contract resulting from a Force Majeure Event

29.2 Each of the parties agrees to give notice to the other upon becoming aware of an Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.

29.3 If the default due to an Event of Force Majeure shall continue for more than 8 weeks then the party not in default shall be entitled to terminate this Contract. Neither party shall have any liability to the other in respect of the termination of this Contract as a result of an Force Majeure Event.

29.4 For the avoidance of doubt, the sum payable for the Services affected by the Force Majeure Event shall be reduced or waived by a reasonable amount to be agreed between the parties to reflect the extent and standard to which the affected Services are being provided.

30.0 Third Party Rights

30.1 The parties hereby declare that subject to **Clause** 33.3.9 no term of the Contract shall create or give rise to, nor is it the intention of the parties to this Contract to create or give rise to, any third party rights (as defined by the Contracts (Rights of Third Parties) Act 1999). No third party shall have any right to enforce or rely on any provision of this Contract that does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly. The application of any legislation including, but not limited to the Contracts (Rights of Third Parties) Act 1999, giving to or conferring on third parties contractual or other rights in connection with this Contract shall be excluded.

31.0 Local Government Ombudsman

31.1 Under the Local Government Act 1974, the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 (SI 2007/1889) and The Local Government and Public Involvement in Health Act 2007, members of the public are entitled to complain to the Local Government Ombudsman (“LGO Complaints”) in connection with the delivery of services by the Council.

31.2 In the event that an LGO Complaint is made in connection with the delivery of the Services:

- (a) the Contractor shall and shall procure that any relevant Contractor Party shall give their full co-operation (at no additional cost to the Council) in addressing the LGO Complaint. Such co-operation shall include (without limitation, promptly providing copies of all relevant documentation and making available any Contractor Personnel who were in any way connected with the LGO Complaint; and
- (b) without prejudice to any other remedies under this Contract, the Contractor shall indemnify the Council in respect of all costs, losses, claims, expenses and proceedings whatsoever which have been incurred by the Council as a consequence of the LGO Complain or any order, finding or recommendation made by the Local Government Ombudsman in respect of the LGO Complaint.

32.0 Environment

32.1 The Contractor shall ensure compliance with any direction given by the Secretary of State and/or any statutory provisions including the Environmental protection Act 1990 and the Waste Minimisation Act 1998 as amended and any other relevant legislation relating to environmental protection.

32.2 The Contractor shall (at no additional cost to the Council) provide the Council with such data as the Council may require in order to discharge any statutory reporting obligations under any Law with respect to carbon reduction and greenhouse gas emissions. Such data shall be provided in a written report to be provided quarterly or at such other frequency as the Council may specify.

33.0 Transfer of Undertakings Regulations 2006 (“TUPE”)

33.1 Application of TUPE

33.1.1 The Parties agree that the provisions of TUPE may apply to this Contract.

33.1.2 In the event that TUPE does apply, the Parties agree that, where the identity of a provider (including the Council) of any of the Services is changed pursuant to this Contract (including on expiry of the Contract Term), the change shall constitute a Relevant Transfer.

33.1.3 On the occasion of a "Relevant Transfer" (other than a Relevant Transfer on expiry of the Contract Term), the Contractor shall and shall procure that any replacement Contractor shall comply with its obligations under TUPE and the Directive in respect of the Transferring Employees.

33.2 Emoluments and Outgoings

33.2.1 The Council shall be responsible for all emoluments and outgoings in respect of the Transferring 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 any Relevant Transfer.

33.2.2 The Contractor shall be or shall procure that any Contractor Party shall be responsible for all emoluments and outgoings in respect of the Transferring 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 any Relevant Transfer.

33.3 Pensions

33.3.1 Contractor to Become an Admission Body

Where the Contractor employs any Eligible Employees on the occasion of a Relevant Transfer and wishes to offer those Eligible Employees membership of the Local Government Pension Scheme, the Contractor shall procure that it shall become an Admission Body. The Contractor shall before the Relevant Transfer execute an Admission Agreement which will have effect from and including the occasion of a Relevant Transfer.

33.3.2 Indemnity for a Breach of the Contractor Admission Agreement

Without prejudice to the generality of this **Clause 33**, the Contractor hereby indemnifies the Council and/or any future Contractor on demand from and against all direct losses suffered or incurred by it or them which arise from any breach by the 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 (howsoever caused).

33.3.3 Indemnity or Bond

Without prejudice to the generality of the requirements of this **Clause 33** the Contractor shall procure that it shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Admission Agreement.

33.3.4 Right of Set-Off

The Council shall have a right to set off against any payments due to the Contractor under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor under the Admission Agreement.

33.3.5 Contractor Ceases to be an Admission Body

If the Contractor employs any Eligible Employees on the occasion of a Relevant Transfer and:

- (a) the Contractor does not wish to offer those Eligible Employees membership of the Local Government Pension Scheme; or
- (b) the Council and the Contractor are both of the opinion that it is not possible to operate the provisions of **Clause** 33.3.1 (Contractor to Become an Admission Body) to 33.3.4 (Right of Set Off) inclusive; or
- (c) if for any reason after the Relevant Transfer the Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of **Clause** 33.3.1 (Contractor to Become an Admission Body) to 33.3.4 (Right of Set Off) inclusive shall not apply (without prejudice to any rights of the Council under those **Clause**) and the provisions of **Clause** 33.6.6 (Contractor Scheme) shall apply.

33.3.6 Contractor Scheme

Where this **Clause** 33.3.6 (Contractor Scheme) applies pursuant to **Clause** 33.3.5 (Contractor Ceases to be an Admission Body), the following shall apply:

- (a) The Contractor shall not later than on the occasion of the Relevant Transfer or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be the **Contractor Scheme** for the purposes of this **Clause** 33.3.6 (Contractor Scheme). Such pension scheme or schemes must be:
 - i established within three (3) months of the Relevant Transfer or Cessation Date (as the case may be) and maintained until any payment to be made under the bulk transfer terms agreed pursuant to clause 33.3.6(c) is made;
 - ii reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
 - iii registered under section 153 of the Finance Act 2004; and
 - iv certified by an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS,
- (b) The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall procure that:
 - i the Eligible Employees shall by three (3) months before the occasion of the Relevant Transfer or such other date as the Council may propose or the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer or Cessation Date (as the case may be);

- ii the Contractor Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the occasion of the Relevant Transfer or Cessation Date (as the case may be) which the actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the Local Government Pension Scheme had they continued in membership of the Local Government Pension Scheme;
 - iii if the Contractor Scheme is terminated or the Contractor's participation in the Contractor Scheme terminates, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor. The replacement scheme must comply with this **Clause 33.3.6 (Contractor Scheme)** as if it were the Contractor Scheme;
 - iv before the occasion of the Relevant Transfer or Cessation Date (as the case may be) the trustees of the Contractor Scheme shall undertake by deed to the Council that they shall comply with the provisions of this **Clause 33 (a)**; and
 - v where the Contractor Scheme has not been established at the occasion of the Relevant Transfer or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service benefits provided by the Local Government Pension Scheme immediately before the occasion of the Relevant Transfer or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Contractor Scheme.
- (c) The parties shall use best endeavours to agree the terms of Schedule 1 (Bulk Transfer Terms) which shall apply in relation to the terms for bulk transfers from the Local Government Pension Scheme to the Contractor's Scheme following the Relevant Transfer and any subsequent bulk transfers on termination or expiry of this Contract.

33.3.7 Undertaking from the Contractor

- (a) The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:
 - i all information which the Council or their respective professional advisers may reasonably request from the Contractor for the administration of the Local Government Pension Scheme or concerning any other matters raised in **Clause 33.3.6 (Contractor Scheme)**, **Clause 33.3.7 (Undertaking from the Contractor)** or **Schedule 1 (Bulk Transfer Terms)** shall be supplied to them as expeditiously as possible;
 - ii it shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Contractor of such reasonable costs as the Council may require) consent to instigate, encourage or assist any event which could impose on the Local Government Pension Scheme or on the Council a cost in respect of

any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- iii until the occasion of the Relevant Transfer, it shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in **Clause** 33.3.1 (Contractor to Become an Admission Body) to 33.3.5 (Contractor ceases to be an Admission Body) inclusive without the consent in writing of the Council (not to be unreasonably withheld or delayed);
- iv it shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

33.3.8 Discretionary Benefits

- (a) Where the Contractor is an Admission Body, the Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- (b) Where the award of benefits in **Clause** 33.3.8(a) (Discretionary Benefits) is not permitted under the Compensation Regulations and/or the Local Government Pension Scheme or the Contractor is not an Admission Body, the Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- (c) Under **Clause** 33.3.8 (a) and (b) (Discretionary Benefits), where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any relevant sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

33.3.9 Claims from Eligible Employees or Trade Unions

- (a) The Contractor hereby indemnifies the Council and/or any future Contractor and, where relevant, their Sub-Contractors from and against all losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- i relate to pension rights in respect of periods of employment on and after the Relevant Transfer until the date of termination or expiry of this Contract; or
- ii arise out of the failure of the Contractor to comply with the provisions of this **Clause** 33 before the date of termination or expiry of this Contract,

and the Council and the Contractor agree that **Clause** 30 Third Party Rights of this Contract shall not apply to this **Clause** 33.3.9

33.3.10 Liability for Costs

The costs of the Council necessarily and reasonably incurred in connection with the Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with **Clause** 33.3.6 (a) (Contractor Scheme) shall be borne by the Contractor.

33.3.11 Transfer to Another Employer

- (a) Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall:
 - i consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
 - ii procure that the employer to which the Eligible Employees are transferred (the “**New Employer**”) complies with the provisions of this **Clause** 31 (Pensions) provided that references to the sub-Contractor will become references to the New Employer, references to Relevant Transfer will become references to the date of the transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer.

33.3.12 Pension Issues on Expiry or Termination

The Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in **Clause** 33.3.12 (a) (Pension Issues on Expiry or Termination) which the Council may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully co-operate (and procure that the trustees of the Contractor Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor in the provision of the Services on the expiry or termination of this Contract.

33.4 Provision of information

The Council warrants that the TUPE information provided in writing to the Contractor by the Council (Transferring Employees) is accurate and complete as at the date of this Contract and that the Transferring Employees were employed by the Council immediately prior to the Transfer Date.

33.5 Contractor to inform Council of any measures

The Contractor shall or shall procure that any sub-contractor shall within fourteen (14) Calendar Days of receiving a request from the Council, provide the Council with any information which is reasonably necessary concerning any measures (within the meaning of TUPE and the Directive) that the Contractor intends to take in relation to any Transferring 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 **Clause** 31.5.

33.6 Indemnities

33.6.1 The Council shall indemnify and keep indemnified the Contractor from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of any such employee provided that this arises from any act, fault or omission of the Council prior to the date of the Relevant Transfer.

33.6.2 The Contractor shall indemnify and keep indemnified the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of the Contractor or any sub-contractor on or after the date of the Relevant Transfer.

33.6.3 The Contractor shall indemnify and keep indemnified the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of:

- (a) 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 Transferring Employees) arising from or connected with any failure by the Contractor or any sub-contractor to comply with any legal obligation to such trade union, staff associated or other employee representative under TUPE or the Directive and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer;
- (b) any step or measure envisaged by the Contractor and/or any sub-contractor in relation to employees affected by this Contract; and
- (c) the change of identity of the employer.

33.7 TUPE Compliance on Termination

33.7.1 During the twelve (12) months prior to the expiry of the Contract Term or after the Council has given notice to terminate this Contract and within twenty one (21) Calendar Days of being so requested to do so, the Contractor shall fully

and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Services including:

- (a) a list of employees employed by the Contractor or any sub-contractor in the provision of the Services;
- (b) a list of agency workers, agents and independent contractors engaged by the Contractor or any sub-contractor in the provision of the Services;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons; and
- (d) the terms and conditions of employment or other contract with such persons.

33.7.2 The Contractor shall notify the Council as soon as reasonably practicable of any variation in the information provided under **Clause** 31.7.1 above and shall provide the Council with the revised and accurate information.

33.7.3 During the twelve (12) months prior to expiry of the Contract Term or where notice to terminate this Contract for whatever reason has been given, the Contractor shall not and shall procure that any sub-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 re-deploy any employee employed in connection with the Services to other duties unconnected with the Services or assign or re-deploy any employee employed to carry out duties unconnected with the Services to the duties connected with the Services.

33.8 Obligations on Termination

33.8.1 The Contractor shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Relevant Transfer Date.

33.8.2 The Contractor shall indemnify and keep indemnified the Council against any loss caused to the Council or any New Contract by any inaccuracy or incompleteness in such information as is provided under 31.7.1 above or by any changes in the information which have not been communicated to the Council (whether relating to the number, identity or details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date.

33.8.3 The Contractor shall indemnify the Council in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Council and/or any New Contractor incurs arising from:

- (a) any act or omission of the Contractor or any sub-contractor in relation to the Relevant Employees,

- (b) any claim by an employee or former employee of the Contractor or any sub-contractor, and
- (c) any representations made by the Contractor or any sub-contractor in relation to employment by the Council and/or any New Contract.

33.8.4 The Council shall indemnify the Contractor in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Contractor incurs arising from any act or omission of the Council in relation to the Relevant Employees.

34.0 Best Value

- 34.1 The Council has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in standards of Goods/Services and quality within financial restrictions. The Contractor shall work with the Council to identify develop and deliver Best Value Goods/Services under the terms and conditions of the Contract within available resources.
- 34.2 Types of requirements of the Contractor by the Council shall include but not necessarily be restricted to provisions of Goods/Services that are cost effective, efficient, timely, reliable, responsive, consistent, courteous and which effect to the Council's policies.
- 34.3 The Contractor will provide periodical and regular inspections and reviews of (performance) standards and suggested improvements.

35.0 Rights to Council Data

- 35.1 The Contractor:
 - 35.1.1 acknowledges that it has no rights of ownership in the Council data;
 - 35.1.2 shall not delete or remove any copyright notices contained within the Council data;
 - 35.1.3 shall not use Council data, except as may be required to provide the Services or as instructed by the Council;
 - 35.1.4 shall not disclose the Council data to any third party except with the prior written consent of the Council or as required under this Contract;
 - 35.1.5 shall undertake the obligations set out in this Contract and the Council's data quality policy in such a manner as to preserve so far as possible the integrity and prevent any loss, disclosure, theft, manipulation or interception of the Council data;
- 35.2 In the event that the Council data is corrupted or lost the Contractor shall, at its own expense, restore (or procure the restoration of) the Council data using the back up copy. Where the Contractor fails (or is unable) to restore the Council data from the back-up copy, the Council may itself restore (or procure the restoration of) the Council data in any manner reasonably available to it at the sole expense of the Contractor.

35 Business Continuity

- 35.1 In order to support the Council's Business Continuity and Emergency Planning Obligations as defined in by the Civil Contingencies Act 2004, the Contractor shall have, on the Commencement date or within 2 weeks of the Commencement date, documented

arrangements (“Contractor’s Business Continuity Arrangements”) that meet good practice guidelines established by www.londonprepared.gov.uk, to effectively protect the Council from the consequences of a business interruption (or series of interruptions). Such arrangements must fully integrate with the Council’s own business continuity arrangements and include plans for restoring and maintaining the delivery of the Goods, Services and/or Works which are the subject of the Contract and for maintaining communication with the Council.

- 35.2 Upon the occurrence of a Business Continuity Event, the Contractor shall invoke the Contractor’s Business Continuity Arrangements and shall continue to deliver the Services in accordance with the Specification, allowing for such variations to the Services as may reasonably be required in the circumstances.
- 35.3 The Contractor shall undertake a test of the Contractor’s Business Continuity Arrangements no less than once per annum; or more frequently if it is practicable under the Contract.
- 35.4 The Contractor shall inform the Client when such tests or exercises are scheduled (providing at least one months notice) and, if requested to do so provide outcomes of these tests or exercises to the Client in writing.
- 35.5 The Council reserves the right to attend any business continuity test or exercise undertaken by the Contractor and to invite the Contractor to any relevant exercises held by the Council.
- 35.6 The Council reserves the right to audit the Contractor’s business continuity arrangements, but will accept audits that cover the works/goods/services carried out by a United Kingdom Accreditation Service accredited auditor, provided that the scope of the audit covers the services delivered by the Contract.
- 35.7 The Contractor shall promptly (and in any case within three months) implement any actions or remedial measures which the Contractor or Council considers to be necessary as a result of audits; tests or exercises; business interruptions; emerging risks; a change to the foods, services and/or works covered by this Contract or any underlying business processes.

36. Contract Procedure Rules

- 36.1 This Contract shall be subject to the Contract Procedure Rules of the Council current at the date of the Contract and the Contractor shall on request be directed to an electronic copy of these including appendices and Financial Regulations, which can be located on the Council’s website. In the event of any conflict between the provisions of this Contract and the rules and regulations referred to in this Condition then the rules and regulations shall take precedence.

37.0 Transparency Agenda

- 37.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract or any associated tendering documentation is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Council to publish the Contract in its entirety or such information contained herein as determined by the Council (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the contract, to the general public.

37.2 The Contractor hereby irrevocably consents that where the Council pays any sum to the Contractor, the Council may publish the details of such payment pursuant to the Council's interests of providing greater transparency. Such details include but are not limited to: the Contractor's full name (for the avoidance of doubt including, but not limited to, where the Contractor is a sole trader), the Contractor's companies house or charity registration number, the Contract identification number, the date of payment, the net amount paid to the Contractor, the transaction number and a description confirming the nature of the transaction.

38.0 Entire Agreement

38.1 Subject to **Clause 5.3** the Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

38.2 In the event of and only to the extent of any conflict between the Conditions, Specification, [Invitation to Tender], [Contractor's Tender] [and other documents referred to or attached to the Contract], unless expressly stated otherwise the conflict shall be resolved in accordance with the following order of precedence:

- (1) the Conditions shall prevail over;
- (2) the Specification [which shall prevail over ...
- (3)]

39 Governing Law

39.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

SCHEDULE 1 BULK TRANSFER TERMS

1 Interpretation and Definitions

In this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

"Actuary's Letter" means the letter from the Administering Authority's Actuary, a copy of which has been attached to this Schedule;

"Administering Authority's Actuary" means [name of actuary] of [name of firm], or another actuary appointed by the Administering Authority for the purposes of this Schedule;

"AVCs" means AVCs or SCAVCs as defined in the LGPS Regulations;

"Contractor's Actuary" means [name of actuary] of [name of firm], or another actuary appointed by the Contractor and/or relevant sub-contractor for the purposes of this Schedule;

"Contractor's Scheme" means the pension scheme or schemes nominated by the Contractor and/or relevant sub-contractor in accordance with clause 31.7.1 of this Agreement;

"Due Date" means the date [] days after the last of the conditions in paragraph 3.6 of this Schedule has been satisfied;

"Fund" means the [] Fund within the LGPS;

"Transfer Amount" means the amount or amounts referred to in paragraph 3.1 of this Schedule;

"Transferring Member" means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Contractor's Scheme under paragraph 2.1 of this Schedule;

2 The Contractor's Scheme

The Contractor shall (and shall procure that each relevant sub-contractor shall) invite each Eligible Employee who joins the Contractor's Scheme in accordance with clause 33.3.6 of this Agreement to consent to a transfer of benefits being made for him from the Fund to the Contractor's Scheme. The Contractor and/or relevant sub-contractor must issue this invitation no later than [one] month after the Relevant Transfer Date. The invitation must be in a form acceptable to the Council and the Administering Authority (such acceptance not to be unreasonably withheld or delayed by the Council) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the Contractor and/or relevant sub-contractor of this consent in writing no later than [three] months after the date of the invitation. The Contractor shall (and shall procure that each relevant sub-contractor shall) provide the Council and the Administering Authority with the names of the Transferring Members no later than [four] months after the Relevant Transfer Date.

3 Transfer payment from the Fund

- 3.1 The Council shall use reasonable endeavours to ensure that the Administering Authority transfers from the Fund to the Contractor's Scheme on the Due Date an amount in respect

of the relevant Transferring Members' service in the Fund before the Relevant Transfer Date calculated in accordance with the Actuary's Letter and the LGPS Regulations.

- 3.2 As soon as reasonably practicable following the Relevant Transfer Date, the Contractor shall (and shall procure that each relevant sub-contractor shall) promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
- 3.3 As soon as reasonably practicable following the Relevant Transfer Date, the Council shall promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
- 3.4 The Council shall use its reasonable endeavours to procure that:
 - 3.4.1 as soon as reasonably practicable after the Administering Authority's Actuary has been provided with the necessary data and information, the Administering Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and
 - 3.4.2 within [one week] of completing this calculation, the Administering Authority's Actuary shall notify the Contractor's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

The Contractor's Actuary will then have [one month] (or such longer period as the Parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary's Letter. The calculation shall be final and binding on the Parties if the Contractor's Actuary raises no objection within this stated period.

- 3.5 If the Contractor's Actuary objects in writing under paragraph 3.4 of this Schedule and the Administering Authority's Actuary and the Contractor's Actuary cannot subsequently agree the Transfer Amount within [one] month (or such longer period as shall be agreed between the Parties) of the objection, then the amount shall be determined by an independent actuary to be nominated by the Administering Authority and the Contractor and/or relevant sub-contractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either Party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the Parties. The independent actuary's costs shall be payable equally by the Administering Authority and the Contractor and/or relevant sub-contractor.
- 3.6 Payment to the Contractor's Scheme of the Transfer Amount shall only be made on the following conditions:
 - 3.6.1 the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Schedule and in accordance with the LGPS Regulations;
 - 3.6.2 the Contractor and/or relevant sub-contractor has complied with all its obligations under this Schedule; and
 - 3.6.3 the trustees of the Contractor's Scheme have confirmed in writing that:
 - 3.6.3.1 a payment should be made in accordance with the LGPS

Regulations and that they shall accept payment on the terms set out in paragraph 4 of this Schedule;

3.6.3.2 they shall accept liability for each Transferring Member's accrued contracted out rights under the Fund; and

3.6.3.3 they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.

3.7 [The payment of the Transfer Amount shall be satisfied by the transfer of readily marketable stocks and shares of the Fund as agreed by the Administering Authority and the trustees of the Contractor's Scheme having a mid-market value on the day before the Due Date equal to the Transfer Amount. If the Administering Authority and the trustees of the Contractor's Scheme are not able to agree some or all of the particular assets to be transferred, or the mid-market value of any such assets, the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Fund transferring cash equal to []% of that part of the Transfer Amount in respect of which there has been no agreement as to the assets to be transferred.]

4 Past service benefits

The Contractor shall (and shall procure that each relevant sub-contractor shall) ensure that:

4.1 the Contractor's Scheme provides in respect of each Transferring Member such benefits as the Administering Authority's Actuary certifies to be of actuarially equivalent value [(in accordance with the Actuary's Letter)] to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer Date if he had remained a member of the LGPS.

4.2 the Transfer Amount will, subject only to any HRMC limits that may still apply, be wholly applied in the Contractor's Scheme for the provision of the benefits mentioned in paragraph 4.1 of this Schedule.

5 Additional voluntary contributions

Nothing in this Schedule shall apply to AVCs or to benefits secured by them. However, the Council shall use reasonable endeavours to ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Contractor's Scheme. The Contractor shall (and shall procure that each relevant sub-contractor shall) ensure that the Contractor's Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

6 No assistance

The Contractor shall not (and shall procure that each relevant sub-contractor shall not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the Contractor's Scheme in respect of the Transferring Members.

7 [Exit Provisions]

7.1 The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the [Eligible Employees] that on:

- 7.1.1 the expiry or termination of this Agreement; or
- 7.1.2 the expiry or termination of any Sub-Contract in the case of a relevant sub-contractor; or
- 7.1.3 the employment of any [Eligible Employee] transferring to a New Employer in accordance with clause 31.12 of this Agreement (or otherwise),

the Contractor shall (and shall procure that each relevant sub-contractor shall) procure that the trustees of the Contractor's Scheme offer bulk transfer terms in respect of the relevant [Eligible Employees'] service in the Contractor's Scheme to the pension scheme of the Council, any Future Service Provider (or their sub-contractors), any new sub-contractor or any New Employer (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Council) than the bulk transfer terms set out in the Actuary's Letter.

- 7.2 If the transfer payment paid by the trustees of the Contractor's Scheme is less (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Council) than the transfer payment which would have been paid had paragraph 7.1 of this Schedule been complied with, the Contractor shall (and/or shall procure that each relevant sub-contractor shall) pay to the Council, any Future Service Provider (or their sub-contractor), any new sub-contractor or any New Employer (as appropriate) (or as such person shall direct) the amount of the difference.]

8 [Council's Costs

Any costs of the Council necessarily and reasonably incurred in connection with this Schedule shall be borne by the Contractor.]

Signed : _____

Name: _____

For and on behalf of: _____

Date: _____

Signed : _____

Name: _____

For and on behalf of: _____

Date: _____