



**DATE:**

**20**

**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF HARINGEY**

**-and-**

**[INSERT SERVICE PROVIDER]**

**CONTRACT FOR THE PROVISION OF  
[ Insert Service ]**

**BETWEEN**

**The Mayor and Burgesses of the London Borough** of Haringey Civic Centre, Wood Green, London, N22 8LE ("**the Council**").

**AND**

**(Insert Name of Service Provider)** [insert registered number] whose registered office is at [insert address] ("**the Service Provider**").

**WHEREAS: -**

- A. The Council is a London Borough Council constituted under the London Government Act 1963 and enters into this Contract pursuant to its powers under the Local Government Contracts Act 1997.
- B. The Council requested a quote from the Service Provider for the provision of [insert service].
- C. The Service Provider submitted a quote and represented to the Council that it is capable of delivering the Services in accordance with the Council's requirements as set out in the Service Specification forming part of this Contract.
- D. The Council now wishes to appoint the Service Provider to provide these Services on the terms and conditions set out in this Contract, which the Service Provider hereby accepts.

**NOW IT IS HEREBY AGREED AS FOLLOWS: -**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Contract:

- (a) "Authorised Officer" means the person appointed by the Council under Clause 14.1 of this Contract whose details are set out in Schedule 1 to this Contract or such other person as may be nominated by the Authorised Officer to act on his or her behalf and whose details are notified in writing to the Service Provider;
- (b) "Best Value" means any method by which the maximum benefit

can be derived from relevant resources.

- (c) "Business Hours" means 8.30am and 5.30pm Monday to Friday excluding Public Holiday and Bank Holiday
- (d) "CCA" means the Civil Contingencies Act 2004;
- (e) "Commencement Date" means [insert];
- (f) "Completion Date" means [insert];
- (g) "Contract" means these terms and conditions and any schedule hereto;
- (h) "Council Data" means any information provided by, obtained or created on behalf of the Council in delivering the services specified in this Agreement;
- (i) "Data Protection Act (DPA)" means the Data Protection Act 1998 and with effect from 25th May 2018, the Data Protection Act 2018;
- (j) "Data Protection Officer" means the role as defined under Chapter IV, Section 4 of GDPR;
- (k) "Data Subject" shall have the same meaning as set out in the Data Protection Act 2018;
- (l) "Dispute Resolution Procedure" means the procedure set out in Clause 32;
- (m) "Environmental Information Regulations (EIR)" means the Environmental Information Regulations 2004;
- (n) "Exempt Information" means information that potentially falls within an exemption under the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA);
- (o) "FOIA" means the Freedom of Information Act 2000;

- (p) "General Data Protection Regulation (GDPR)" means the General Data Protection Regulation (2016), Regulation (EU) 2016/679 as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same. All compliance references to GDPR in this Agreement are applicable from 25th May 2018;
- (q) "Good Industry Practice" means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the same type of undertaking under the same or similar circumstances as are contemplated by this Agreement;
- (r) "Information" has the meaning given under Section 84 of the Freedom of Information Act 2000 (FOIA), which shall include (but not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programmes, (including the source code of any programmes which the Council has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts, and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to information shall include reference to the medium in which it is stored;
- (s) "Information Legislation" means the DPA, FOIA, GDPR and the EIR
- (t) "Intellectual Property Rights" or "IPR" shall mean intellectual property rights whether vested or contingent and whether currently in existence or otherwise including (without limitation) patents, inventions, trademarks, service marks, logos, design rights, registered designs, copyright, database rights, domain names, trade or business names, moral rights, trade secrets, the right to sue for passing off and all similar rights whether registered or not (in any country) and all extensions revivals reversions and renewals of any of the above. The above shall include in relation to registrable rights any applications made in respect of such rights;
- (u) "Legislation" means all Law and in particular the Information Legislation;
- (v) "Method Statements" means the proposals put forward by the Service Provider as part of its quote documents and which form

part of the Contract as set out in Schedule 3;

- (w) "Other Information Law" means any applicable legislation or codes governing access to information other than FOIA;
- (x) "PCR 2015" means the Public Contract Regulations 2015 as amended from time to time;
- (y) "Payment Details" means the prices and payment details as set out in Schedule 4;
- (z) "Personal Data" means personal data as defined in Section 1(1) of the DPA and Article 4(2) of the GDPR, which is supplied to the Service Provider by the Council or obtained by the Service Provider in the course of performing their obligations under this Contract;
- (aa) "Relevant Employee/s" means employees who are the subject of a Relevant Transfer;
- (bb) "Relevant Transfer" means a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE);
- (cc) "Prices" means the tendered rates submitted by the Service Provider covering fully defined Services and the cost of provision of the Services as set out in Schedule 2;
- (dd) "Service Manager" means the representative appointed by the Service Provider under Clause 14.2 of this Contract who will receive and act on any instructions given by the Authorised Officer whose details are set out in Schedule 1 to this Contract;
- (ee) "Services" means the [insert service] that the Service Provider has agreed to provide under this Contract as more particularly described in the Service Specification (Schedule 2) and, where the context requires it, shall include any materials, articles and ancillary services to be supplied thereunder;

- (ff) "Service Specification" means the specification issued by the Council in respect of the provision of the Services as set out in Schedule 2;
- (gg) "Staff" means persons engaged by the Service Provider to perform the Services whether paid or unpaid or otherwise voluntary;
- (hh) "Sub-Contractor" means a person to whom the Service Provider subcontract any of it's obligations under this Contract;
- (ii) "Subject Access Request" means a request for Personal Data falling within the provisions of Section 7 of the DPA and Article 11, 12 & 15 of the GDPR;
- (jj) "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any regulations replacing or amending those regulation.

- 1.2 The headings of these clauses shall not affect the interpretation thereof.
- 1.3 Reference to one gender shall include a reference to the other gender
- 1.4 The singular includes the plural and vice versa.
- 1.5 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 1.6 If there is any inconsistency or conflict between what is set out in any of the conditions of this Contract and what is set out in any of the Schedules, the conditions shall prevail.
- 1.7 This Contract constitutes the entire Contract between the parties for the provision of the Services. The Contract supersedes any

representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date of this Contract, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

- 1.8 None of the provisions of this Contract are intended to relate to any non-commercial matter within the meaning of Section 17(5) of the Local Government Act 1988, except to the extent that its inclusion is permitted by Section 18(2) of that Act.

## **2. SCOPE OF CONTRACT**

- 2.1 The Service Provider shall provide the Services to the Council and other necessary and ancillary services in accordance with this Contract.

- 2.2 The Service Provider shall provide the Services in a professional and prompt manner using reasonable skill, care and diligence and suitably qualified staff in sufficient numbers.

- 2.3 The parties shall work together and individually, in accordance with this Contract, to achieve a transparent and co-operative exchange of information in all matters relating to this Contract.

## **3. CONTRACT PERIOD**

- 3.1 This Contract shall commence from the Commencement Date until the Completion Date the ('Contract Period'), subject to early termination or extension provided for under this Contract or at law.

## **4. CONTRACT DOCUMENTS**

- 4.1 Where there is any conflict or inconsistency between the provision of this Contract, any such conflict or inconsistency shall be resolved according to the following order of priority:

4.1.1 these Conditions of Contract;

4.1.2 Schedule 2 (Service Specification);

4.1.3 all other Schedules attached to these Conditions of Contract.

## **5. PRICING.**

5.1 The cost of the Service shall be in accordance with the Prices submitted by the Service Provider as contained in the Payment Details (Schedule 4) of this Contract and any future changes which may be agreed between the parties.

5.2 The Prices submitted by the Service Provider shall be deemed to be fully inclusive as contained in Schedule 4 of this Contract.

## **6. PAYMENT AND VAT**

6.1 The Council shall pay the Service Provider for the Services or any part thereof satisfactorily provided to the Council under the terms and conditions of this Contract in accordance with the Payment Details set out in Schedule 4.

6.2 The Council shall make no payment unless the Service Provider submits an invoice. Subject to the correction of any errors the Council shall, within 30 days of the receipt of invoices from the Service Provider, pay the Service Provider all undisputed invoice in accordance with the Payment Details set out in Schedule 4.

6.3 Sums payable pursuant to this Contract are exclusive of Valued Added Tax ("VAT") which shall be paid at the prevailing rate providing it is properly detailed on an invoice in compliance with prevailing legislation.

6.4 If the Council and the Service Provider fail to reach agreement on any VAT matter pursuant to this Contract, the Council and the Service Provider may refer the matter to Her Majesty's Revenue and Customs or a VAT tribunal for determination.



- 6.5 For the avoidance of doubt the Prices in the Payment Details shall be deemed to be inclusive of all traveling expenses, insurance costs and all other miscellaneous expenses incurred by the Service Provider in the organisation and provision of Services.
- 6.6 If the Council is late in making any payment due to the Service Provider under this contract then the Council shall pay the Service Provider interest on the amount of any such late payment (unless the unpaid sum is in dispute between the parties). The interest payable will be calculated on a daily basis from the date when payment should have been made to the date when payment is actually made. The applicable interest rate will be the base rate of the Bank of England from time to time plus 2 % per annum.
- 6.7 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Service Provider has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.

## **7. RECOVERY OF SUMS DUE**

- 7.1 Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider to the Council, that sum may be deducted from any sum then due, or which at any later time may become due to the Service Provider under this Contract or any other Contract which the Service Provider has with the Council.

## **8. EURO PAYMENTS**

- 8.1 Any legislative requirement to account for the goods or services in Euros instead of and/or in addition to Sterling shall be implemented by the Service Provider at nil charge to the Council.
- 8.2 The Council shall provide all reasonable assistance to facilitate such

changes.

## **9. SUFFICIENCY OF INFORMATION**

9.1 The Service Provider will be deemed to have satisfied itself as regards the nature and extent of the Services and as to the accuracy and sufficiency of the Prices stated in the Schedules forming part of this Contract prior to agreeing to undertake the Services. The Service Provider will be deemed to have obtained for itself all necessary information as to the risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider undertaking the Services.

## **10. CONTRACTUAL RELATIONSHIP**

10.1 The Service Provider is not an employee or an agent of the Council. Neither the Service Provider nor its employees or agents shall in any circumstances hold themselves out as being the employee or agent of the Council nor are they authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

10.2 The Service Provider is responsible for all acts and omissions of its employees and agents and the Council is not responsible, and cannot be held liable, for any act or omission of any person engaged by the Service Provider in relation to the Services.

10.3 The Service Provider is responsible for the payment of all taxes, National Insurance contributions, imposts and levies of any kind which it is obliged by law to pay. The Service Provider is also responsible for the payment of all fees/wages, income taxes, National Insurance contributions, and levies of any kind, relating to or arising out of the engagement of any person employed or contracted by the Service Provider in relation to the provision of the Services.

## **11. ADVERTISING**

11.1 Save to the extent that this Contract indicates otherwise no advertisement of any description indicating that the Service Provider is acting for the Council is permitted on premises, equipment, materials or consumables utilised in the performance of the Services without the prior written consent of the Authorised Officer. Any advertisement which is placed on the Council's premises with consent shall be promptly removed at the end of the Contract Period or any extension to it.

11.2 The Service Provider will make clear on all products promoting the service and raising professional and public awareness of it that the Service is being provided on behalf of and funded by the Council.

## **12. BEST VALUE**

12.1 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 the Services and quality within financial restrictions. The Service Provider shall work with the Council to identify develop and deliver Best Value Services under the terms and conditions of the Contract within available resources.

12.2 Types of requirements of the Service Provider by the Council shall include but not necessarily be restricted to provision of Services that are cost effective, efficient, timely, reliable, responsive, consistent, courteous and give effect to the Council's priorities.

12.3 The Service Provider shall facilitate periodical and regular inspections and reviews by the Council of performance standards and shall, where possible, suggest improvements in the way the Services are provided.

## **13 STATUTORY AND OTHER REGULATIONS**

13.1 The Service Provider shall at its own expense comply with all statutory

and other provisions to be performed and observed in connection with the Services and shall indemnify and keep indemnified the Council against any claims, actions, proceedings, loss, liability, penalties, costs or expense made or incurred as a result of any failure in compliance.

#### **14. MONITORING**

- 14.1 The Council shall appoint an Authorised Officer who will have responsibility for managing and issuing instructions to the Service Provider in respect of the Contract.
- 14.2 The Service Provider shall appoint a Service Manager who will have responsibility on behalf of the Service Provider for the management of the overall Contract.
- 14.3 The Service Provider's performance of the Services shall be monitored by the Authorised Officer, who shall be entitled to make recommendations to the Service Provider for improving the standard of the Service Provider's performance in undertaking the Services.
- 14.4 The Service Manager will meet with the Authorised Officer on a monthly basis ("the Liaison Meeting") to discuss the Services being provided and to provide the Council with progress reports. Upon receiving a request to do so the Service Manager shall attend any such meeting(s) or other meetings arranged by the Authorised Officer (or his representative) for the purpose of reviewing the Service Provider's performance.
- 14.5 At Liaison Meetings the Authorised Officer and Service Manager will review, among other things, issues relating to the day to day performance of the Services, and the Contract monitoring systems detailed in the Service Specification, including but not limited to, such things as user feedback.
- 14.6 The Service Manager shall keep minutes of all Liaison Meetings.

- 14.7 The Service Provider shall permit the Council access to its premises for contract compliance visits. Site visits may be announced or unannounced. The Council will supply the Service Provider with a copy of any report compiled following a contract compliance visit.
- 14.8 The Service Provider shall provide the Council with monitoring information in accordance with its requirements and within any timescales communicated to it by the Authorised Officer. Further monitoring requirements are contained in the Service Specification.
- 14.9 The Service Provider shall maintain proper records and accounts in relation to the provision of the Services. The financial accounts held in respect of the Services must be separate from the Service Provider's other accounts and all documents relevant to the Services and this Contract must be made available for inspection by the Authorised Officer or any other person or organisation nominated by him.
- 14.10 If following a review of the Services it is apparent to the Council that the Services are not being carried out to the satisfaction of the Council the parties will agree a plan and timescale for corrective action. If this is not achieved to the Council's satisfaction, the Council may issue a default notice in accordance with the provisions of Clause 30 of this Contract.

## **15 THE SERVICE PROVIDER'S INDEMNITIES AND INSURANCES**

- 15.1 The Service Provider shall indemnify and keep indemnified the Council against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to the Council or financial loss arising from any advice given or omitted to be given by the Service Provider or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This does not apply to the extent that such injury, death, loss or damage arises out of the act, default, or negligence of the Council, its

employees, or agents not being the Service Provider or persons engaged by the Service Provider.

15.2 The Service Provider's liability under Clause 15.1 for losses relating to death or personal injury or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 shall be unlimited.

15.3 The Service Provider shall effect and maintain as a minimum a policy or policies of insurance of the type set out in Clause 15.4. The Service Provider shall also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf maintain equivalent insurances as a minimum.

15.4 The insurances referred to in Clause 15.3 are as follows:

15.4.1 public liability insurance that covers the Service Provider's liabilities under Clause 15.1 in a sum of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event;

15.4.2 employer's liability insurance in a sum of not less than £10,000,000.00 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event and which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988;

15.4.3 professional indemnity insurance that covers the risk of professional negligence on the part of the Service Provider and persons engaged by it in a sum of not less than £1,000,000.00 (one million pounds) for any one occurrence or series of occurrences arising out of any one event.

15.5 The Service Provider shall supply to the Council upon request a copy of the insurance policies or a certificate from its insurers or brokers

confirming the policies which it is required to maintain under this Clause 15.

- 15.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

## 16 EQUAL OPPORTUNITIES

- 16.1 In providing the Services, the Service Provider 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:

- (a) eliminate discrimination (whether direct or indirect), harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 16.2 The Service Provider shall take all reasonable steps to ensure that its employees, servants, agents and sub--contractors the “**Service Provider’s Personnel**”) employed in the provision of the Services shall carry out the Services in accordance with the obligations imposed on the Service Provider by Clause 16(1).

- 16.3 Where in connection with this Contract, the Service Provider and the Service Provider'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 Service Provider 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 upon request.
- 16.4 The Service Provider shall notify the Council immediately in writing upon becoming aware of any investigation or proceedings brought against the Service Provider under the Equalities Provisions.
- 16.5 If requested to do so by the Council, the Service Provider shall fully cooperate 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 Equalities Provisions due to the alleged acts or omissions of the Service Provider or the Service Provider's Personnel employed in and about the provision of the Services.

## **17. HUMAN RIGHTS**

- 17.1 The Service Provider shall ensure that it provides the Services in compliance with the provisions of the Human Rights Act 1998 ("HRA").
- 17.2 The Service Provider shall indemnify the Council in respect of any cost claim or damages that the Council may incur in respect of any breach or contravention of the HRA arising out of any act or omission on the part of the Service Provider its employees agents or sub-contractor in providing the Services under this Contract.

## **18. HEALTH AND SAFETY AT WORK**



18.1 The Service Provider shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice and amendments thereto pertaining to the health and safety of employees and members of the public and shall ensure that its agents, employees and sub-contractors are competent to carry out their respective tasks with due regard to the Service Provider's obligations under these Acts and other instruments.

18.2 The Service Provider shall provide and maintain and make available for inspection by the Council's Authorised Officer all records reasonably requested by the Council relating to the Service Provider's compliance with Clause 18.1.

18.3 The Service Provider shall promptly notify the Authorised Officer of any health and safety hazards which may arise in connection with the performance of the Services.

## **19. CONFIDENTIALITY AND PROTECTION OF INFORMATION**

19.1 All confidential information (however recorded or preserved) disclosed by a Party or its Employees, Officers, Representatives or Advisers (together it's Representatives) to the other Party and that Party's Representatives in connection with this Agreement concerning:

19.1.1 the terms of this Agreement;

19.1.2 any information that would be regarded as confidential by a reasonable business person relating to:

i. the business, affairs, Clients, Service Providers, plans, intentions, or market opportunities of the disclosing Party;

ii. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs); and

- iii. any information developed by the Parties in the course of carrying out this Agreement shall be deemed as Confidential Information and may only be disclosed subject to the provisions of this Agreement.

19.2. The Service Provider acknowledges that the confidentiality, integrity and availability of information and the security provided in relation to information is a material element of this Agreement.

19.3. The Service Provider shall and shall at all times provide a level of security which:

19.3.1 is in accordance with Legislation and this Agreement.

19.3.2 is in accordance with compliance regimes representing Good Industry Practice; and

19.3.3 meets any specific security threats identified from time to time by the Council.

19.4. The Service Provider shall ensure that it provides comparable technical and policy coverage of security to Information as if it were being processed directly by the Council. This shall include but not limited to the following:

19.4.1 All mobile storage systems and hardware shall be encrypted to at least industrial standards.

19.4.2 All employees shall be appropriately vetted before use in the services which are the subject of this Agreement.

19.4.3 All employees shall receive adequate information governance training which shall be annually refreshed.

19.4.4 All buildings and physical environments shall be subject to appropriate physical security and protection.

19.4.5 The Service Provider shall permit access to Information by employees of the Council only as may be specifically designated by the Council.

19.4.6 The Service Provider shall securely destroy all Information provided or created under this Agreement and no longer required to be retained in accordance with this Agreement.

19.5. The Service Provider will have in place fully tested and effective business continuity plans.

19.6. The Service Provider shall observe the following principles when handling personal data for the purpose of carrying out the Service Provider's obligations under this Agreement:

19.6.1 Every proposed processing of Personal Data within or outside the Service Provider's organisation should be clearly defined and regularly risk assessed and approved by an appropriate information governance role holder.

19.6.2 Personal Data must not be processed unless it is absolutely necessary. Personal Data should not be used unless there is no alternative.

19.6.3 The minimum necessary Personal Data is to be used. Where use of Personal data is considered necessary, each individual item of information should be justified with the aim of reducing the need for processing personally indefinable information.

19.6.4 Access to Personal Data should be on a strict to know basis. Employees should only have access to the data that they need to see, and should only receive the access and functionality permissions required to undertake their roles.

19.6.5 The Service Provider must ensure that its employees are aware of their responsibility to comply with the common law duty of

confidentiality.

19.6.6 All persons handling Personal Data must understand and comply with the DPA. All processing of Personal Data must be lawful.

19.7. Any information received by the Service Provider from the Council under this Agreement or generated by the Service Provider pursuant to this Agreement shall remain at all times the property of the Council. It shall be identified, clearly marked and recorded as such by the Service Provider on all media and in all documentation.

19.8. The Service Provider shall not, save as required by this Agreement, without the prior written consent of the Council disclose to any other person any information provided by the Council under this Agreement.

19.9. Where processing personal data, the Service Provider shall not procure the services of any other agent or sub-provider in connection with this Agreement without the explicit written consent of the Council.

19.10. The Service Provider shall take all necessary precautions to ensure that all information obtained from the Council under or in connection with this Agreement, is given only to such of the Service Provider's employees and professional advisors or consultants engaged to advise the Service Provider in connection with this Agreement as is strictly necessary for the performance of this Agreement, and is treated as confidential and not disclosed (without prior written approval) or used by any such employees or such professional advisors or consultants otherwise than for the purposes of this Agreement.

19.11. The Service Provider shall not use any information it receives from the Council otherwise than for the purpose of this Agreement.

19.12. With regards to Council's Data:

19.12.1 the Service Provider shall not delete or remove any proprietary notices contained within or relating to Council Data.

19.12.2 the Service Provider shall not store, copy, disclose or use the

Council Data except as necessary for the performance of the Service Provider's obligations under this Agreement or as otherwise expressly authorised in writing by the Council.

19.12.3 to the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in the format specified by the Council.

19.12.4 the Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of same.

19.12.5 the Service Provider shall perform secure back-ups of all Council Data and shall ensure that up-to-date back-ups are stored off-site. The Service Provider shall ensure that such back-ups are available to the Council at all times upon request.

19.12.6 if the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, the Council may:

19.12.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data in full and not later than three (3) days (subject to any agreed business continuity plan); and/or

19.12.6.2 in default thereof itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so.

19.13. if at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, loss or sufficiently degraded in any way for the any reason, then the Service Provider shall notify the Council immediately and inform the Council of remedial action the Service Provider proposes to take.

19.14. The obligations imposed by this Clause shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

## **20. INTELLECTUAL PROPERTY RIGHTS**

- 20.1 The Service Provider hereby grants to the Council a perpetual non-exclusive royalty-free licence to use any material created by the Service Provider in the performance of this Contract (including but not limited to data, working papers and the contents of any report). The Service Provider agrees that the Council may without let or hindrance publish, alter, release, license or otherwise exploit and deal with such material as it thinks fit, via any medium.
- 20.2 The Service Provider undertakes to do all such acts or things and execute and /or procure the execution of all such documents the Council may request from time to time in order to perfect or confirm the Council's licence or use of the material referred to in sub-clause 20.1.
- 20.3 The Service Provider agrees to waive all moral rights in respect of the material referred to in sub-clause 20.1.
- 20.4 Where the IPR in material used in the performance of this Contract or forming a material part of any report or data prepared for use by the Council are owned by a third party the Service Provider shall obtain the necessary licence for use of such material by the Council.
- 20.5 The Service Provider shall keep the Council fully indemnified against all losses and all actions claims proceedings costs and damages (including any damages or compensation paid by the Council on the advice of its legal advisor and after consultation with the Service Provider to compromise or settle any claim and all legal costs or other expenses) arising out of any breach of IPR of a third party in material supplied by the Service Provider in the provision of the Services.

## **21. DATA PROTECTION**

- 21.1. The Council is and will remain the Data Controller in relation to the personal information processed under this Agreement, and the Service Provider will act as Data Processor with respect to such personal information. As such, the Service Provider must follow the direction of the Council as to how Personal Data is processed.

- 21.2. All Personal Data acquired by the Service Provider from the Council shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the prior written consent of the Council.
- 21.3. If and when applicable the Service Provider shall comply with the GDPR requirements with regards to appointing a Data Protection Officer.
- 21.4. The Service Provider shall comply with all relevant code of practice issued under the DPA and GDPR.
- 21.5. The Service Provider shall assist the Council in safeguarding the legal rights of the Data Subject.
- 21.6. The Service Provider will have in place at all times appropriate technical and organisational security measures to safeguard Council Data in compliance with DPA and the National Cyber Security Centre (NSNC) guidance and the GDPR.
- 21.7. The Service Provider shall indemnify the Council against loss, destruction or processing contrary to Information Legislation by itself, its employees, contractors or agents.
- 21.8. The Service Provider shall ensure the reliability and training of all its relevant employees to ensure awareness of and compliance with the Service Provider's obligations under the DPA (and GDPR when in force).
- 21.9. The Council shall respond to all Subject Access Request (SAR), whether received by the Service Provider or the Council, and therefore the Service Provider shall provide to the Council the personal data requested by the Data Subject (as defined in the DPA) within 10 working days of receipt of instruction by the Council for supply of the data.
- 21.10. The Service Provider shall immediately notify the Authorised Officer if it receives:
  - 21.10.1. a request from any person whose Personal Data it holds to access his Personal Data; or
  - 21.10.2. a complaint or request relating to the Council's obligations under the DPA and the GDPR.
- 21.11. The Service Provider will assist and co-operate with the Council in relation to any complaint or request received, including:
  - 21.11.1. providing full details of the complaint or request;
  - 21.11.2. providing the Council with any information relating to a SAR within 10 working days of receipt of the request;
  - 21.11.3. promptly providing the Authorised Officer with any Personal Data and other information requested by him.
- 21.12. The Service Provider shall not process information outside of the EEA as

defined by the DPA and GDPR without full prior written consent from the Council.

21.13. The Service Provider shall cooperate with Data Protection Compliance Audits as and when requested.

21.14. When in force, the Service Provider shall comply with GDPR requirements for maintaining accurate, current and comprehensive Records of Processing Activities.

21.15. The Service Provider shall be liable for and shall indemnify the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements) and demands incurred by the Council which arise directly from a breach by the Service Provider of its obligations under the DPA, including without limitation those arising out of any Third Party demand, claim or action, or any breach of Agreement, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the DPA (and GDPR when in force) by the Service Provider or its Employees, servants, agents or Sub-Providers.

## **22. FREEDOM OF INFORMATION**

22.1 The Service Provider recognises that the Council is subject to legal duties which may require the release of information under FOIA or any Other Information Law and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under, this Contract in any way.

22.2 Notwithstanding anything in this Contract to the contrary, in the event that the Council receives a request for information under the FOIA or any Other Information Law, the Council shall be entitled to disclose all information and documentation (in whatever form) as is necessary to respond to that request in accordance with the FOIA or Other Information Law, save that in relation to any such information that the Council believes is Exempt Information, the Council shall use reasonable endeavours to consult the Service Provider as soon as practicable after receipt of such a request and shall not:

- (a) confirm or deny that the information in question is held by the Council; or
- (b) disclose the information requested,



to the extent that in the Council's opinion (having taken into account the views of the Service Provider) that exemption is or may be applicable in accordance with the relevant section of FOIA in the circumstances to all or any of the information requested.

- 22.3 Where the Council consults with the Service Provider in accordance with Clause 22.2 above, the Service Provider shall make its written representations as to whether it believes the information falls within an exemption under the FOIA to the Council within 14 days of receiving the Council's request for consultation.
- 22.4 The Service Provider shall indemnify and keep indemnified the Council for any costs that the Council incurs, including but not limited to external legal costs, in seeking to maintain the withholding of information arising out of or under the Contract in any way that the Service Provider wishes it to withhold, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure.
- 22.5 In any event the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempt Information or other information relating to this Contract under FOIA or Other Information Law.
- 22.6 The Service Provider will at all times assist the Council to enable the Council to comply fully with its obligation under FOIA governing access to information or Other Information Law or related guidelines or codes of practice. In particular it acknowledges that the Council is entitled to any and all information relating to or arising in the course of the performance of this Contract. In the event that the Council receives a request for information under the FOIA or Other Information Law, and requires the Service Provider's assistance in obtaining all or any such information, the Service Provider will respond to any such request for assistance at its own cost and promptly and in any event within 10 days of receiving the Council's request (or other reasonable time period specified by the

Council when making the request).

22.7 Other than as set out above the Council shall have no obligation to consult the Service Provider where any request for information, whether under the FOIA or otherwise, touches or concerns this Contract.

22.8 In no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.

## **23. CORRUPTION**

23.1 The Service Provider shall not offer or give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or having refrained from doing any act in relation to the obtaining or execution of this or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to this or any other contract with the Council. The Service Provider warrants that it has not otherwise done anything contrary to or committed any offence under the Bribery Act 2010 or incited any breach of section 117(2) of the Local Government Act 1972 .

23.2 Where the Service Provider or the Staff, or suppliers or anyone acting on the Service Provider's behalf, engages in conduct prohibited by Clause 23.1 in relation to this or any other contract with the Council, the Council has the right to:

- (a) terminate this Contract and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination; or
- (b) recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this Clause 23, whether or not this Contract has been terminated.

## **24. ILLEGALITY**

24.1 If any provision or term of this Contract or any part of it shall become unenforceable for any reason whatsoever, including but without limitation by reason of the provisions of any legislation, Regulation, Order, Direction of the Secretary of State or other provision having the force of law or by reason of any decision of any Court of competent jurisdiction, the validity and enforceability of the remainder of this Contract shall not be affected thereby and shall remain in full force and effect. Where any such provision or decision substantially affects or alters the ability of either of the parties to comply fully with its contractual obligations the parties shall negotiate in good faith to amend and modify the provisions and terms of this Contract as may be necessary or desirable in the circumstances.

## **25. FORCE MAJEURE**

25.1 Neither party to this Contract shall be liable to the other nor held in breach of this Contract if either party is prevented, hindered or delayed in the performance of its obligations by any act of God, war, riot, civil commotion, act of terrorism, explosion, fire, radiation, accident, government action, interruption in the supply of power, labour dispute other than a dispute concerning the Service Provider's employees or the employees of its sub-contractors, epidemic or other circumstances beyond the control of the parties which prevents a party from, or hinders or delays a party in, performing its obligations under this Contract (and which the application of due diligence and foresight could not have prevented).

25.2 If due to any of the circumstances listed in Clause 25.1 either party is prevented, hindered or delayed in the performance of their obligations in accordance with this Contract that party shall as soon as reasonably practicable notify the other in writing of such prevention, hindrance or delay and the reasons therefore whereupon the operation of this Contract shall be suspended. The Council shall not be liable to make payment to the Service Provider during such suspension.

- 25.3 The suspension of the operation of this Contract shall continue during the period (and only during the period) that such prevention, hindrance or delay due to the circumstances listed in Clause 25.1 continues. Upon those circumstances ceasing to prevent, hinder or delay the performance of the obligations of the party relying upon it that party shall give written notice to the other party of this fact.
- 25.4 If either party is prevented from performing their obligations due to any of the circumstances listed in Clause 25.1 for longer than one month either party may terminate this Contract upon service of one month's written notice to the other party.

## **26. BUSINESS CONTINUITY**

- 26.1 The Service Provider acknowledges and accepts that the Council has obligations under the CCA.
- 26.2 The Service Provider undertakes during and after the Contract Period to provide any information, documentation and assistance the Council may reasonably require in order to enable the Council to comply with its obligations under section 2 of the CCA (Duty to assess, plan and advise).
- 26.3 In the event of an Emergency (as defined in Part 1 or Part 2 of the CCA), the Service Provider shall use its best endeavours to comply with any instructions whatsoever of the Council in relation to such Emergency, notwithstanding that such instructions may be given by an officer of the Council other than the officer(s) the Service Provider would usually deal with in respect of this Contract.
- 26.4 The Council shall remunerate and indemnify the Service Provider for any claims, costs and losses that the Service Provider may suffer as a direct consequence of compliance with the Council's instructions during and in respect of an Emergency.

26.5 The Council shall use all reasonable endeavours to ensure that any instruction given to the Service Provider pursuant to sub-clause 26.3 shall be:

- (i) reasonably necessary for the prevention or mitigation of the Emergency;
- (ii) reasonably within the power and ability of the Service Provider to comply with, having regard to the nature of the Service Provider's business and its obligations to the Council under this Contract .

26.6 Notwithstanding Clause 25, during the term of this Contract the Service Provider shall have in place such measures as may be reasonably practicable and sufficient so that as far as reasonably possible it is able to continue to perform its obligations under this Contract in the event of an Emergency or a Disruptive Event ("Business Continuity Measures").

26.7 A Disruptive Event means any event falling outside the definition of an Emergency that may result

- (i) Inability by the Service Provider to access the premises from which it provides the Services;
- (ii) General failure of the Service Provider's Personnel to attend work or perform their functions;
- (iii) Failure of or disruption to the IT and communications systems, or the loss of data and/or records of, the Service Provider;
- (iv) Loss of or damage to equipment, resources or materials of the Service Provider;
- (v) A disruption in provision of goods or services provided to the Service Provider by any third party.

26.8 Within 1 month of the Commencement Date the Service Provider shall ensure that its Business Continuity Measures are recorded in a document entitled a Business Continuity Plan and shall submit a copy of the Business Continuity Plan for the Council's approval.

26.9 If at any time during the term of this Contract after receipt of the Business Continuity Plan, the Council reasonably considers that changes to the Business Continuity Plan are required, the Service Provider shall upon notification by the Council of these changes record the changes in the Business Continuity Plan and implement them.

26.10 The Service Provider shall use its best endeavours to ensure that its contracts with its sub-contractors engaged in or about the execution of this Contract contain provisions similar to those in this Clause 26 as far as necessary to allow the Service Provider to perform its obligations under this Clause 26.

26.11 The Service Provider shall indemnify and keep indemnified the Council for any claims, loss or damage incurred by the Council as a result of the Service Provider's breach of this Clause 26.

## **27. ASSIGNMENT AND SUB-CONTRACTING**

27.1 The Service Provider shall not assign, sub-contract, or delegate in whole or in part any of its duties or the Services under this Contract without the prior written consent of the Council, which may be given or withheld in the Council's sole discretion and subject to any conditions which the Council sees fit to impose.

27.2 In the event that the Council agrees to any part of the Services being sub-contracted, the Service Provider shall ensure that the Service Provider enters into a legally binding contract with the sub-contractor in a form approved in writing by the Authorised Officer prior to the commencement of that sub-contract. A copy of each sub –contract will be sent by the Service Provider to the Council immediately.

27.3 It shall be a condition of any sub-contract entered into by the Service Provider that the Sub-contractor shall not enter into a further sub-contract in respect of the Services or any part of the Services under the

sub-contract without notifying and obtaining the written consent of the Service Provider. Upon receipt of any such notification from the Sub-contractor and before giving the Sub-contractor its consent, the Service Provider shall inform the Council of the Sub-contractor's intention to further sub-contract the Services or part of the Services and shall obtain the Council's written consent thereto, which consent may be given or withheld at the Council's sole discretion and subject to any conditions the Council may see fit to impose.

27.4 Nothing in this Clause 27 shall alleviate the Service Provider of its obligations under this Contract generally. In particular, notwithstanding the grant of consent or imposition of conditions by the Council under this Clause 27, the Service Provider shall remain ultimately responsible for any choice of sub-contractors and for the provision of the Services in all respects.

## **28. WAIVER**

28.1 Failure by the Council at any time to enforce the provisions of this Contract or to require performance by the Service Provider of any of the provisions of this Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

## **29. VARIATION**

29.1 A variation to this Contract shall only be valid if it has been agreed by the Council and the Service Provider in writing.

## **30. PERFORMANCE DEFAULT**

30.1 Without prejudice to the Council's right to terminate the Contract in accordance with these terms and conditions and without prejudice to any other claim or remedy the Council may have against the Service

Provider, the Council may in the event that the Service Provider: -

- (a) fails in the reasonable opinion of the Council's Authorised Officer to provide the Services or any part of the Services;
- (b) fails to provide any part of the Services to a reasonable standard acceptable to the Council's Authorised Officer;

issue the Service Provider with a written notice (a "Default Notice") detailing the breach, the remedy (if any) and a period within which to comply.

30.2 If the Service Provider fails to comply with the Default Notice or if the breach is incapable of remedy, the Council shall be entitled to deduct from any monies that may be due to the Service Provider such sums to reflect the actual loss to the Council arising out of the breach including administration costs.

30.3 If the Service Provider complies with a Default Notice to the satisfaction of the Council the Service Provider may be charged the Council's reasonable costs (if any) arising from the breach.

30.4 If the Service Provider is issued with three default notices this shall be deemed a persistent breach of this Contract giving the Council the right to terminate this Contract in accordance with this Contract.

## **31. CONTRACT TERMINATION**

31.1 The Council may terminate this Contract at any time by giving the Service Provider one month notice in writing. The Council may extend the period of notice at any time before it expires subject to Contract on the level of services to be provided by the Service Provider during the period of extension.

31.2 If the Service Provider commits a fundamental breach of its obligations



under this Contract then the Council may, without prejudice to any accrued rights or remedies, terminate this Contract by notice in writing having immediate effect.

31.3 The Council may terminate this Contract by notice in writing having immediate effect, without prejudice to any accrued rights or remedies, if any one or more of the following occurs:

31.3.1 the Service Provider commits a persistent breach of any of its obligations under this Contract under Clause 30.4;

31.3.2 any information provided by the Service Provider during the process of selection of the Service Provider for the award of this Contract proves materially untrue or incorrect;

31.3.3 the Service Provider has obtained or received by whatever means any information which has given or was intended or likely to give the Service Provider any unfair advantage over any other tenderer in relation to the tendering for the award of this Contract;

31.3.4 an event described in Clause 23 (Corruption);

31.3.5 the Service Provider's directors become bankrupt or the Service Provider makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme of arrangement approved in accordance with the Insolvency Act 1986;

31.3.6 the Service Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed;

31.3.7 the Service Provider has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

31.3.8 the Service Provider has possession taken, by or on behalf of the holder of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;

31.3.9 the Service Provider is in circumstances that entitle the Court or

a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver or which entitle the Court to make a winding-up order;

31.3.10 if there is a change of control in the share holding of the Service Provider;

31.3.11 where the Council has, on grounds of breach of contract, terminated a contract between itself and the Service Provider other than this Contract;

31.3.12 where the Service Provider or any of its employees or sub-contractors becomes embroiled in matters attracting significant negative publicity liable to reflect adversely on the Council, including but not limited to any occasion on which any of these persons is convicted of an arrestable offence;

31.3.13 where the Service Provider is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

31.3A The Council shall be entitled to give the Service Provider notice terminating this Contract effective immediately or after such longer period of notice as the Council may decide having regard to the circumstances of the termination in the following circumstances:

31.3A.1 where the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015;

31.3A.2 where the Service Provider should have been excluded from the process for procuring this contract in accordance with the provisions of regulation 57(1) or 57(2) of the PCR 2015 (which relate to mandatory exclusions);

31.3A.3 where this contract should not have been awarded to the Service Provider in view of a serious infringement of European law in the circumstances provided for by regulation 73(1)(c) of the PCR 2015 (which relate to infraction proceedings).

31.4 If the Council terminates this Contract under this Clause 31 or any other

Clause the Council shall:

- 31.4.1 cease to be under any obligation to make further payment to the Service Provider until all costs and damage resulting from or arising out of termination of this Contract or specific contract have been calculated; and
  - 31.4.2 be entitled to deduct such costs from any sum or sums which would have been due to the Service Provider and/or be entitled to recover the costs from the Service Provider as a debt; and
  - 31.4.3 be entitled to carry out this Contract or specific contract itself in whole or in part or engage any other person to provide the Services.
- 31.5 Where this Contract shall terminate for whatsoever reason the Service Provider shall within 21 days from termination (or such reasonable period specified by the Council) provide the Council with sufficient information, material, documentation and reasonable assistance necessary to enable the Council or a third party to continue or to re-tender the provision of the Service(s). Without prejudice to the Council's other remedies, failure to comply with this Clause may result in the Council withholding any payment due until reasonable compliance by the Service Provider.
- 31.6 In addition and without prejudice to this Clause 31.6 if the Council terminates this Contract in accordance with 31.2 or 31.3 the Service Provider shall fully indemnify and keep indemnified the Council in respect of any loss or damage suffered as a consequence of termination including the cost of providing the Services for the remainder of the period of the relevant Specific Contract to the extent that such cost exceeds the payment that otherwise would have been payable to the Service Provider.
- 31.7 The rights of the Council under this Clause 31 are in addition to, and without prejudice to, any other rights that the Council may have at law or under this Contract.

31.8 Any provision of this Contract (which shall include but not be limited to Clause 19 (Confidentiality and Protection of Information), Clause 20 (IPR), Clause 21 (Data Protection) and Clause 22 (FOIA)) which is expressly or by implication intended to continue in force and effect after termination of this Contract shall continue in force and effect notwithstanding such termination or expiry of this Contract.

## **32. DISPUTE RESOLUTION**

32.1 If any dispute arises out of or in connection with the Contract, the Parties shall promptly notify each other of the matter in dispute (“Dispute”), which shall in the first instance be referred to the Authorised Officer and the Service Provider Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all Parties and consider all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.

32.2 Where the Authorised Officer and the Service Provider’s Manager do not achieve within ten [10] days of notification of a dispute a solution that is acceptable to all Parties involved (and provided no right of termination has been exercised), then senior Representatives of both Parties (being the Chief Executive or designate of the Council and the Managing Director or designate of the Provider) shall meet promptly, and in any event within ten [10] days of notification to seek to resolve the dispute and shall use all reasonable skill, care and diligence to seek to resolve the dispute and achieving an agreed solution.

32.3 The senior Representatives will aim to resolve any issues relating to this Contract in good faith, however, (except in those circumstances where the Council has the right to terminate this Contract) if either Party considers the other to be in default of its obligations under this Contract and the dispute cannot be resolved through dialogue in accordance with this Clause then the matter may be referred by either Party to Mediation.

32.4 The delivery of the Services shall not be suspended, cease, or be delayed by the reference of a dispute to Mediation and the Provider (or Employee, agent, supplier or Sub-Provider) shall continue to comply fully with the requirements of the Contract at all times.

32.5 The procedure for Mediation and consequential provisions relating to Mediation are as follows:

32.5.1 a Mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Days from the date of the proposal to appoint a Mediator or within ten (10) Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

32.5.2 the Parties shall within ten [10] Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

32.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

32.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised Representatives;

32.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Days of the Mediator being appointed, (or such longer period as may be agreed by the Parties), then any dispute or difference

between them may be referred to the Courts.

32.7 Where it is expressly stated in this Contract that the opinion or decision of the Authorised Officer shall be final and binding such opinion or decision shall not be mediated.

32.8 The costs of mediation and/or conciliation shall be shared equally between the parties.

## **32. STAFF - RECRUITMENT, VETTING AND TRAINING**

32.1 The Service Provider shall select, train and engage in and about the provision of the Services only such persons as are of good character and who are appropriately skilled and experienced.

32.2 The Service Provider shall ensure that it complies with its statutory duties under the Asylum and Immigration Act 1996 and/or any other relevant legislation in relation to the engagement of Staff.

32.3 The Service Provider must operate an equal opportunities policy with regard to all aspects of the engagement of Staff.

32.4 The Service Provider shall comply with any statutory requirements in relation to the recruitment of persons who have a criminal record and to disclosures under the Police Act 1997. The Service Provider shall ensure that all Staff who may be required to come into contact with children or vulnerable adults have, before they are so engaged, appropriate levels of Disclosure and Barring Service checks done having regard to the nature of the work they are required to do.

32.5 The Service Provider shall upon request from the Council produce evidence to the Council that the checks done in accordance with Clause 32.4 are satisfactory.

32.6 The Service Provider shall ensure that all Staff who may be required to come into contact with children or vulnerable adults in the provision of the Services are appropriately trained and up to date with current practice and perform their duties in accordance with the requirements of

any child and vulnerable adult protection procedures laid down by the Haringey Local Safeguarding Children or Adults Boards and any other relevant statutory requirements and government guidance relating to safeguarding children and vulnerable adults and have an understanding of their roles and responsibilities with regards to safeguarding their welfare as appropriate.

32.7 The Service Provider shall ensure that managers in charge of recruitment, vetting and monitoring of Staff are adequately trained.

32.8 The Service Provider shall provide training on a continuing basis for all Staff.

32.9 The Council reserves the right to visit the Service Provider's organisation to audit, inspect and monitor the Service Provider's compliance with this Clause 32.

### **33. TRANSFER OF UNDERTAKING (TUPE) AND RETENDERING**

33.1 The Parties agree that where the identity of the Service Provider changes, this shall constitute a Relevant Transfer and the Contracts of employment of any Relevant Employees shall transfer to the new Provider and the Service Provider shall comply and shall procure that each Sub-contractor shall also comply with their obligations under TUPE.

33.2 Without prejudice to the generality of this Clause 33 and Clause 34 and for the avoidance of doubt it is hereby specifically provided that the Service Provider shall fully, promptly and effectively indemnify and keep so indemnified the Council, its servants and agents from and against all and any actions, charges, claims, reasonable costs, damages, demands, reasonable expenses (including legal and administrative expenses), liabilities, direct losses and proceedings whatsoever arising from its failure to comply with their obligations under TUPE.

### **34 TUPE COMPLIANCE ON TERMINATION OR EXPIRY**

34.1 During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as

directed by the Council and within 15 working days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all Staff engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Council may request, in particular but not necessarily restricted to any of the following:

- (a) a list of employees employed by the Service Provider;
- (b) a list of agency workers, agents and independent Service Providers engaged by the Service Provider;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- (d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.

34.2 The Service Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 34.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

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

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

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;



- (b) materially increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

34.6 In the event that the Service Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Clause 34 and shall procure that the Sub-contractor complies with such terms. The Service Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

## **35. NOTICES**

35.1 All notices served under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first class recorded delivery post or by facsimile, or by email in the case of the Council to the Authorised Officer's address stated in Schedule 1 or, in the case of the Service Provider to its address as stated above (which addresses may themselves be amended by notice in accordance with this Clause 35). Notices sent by post shall be deemed to have been received by the addressee 2 days after the day on which they were posted (excluding weekends and public holidays). Notices sent by facsimile or email during normal business hours shall be deemed to have been received on the date of despatch (or on the next working day if sent after normal business hours). All facsimile notices and notices by email shall be confirmed by post.

## **36. CONTRACTS (RIGHTS OF THIRD PARTIES)**

36.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract and no person who is not a party to this Contract shall be entitled to enforce any of the provisions of this Contract pursuant to that Act.

**37. GOVERNING LAW**

37.1 This Contract is governed by, and is to be construed in accordance with, English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

**38. CONTRACT EXECUTION COSTS**

38.1 Each party shall bear its own costs of and incidental to the preparation and execution of this Contract.

**IN WITNESS** whereof the parties have executed this Contract under hand the day and year first before written

**SIGNED**

For and on behalf of the Mayor and Burgesses of the London Borough of Haringey

Director Signature:.....

Print Name: .....

Head of Business Unit Signature .....

Print Name:.....

**SIGNED**

For and on behalf of (Service Provider)

Signature:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULES**

- 1. AUTHORISED OFFICER AND SERVICE MANAGER'S DETAILS**
- 2. SERVICE SPECIFICATION**
- 3. METHOD STATEMENTS**
- 4. PAYMENT DETAILS**

**SCHEDULE 1**

**AUTHORISED OFFICER'S AND SERVICE MANAGER'S DETAILS**

**AUTHORISED OFFICER'S DETAILS**

**NAME:**

**POSITION:**

**ADDRESS:**

**TEL. NO:**

**EMAIL:**

**SERVICE MANAGER'S DETAILS**

**NAME:**

**POSITION:**

**ADDRESS:**

**TEL. NO:**

**EMAIL:**

**SCHEDULE 2**  
**SERVICE SPECIFICATION**

**SCHEDULE 3**  
**METHOD STATEMENTS**

## **SCHEDULE 4 – PAYMENT DETAILS**