

Supplier Agreement

For the provision of Temporary Accommodation

The Mayor and Burgesses of the London Borough of Haringey

and

[Supplier]

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This Agreement is made the _____ day of _____ 20

Between:

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

And

2. [**Supplier**] of [Address] (the Supplier).

Background

The Council has various statutory duties and powers regarding persons in need of residential accommodation.

The Council has decided to set up a Property Transaction Process (PTP) for the procurement of temporary accommodation for persons in need of residential accommodation.

The Council has contracted with *adam* HTT Limited t/a *adam* (the “Technology Provider”) to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Council and the Technology Provider from time to time (the “Application”), to procure Supplier of the Services via the PTP.

The Council shall admit to the PTP each supplier that satisfies the Selection Criteria and has submitted a request to participate in the PTP which complies with the Specification and any additional documents produced by the Council.

- (A) The Purpose of this Supplier Agreement is to set out the process by which the Council may, from time to time, award to the Supplier, once it is admitted to the PTP, Service Agreements for any Services the Council requires and to set out terms and conditions applicable to those Service Agreements.

For the avoidance of doubt, there will be no obligation for the Council to award any contracts under this Agreement during its Term.

Operative clauses

1 **Definitions and interpretation**

1.1 **Definitions**

In this Agreement words and expressions shall have the following meanings:-

Accommodation Supply Request means a notification by the Council to the Supplier of the requirement to provide Premises for Service User(s) following the procedure set out in this Agreement;

Accreditation and Enrolment means the evaluation of requests to participate received from suppliers and the admittance to the PTP of suppliers that fulfil the Council’s Selection Criteria;

Agreement means the terms and conditions set out in this document and Schedules attached hereto;

Application means the proprietary web-based software owned and operated by the Technology Provider, currently called SProc.Net or such other technology as may be agreed between the Council and the Technology Provider;

Associated Body means in relation to a body corporate:

- a any subsidiary or holding company of that body corporate (as the terms "subsidiary" and "holding company" are defined in section 1159 of the Companies Act or any analogous relationships in the case of other forms of body corporate, or
- b any subsidiary of the holding company of that company or any analogous relationships in the case of other forms of body corporate;

Authorised Officer means the person or persons appointed from time to time by the Council to act as its representative for the purposes of this Agreement in accordance with clause 23.1;

Bed and Breakfast Accommodation means the procurement and management of non self contained Properties provided for Service Users on a nightly let basis;

Bed and Breakfast Specification means the specification for the provision of Bed and Breakfast Accommodation as set out in part 3 of schedule 4 as amended from time to time in accordance with the provisions of this Agreement or otherwise by agreement between the parties;

Block Booked Accommodation means an agreement to secure the Nightly Paid Accommodation for use on a fixed term as set out in Schedule 11;

Bribery Act means 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;

Commencement Date means the date the Supplier is accepted into the PTP;

Commercially Sensitive Information means the information set out in schedule 10;

Companies Act means the Companies Act 2006 and any re-enactments, amendments and relevant regulations;

Contract means the agreement in respect of the provision of the Services consisting of the following listed documents which shall be interpreted as a single contractual arrangement:

- 1 The Agreement
- 2 The Service Agreement
- 3 The Supplier Entry Guide
4. The Specification

collectively called the “**Contract Documents**”;

Conviction means other than in relation to minor road traffic offences, any previous or pending prosecution, conviction, caution, or binding over (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order) which are required to be disclosed under the Police Act 1997, and any other legislation which requires spent convictions to be disclosed;

DPA means the Data Protection Act 2018 and any re-enactments, amendments and relevant regulations;

Default means any of,

- a a General Default, or
- b a Serious Default,

E-Auction means the electronic, reverse-auction that may be operated within the Application for the purpose of awarding a Requirement;

Environmental Information Regulations means the Environmental Information Regulations 2004 and any re-enactments, amendments and relevant regulations;

Expiry means the date upon which this Agreement terminates being the sooner of:

- a the date 2 years from the Commencement Date,
- b the date of early termination of this Agreement in accordance with its terms, or
- c such other date as may be agreed by the parties in accordance with clause 29.

Fees means the Supplier’s fees for the performance of the Services as set out in part 2 of schedule 3;

FOIA means the Freedom of Information Act 2000 and any re-enactments, amendments and relevant regulations;

General Default means an act or omission on the part of the Supplier which is not a material breach of this Agreement or which otherwise the Council chooses to treat as a General Default;

Home means the self contained accommodation to be made available for the Service Users by the Supplier in the performance of the Services;

Insolvency Act means the Insolvency Act 1986 and any re-enactments, amendments and relevant regulations;

Legislation means:

- a any Act of Parliament,

- b any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978,
 - c any exercise of the Royal Prerogative, and
 - d any enforceable community right within the meaning of Section 2 of the European Communities Act 1972 as applied pursuant to the EU (Withdrawal Agreement) Act 2018 (as modified by the EU (Withdrawal Act) 2020).
 - e circulars and/or policy documents issued by a minister or department of the government of the United Kingdom,
- in each case in the United Kingdom;

Minimum Property Standards means the minimum property standards set out in schedule 4 (Specifications);

Nightly Paid Accommodation means the procurement and management of Properties provided for Service Users on a nightly let basis;

Nightly Paid Specification means the specification for the provision of Nightly Let Accommodation as set out in part 3 of schedule 4 as amended from time to time in accordance with the provisions of this Agreement or otherwise by agreement between the parties;

Occupancy Agreements means the tenancy agreement (as required by the appropriate Specification) in relation to the Premises and in the form set out in schedule 7 to be entered into by the Service User;

Offer means the Supplier's tender for the desired Services in response to the Council's Requirement;

Offer of Accommodation Letter means the letter in the form set out in schedule 8 sent to a Service User to notify the Service User of an available Property;

Open for Offers means the period during which time the Supplier can create and submit their Offer within the Application;

Overnight Accommodation means as the case may be Bed and Breakfast Accommodation and/or Nightly Paid Accommodation whether self contained or not;

Premises means as the case may be any:

- a Home and/or,
- b Property;

Private Sector Lease means a fixed term contract (in the form as set out in Schedule 4) between the Council between the Council or Homes for Haringey (the Council's arms length management organisation) with a private sector landlord securing a property for use as temporary accommodation in discharge of the Council's statutory duty;

Private Sector Leased Home means a dwelling which is subject to Private Sector Leasing;

Private Sector Leasing Specification means the specification for the provision of the Private Sector Leasing as set out in Part 1 of Schedule 4 as amended from time to time in accordance with the provisions of this Agreement or otherwise by agreement between the parties;

Private Sector Leasing means the procurement and management of Suitable Accommodation leased to the Council by the Supplier on behalf of a private sector landlord;

Private Sector Rented means a dwelling which is subject to an arrangement to secure a Assured Shorthold Tenancy Agreement;

Private Sector Rented Specification means the specification for the provision of Private Rented Accommodation as set out in Part 5 of Schedule 4 as amended from time to time in accordance with the provisions of this Agreement or otherwise by agreement between the parties;

Prohibited Act means any of the following:

a to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity;

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

c committing any offence –

i under the Bribery Act;

ii under legislation creating offences concerning fraudulent acts;

iii at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or

iv defrauding, attempting to defraud or conspiring to defraud the Council;

Property shall mean a unit of Overnight Accommodation, whether or not self contained, offered by the Supplier to the Council;

Property Agreement means the lease or management agreement in the form set out at schedule 6 to be entered into by the Council and the Supplier under clause 8;

Property Transaction Process (PTP) means the system operated via the Application to procure Suppliers to provide the Services;

Public Safety Incident means a material breach of health and safety legislation and/or an incident which results in serious personal injury or death to any person caused by any act or omission of the Supplier or any of its agents, employees or representatives in the performance of the Services;

Recovery Plan has the meaning given to it in Clause 18.2 (Default and Recovery Plan);

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

Replacement Services means services that are identical or substantially similar to any of the Services to be provided by the Supplier, which the Council receives in substitution by a Replacement Supplier who has already been admitted to the PTP, following termination or expiry of a Service Agreement with the Supplier;

Replacement Supplier means a third party supplier of Replacement Services admitted to the PTP and appointed by the Council from time to time;

Requests for Information shall have the meaning set out in the FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations;

Requirement means an Accommodation Supply Request made by the Council via the Application;

Selection Criteria means the requisite criteria that a supplier must meet and maintain throughout the Term in order to successfully complete and maintain their Accreditation and Enrolment into the PTP;

Self Billing means the billing of the Supplier through the Application which may be adopted by the Council in accordance with Clause 8;

Self-Billing Agreement means the separate agreement between the Supplier and the Council (in the form set out in Schedule 5) whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Application for the billing of the appropriate price and payment; **Self-Bill Invoice** means the invoice produced via the Application on the Supplier's behalf, through which the Technology Provider shall process payment

Serious Default means such act or omission on the part of the Supplier or Associated Body which is or results in:

- a a Public Safety Incident;
- b an act of fraud or deception committed by or on behalf of or otherwise to the benefit of the Supplier in connection with the provision of the Services or the terms of this Agreement;
- c a failure to provide and/or manage and/or maintain Suitable Accommodation to the property standards set out in schedule 4 (Specification);
- d a failure to comply with any obligation of the Supplier's under this Agreement in clauses 10, 11, 13, 19, 20, 22, 24, 25, or 29;
- e a Conviction in connection with or arising from the provision of the Services or similar accommodation or housing management services;
- f ceasing to carry on the whole of its business or disposing of all of its assets;

- g becoming the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986 (other than for the purposes of an agreed restructuring of the Supplier in consultation with the Council);
- h having a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertakings, assets or income:
- i having passed a resolution for its compulsory winding-up; or
- j being the subject of any process or event similar or analogous to the events in limbs (f) to (i) above in any jurisdiction;

Service Agreement means the Parties' acceptance of the Supplier's final Offer in response to the Council's corresponding Requirement incorporating the terms of this Agreement;

Service Receipt means the agreed record within the Application of the completed delivery of Services as quantified and agreed between the Parties;

Services means each or any of the following:

- a Private Sector Leasing;
- b Nightly Paid Accommodation;
- c Bed and Breakfast Accommodation;

Service User means a person identified by the Council as requiring residential accommodation in the form of a Home or Property or who is otherwise benefiting from the Services;

Signature Document means the signed document between the Council and the Supplier which constitutes the Parties' agreement to this Agreement and the creation of the overall contract;

Specification means any or all of the:

- a Private Sector Leasing Specification;
- b Nightly Paid Accommodation Specification;
- c Bed and Breakfast Specification;
- d Private Rented Accommodation specification;

Suitable Accommodation means housing accommodation located in the London Borough of Haringey (or other location agreed by the Council) which is considered to be suitable with regard to the particular circumstances of the Service User and the property standards set out in schedule 4;

Supplier Employee means a person who:

- a performs any part or element of the Services; or

- a is an employee agent or consultant or service provider to the Supplier and in that capacity has contact with any Service Use;, or
- b at the relevant time is likely to be a person who will undertake activities set out in limbs (a) and (b) above;

Supplier Entry Guide means the entry guide issued by the Council detailing the operation of the PTP;

Supplier's Representative means the person appointed by the Supplier from time to time to act as its representative in accordance with clause 23.2;

Technology Provider means the owner and provider of the Application, Adam HTT Limited (registered company 07718565), who shall also act as the Council's payment agent;

Term has the meaning given to it in clause 2.1;

VAT means value added tax at the current applicable rate;

Working Day means Monday to Friday inclusive but not including any declared public holiday.

1.2 Interpretations

In this Agreement:

- 1.2.1 references to clauses and schedules are references to clauses and schedules to this Agreement,
- 1.2.2 the headings are for convenience only and shall not affect the interpretation of this Agreement,
- 1.2.3 the singular includes the plural and vice versa,
- 1.2.4 references to any gender includes both genders,
- 1.2.5 "includes" and "including" means without limitation to the generality of the foregoing or without limitation, and
- 1.2.6 reference to a person includes reference to a body corporate, incorporated association or partnership.
- 1.2.7 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.

2 Term of this agreement

- 2.1 This Agreement shall commence on the Commencement Date and shall continue until Expiry (**the Term**).

2.2 Upon Expiry the parties obligations under this Agreement shall continue in respect of any Property Agreement and/or Occupancy Agreement and/or Offer of Accommodation Letter which is existing at Expiry and such obligations shall continue until the expiry or sooner termination of the same Property Agreement and/or Occupancy Agreement and/or Offer of Accommodation Letter.

3 **Scope of Agreement**

3.1 This Agreement governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the PTP. The Supplier must agree to the terms of this Agreement prior to acceptance into the PTP. For the avoidance of doubt, the Supplier's acceptance of this Agreement shall not guarantee the Supplier's acceptance into the PTP, which shall be subject to successful completion of the Accreditation and Enrolment

3.2 In the event of a conflict between the terms of any of the Contract Documents, then the documents shall take precedence in the following order:

3.2.1 The Service Agreement

3.2.2 The Agreement

3.2.3 The Supplier Entry Guide

3.2.4 The Specification.

3.3 The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the Term. Notwithstanding the fact that the Council has followed the procedure set out in this Agreement or Supplier Entry Guide, the Council shall be entitled at all times to decline to make an award for its Requirement.

3.4 The Council may update the Supplier Entry Guide at any time throughout the Term, provided that the Council provides the Supplier with fair and open access to such changes with reasonable advance notice.

3.5 The Supplier warrants that all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council reserves the right to, at its sole discretion, expel the Supplier from the PTP, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract.

3.6 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation and Enrolment details throughout the Term, and may perform audit checks of any such or existing Accreditation and Enrolment information.

3.7 The Supplier acknowledges that once agreed via the Application, a Service Agreement is a legally binding agreement between the Supplier and the Council and must be adhered to in accordance with the terms of the Contract.

4 **Objectives**

- 4.1 The parties shall establish, develop and implement their relationship in accordance with this Agreement with the objectives of achieving for the mutual benefit of each party:-
- 4.1.1 the provision of Suitable Accommodation of a high quality for Service Users,
- 4.1.2 agreed common goals and an understanding of each other's expectations and values,
- 4.1.3 fair, equitable and open treatment of each other and of vulnerable persons and the Service Users,
- 4.1.4 best practice through collaborative working, and
- 4.1.5 such other appropriate objectives as are agreed by the Council and the Supplier under the terms of this Agreement.

5 **PTP Process**

- 5.1 The Council shall:
- 5.1.1 Offer all potential suppliers unrestricted, direct access to all appropriate documents, including the template Contract Documents and Selection Criteria by electronic means and to any additional documents relating to the provision of the Services from the date of setting up the PTP to the date when the system ceases to be operated.
- 5.1.2 Give any potential suppliers the opportunity to submit a 'request to participate' within the PTP via the Application to proceed through the Accreditation and Enrolment process. Admission into the PTP is subject to the Supplier satisfying the Selection Criteria, passing the Council's review of the request to participate in the PTP, and submitting a request to participate which complies with the Contract Documents and any additional documents produced by the Council.
- 5.1.3 Complete the evaluation of a request to participate in the PTP within 10 Working Days from the date of its submission or such longer period as the Council may determine.
- 5.1.4 Invite all applicable suppliers who have been admitted to the PTP to submit an Offer for each applicable Requirement within a time limit specified by the Council
- 5.1.5 Enter into a Service Agreement with the supplier who submits the Offer which best meets the Requirement and its appropriate award criteria, as may be specified in the Contract Documents, when choosing to enter into a contract via the PTP.

6 **Communication**

- 6.1 The Council and the Supplier shall work together and individually, in accordance with this Agreement, to achieve a transparent and co-operative exchange of information in all matters relating to this Agreement.
- 6.2 Except for communication via the Application or as otherwise agreed in writing, all notices, reports, submissions, decisions, consents, approvals, covenants, instructions and other communications between the parties shall be (1) by email or (if the parties have signed an appropriate procedural agreement) (2) in writing by receipted hand delivery or recorded

delivery post or fax in each case effective from the date of its delivery to the relevant party at the address stated in this Agreement or to such other address as the parties may from time to time notify to each other.

- 6.3 The parties shall agree a programme of monitoring meetings at the commencement of the Agreement. When the Authorised Officer has confirmed the terms of such monitoring meetings in writing to the Supplier, attendance at such meetings shall be a contractual obligation under this Agreement.
- 6.4 To enable the Authorised Officer to undertake monitoring of the Agreement, the Supplier shall provide to the Authorised Officer such relevant management information and other documentation as detailed in the Specification(s) or otherwise notified to the Supplier in writing at such intervals as provided in the Specification(s) or at a frequency to be agreed between the Authorised Officer and the Supplier at the commencement of the Agreement or at any time during the Term.
- 6.5 The Supplier shall provide a monthly written report to the Council (in a form to be approved by the Council) including details of the Supplier's capacity to supply Premises to the Council and other relevant business factors, problems, potential disputes and proposed solutions.

7 Procurement Process

- 7.1 The Supplier acknowledges and accepts that Services shall be procured and/or transacted in accordance with the procedures detailed in the Contract Documents.
- 7.2 The Supplier shall submit all Offers within the Application in accordance with the procedures detailed in the Supplier Entry Guide, the Agreement, and as may be further supplemented within the Requirement.
- 7.3 Where the Council's Requirement is for a Home to be provided to it under Private Sector Leasing it shall make an Accommodation Supply Request to the Supplier under the provisions of Schedule 4 part 1 (Private Sector Leasing Specification), and the Supplier shall comply with its obligations under the provisions of Schedule 4 part 1 (Private Sector Leasing Specification).
- 7.4 The Council may update the Private Sector Leasing Specification at any time throughout the Term, provided that the Council provides the Supplier with fair and open access to such changes with reasonable advance notice.
- 7.5 Where the Council's Requirement is for Nightly Paid Accommodation it shall make an Accommodation Supply Request to the Supplier under the provisions of Schedule 4 part 3 (NightlyPaid Specification), and the Supplier shall comply with its obligations under the provisions of Schedule 4 part 3 (Nightly Paid Specification).
- 7.6 The Council may update the Nightly Paid Specification at any time throughout the Term, provided that the Council provides the Supplier with fair and open access to such changes with reasonable advance notice.
- 7.7 Where the Council's Requirement is for Bed and Breakfast Accommodation it shall make an Accommodation Supply Request to the Supplier under the provisions of schedule 4 part 3 (Bed and Breakfast Specification), and the Supplier shall comply with its obligations under the provisions of schedule 4 part 3 (Bed and Breakfast Specification).

- 7.8 The Council may update the Bed and Breakfast Specification at any time throughout the Term, provided that the Council provides the Supplier with fair and open access to such changes with reasonable advance notice.
- 7.9 Where the Council's Requirement is for Private Rented Accommodation it shall make an Accommodation Supply Request to the Supplier under the provisions of Schedule 4 part 5 (Private Rented Accommodation Specification), and the Supplier shall comply with its obligations under the provisions of Schedule 4 part 5 (Private Sector Rented Accommodation Specification).
- 7.10 The Council may update the Private Sector Rented Accommodation Specification at any time throughout the Term, provided that the Council provides the Supplier with fair and open access to such changes with reasonable advance notice.
- 7.11 The Supplier shall submit all Offers within the Application within a timely manner and no later than the deadlines established within the requisite Requirement or shall otherwise be excluded from the procurement process within the Application.
- 7.12 The Supplier shall submit all Service Receipts within the Application within a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in the Self-Billing Agreement.
- 7.13 The Supplier agrees and acknowledges that all transactions governed by the Contract will be processed via the Application. The Supplier shall not endeavour to process Requirements or Services for the Council that have been subject to the PTP outside of the Application.
- 7.14 The Supplier shall ensure that the Services are provided in accordance with the Requirements, the consequent Service Agreement and the Contract Documents overall. Further, on request at any time, the Supplier must be able to evidence compliance with the same.
- 7.15 The Council reserves the right to operate an E-Auction when awarding a Requirement so that suppliers may competitively reduce their Offer's price.
- 7.16 Where a Requirement is issued to the Supplier it shall state the type of or part of the Services required including the Council's necessary timescale for the delivery of those Services.
- 7.17 The Supplier acknowledges that users of the Application may submit a quality review or summary of the Supplier's performance under this Contract. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Application shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems reasonably necessary.
- 7.18 If an offer appears to be abnormally low, the Council may reject the Offer but only if it has:
- 7.18.1 Requested in writing from the Supplier details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
- 7.18.2 Taken account of the evidence supplied by the Supplier; and
- 7.18.3 Verified those constituent elements with the Supplier

and concludes that the Supplier would not be able to carry out the Services to the required standards.

7.19 The amount of time provided to the Supplier to respond to a Requirement shall be detailed within the Application, and shall, in any event, not exceed the following parameters:

within one (1) Working Day unless the Requirement is specific to a particular type or design of property not ordinarily available. Where the Requirement is specific to a particular type or property not ordinarily available the Supplier shall respond in a reasonable timeframe.

8 **Self Billing**

8.1 The Council may at any time during the Term and on written notice to the Supplier elect to adopt Self Billing in place of the provisions of Clause 9. With effect from the date set out in such notice the provisions of Schedule 1 shall be adopted into the Agreement and Clause 9 shall be deemed to be deleted.

9 **Fees**

9.1 Unless otherwise agreed between the parties the Fees payable by the Council to the Supplier in respect of the provision of the Services are set out in Schedule 3.

9.2 The Supplier shall on or before the 15th day of each month submit to the Council an invoice (in the form specified by the Council from time to time) containing a detailed breakdown of the Fees in respect of the Services provided in the previous month.

9.3 The Council shall pay the undisputed amount stated in any invoice submitted in accordance with clause 9.2 within 30 days of receipt of such invoice.

9.4 The Council may on reasonable notice to and after consulting with the Supplier change the procedure for processing invoices and payments.

9.5 The Council may set off or deduct:

- a any amount owed to it by the Supplier, or
- b any overpayment of Fees or other monies it may have previously made to the Supplier,

against any Fee or other monies due to the Supplier under this Agreement.

10 **Skill, care, quality and health and safety**

10.1 In the delivery of the Services and of its obligations under this Agreement the Supplier shall use all reasonable skill care and due diligence appropriate to its obligations, expertise and responsibilities as stated in this Agreement and it shall owe the Council a duty of care in respect of the same.

10.2 In providing the Services, the Supplier shall endeavour to provide the highest possible standards of Suitable Accommodation and in any event shall ensure that as a minimum the Premises comply with the Minimum Property Standards and shall implement with the

Council such quality management systems as are referred to in this Agreement or as are otherwise agreed between them.

10.3 The Council and the Supplier shall work together and individually within their agreed respective roles, responsibilities and expertise and in accordance this Agreement to achieve the highest possible standards of health and safety consistent with best value in all activities forming part of the Services and shall implement in the performance of the Services such health and safety measures as are required by legislation and as may be set out in Schedule 4 (Specifications).

10.4 The Supplier shall comply with all statutory and other provisions to be observed and performed in connection with the Services, in particular but not limited to the Control of Substances Hazardous to Health Regulations 1994(COSHH), the Computer Misuse Act 1990, the Data Protection Act 1998 and the Freedom of Information Act 2000 and to any amendments or re-enactments, any subsidiary legislation, regulations or any future Acts of a similar nature during the Term or any extension or extensions thereof and shall indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this clause 10.4.

11 **Services**

11.1 The Supplier will provide the Services in accordance with the Contract Documents and in accordance with the duty of care described in clause 10.1.

11.2 The Supplier shall attend such meetings with the Council as the Council in its absolute discretion considers necessary for the proper performance of the Services.

12 **Inspection and monitoring**

12.1 The Supplier shall at all times co-operate with the Council in applying the Council's procedures (either existing or from time to time amended by the Council in its reasonable discretion) for performance management, inspection, monitoring, evaluation and quality audit of the Services.

12.2 The Supplier shall ensure or shall procure that the Council or any representative or adviser of the Council shall have, at all reasonable times and upon giving reasonable notice, the right (subject to the rights of any occupants) to enter any of the Premises to inspect the condition of the Premises and to monitor compliance by the Supplier of its obligations under this Agreement.

13 **Key personnel and employees**

13.1 The Supplier shall employ individuals with the necessary skills, qualifications and experience to fulfil its role, expertise and responsibilities under this Agreement.

13.2 **Disclosure and Barring Service**

13.2.1 The Supplier 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.

13.2.2 The Supplier shall or shall procure that each Service Employee is questioned as to whether he has a Conviction.

13.2.3 The Supplier shall insure that each Service Employee who may be required to come into contact with children or vulnerable adults have, before they are engaged, appropriate levels of Disclosure and Barring Service checks are done having regard to the nature of the work they are required to do.

13.2.4 The Supplier shall upon reasonable request produce evidence to the Council that the checks done in accordance with clause 13.2.3 are satisfactory.

13.2.5 The Supplier shall procure that no Supplier Employee who discloses any Conviction, or who is found to have any Conviction following the results of a Disclosure and Barring Service check (if appropriate), is permitted to provide any part of the Services or have contact with Service Users without the Council's prior written consent.

13.2.6 The Supplier shall procure that the Council is kept advised at all times of any Supplier Employee who, subsequent to his/her commencement of employment as a member of staff, receives a Conviction or whose previous Conviction becomes known to the Supplier (or any employee of a sub-contractor involved in the provision of the Services).

13.3 **Conduct of staff**

Whilst providing the Services or dealing with Service Users the Supplier shall and shall procure that Supplier Employees shall not,

- a use offensive language or make offensive gestures,
- b treat any Service User or person acting on behalf of the Council in a discriminatory manner on the grounds of race, ethnic origin, religion, gender, disability, health status or sexual orientation.

13.3.2 The Council (acting reasonably) may:

13.3.3 instruct the Supplier to take disciplinary action against any Supplier Employee where he misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing by the Supplier of the outcome), or

13.3.4 where the Council has reasonable grounds for considering that the presence or conduct of a Supplier Employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant Supplier Employee from providing the Services.

13.4 The Supplier shall not, whether itself, or by any Supplier Employee, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, consideration or charge for any part of the Services other than charges properly approved by the Council in accordance with the provisions of the Agreement.

14 **Inspection and Review by the Council**

The Supplier shall undertake or refrain from undertaking such actions as the Council shall reasonably request, to enable the Council to undertake or comply with any assessment review or evaluation of its performance or review of the Services, including,

- a supporting and assisting the Council in preparing any report or review of the Services,
- b complying with requests for information, data or other assistance made by the Council including to:
- c enable the Council to prepare a report or be reviewed,
- d facilitate the audit of the Council,
- e facilitate the Council preparing any statement, in response to a report of the Council's auditor's or any other public body,
- f assist the Council in relation to any action taken by a relevant Authority which arises from or is connected to the Services, and
- g enable the Council to comply with any direction of a Relevant Authority,
- h enable the Council to report on performance indicators related to or arising from the Services,
- i assist the Council in any other review as may reasonably be required,
- j assist the Council in any other activity like or analogous to the above as the Council may reasonably require.

15 **Intellectual property and confidentiality**

- 15.1 Ownership in all documents relating to this Agreement shall transfer from the Supplier to the Council immediately on termination of its appointment under this Agreement. In such circumstances, the Supplier shall hand over all such documents to the Council immediately upon request (save that the Supplier may retain copies for its records).
- 15.2 The Supplier will (and will procure that its employees and any sub contractors, representatives and agents of the Supplier and their respective employees) keep confidential and will not disclose to any person or use any confidential information or any technical, operational, administrative or business information relating to the Council, the Services or this Agreement or any information which comes into the possession of the Supplier or its employees (or its sub-contractors, representatives and agents of the Supplier or their respective employees) in the course of providing the Services without the Council's prior written authority except as may be required by law. This restriction shall continue to apply after termination or expiry of this Agreement.
- 15.3 The Supplier shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this clause 15.
- 15.4 For the avoidance of doubt, the Application is third party licensed software and usage of the Application shall be in line with any terms and conditions set out therein. The Supplier shall ensure that all permissions are obtained by any applicable parties for reproduction within the Application to allow the performance of the Services detailed within the Contract Documents.

16 Indemnity and insurance

- 16.1 The Supplier shall be liable for and shall indemnify the Council from and against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of any personal injury or death of any person whatsoever and any loss or damage to any property whatsoever arising under, out of or in the course of or in connection with the performance of the Services and due to any neglect, error, act or omission by the Supplier or any of its employees, agents or representatives.
- 16.2 The Supplier shall take out and maintain throughout the duration of this Agreement third party/public liability insurance in the amounts and for the risks stated in Schedule 2 part 1 and employer's liability insurance in the amounts stated in schedule 2 part 2 [and professional indemnity insurance in the amounts stated in schedule 2 part 3].
- 16.3 In relation to the insurance described in clause 16.2, the Supplier shall observe the general obligations set out in schedule 2 part [3] [4].

17 Problem solving and dispute avoidance and resolution

- 17.1 As soon as either party is aware of any concern, difference or dispute arising out of or in connection with this Agreement, it shall give notice to the other party and the Authorised Officer and the Supplier's Representative shall meet within ten (10) Working Days of such notice (or sooner if reasonably required to by the Council) to seek to achieve an agreed solution to the dispute.
- 17.2 In the event that agreement cannot be reached by the parties in accordance with clause 17.1 then each of the Council and the Supplier shall arrange for a more senior representative than those referred to in clause 17.1 to meet in order to resolve the matter in dispute. Such meeting(s) shall take place within 15 Working Days of the meeting held in accordance with clause 17.1 and shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.
- 17.3 If the meeting(s) referred to in clause 17.2 does not resolve the matter in question, then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the parties. To initiate a mediation either of the parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the parties asking them to nominate a mediator. The mediation shall commence within 20 Working Days of the Mediation Notice being served. Neither party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the parties). Neither party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The parties will co-operate with any person appointed as mediator providing him with such information and other assistance as the mediator shall require and will pay the costs, as the mediator shall determine or in the absence of such determination such costs will be shared equally.

18 **Default and Termination**

General

18.1 The Council may subject to clause 2 (**Term**) terminate the appointment of the Supplier under this Agreement by giving to the Supplier not less than 3 months prior written notice.

Default and Recovery Plan

18.2 The Supplier shall upon request from the Council deliver to the Council a Recovery Plan where a Default has occurred and the Council notifies the Supplier that remedial action is required to deal with such Default.

18.2.1 In the circumstances set out in clause 18.2 above the Supplier shall consult with the Council and deliver a Recovery Plan to the Council for its approval setting out the Supplier's proposals for remedying any Default and/or for avoiding a recurrence of such Default as may be appropriate,

18.2.2 A Recovery Plan shall:

- a contain the reasons or explanation of why the Default occurred,
- b set out what steps the Supplier propose to take to rectify and avoid a recurrence of the Default (including details of the appropriate timescales and procedures), and
- c be delivered to the Council for its approval within 15 Working Days (or sooner if in the reasonable opinion of the Council circumstances require it) from the relevant request made by the Council in clause 18.2.

18.2.3 The Council shall decide within 20 Working Days of the receipt of a Recovery Plan whether to accept or reject it. In the absence of notification from the Council in writing to the Supplier (within 20 Working Days of the Council receiving a Recovery Plan) of its decision to reject a Recovery Plan or to suggest amendments to it, such plan shall be deemed to have been accepted by the Council,

18.2.4 The Council may propose amendments to the Recovery Plan. The Supplier shall not unreasonably refuse to incorporate any amendments suggested by the Council,

18.2.5 If the Council rejects a Recovery Plan proposed by Supplier it shall notify the Supplier. In such circumstances the Supplier shall within a further 5 Working Days propose a revised Recovery Plan taking account of the Council's reasons for rejection and any reasonable and appropriate amendments proposed by the Council,

18.2.6 The Supplier shall implement the Recovery Plan as agreed by the Council within the time limits contained in it,

18.2.7 If the Supplier fails to act with reasonable diligence in complying with this clause 18.2 or in seeking to implement the Recovery Plan a relevant General Default will become a Serious Default and the parties will follow the procedure set out in clause 18.3 below.

18.3 **Serious Default**

18.3.1 If a Serious Default has occurred the Council may in its discretion,

- a request a Recovery Plan in accordance with clause 18.2, or
- b if it wishes to terminate this Agreement the Council shall serve written notice on the Supplier (**Termination Notice**). The Termination Notice must specify the type and nature of the Serious Default that has occurred,

and subject to clause 2.2, this Agreement shall terminate 30 Working Days after the date of service on the Supplier of the Termination Notice,

- 18.3.2 The rights of the Council (to terminate or otherwise) under this clause 18 are in addition (and without prejudice) to any other right which the Council may have to claim the amount of loss or damage suffered by the Council on account of any of the acts or omissions of the Supplier (or to take any action other than termination of this Agreement).

18.4 **Consequences**

- 18.4.1 Notwithstanding the provisions of clauses 18.2 and 18.3 for the purpose of this Agreement, losses for which Supplier assumes responsibility and which shall be recoverable by the Council shall include but not be limited to the following.

- A Monies paid by the Council pursuant to this Agreement in respect of any Services not provided in accordance with Agreement.
- B The cost and expenses reasonably incurred by the Council in contemplation of and pursuant to this Agreement to the extent that such costs and expenses are wasted if alternative or replacement Services are procured.
- C The cost and expense of reloading or reconstituting lost or corrupt data.
- D The cost and expense of implementing workarounds following a failure of the provision of Service.
- E Losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any sub-contractor or regulator) against the Council caused by the act or omission of the Supplier or sub-contractor or staff.

- 18.4.2 The Council may reduce payment (acting reasonably) in respect of any Services which the Supplier fails to provide or have provided inadequately, or where the calculation or amount of an invoice is disputed (without prejudice to any other rights or remedies the Council may have). Where any payment of the Fees is reduced in accordance with this clause the Council must pay any undisputed element of the Fees promptly and within normal payment terms.

- 18.4.3 Following termination pursuant to clause 18.3, the Supplier shall be entitled to such proportion of the Fees as represents a fair and reasonable value of that part of the Services carried out up to the date of such termination provided always that the Council may deduct from any such sum or sums the amount of any claim the Council may have in respect of any breach and/or failure by the Supplier to observe or perform its obligations under this Agreement. For the avoidance of doubt, the Council shall not in any circumstances be liable to the Supplier for any loss of profit, loss of contracts or other costs, losses and/or expenses arising out of or in connection with any such termination.

18.4.4 Termination of this Agreement shall be without prejudice to any accrued rights and obligations of either party under this Agreement and any Property Agreement or Occupancy Agreement as at the date of termination

19 Unlawful discrimination and equal opportunities

19.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of The Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

19.2 The Supplier (including its agents and employees) shall, and shall procure that any sub-contractor shall, for purposes of ensuring compliance with clause 19.1 above, in relation to the Supplier's staff, Service User and any beneficiaries of the Services observe as far as possible the provisions of:

19.2.1 the Equality and Human Rights Commission's Employment Statutory Code of Practice and the Equality and Human Rights Commission's Code of Practice on the Public Sector Equality Duty; and

19.2.2 any other relevant guidance or code of practice introduced the Equality and Human Rights Commission or other a commission or other body set up by Parliament to promote, monitor and enforce the Equality Act 2010, including but not limited to those provisions commending the adoption, implementation and monitoring of an equal opportunity policy.

19.3 The Supplier shall, and shall procure that any sub-contractor shall, in performing its obligations hereunder, comply (to the extent permitted by law) with the provisions of Section 149 of the Equality Act 2010, as if they were a body within the meaning of Section 150 of the Equality Act 2010.

19.4 The Supplier shall, and shall procure that any sub-contractor shall, notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier or sub-contractor under the Equality Act 2010.

19.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of its obligations under this Agreement being in contravention of the Equalities legislation, the Supplier shall, and shall procure that any sub-contractor shall, free of charge:

19.5.1 provide any information requested in the timescale allotted;

19.5.2 attend any meetings as required and permit any of its staff to attend;

19.5.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

19.5.4 allow itself and any of its staff to appear as witnesses in any ensuing proceedings; and

19.5.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

19.6 The Supplier shall provide within such reasonable time period specified all such information as may be reasonably requested by the Council relating to the Supplier's compliance with this clause 16 and any sub-contractor's compliance with the Equality Act 2010.

20 **Data protection**

20.1 The Supplier shall ensure that it shall at all times during the period of this Agreement comply with the provisions and obligations imposed by the DPA and shall indemnify and keep the Council indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this clause 20.

20.2 The Supplier shall ensure that, to the extent that it stores and processes data in connection with this Agreement or any Appointment, it shall comply with the provisions and obligations imposed on it by the DPA. The Council will:

20.2.1 act in the capacity of Data Controller (as defined in the DPA) of any Council or third party data accessed and/or processed by the Supplier in the performance of the Services, and

20.2.2 be solely responsible to third parties for such data, including the individuals to whom the data relates.

20.3 As Data Processor (as defined in the DPA) the Supplier shall at all times in respect of data for which the Council is Data Controller:

20.3.1 comply with the seventh principle in schedule 1 of the DPA, and

20.3.2 process data only in connection with Services and only in accordance with the lawful and reasonable instructions of the Council unless the Supplier is of the opinion that to act on such instructions would be unlawful.

20.4 The Supplier shall also comply fully with all applicable Guidelines and Codes of Practice issued by the Information Commissioner in the UK from time to time.

20.5 The Council shall on giving reasonable notice to the Supplier be entitled to audit the procedures of the Supplier (which shall include the right to enter the Supplier's premises and/or view the Supplier's systems) for the purposes of ensuring compliance with this clause and to take any reasonable steps to satisfy itself that the Supplier is so complying.

20.6 In the event that the Supplier becomes aware that it, or any of its staff or agents is processing data in contravention of this clause, the Supplier shall promptly give written notice to the Council with full details of such contravention.

20.7 The Supplier will provide all data in its possession as requested by the Council from time to time in accordance with the timescale specified by the Council on the occasion of an access request. Where the Council requests data for the purpose of complying with a request, including a data subject access request under the DPA, the Supplier will retrieve the relevant

data and provide a full copy of such to the Council as soon as is possible but in any event within five (5) Working Days of such a request being made.

20.8 The Supplier will co-operate and provide reasonable assistance with any proceedings or inquiry by the Council, an affected data subject and/or the Information Commissioner's Office or other body authorised by statute which are concerned with the DPA.

20.9 The Supplier will on termination or expiry of this Agreement and at the request of the Council either return to the Council or destroy the data (and all copies of such data) in the Supplier's possession or other as directed by the Council.

21 **Freedom of information**

21.1 The Supplier recognise that the Council is subject to legal duties which may require the disclosure of information under the Code of Practice the FOIA or the Environmental Information Regulations or any other applicable legislation or codes governing access to information 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 Agreement in any way.

21.2 The Supplier recognises that in order to facilitate openness with and accountability to its citizens the Council's general view is that all relevant information concerning its contracts (including financial information) should be subject to disclosure unless the information:

21.2.1 is Commercially Sensitive Information and/or subject to an FOIA Exemption, and

21.2.2 has expressly in writing been subject to a request from the Supplier not to disclose the information, to which request the Council has expressly agreed in writing.

21.3 The Supplier hereby consents to disclosure of information by the Council in accordance with the duties set out in clause 21.1.

21.4 In the event that the Council receives a Request for Information governing access to information the Council shall be entitled to disclose all information and documentation that is disclosable under FOIA and not exempt from disclosure. The Council recognises the importance to the Supplier of maintaining the confidentiality of information submitted to the Council by the Supplier and, to the extent permitted by the Act, the Council agrees to use its reasonable endeavours not to disclose any Commercially Sensitive Information to any third party for the period 10 Working Days from notification by the Council to the Supplier pursuant to clause 21.5 below.

21.5 The Council shall inform the Supplier as soon as practicable and in any event within 2 Working Days of any Request for Information received by it which relates to Commercially Sensitive Information of the Supplier and, to the extent permitted by law, shall disclose to the Supplier the detail of the information being requested. The Council shall in accordance with the principles of natural justice consider any representations made to the Council by the Supplier and shall inform the Supplier what information it intends to disclose to the person making the information request at least 2 Working Days before that disclosure is made.

21.6 In the event that the Council incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information at the request of the Supplier,

including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Supplier shall fully indemnify the Council.

21.7 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 Commercially Sensitive Information or other information relating to this Agreement under the FOIA or other applicable legal requirement governing access to information.

21.8 The Supplier will assist the Council to enable the Council to comply with its obligations under the FOIA or other applicable legislation governing access to information at the Council's cost. In particular the Supplier acknowledge that the Council is entitled to any and all information relating to the performance of this Agreement or arising in the course of performing this Agreement. In the event that the Council receives a Request for Information and it requires the Supplier's assistance in obtaining the information that is the subject of such request or otherwise, the Supplier will respond to any such request for assistance from the Council at the Council's cost promptly and in any event within 10 Working Days of receiving the Council's request.

22 **Prevention of bribery and prevention of fraud**

22.1 The Supplier:

22.1.1 shall not, and shall procure that any employee, agent, consultant, contractor or sub-contractor shall not, in connection with this Agreement commit a Prohibited Act;

22.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

22.2 The Supplier shall:

22.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act

22.2.2 within 10 Working Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 22 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

22.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any employee, agent, consultant, contractor or sub-contractor from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of this clause 22 is suspected or known, the Supplier must notify the Council immediately.

- 22.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of this clause 22, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Agreement howsoever determined.
- 22.6 The Council may terminate this Agreement by written notice with immediate effect if the Supplier, or any employee, agent, consultant, contractor or sub-contractor of the Supplier (in all cases whether or not acting with the Supplier's knowledge) breaches this clause 22. In determining whether to exercise the right of termination under this clause 22, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, sub-contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a sub-contractor) means and shall be construed as acting:
- 22.6.1 with the authority or with the actual knowledge of any one or more of the directors of the Supplier or any sub-contractor (as the case may be); or
- 22.6.2 in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.
- 22.7 Any notice of termination under this clause 22 must specify:
- 22.7.1 the nature of the Prohibited Act;
- 22.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 22.7.3 the date on which this Agreement will terminate.
- 22.8 Notwithstanding clause 17 any dispute relating to
- 22.8.1 the interpretation of clause 22; or
- 22.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 22.9 Any termination under clause 22.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 22.10 The Council shall be entitled to terminate the Agreement forthwith and to recover from the Supplier the amount of any loss resulting from such termination if in relation to any contract with the Council the Supplier or any person employed by him or acting on his behalf shall:
- 22.10.1 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or
- 22.10.2 where collusion has taken place between two or more tenderers or parties in fixing or adjusting the bids submitted for the Agreement.

22.11 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by any employee, agent, consultant, contractor or sub-contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Council.

22.12 The Supplier shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

22.13 If the Supplier or any employee, agent, consultant, contractor or sub-contractor commits fraud in relation to this Agreement or any other contract with the Council then the Council may:

22.13.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Term; or

22.13.2 recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause.

23 **Authorised Officer and Supplier's Representative**

23.1 **Authorised Officer**

23.1.1 The Council shall within 15 Working Days of the date of this Agreement appoint a person to be its Authorised Officer,

23.1.2 The Authorised Officer may at any time notify the Supplier in writing of the appointment of one or more (but not more than five) representatives to whom he has delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and facsimile numbers of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the Authorised Officer,

23.1.3 The Authorised Officer shall have full authority to act on behalf of the Council for all purposes of this Agreement. The Supplier shall be entitled to treat any act of the Authorised Officer as being expressly authorised by the Council (save where the Council has notified the Supplier) and shall not be required to determine whether any express authority has in fact been given. Any notice, information, instruction or other communication given by or made to the Authorised Officer shall be deemed to have been given or made to the Council **provided that** it has been given, made or subsequently recorded in writing.

23.1.4 The Supplier shall afford to the Authorised Officer, and his representatives, access to all relevant information for the duration of the Authorised Officer's appointment.

23.2 **The Supplier's Representative**

23.2.1 The Supplier shall within 15 Working Days of the date of this Agreement appoint a person to be the Supplier's Representative.

23.2.2 The Supplier's Representative shall be the duly authorised representatives of the Supplier for all purposes connected with this Agreement. Any notice, information, instruction or other communication given by or made to the Supplier's Representative shall be deemed to have

been given to or made by the Supplier **provided that** it has been given, made or subsequently recorded in writing.

23.2.3 The Supplier's Representative may at any time notify the Council in writing of the appointment of one or more (but not more than five) representatives to whom he has delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and facsimile numbers of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the Supplier's Representative.

23.3 **Notification**

23.3.1 The parties shall within 15 Working Days of the date of this Agreement give the other party written notification of their respective appointments of Authorised Officer and Supplier's Representative and such notification shall include the appointees:

name,

postal address of his offices,

email address, and

telephone number(s).

23.3.2 In the event a party replaces the Authorised Officer or the Supplier's Representative (as the case may be) it shall give written notice to the other party within 15 Working Days of such replacement such notification shall include the information stipulated in this clause 23.3.1.

23.3.3 Written notice referred to in this clause 23.3 may be given by electronic mail.

24 **Ombudsman**

24.1 Where any investigation by an Ombudsman arises from the provision or omission to provide the Services the Supplier shall:

24.1.1 provide any information requested in the timescale allotted,

24.1.2 attend any meetings as required and permit its personnel so to attend,

24.1.3 promptly allow access to and investigation of any documents deemed to be relevant,

24.1.4 allow itself and any employee deemed to be relevant to be interviewed,

24.1.5 allow itself and any employee to appear as witness in any ensuing proceedings, and

24.1.6 co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.

24.2 For the avoidance of doubt, no additional payment shall be made to the Supplier for performing the requirements set out in this clause 24.

24.3 Where any investigation is conducted by the Ombudsman concerning the provision of the Services or any other action by the Supplier or the Service Employees, then the Council

shall be entitled to recover from the Supplier the full cost it may have incurred in such investigation and such financial redress or other compensation ordered by the Ombudsman.

25 **Assignment and sub-contracting**

25.1 The Council shall be entitled to assign the benefit of this Agreement (in part or the whole) and shall give written notice of any assignment to the Supplier.

25.2 The Supplier shall not:

25.2.1 assign the Agreement (in part or in whole) or any benefit or advantage of the Agreement;

25.2.2 Sub-contract the provision of any or all of the Services to any person without the previous written consent of the Council, such consent shall be in the absolute discretion of the Council and if given, shall not relieve the Supplier from any liability or obligation under the Agreement and the Supplier shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees or agents in all respects as if they were the acts, defaults or neglect of the Supplier, its employees or agents.

26 **Waiver**

26.1 Failure by the Council at any time to enforce the provisions of the Agreement or to require performance by the Supplier of any of the provisions of the Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Council to enforce the provision in accordance with its terms.

27 **Exclusion of Third Party Rights**

27.1 No person who is not a party to this Agreement (including any employee, officer, agent, representative or sub-contractor of either party or any Service User) shall have the right to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this clause 27.

27.2 Even if a person who is not a party to this Agreement (including any employee, officer, agent, representative or sub-contractor of either party) has a right to enforce any term of this Contract by virtue of Section 1 of the Contracts (Rights of Third Parties) Act 1999, the parties may, notwithstanding Section 2 of the Contracts (Rights of Third Parties) Act, vary or cancel this Agreement by agreement between them without requiring the consent of such third party.

28 **General provisions**

28.1 Nothing in this Agreement and any Appointment shall create, or be construed as creating, a partnership between the Council and the Supplier and neither party shall conduct itself in such a way as to create an impression that such a partnership exists.

28.2 It is acknowledged that, whatever the manner in which the parties have executed this Agreement, the period of limitations applicable to any claim or claims arising out of or in connection with this Agreement shall be twelve (12) years from the date when the cause of action arose.

28.3 In the event of any discrepancy between the terms of this Agreement and the terms of any Property Agreement or Occupancy Agreements or Offer of Accommodation Letter, the terms of the relevant Property Agreement or Occupancy Agreements or Offer of Accommodation Letter shall prevail.

28.4 If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions or any other documents referred to in this Agreement.

29 **Change**

29.1 The Council and the Supplier may agree a change or amendment to this Agreement provided that,

29.1.1 the change or amendment is set out in writing, and

29.1.2 that it includes all of the terms or conditions of that change, and

29.1.3 is signed and dated by the Authorised Officer (or such other person(s) authorised by the Council for this purpose) and the Supplier's Representative.

29.2 In the event Legislation is amended to the extent that:

29.2.1 the Council does not have the power to commission a Service, or

29.2.2 funding arrangements (including but not limited to Housing Benefit) are changed to the extent that they are not sufficient to fund a service,

then the Council and the Supplier shall co-operate and work together to the benefit of the parties to this Agreement to amend the Services to reflect Legislation or available funding including but not limited to reducing the cost of the Service or varying or terminating a Service.

30 **Jurisdiction**

This Agreement and each Appointment shall be governed by and construed in accordance with the laws of England and shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1

Self Billing

Where the Council elects to adopt Self Billing as set out in Clause 8 the following clauses shall be amended and deemed incorporated into the Agreement:

Contract means the agreement in respect of the provision of the Services consisting of the following listed documents which shall be interpreted as a single contractual arrangement:

- 1 The Agreement
- 2 The Self-Billing Agreement
- 3 The Service Agreement
- 4 The Supplier Entry Guide
- 5 The Specification

collectively called the “**Contract Documents**”,

3.2 In the event of a conflict between the terms of any of the Contract Documents, then the documents shall take precedence in the following order:

- 3.2.1 The Service Agreement
- 3.2.2 The Agreement
- 3.2.3 The Supplier Entry Guide
- 3.2.4 The Self-Billing Agreement.
- 3.2.5 The Specification

7.12 The Supplier shall submit all Service Receipts within the Application within a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in the Self-Billing Agreement.

9.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of the Contract Documents, the Council shall pay the Fees to the Supplier in accordance with the Self-Billing Agreement.

9.2 The Council shall only raise a Self-Bill Invoice on behalf of the Supplier once the appropriate Service Receipt has been created and agreed between the Parties within the Application and becomes payable in accordance with the Self-Billing Agreement.

9.3 The Council shall pay the Fees which have become payable in accordance with the Self-Billing Agreement within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.

9.4 For the avoidance of doubt, the Supplier acknowledges and accepts that the Fees due for the Services provided under the Contract shall be paid by the Council via the Technology Provider, acting as the Council's payment agent.

9.5 The Supplier must ensure that all of its employees, officers, agents and contractors are paid at least the national minimum wage, as legislatively applicable at the time of delivery of services.

SCHEDULE 2

Insurance

Part 1 – Third Party/Public Liability Insurance

Third party/public liability insurance cover shall be taken out by the Supplier in the amount of not less than £5 million for each and every claim with the number of events unlimited in respect of:

- (i) any liability, damage, loss, expense, cost, claim or proceedings in respect of personal injury to or death or any person arising out of or in connection with the performance of the Services, and
- (ii) any liability, damage, loss, expense, cost, claim or proceedings in respect of loss, injury or damage to any property (other than any Premises themselves) insofar as the same is due to any negligence, omission or default of the Supplier or any individual or organisation for whom it is responsible,

Part 2 – Employers Liability Insurance

Employers Liability insurance cover shall be taken out by the Supplier in the amount of not less than £10 million for each and every claim with the number of events unlimited.

[Part 3 – Professional Indemnity Insurance [Note: applies for Private Sector Leasing only]

Professional Indemnity insurance cover shall be taken out by the Supplier in the amount of not less than £250,000 for each and every claim with the number of events unlimited.]

Part [3] [4] - Insurance – General

In relation to all insurances described in this Agreement:

- i The insurer shall be a reputable company trading in one or more member states of the European Union,
- ii The Supplier shall promptly pay all premiums and shall provide evidence of insurance cover to the Council upon request,
- iii The Supplier shall comply with all the terms of its insurance policies and shall follow all required claims procedures,
- iv The Supplier shall not knowingly do anything to invalidate any insurance cover or fail to make any claim affecting the Services and shall immediately notify the Council in the event of any change of circumstances affecting any insurance cover,
- v The Supplier shall produce evidence to the Council of all exclusions and deductibles and such exclusions and deductibles shall be reasonable and approved in advance by all parties covered by the relevant insurance. The Supplier shall notify the Council of any changes to such exclusions and deductibles and the Council, acting reasonably at all times, shall either approve the new exclusions or deductibles or shall be entitled to terminate the appointment of the Supplier,

- vi The Supplier will notify the Council of all additional levels of insurance cover carried by it from time to time in excess of the minimum levels of cover stated in [Parts 1 and 2] [Parts 1, 2 and 3].

All notifications to the Council required under this Schedule 2 will be made via the Application.

SCHEDULE 3

Payment Schedule

SCHEDULE 4

Specification(s) (including property standards)

As set out in the relevant Specification

SCHEDULE 5

Self Billing Agreement

SCHEDULE 6

Property Agreements

As set out in the relevant Specification

SCHEDULE 7

Occupancy Agreements

As set out in the relevant Specification

SCHEDULE 8

Offer of Accommodation Letter

As set out in the relevant Specification

SCHEDULE 9

Sample Service Agreement