

**London Borough of [Waltham Forest] [Redbridge] [Newham][Enfield]
and [Supplier]**

Temporary Accommodation Agreement

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Temporary Accommodation Agreement

dated

Parties

- (1) **London Borough of [Redbridge]** [LONDON BOROUGH OF WALTHAM FOREST whose principal place of business is at Town Hall, Forest Road, Walthamstow, E17 4JF] **[Newham]** **[Enfield]** [full name] of [Address] (the “**Council**”),
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Supplier**”)

and each of the Council and the Supplier being a “**Party**” and together the “**Parties**”.

Background

- (A) The Council has various statutory duties and powers regarding persons in need of residential accommodation.
- (B) Further legislation may change the Council's duties with regard to these or to other categories of persons.
- (C) The Council placed a Contract Notice in the [Official Journal of the European Union] [[if published after EU exit date but not within any transition period [the UK e-notification service Find a Tender]]] on [date] to establish a Dynamic Purchasing System (“DPS”) for the procurement of temporary accommodation for persons in need of residential accommodation (the “Services”).
- (D) In accordance with Regulation 34 of the Public Contracts Regulations 2015 (the “PCR”), the Council has used the restricted procedure to establish a DPS.
- (E) The Council has contracted with ADAM HTT Limited trading as *adam* (registered company 07718565 – the “Technology Provider”) to provide a web-based software system namely adamhousing.co.uk, or such other technology as notified to the Council by the Technology Provider from time to time (the “Application”), to procure Services via the DPS, and for such Services to be transacted as further set out in this Agreement.
- (F) The Council shall admit to the DPS each supplier that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Specification and any additional documents produced by the Council.
- (G) In consideration of the Supplier carrying out its obligations under this Agreement, including the delivery of the Services identified in Schedule 4 (Specification), the Council shall pay the Fees in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 1 (Self Billing Agreement).
- (H) For the avoidance of doubt, there will be no obligation for the Council to award any contracts under the Agreement during its Term.

- (l) The Supplier has agreed to provide the Services in accordance with the terms and conditions of this Agreement.

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,

Client Accreditation means the evaluation of requests to participate received from suppliers and the admittance to the DPS of suppliers that fulfil the Council's Selection Criteria,

Agreement means legally binding terms and conditions including the schedules for the provision of Services made between a Council and the Supplier as set out in this document,

Application means the proprietary web-based software owned and operated by the Technology Provider, currently called adamhousing.co.uk or such other technology notified to the Council by the Technology Provider from time to time ,

Approval means the prior written approval of the Council and Approve and Approved shall be construed accordingly,

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 2006 as amended) or any analogous relationships in the case of other forms or 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,

Authorities means the London Boroughs of [Newham] [Redbridge] [Waltham Forest] [Enfield]

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,

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 DPS.

Commercially Sensitive Information means the pricing information set out in schedule 3 (Payment Schedule),

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

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, intellectual property rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA.

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 and the schedules

2 The Service Agreement and the schedules

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,

Data Controller, Data Processor, Data Subject, Data Protection Officer, Personal Data, Personal Data Breach, Process and Processing take the meaning given in the GDPR,

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach,

DPA means the Data Protection Act 2018 as updated from time to time,

Data Protection Impact Assessment means an assessment by the Council of the impact of the envisaged Processing on the protection of Personal Data prior to commencing any Processing,

Data Protection Legislation means the Data Protection Act 2018 (DPA), the General Data Protection Regulation (EU 2016/69), Law Enforcement Directive (Directive (EU) 2016/680), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner,

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data,

Default means any of:

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

Dispute means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services,

Dynamic Purchasing System or “DPS” means the dynamic purchasing system operated via the Application, which applies the procurement methodology provided for by Regulation 34 of the PCR, as amended from time to time,

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

Environmental Information Regulations means the Environmental Information Regulations 2004 and any re-enactments or amendments,

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

- (a) the date [3] 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 2.2,

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,

Force Majeure means any event, occurrence or cause affecting the performance by either the Council or the Supplier of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected party;
- (b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;

- (c) acts of government, local government or regulatory bodies;
- (d) fire, flood, any disaster and any failure or shortage of power or fuel;
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

Force Majeure shall exclude:

- i. any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the sub-contractor's supply chain; or
- ii. any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned; or
- iii. any changes in economic conditions, including without limit, currency exchange and currency movement, increased costs for or scarcity of raw materials from usual sources of supply; or
- iv. any consequences arising as a result of or in connection with the United Kingdom's withdrawal from the European Union.

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,

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679),

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

Information Commissioner means the United Kingdom's independent data protection authority established under Part 5 of the Data Protection Act 2018,

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

Law means:

a any law, statute, bye-law, regulation, directives, delegated or subordinate legislation in force from time to time and within the meaning of section 21(1) of the Interpretation Act 1978, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements of any regulatory body with which the Supplier is bound to comply; and

b any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after EU exit day as a reference to the EU References

as modified by domestic law from time to time. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union,

London Living Wage means the basic hourly wage payable to the Supplier's Staff and as defined on the Mayor of London Site (<https://www.london.gov.uk/>) (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Supplier,

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

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

Nightly Let Specification means the specification for the provision of Nightly Let Accommodation as set out in part 2 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 (referred to as a 'Property Listing' in the Application) 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,

Ombudsman means an authority appointed by a government to investigate complaints made by individuals,

Overnight Accommodation means as the case may be Bed and Breakfast Accommodation and/or Nightly Let Accommodation

PCR means the Public Contracts Regulations 2015, as amended from time to time,

Premises means as the case may be any,

- a Home and/or,
- b Property,

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,

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 7,

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 the Supplier Staff in the performance of the Services,

Recovery Plan has been given a meaning in clause 18.2,

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 DPS, following termination or expiry of a Service Agreement with the Supplier,

Replacement Supplier means a third-party supplier of Replacement Services admitted to the DPS 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 (referred to as a 'Pending Booking' in the Application) means an Accommodation Supply Request made by the Council via the Application,

Selection Criteria means the requisite criteria that the Supplier must meet and maintain throughout the Term in order to successfully complete and maintain their Client Accreditation into the DPS,

Self-Billing means the billing of the Supplier through the Application which may be adopted by the Council in accordance with clause 8,

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 3.5, 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
 - ii 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 (referred to as an 'Active Booking' in the Application) 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 Let 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,

Specification means any or all of the,

- a) Private Sector Leasing specification,
- c) Nightly Let Accommodation specification,

Suitable Accommodation means housing accommodation located in the London Borough of [Redbridge] [Waltham Forest] [Newham] [Enfield] (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's Representative means the person appointed by the Supplier from time to time to act as its representative in accordance with clause 23.2,

Term has the meaning given to it in clause 2.1,

Supplier Staff means a person who:

- a) performs any part or element of the Services, and
- b) is an employee, servant, agent, representative, supplier, sub-contractor or sub-contractor staff or consultant to the Supplier and in that capacity has contact with any Service User, or
- c) at the relevant time is likely to be a person who will undertake activities set out in limbs (a) and (b) above,

Technology Provider means the owner and provider of the Application, *adam* HTT Limited (registered company 07718565),

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 any person shall include natural persons and partnerships, firms, companies, body corporate, corporation, unincorporated association, other legal entity, public sector body or other similar body or authority and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.

2 **Term of this Agreement**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue until Expiry (the "**Term**") either:
 - 2.1.1 2.1.1. [three (3)] years from the Commencement Date (the period between the Commencement Date and this date shall be known as the (the "Initial Term")); or
 - 2.1.2 2.1.2 where the Council elects to extend the Initial Term in accordance with clause 2.2 below, at the end of the Extension Period,

in each case, unless it is terminated earlier pursuant to clause 18 (Termination) and/or in accordance with the terms of this Agreement or otherwise by operation of Law.

- 2.2 The Council may extend the duration of this Agreement for any period up to a maximum of [three (3)] Years (the "**Extension Period**") from the expiry of the Initial Term by giving the Supplier no less than three (3) months' written notice prior to the end of the Initial Term.
- 2.3 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 Parties in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the DPS. The Supplier must agree to the terms of this Agreement prior to acceptance into the DPS. For the avoidance of doubt, the Supplier's acceptance of this Agreement shall not guarantee the

Supplier's acceptance into the DPS, which shall be subject to successful completion of the Client Accreditation.

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 Agreement

3.2.2 The Service Agreement.

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 this Agreement. 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, the Council shall be entitled at all times to decline to make an award for its Requirement.

3.4 The Supplier warrants that all information submitted within the Client Accreditation is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Client Accreditation 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 DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Agreement.

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

3.6 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 **DPS 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 publication of the contract notice 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 DPS via the Application to proceed through the Client Accreditation process. Admission into the DPS is subject to the Supplier satisfying the Selection Criteria, passing the Council's review of the request to participate in the DPS, 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 DPS 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 DPS 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 DPS.

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

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 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 Where the Council's Requirement is for Nightly Let Accommodation it shall make an Accommodation Supply Request to the Supplier under the provisions of schedule 4 part 2 (Nightly Let Specification), and the Supplier shall comply with its obligations under the provisions of schedule 4 part 2 (Nightly Let Specification).
- 7.5 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).

7.6 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 (as defined in Schedule 2).

7.7 The Supplier agrees and acknowledges that all transactions governed by the Contract will be processed via the Application. The Supplier shall not process Requirements or Services for the Council that have been subject to the DPS outside of the Application.

7.8 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 by the Council at any time, the Supplier must be able to evidence compliance with the same.

7.9 The Council reserves the right to operate an E-Auction when awarding a Requirement so that suppliers may competitively reduce their Offer's price.

7.10 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.

7.11 The Supplier acknowledges and agrees 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.

7.12 If an Offer appears to be abnormally low, the Council may reject the Offer but only if it has:

7.12.1 Requested in writing from the Technology Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;

7.12.2 Taken account of the evidence supplied by the Supplier; and

7.12.3 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.

7.13 The amount of time provided to the Supplier to respond to a Requirement shall be

detailed within the Application.

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 (Self Billing) 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 the Parties.

10.3 The Council and the Supplier shall work together and individually within their agreed respective roles, responsibilities and expertise and in accordance with 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 Law and as may be set out in schedule 4 (Specifications).

10.4 The Supplier shall comply with all applicable Law to be observed and performed in connection with the Services, in particular but not limited to the Control of Substances Hazardous to Health Regulations 2002 (COSHH), the Computer Misuse Act 1990, the DPA and the FOIA 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 Staff shall have 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 or shall procure that in respect of each Supplier Staff:

- a the Supplier Staff is questioned as to whether he has any Conviction, [and
- b where the Supplier Staff is employed in a position or occupation set out in the exceptions order to the Rehabilitation of Offenders Act 1974 as excepted from the provisions of the Rehabilitation of Offenders Act 1974 the results are obtained of a check of the most

extensive available kind made with the Disclosure and Barring Service in respect of that Supplier Staff,] and

c a copy of the results of such check are notified to the Council.

13.2.2 The Supplier shall ensure that no Supplier Staff 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 Approval.

13.2.3 The Supplier shall advise the Council at all times of any Supplier Staff who, subsequent to his/her commencement of employment as the Supplier Staff, receives a Conviction or whose previous Conviction becomes known to the Supplier.

13.3 **Conduct of Supplier Staff**

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

- a) use offensive language or make offensive gestures,
- b) 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:

13.3.2.1 instruct the Supplier to take disciplinary action against any Supplier Staff in cases of misconduct, incompetence or negligence (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

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

13.3.3 The Supplier shall not, whether itself, or by any Supplier Staff, 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**

14.1 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:
- i. enable the Council to prepare a report,
 - ii. facilitate the audit of the Council,
 - iii. facilitate the Council preparing any statement, in response to a report of the Council's auditor's or any other public body,
 - iv. assist the Council in relation to any action taken by a Relevant Authority which arises from or is connected to the Services, and
 - v. enable the Council to comply with any direction of a Relevant Authority,
 - vi. enable the Council to report on performance indicators related to or arising from the Services,
 - vii. assist the Council in any other review as may reasonably be required,
 - viii. 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 shall and shall procure that the Supplier Staff 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 the Supplier Staff 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 Subject to clause 15.4, the Parties shall keep confidential the all matters relating to this Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 15.3 Clause 15.3 shall not apply to any disclosure of information:

- a) required by any applicable Law, provided that clause 21 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Agreement;
- c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 15.3;
- d) by the Council of any document to which it is a Party and which the Parties to this Agreement have agreed contains no Confidential Information;
- e) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;

15.4 The Supplier shall indemnify and keep fully 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.

15.5 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 2.2 (**Term**) terminate the appointment of the Supplier under this Agreement by giving to the Supplier not less than [three 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.

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).

Consequences

- 18.4.1 Notwithstanding any other provision 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 the 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 Supplier 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 a payment 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 and the Supplier Staff 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 by 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 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:

19.1.1 provide any information requested in the timescale allotted;

19.1.2 attend any meetings as required and permit any of the Supplier Staff to attend;

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

19.1.4 allow itself and any of the Supplier Staff to appear as witnesses in any ensuing proceedings; and

19.1.5 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 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Supplier is the Data Processor. The only Processing that the Supplier is authorised to do is what has been instructed by the Council and may not be determined by the Supplier.

20.2 The Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation.

20.3 The Supplier shall provide reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment.

20.4 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Council to perform its obligations under this Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data (and provide the Council with details of such measures, if so requested by the Council on reasonable notice in writing);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Staff unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written approval (save where such disclosure or transfer is specifically authorised under this Agreement);
- (d) in accordance with Article 32 of the GDPR, implement appropriate technical and organisational security measures to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;
- (e) ensure a level of security appropriate to the risk is applied taking into account the harm which might result from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed. The security measures shall include, but shall not be limited to;
 - (i) the pseudonymisation and encryption of the Personal Data;
 - (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - (iii) the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident;

- (iv) a Process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;
 - (v) return the Personal Data to the Council on the expiry or earlier termination of this Agreement;
 - (vi) obtain prior written approval in order to transfer, copy, share or otherwise disclose in any manner Personal Data, sensitive personal data (as defined in the DPA and/or GDPR as applicable) or information of the Council arising in respect of this Agreement to any other person, including but not limited to any sub-contractor or agent of the Data Processor;
- (f) take reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that the Supplier Staff:
 - (i) are aware of and comply with the Supplier's duties under this clause and clause 15 (intellectual property & confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (g) notify the Council immediately (and in any event within 24 hours) if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Council's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) information or becomes aware of a Data Loss Event;
 - (iv) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (h) provide the Council with full cooperation and assistance (within the timescales reasonably required by the Council) in relation to any complaint, communication or request made (as referred to at clause 20.4(g), including by promptly providing:
 - (i) the Council with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Council to enable the Council to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Council, on request by the Council, with any Personal Data it holds in relation to a Data Subject; and
- (i) if requested by the Council, provide a written description of the measures that has taken and technical and organisational security

measures in place, for the purpose of compliance with its obligations pursuant to this clause and provide to the Council copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals;

- (j) ensure that it has in place protective measures, which are appropriate to protect against a Data Loss Event, having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- 20.5 The Data Processor shall within twenty-four (24) hours, notify the Council of any information security breach and/or any breach of the Data Processor's obligations pursuant to the DPA and/or the GDPR, together with the steps the Data Processor shall take to rectify the breach and to avoid any future such breaches occurring.
- 20.6 In the event that the Supplier becomes aware that it, or any of the Supplier Staff is Processing Personal Data in contravention of this clause 20, the Supplier shall promptly give written notice to the Council with full details of such contravention.
- 20.7 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.
- 20.8 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 Personal 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 recognises that the Council is subject to legal duties which may require the disclosure of information under the FOIA or the Environmental Information Regulations or any other applicable Law 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 FOIA, 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.
- 21.6 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.
- 21.7 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.
- 21.8 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 Law governing access to information.
- 21.9 The Supplier shall assist the Council to enable the Council to comply with its obligations under the FOIA or other applicable Law governing access to information at the Council's cost. In particular the Supplier acknowledges 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

21.10 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 the Supplier Staff 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 Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent the Supplier Staff 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 the Supplier Staff (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 the Supplier Staff or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier Staff 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 22.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and 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 the Supplier Staff 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 Supplier Staff (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 Supplier Staff 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 email address 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 representative 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 email address 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 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 Supplier Staff deemed to be relevant to be interviewed,
- 24.1.5 allow itself and any Supplier Staff 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 Supplier Staff, 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.
- 24.4 To be referred to Section 10.5 of the PSL Specification

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, novate or otherwise dispose of any or all of its rights and obligations or any benefit or advantage under this Agreement (in part or in whole) without the prior written consent of the Council;
 - 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 Supplier Staff in all respects as if they were the acts, defaults or neglect of the Supplier Staff.

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 Agreement 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]/[Chief Housing Officer]/[Head of Law] and the Supplier's Representative.
- 29.2 In the event Law 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 Law or available funding including but not limited to reducing the Fee, rent or varying or terminating a Service.
- 29.3 For the avoidance of doubt, the Supplier shall neither be relieved of its obligations to supply the Services (or any part of the services) in accordance with this Agreement nor be entitled to an increase in the Fees as a result of:

- a) a general change in Law; or
- b) a specific change in any Law where the effect of that specific change in that Law on the services is reasonably foreseeable at the starting date; or
- c) an EU status change.

30 Entire agreement

- 30.1 This Agreement, the schedules, the Property Agreement, the Occupancy Agreements and the Offer of Accommodation Letter and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 30 shall operate to exclude any liability for fraud.
- 30.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

31 Force Majeure

- 31.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from the Force Majeure events. If the period of delay or non-performance continues for [NUMBER] [weeks OR months], the Party not affected may terminate this Agreement by giving [NUMBER] [days'] written notice to the affected Party.

32 London Living Wage

- 32.1 Without prejudice to any provision of this Agreement, the Supplier shall ensure that none of its Supplier Staff and sub-contractor's staff engaged in the provision of any services in respect of the fulfilment of the Supplier's obligations under this Agreement is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage.

33 Modern Slavery, Child Labour and Inhumane Treatment

- 33.1 The Supplier:
 - 33.1.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

- 33.1.2 shall not require any Supplier Staff or sub-contractor staff to lodge deposits or identify papers with the Supplier or sub-contractor (as applicable) and shall be free to leave their employer after reasonable notice;
- 33.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 33.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- 33.1.5 shall make reasonable enquires to ensure that the Supplier Staff have not been convicted of slavery or human trafficking offenses anywhere around the world;
- 33.1.6 shall have and maintain throughout the term of the Agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 33.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Agreement;
- 33.1.8 if required by the Council, shall prepare and deliver to the Council, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance;
- 33.1.9 shall not use, nor allow any of the Supplier Staff to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of any Supplier Staff;
- 33.1.10 shall not use or allow child or slave labour to be used by its sub-contractors;
- 33.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Council.

34 **Jurisdiction**

- 34.1 This Agreement and each Service Agreement shall be governed by and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it. [EXECUTED AS A DEED/SIGNED UNDER HAND]

The Common Seal of **THE MAYOR**)
AND BURGESSES OF THE)
LONDON BOROUGH OF)
WALTHAM FOREST was hereunto)
affixed in the presence of:)
)
)

.....

Authorised Signatory

Signed as a Deed on behalf of
[Supplier]

.....

Director

.....

Director / Secretary

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

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

Self-Bill Invoice means the invoice produced via the Application on the Supplier’s behalf, through which the Technology Provider shall process payment,

Self-Billing Agreement means the separate agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Application for the billing of the appropriate price and payment,

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,

1. 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:

- 1.1 The Service Agreement
- 1.2 The Agreement
- 1.3 The Self-Billing Agreement.

2. 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.

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 The Supplier must ensure that all of the Supplier Staff are paid no less than the London Living Wage 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 £10 million for each and every event 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 £5 million for each and every event 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 event 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]/[the UK],
- 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

1 As specified within each individual enrolment and / or Requirement placed and agreed within the Application and further agreed by both Parties within the Service Agreement.

SCHEDULE 4

Specification(s) (including property standards)

- 1 As detailed within each Specification located within the Application

SCHEDULE 5

Method Statement(s)

- 1 As detailed within each Specification located within the Application

SCHEDULE 6

Property Agreements

- 1 As detailed within each Specification located within the Application

SCHEDULE 7

Occupancy Agreements

- 1 As detailed within each Specification located within the Application

SCHEDULE 8

Offer of Accommodation Letter

- 1 As detailed within each Specification located within the Application