

# **SUPPLIER AGREEMENT**

**FOR THE PROVISION OF PASSENGER  
TRANSPORT SERVICES**

**between**

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

**-and-**

**[THE SERVICE PROVIDER]**

**WHEREAS: -**

- A. The London Borough of Lewisham (“the Council”) enters into this Supplier Agreement pursuant to its powers under the Local Government Contracts Act 1997.
  - B. The Council placed a Contract Notice on 24 February 2017 (“the Contract Notice”) in the Official Journal of the European Union to establish a Dynamic Purchasing System (“DPS”) for the procurement of passenger transport services (“the Services”).
  - C. The Council has established this DPS in accordance with Regulation 34 of the Public Contracts Regulations, and has been admitting and will continue to admit to the DPS, Service Providers which satisfy the Council’s Selection Criteria and submit “Offers” that comply with the Council’s Service Specification and any additional related documents produced by the Council.
  - D. The Council has contracted with “*adam*”, to provide a web-based software system, namely SProc.Net or such other technology as may be agreed between the Council and *adam* from time to time (the “Application”), to enable the Council to procure Services via the DPS in compliance with the Public Contract Regulations.
  - E. The purpose of this Supplier Agreement is to set out the process by which the Council may, from time to time, award to [NAME] (“the Service Provider”), once it is admitted to the DPS, Service Agreements for any Services the Council requires and to set out terms and conditions applicable to those Service Agreements.
  - F. The parties acknowledge that the Council shall be under no obligation to award any Service Agreements under this Supplier Agreement.
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**NOW IT IS HEREBY AGREED AS FOLLOWS: -**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Supplier Agreement:

“*adam*” refers to adam HTT Limited t/a *adam* (registered company #7718565) which is the provider of the Application;

“Application” the proprietary web-based software called SProc.Net, which is owned and operated by adam, or such other technology as may be agreed between the parties;

“Authorised Officer” means the person appointed by the Council under Clause 14.1 of this Supplier Agreement whose details are set out in Schedule 1 to this Supplier Agreement or such other person as may be nominated by the Council from time to time and whose details are notified in writing to the Service Provider;

“Best Value” means any method by which the maximum benefit can be derived from relevant resources;

“CCA” means the Civil Contingencies Act 2004;

“Charges” means the sums the Council is to pay the Service Provider for the provision of Services under Service Agreements awarded to the Service Provider as calculated in accordance with the Pricing Details of the relevant Service Agreements;

“Commencement Date” means the start date for delivery of Services as set out in a Service Agreement;

“Completion Date” means the end date for delivery of Services set out in a Service Agreement;

“Contract Manager” means a representative appointed by the Service Provider under Clause 14.2 of this Supplier Agreement from time to time who will receive and act on any instructions given by the Authorised Officer and whose details are notified in writing to the Council;

“Dispute Resolution Procedure” means the procedure set out in Clause 32;

“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 Public Contract Regulations;

“Enrolment Application” means the stage at which a Service Provider is required to submit documents and supporting statements that demonstrate the qualifications and technical ability of the Service Provider to deliver services to the required standards.

“Evaluation Methodology” means the methodology the Council will use to evaluate Enrolment Applications and Offers.

“Exempt Information” means information that potentially falls within an exemption under the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA);

“Expiry Date” means the 9 April 2019 subject to any extension under clause 3.2;

“FOIA” means the Freedom of Information Act 2000;

"Intellectual Property Rights" or "IPR" shall mean intellectual property rights whether vested or contingent and whether currently in existence or otherwise including (without limitation) patents, inventions, trade marks, service marks, logos, design rights, registered designs, copyright, database rights, domain names, trade or business names, moral rights, trade secrets, the right to sue for passing off and all similar rights whether registered or not (in any country) and all extensions revivals reversions and renewals of any of the above. The above shall include in relation to registerable rights any applications made in respect of such rights.

"Offer" means the Service Provider's tender in response to a published Requirement;

"Open for Offers Period" means the period during which a Service Provider participating in the DPS process may submit Offers against a Requirement;

"Other Information Law" means any applicable legislation or codes governing access to information other than FOIA;

"Performance Default" means any failure by the Service Provider to carry out any of their obligations under or arising out of this Supplier Agreement or any Service Agreement it enters into or performs it other than in accordance with this Supplier Agreement or any Service Agreement it enters into or is in breach of this Supplier Agreement or any Service Agreement Contract it enters into including, but not limited to, any requirements set out in the Specification

"Previous Provider" means the third party that was appointed by the Council to provide the Service or any part thereof prior to the Provider providing the Service

"Public Contract Regulations" means the Public Contract Regulations 2015 as amended from time to time;

"Pricing Details" means the Service Provider's costs for carrying out the Requirement referred to in a Service Agreement as contained in the Offer referred to in the Service Agreement;

“Registration, Accreditation and Enrolment” means the process of approval of service providers for admission to the DPS via the evaluation of Enrolment Applications received from Service Providers to ensure these fulfil the Council’s Selection Criteria for delivery of the Services;

“Relevant Employees” means the employees who are subject to a Relevant Transfer under TUPE Regulations;

“Relevant Transfer” means a relevant transfer for the purposes of TUPE;

“Request to Participate” means the process by which a Service Provider is seeking to join the DPS in response to a published Contract Notice

“Replacement Services” means services that are identical or substantially similar to any of the Services provided by the Service Provider under this Supplier Agreement which the Council receives, following the termination or expiry of a Service Agreement awarded to the Supplier, in substitution for Services so provided by the Supplier;

“Replacement Service Provider” means a third party appointed by the Council from time to time to provide Replacement Services;

“Requirement” means a request issued from time to time by the Council on the SProc.Net Application identifying specific Services for which the Council is seeking to award a Service Agreement and which may include terms and conditions applicable to the provision of those Services which supplement the terms and conditions set out in this Supplier Agreement;

“Selection Criteria” means the criteria that a Service Provider must meet and maintain throughout the duration of the DPS in order to successfully complete and to retain their Registration and Enrolment in the DPS;

“Self-Billing Invoice” means an invoice generated through the SProc.Net Application on the Service Provider’s behalf in accordance with the Self-



Billing Procedure;

“Self-Billing Procedure” means the arrangements agreed between the Service Provider and the Council and set out in Schedule 2 under which invoices billing the Council for Services provided to it by the Service Provider are generated at regular intervals through the SProc.Net Application and payment in respect of the invoices is processed;

“Service Agreement” means a contract awarded by the Council accepting an Offer by the Service Provider.

“Service Category” means a category of vehicle in relation to which a Service Provider may be admitted to the DPS to provide Services;

“Service Receipt” means a record of Services delivered over a stated period and of the Charges for them, uploaded by the Service Provider onto the SProc.Net Application for agreement by the Council;

“Services” means the passenger transport services that the Service Provider agrees to provide to the Council pursuant to a Service Agreement awarded in accordance with this Supplier Agreement as more fully described in the Service Specification and further detailed by the Requirement associated with the relevant Service Agreement;

“Service Specification” means the specification by the Council of Services which the Council may procure via the DPS as set out in Schedule 3;

“Staff” includes employees, and where the context permits any sub-contractors, agents and volunteers, employed or otherwise engaged by the Service Provider in the provision of the Services;

“Sub-contractor” means a person to whom the Service Provider subcontracts any of its obligations under this Supplier Agreement;

“Successor Provider” means any third party at any time appointed by the Council

to provide a Service or any part thereof in succession to or in substitution for the Provider including where relevant the Council itself

“Supplier Agreement” means this overarching agreement, consisting of these terms and conditions and any schedules to them, setting out the process to apply when the Council wishes to award Service Agreements via the DPS and the terms and conditions applicable to the carrying out of Service Agreements

“DPS Operational Guide” means the entry guide issued by the Council detailing the operation of the DPS and stored on <http://demand.sproc.net>;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulation 2006.

1.2 The headings of these clauses shall not affect the interpretation thereof.

1.3 The masculine includes the feminine and vice versa.

1.4 The singular includes the plural and vice versa.

1.5 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

1.6 The documents listed in clause 1.7 (the Contract Documents) together constitute the entire agreement between the parties relating to the provision of the Services. The Contract Documents supersede any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date this Supplier Agreement is accepted by the Supplier, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

1.7 In the event of any inconsistency or conflict between the provisions of

different documents forming part of the Contract Documents, the provisions of the document ranking higher in the following order of priority of documents shall prevail over the provisions of the documents ranking lower:

- 1.7.1 Any Service Agreement awarded under this Supplier Agreement;
- 1.7.2 The Clauses of this Supplier Agreement;
- 1.7.3 The Schedules of this Supplier Agreement;
- 1.7.4 The Enrolment Application Form
- 1.7.5 The DPS Operational Guide.

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

## **2. SCOPE OF SUPPLIER AGREEMENT**

- 2.1 The purpose of this Supplier Agreement is to set out the process which will apply to the awarding of Service Agreements by the Council via the DPS for the provision of Services by the Service Provider and the terms and conditions which will apply to any such Service Agreements.
- 2.2 The Council may from time to time procure Services from the Service Provider via the DPS in accordance with the procedure set out in the DPS Operational Guide and this Supplier Agreement but the Council shall not be obliged to award any Service Agreements via the DPS to the Service Provider and even where the Council has followed the procedures in the DPS Operational Guide and this Supplier Agreement leading up to the award of a Service Agreement it may decline to award a Service Agreement.
- 2.3 The Service Provider shall provide the Council with any Services required in accordance with a Service Agreement which shall be deemed to incorporate the terms and conditions of this Supplier Agreement relating to the provision of Services and may include additional terms and

conditions.

- 25 The Service Provider shall provide the Services in a professional and prompt manner using reasonable skill, care and diligence and suitably qualified Staff in sufficient numbers.
- 26 The parties shall work together and individually, in accordance with this Supplier Agreement, to achieve a transparent and co-operative exchange of information in all matters relating to this Supplier Agreement.

### **3. TERM OF THIS SUPPLIER AGREEMENT**

- 3.1 This Supplier Agreement shall be for a term commencing on the date of this Supplier Agreement and ending on the Expiry Date subject to termination under this Supplier Agreement or at law.
- 3.2 The Council may extend this Supplier Agreement for further periods of up to four (4) years in total by giving no less than one (1) month's written notice to the Service Provider in accordance with clause 33.

### **4. SERVICE AGREEMENT AWARD PROCEDURE**

- 4.1 Where the Council requires specific Services for which it is seeking to award a Service Agreement via the DPS it shall:
  - (a) identify the relevant Service Category which the Services required fall into;
  - (b) issue a Requirement via the DPS to all Service Providers who have been admitted to the DPS in relation to that Service Category notifying them of the opportunity to submit an Offer for the Requirement and of the Open for Offers Period;
  - (c) conduct a tender exercise via the DPS among the Service Providers to whom the Requirement has been issued;

- (d) allow each Service Provider participating in the tender exercise to submit revised Offers up to the close of the Open for Offers Period;
- (e) subject to clause 4.1(f), award the Service Agreement for the Requirement to the Service Provider which has, at the close of the Open for Offers Period, submitted the top-ranked Offer in accordance with the Evaluation Methodology;
- (f) despite having issued a Requirement and followed the procedure under this clause 4.1, be entitled at all times prior to making an award of a Service Agreement for the Requirement, opt not to do so

4.2 The Council aims to keep Offer Periods open, and the Service Provider mutually agrees, for 10 calendar days during school holiday periods with regards to school transport; and for 3 calendar days in respect of all other periods and services; but the Council reserves the right to reduce these periods for the contingency of the Service.

4.3 Where an Offer received by the Council is abnormally low, the Council may reject the Offer provided it:

- (a) requests in writing from the Service Provider submitting the Offer details of the constituent elements of the Offer which are considered to contribute to it being abnormally low;
- (b) takes account of the evidence supplied by the Service Provider;
- (c) verifies those constituent elements with the Service Provider;

and

- (d) concludes that the Service Provider would not be able to carry out the Services to the required standards.

## **5. WARRANTIES AND REPRESENTATIONS**

- 5.1 The Service Provider warrants and represents to the Council that:-
- (a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under this Supplier Agreement and any Service Agreement awarded under it;
  - (b) the Supplier Agreement has been entered into by a duly authorised representative of the Service Provider;
  - (c) as at the date of entering into this Supplier Agreement, all information, contained in the Service Provider's Requests to Participate (including statements made in relation to the categories referred to in Chapter 2, Section 5 of the Public Contract Regulations) are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the Service Provider entering into this Supplier Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or statements and representations to be false or misleading.

[London Living Wage

- 5.2 Whilst carrying out the Services this Supplier Agreement and any Service Agreement entered into, the Service Provider undertakes to pay all of its employees involved in undertaking the Services an hourly rate of pay set at or above the London Living Wage.
- 5.3 The Service Provider must provide evidence that all of the its employees are being paid the London Living Wage:
- (a) at any time the Council requests; and
  - (b) at least once annually (not later than one month prior to the anniversary of the *starting date*).

- 5.4 Subject to 5.3 above and the Council being satisfied that the employees are receiving the London Living Wage, the Service Provider on each anniversary of providing the Services shall adjust the Charges to cover the additional cost imposed on the Service Provider in complying with clause 5.2.
- 19.4 The Service Provider must provide any and all evidence required by the Council to substantiate and evidence that an increase in the Charges for the Services is due solely to an increase in the London Living Wage.]

## **6. PAYMENT AND VAT**

- 6.1 In consideration of the Service Provider undertaking to provide any Services required by the Council under a Service Agreement awarded under this Supplier Agreement, the Council undertakes to pay the Service Provider the Charges for such Services.
- 6.2 The parties acknowledge that at the Council's sole discretion, *adam* may act as the Council's payment service provider for making payments to the Service Provider in respect of Charges that have become payable.
- 6.3 Subject to the correction of any errors, Self-Billing Invoices shall be payable in accordance with the terms of the Self Billing Agreement (Schedule 2), by the Council or *adam*, as applicable.
- 6.4 The Service Provider shall not suspend the provision of the Services if any payment is overdue unless it is entitled to terminate this Supplier Agreement or the relevant Service Agreement awarded under it pursuant to clause 31.2 for failure to pay the Charges.
- 6.5 For the avoidance of doubt the Charges shall be deemed to be fully inclusive of:

(a) the value of the Services as specified in Schedule 3 of this Supplier Agreement subject to any further details in the Requirement referred to in the Service Agreement to which the Charges relate; and

(b) all traveling expenses, insurance costs and all other miscellaneous expenses incurred by the Service Provider in the organisation and provision of the Services to which the Charges relate.

6.6 The Charges are exclusive of VAT which shall be added at the prevailing rate as applicable and paid by the Council following receipt of a valid VAT invoice.

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

6.8 The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Supplier Agreement.

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

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

7.2 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court



order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

## **8. EURO PAYMENTS**

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

## **9. SUFFICIENCY OF INFORMATION**

- 9.1 The Service Provider will be deemed to have satisfied itself as regards the nature and extent of the Services required by the Council and as to the accuracy and sufficiency of the Charges provided for by the Pricing Details of a Service Agreement awarded under this Supplier Agreement prior to agreeing to undertake the provision of Services. The Service Provider will be deemed to have obtained for itself all necessary information as to the risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider in the provision of Services.

## **10. CONTRACTUAL RELATIONSHIP**

- 10.1 The Service Provider is not an employee or an agent of the Council. Neither the Service Provider nor its employees or agents shall in any circumstances hold themselves out as being the employee or agent of the Council nor are they authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 10.2 The Service Provider is responsible for all acts and omissions of its employees and agents and the Council is not responsible, and cannot be held liable, for any act or omission of any person engaged by the Service Provider in relation to the Services.

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

10.4 The Service Provider shall indemnify the Council against any liability which is levied, demanded or assessed on the Council at any time in respect of the Service Providers failure to pay taxes, National Insurance or levies of any kind which the Service Provider is obliged by law to pay.

## **11. ADVERTISING**

11.1 No advertisement of any description indicating that the Service Provider is acting for the Council is permitted on premises, equipment, materials or consumables utilised in the provision of the Services save to the extent that this Supplier Agreement indicates otherwise without the prior written consent of the Authorised Officer which shall not be unreasonably withheld. Any advertisement which is placed on the Council's premises with consent shall be promptly removed on the termination or expiry of any Service Agreement awarded under this Supplier Agreement to which the advertisement relates.

## **12. BEST VALUE**

12.1 The Council has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in the standard of the Services and quality within financial restrictions. The Service Provider shall work with the Council to identify develop and deliver Best Value services under the terms and conditions of this Supplier Agreement within available resources.

12.2 Services required of the Service Provider by the Council shall include but not necessarily be restricted to provision of Services that are cost effective, efficient, timely, reliable, responsive, consistent, courteous and

that give effect to the Council's priorities.

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

### **13 STATUTORY AND OTHER REGULATIONS**

- 13.1 The Service Provider shall at its own expense comply with all statutory and other provisions to be performed and observed in connection with provision of the Services and shall indemnify the Council against any claims, actions, proceedings, loss, liability, penalties, costs or expense made or incurred as a result of any failure in compliance.

### **14. MONITORING**

- 14.1 The Council shall appoint an Authorised Officer who will have responsibility for managing and issuing instructions to the Service Provider in respect of the provision of the Services.
- 14.2 The Service Provider shall appoint a Contract Manager who will have responsibility on behalf of the Service Provider for the management of the provision of the Services under any Service Agreements awarded to the Service Provider.
- 14.3 The Service Provider's provision of the Services shall be monitored by the Authorised Officer, who shall be entitled to make recommendations to the Service Provider for improving the standard of the Service Provider's performance in providing the Services.
- 14.4 The Authorised officer may request to meet the Service Provider . Upon receiving such a request the Contract Manager shall attend any meeting(s) arranged by the Authorised Officer (or his representative) for the purpose of reviewing the Service Provider's performance.
- 14.5 The Council will review, among other things, any issues relating to

the day to day provision of the Services, and performance monitoring as detailed in the Service Specification, including but not limited to, such things as feedback from Passengers, carers or parents of Passengers and other establishments (such as schools).

- 14.6 The Service Provider shall permit the Council or appointed representative access to its premises and to inspect vehicles for contract compliance visits. Such visits may be announced or unannounced.
- 14.7 The Service Provider shall provide the Council with monitoring information requested and within any timescales communicated to it by the Authorised Officer. Further monitoring requirements may be contained in the Service Specification.
- 14.9 The Service Provider shall maintain proper records and accounts in relation to the provision of the Services. The financial accounts held in respect of the Services must be separate from the Service Provider's other accounts and all documents relevant to the Services and this Supplier Agreement must be made available for inspection by the Authorised Officer.
- 14.10 If following a review of the Services it is apparent to the Council that the Services are not being carried out to the satisfaction of the may issue a default notice in accordance with the provisions of Clause 30 of this Supplier Agreement.

## **15 INDEMNITIES AND INSURANCES**

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

engaged by the Service Provider.

- 15.2 The Service Provider's liability under Clause 15.1 for losses relating to death or personal injury or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 shall be unlimited.
- 15.3 The Service Provider shall effect and maintain as a minimum a policy or policies of insurance of the type set out in Clause 15.4. The Service Provider shall also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf maintain equivalent insurances as a minimum.
- 15.4 The insurances referred to in Clause 15.3 are as follows:
- 15.4.1 public liability insurance that covers the Service Provider's liabilities under Clause 15.1 in a sum of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event;
- 15.4.2 employer's liability insurance in a sum of not less than £5,000,000.00 (five million pounds) for any one occurrence or series of occurrences arising out of any one event and which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988;
- 5.5 The Service Provider shall supply to the Council upon request a copy of the insurance policies or a certificate from its insurers or brokers confirming the policies which it is required to maintain under this Clause 15.
- 15.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Supplier Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

## **16 EQUAL OPPORTUNITIES**

- 16.1 In providing the Services, the Service Provider shall to the same extent as if it were a public authority within the meaning of the Equality Act 2010 ("the 2010 Act") (or any European equivalent) comply with the 2010 Act together with all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination

in employment and service delivery (the “Equalities Provisions”) and shall in particular comply with the public sector equality duty under Section 149 and shall have due regard to the need to:

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

16.2 The Service Provider shall take all reasonable steps to ensure that the employees or agents of the Service Provider and of its Sub- contractors engaged in the provision of the Services shall provide the Services in accordance with the obligations imposed on the Service Provider by Clause 16.1.

16.3 The Service Provider shall notify the Council immediately in writing upon becoming aware of any investigation or proceedings brought against the Service Provider under the Equalities Provisions in connection with the Service Provider’s provision of the Services.

16.4 If requested to do so by the Council, the Service Provider shall fully cooperate at its own expense with the Council in connection with any legal proceedings, ombudsman inquiries or arbitration in which the Council may become involved arising from any breach of the Council’s duties under the Equalities Provisions due to the alleged acts or omissions of the Service Provider or of the servants or employees or agents of the Service Provider and of its Sub-contractors engaged in the provision of the Services.

## **17. HUMAN RIGHTS**

17.1 The Service Provider shall ensure that it provides the Services in compliance with the provisions of the Human Rights Act 1998

("HRA").

17.2 The Service Provider shall indemnify the Council in respect of any cost claim or damages that the Council may incur in respect of any breach or contravention of the HRA arising out of any act or omission on the part of the Service Provider its employees agents or subcontractors in providing the Services under this Supplier Agreement.

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

18.1 The Service Provider shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice

and amendments thereto pertaining to the health and safety of employees and members of the public and shall ensure that its agents, employees and sub-contractors are competent to carry out their respective tasks with due regard to the Service Provider's obligations under these Acts and other instruments.

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

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

## **19. CONFIDENTIALITY**

19.1 "Confidential information" shall mean all information disclosed by one party to the other, orally in writing or in electronic form relating to the provision of the Services that is not in the public domain (except where disclosure is in the public domain due to a breach of this Clause 19). It shall also include information, documents, drawings, reports or data the Service Provider may acquire or generate under or in connection with the

provision of the Services.

- 19.2 Subject to sub-clause 19.7, neither party shall, without the prior written consent of the other, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the Services or the party's business generally.
- 19.3 Each party:
- (a) shall treat all Confidential Information as secret and confidential and safeguard it accordingly;
  - (b) shall not disclose any Confidential Information to any third party without the prior written consent of the other party, except to such extent as may be necessary for the provision of the Services; and,
  - (c) shall not use any Confidential Information otherwise than for the purposes of the provision of the Services.
- 19.4 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the provision of the Services :-
- (a) is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the provision of the Services as is strictly necessary for the provision of the Services and then only to the extent necessary for the activities of each member of staff or of such professional advisors or consultants in the provision of the Services;
  - (b) is treated as confidential and not disclosed (without prior approval of the Council) or used by any staff or any such professional advisors or consultants otherwise than for the purposes of the provision of the Services.
- 19.5 Where it is considered necessary in the opinion of the Council, the Service Provider shall ensure that its staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the provision of the Services.



19.6 The provisions of Clause 19.2 and 19.3 above shall not apply to any information:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Clause 19); or
- (b) which is in the possession of the party concerned, without restriction as to its disclosure, before receiving it from the disclosing party; or
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d) which is independently developed without access to the Confidential Information.

19.7 Nothing in this Clause 19 shall prevent the Council:-

- (a) disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- (b) disclosing any Confidential Information in accordance with Clause 22.1 and 22.2 (FOIA provisions);
- (c) disclosing any information for the purpose of:-
  - (i) the examination and certification of the Council's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with the Council have used their resources;
- (d) disclosing any information obtained from the Service Provider:
  - (i) to any other department, office or agency of the Crown; or
  - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the provision of the Services;

provided that in disclosing information under sub-paragraph (d)(i) or (ii) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

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

## **20. INTELLECTUAL PROPERTY RIGHTS**

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

## **21. DATA PROTECTION**

- 21.1 The Service Provider shall throughout the subsistence of any Service Agreement awarded under this Supplier Agreement comply with the provisions of the Data Protection Act 1998 ('DPA 1998') or any subsequent amendment thereto and shall ensure that its agents and employees are trained in and comply with the data protection principles set out in the above Act in their performance of the Services.
- 21.2 Any personal data as defined by the DPA 1998 or any subsequent amendment thereto given to or required to be collected and kept by the Service Provider in the provision of the Services ("the Personal Data"):-
- (a) shall be given to or collected and kept by the Service Provider solely for the purposes of enabling the Service Provider to perform the Services and for no other purposes;
  - (b) shall not be altered or amended by the Service Provider other than as required under this Supplier Agreement;
  - (c) shall only be copied by the Service Provider as required under a Service Agreement awarded under this Supplier Agreement and shall be returned to the Council upon expiration or earlier termination of any such Service Agreement.
- 21.3 Where the Service Provider processes personal data and sensitive data (as defined in the DPA 1998), the Service Provider shall where required by the Council provide proof of consent to that processing by the data subject and the form of consent shall specifically include consent for processing by the Council to use the same to improve the Services.
- 21.4 The parties agree that where they act as data controller (as defined by the DPA 1998) as regards Personal Data they shall have in place at all times and maintain appropriate technical and organisational measures to ensure the security of the Personal Data as required under the Seventh Data Protection Principle in Schedule 1 to the DPA 1998.
- 21.5 The Service Provider will provide such information as is reasonably necessary to enable the Council to satisfy itself of the Service Provider's compliance with clause 21.4. The Service Provider will also allow Council employees or appointed representatives, upon reasonable prior written

notice to the Service Provider, reasonable access to any relevant premises, during normal business hours, to inspect the measures referred to in Clause 21.4.

- 21.6 The Service Provider will not process Personal Data outside of the European Economic Area (or any country deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC) without the Council's prior written consent.
- 21.7 On termination of a Service Agreement awarded under this Supplier Agreement for any reason, the Service Provider shall immediately cease all processing of the Personal Data relating to that Service Agreement on behalf of the Council and shall within 2 calendar months of the termination date, return to the Council in a format specified by the Authorised Officer, or destroy, as the Council may request at its discretion, all such Personal Data.
- 21.8 The Service Provider will co-operate so far as is reasonable with the Council in complying with any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Personal Data.
- 21.9 The Service Provider shall fully indemnify the Council, its employees or agents against the cost of dealing with any claims made in respect of any information subject to the Act, which claims would not have arisen but for some act, omission or negligence on the part of the Service Provider, his employees or agents in the provision of the Services.

## **22. FREEDOM OF INFORMATION**

- 22.1 The Service Provider recognises that the Council is subject to legal duties which may require the release of information under FOIA or any Other Information Law and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under, this Supplier Agreement in any way.
- 22.2 Notwithstanding anything in this Supplier Agreement to the contrary, in the event that the Council receives a request for information under the FOIA or any Other Information Law, the Council shall be entitled to disclose all

information and documentation (in whatever form) as is necessary to respond to that request in accordance with the FOIA or Other Information Law, save that in relation to any such information that the Council believes is Exempt Information, the Council shall use reasonable endeavours to consult the Service Provider as soon as practicable after receipt of such a request and shall not:

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

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

22.3 Where the Council consults with the Service Provider in accordance with Clause 22.2 above, the Service Provider shall make its written representations as to whether it believes the information falls within an exemption under the FOIA to the Council within 14 days of receiving the Council's request for consultation.

22.4 The Service Provider shall indemnify the Council for any costs that the Council incurs, including but not limited to external legal costs, in seeking to maintain the withholding of information arising out of or under the Supplier Agreement in any way that the Service Provider wishes it to withhold, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure.

22.5 In any event the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempt Information or other information relating to this Supplier Agreement under FOIA or Other Information Law.

22.6 The Service Provider will at all times assist the Council to enable the Council to comply fully with its obligation under FOIA governing access to information or Other Information Law or related guidelines or codes of practice. In particular it acknowledges that the Council is entitled to any

and all information relating to or arising in the course of the performance of this Supplier Agreement. In the event that the Council receives a request for information under the FOIA or Other Information Law, and requires the Service Provider's assistance in obtaining all or any such information, the Service Provider will respond to any such request for assistance at its own cost and promptly and in any event within 10 days of receiving the Council's request (or other reasonable time period specified by the Council when making the request).

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

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

## **23. CORRUPTION**

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

23.2 Where the Service Provider or the Service Provider's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Service Provider's behalf, engages in conduct prohibited by clause 23.1 in relation to this or any other contract with the Council, the Council has the right to:

- (a) terminate the Supplier Agreement and any Service Agreement awarded under it and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination; or

- (b) recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Supplier Agreement or any Service Agreement awarded under it has been terminated.

## **24. ILLEGALITY**

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

## **25. FORCE MAJEURE**

25.1 Neither party to this Supplier Agreement shall be liable to the other nor held in breach of the Supplier Agreement or of any Service Agreement awarded under it if either party is prevented, hindered or delayed in the performance of its obligations under the Supplier Agreement by any act of God, war, riot, civil commotion, explosion, fire, radiation, major incident government action, interruption in the supply of power, labour dispute (other than a dispute concerning the Service Provider's employees or the employees of its sub-contractors), epidemic or other circumstances beyond the control of the parties which prevents a party from, or hinders or delays a

party in, performing its obligations under this Supplier Agreement (and which the application of due diligence and foresight could not have prevented).

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

25.3 The suspension of the operation of this Supplier Agreement or of any Service Agreement awarded under it shall continue during the period (and only during the period) that such prevention, hindrance or delay due to the circumstances listed in Clause 25.1 continues to affect it. Upon those circumstances ceasing to prevent, hinder or delay the performance of the obligations of the party relying upon it that party shall give written notice to the other party of this fact.

25.4 If either party is prevented from performing their obligations due to any of the circumstances listed in Clause 25.1 for longer than two weeks either party may immediately terminate the Supplier Agreement or the Service Agreement, whichever may be affected.

## 26. **BUSINESS CONTINUITY**

26.1 The Service Provider acknowledges and accepts that the Council has obligations under the CCA and upon the award of a Service Agreement under this Supplier Agreement and prior to the commencement of the Service Agreement shall carry out a risk assessment of the issues that could prevent its provision of the Services.

26.2 The Service Provider undertakes during and after the subsistence of a Service Agreement awarded under this Supplier Agreement to provide any information, documentation and assistance the Council may reasonably



require in order to enable the Council to comply with its obligations under section 2 of the CCA (Duty to assess, plan and advise).

- 26.3 In the event of an Emergency (as defined in Part 1 or Part 2 of the CCA), the Service Provider shall use its best endeavours to comply with any instructions whatsoever of the Council in relation to such Emergency, notwithstanding that such instructions may be given by an officer of the Council other than the Authorised Officer the Service Provider would usually deal with in respect of this Supplier Agreement.
- 26.4 The Council shall remunerate and indemnify the Service Provider for any claims, costs and losses that the Service Provider may suffer as a direct consequence of compliance with the Council's instructions during and in respect of an Emergency.
- 26.5 The Council shall use all reasonable endeavours to ensure that any instruction given to the Service Provider pursuant to sub-clause 26.3 shall be:
- (i) reasonably necessary for the prevention or mitigation of the Emergency;
  - (ii) reasonably within the power and ability of the Service Provider to comply with, having regard to the nature of the Service Provider's business and its obligations to the Council under this Supplier Agreement.
- 26.6 Notwithstanding Clause 25, during the subsistence of each Service Agreement awarded under this Supplier Agreement the Service Provider shall have in place such measures as may be reasonably practicable and sufficient so that as far as reasonably possible it is able to continue to perform its obligations under each such Service Agreement in the event of an Emergency or a Disruptive Event ("Business Continuity Measures").
- 26.7 A Disruptive Event means any event falling outside the definition of an Emergency that may result from:
- (i) Inability by the Service Provider to access the premises from which it provides the Services;
  - (ii) General failure of the Service Provider's staff to attend work or perform their functions;

- (ii) Failure of or disruption to the IT and communications systems, or the loss of data and/or records of, the Service Provider;
- (iii) Loss of or damage to equipment, resources or materials of the Service Provider;
- (iv) A disruption in provision of goods or services to the Service Provider by any third party.

26.8 The Service Provider shall use its best endeavours to ensure that its contracts with any Sub-contractors contain provisions similar to those in this Clause 26 as far as necessary to allow the Service Provider to perform its obligations under this Clause 26.

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

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

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

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

273 It shall be a condition of any subcontract entered into by the Service Provider that the Sub-Contractor shall not enter into a further subcontract in respect of the Services or any part of the Services under the subcontract without notifying the Service Provider. Upon receipt of any such notification from the Sub-Contractor and before giving its consent, the Service Provider shall inform the Council of the Sub-Contractor's intention to further sub-contract the Services or part of the Services and shall obtain the Council's written consent thereto, which consent may be given or withheld at the Council's sole discretion and subject to any conditions the Council may see fit to impose.

274 Nothing in this Clause 27 shall alleviate the Service Provider of its obligations in relation to the provision of the Services under this Supplier Agreement generally. In particular, notwithstanding the grant of consent or imposition of conditions by the Council, the Service Provider shall remain ultimately responsible for any Sub- contractors and for the provision of the Services in all respects.

## **28. WAIVER**

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

## **29. VARIATION**

291 Any variation to this Supplier Agreement shall only be valid if it has been agreed by the Council and the Service Provider in written form.

292 Variations to any Service Agreement awarded under this Supplier Agreement shall be at the Council's sole discretion and confirmed to the Service Provider concerned via the DPS Change Order process.

### **30. PERFORMANCE DEFAULT**

- 30.1 The Service Provider must indemnify the Council against all actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis and the Council's administrative costs) which arise out of or in consequence of performance or non-performance by the Service Provider of its obligations under this Supplier Agreement and any Service Agreement entered into. Amounts due to the Council will be payable by the Service Provider on demand.
- 30.2 The Service Provider must:
- 30.2.1 as soon as possible and giving full details inform the Authorised Officer of anything (including an act or omission by the Council) which might prevent the Service Provider from performing the Services either in part or at all and of any risk of such an event; and
  - 30.2.2 in the event of an occurrence under clause 30.2.1 as soon as reasonably practicable in the circumstances:
    - (a) write to the Authorised Officer suggesting ways to provide the affected Service or avoid the risk; and
    - (b) do everything approved or directed by the Authorised Officer so that the Services are provided and any loss or damage to the Council or anyone else is mitigated.
- 30.3 Without prejudice to the Council's right to terminate this Supplier Agreement or any Service Agreement awarded under it in accordance with these terms and conditions and without prejudice to any other claim or remedy the Council may have against the Service Provider, should a Performance Default occurs or if the Service Provider fails to perform the Services or any part thereof or performs it other than in accordance with this Supplier Agreement or any Service Agreement entered into or is in breach of such agreements (which together are called "Defective Service") the Council may serve on the Service Provider a with a written notice (a "Default Notice") which must specify:

30.3.1 the Performance Default or Defective Service;

30.3.2 any action (if any) which must be taken by the Provider to remedy the Performance Default or Defective Service (if it is capable of remedy); and

30.3.3 the time within which such action is to be taken.

- 30.3 If the Provider fails to act as required by the Default Notice to the Authorised Officer's reasonable satisfaction, the Council may at its discretion serve a Notice in accordance with clause 33 on the Service Provider suspending this Supplier Agreement or any part thereof and/or any Service Agreement or any part thereof and/or the provision of the Services by the Service Provider or any part thereof. Such a Notice must be signed by the Council and must if it affects parts of the Services only, set out what part(s) of the Services are suspended.
- 30.4 If the Service Provider fails to comply with the Default Notice or if the breach is incapable of remedy, the Council shall be entitled to claim and/or deduct from any monies that may be due to the Service Provider such sums to reflect the actual loss to the Council arising out of the breach including administration costs.
- 30.5 If the Service Provider complies with a Default Notice to the reasonable satisfaction of the Council the Service Provider may be charged the Council's reasonable costs (if any) arising from the breach.
- 30.6 Any action taken by the Council to secure continuance of the Service need not be the cheapest alternative way of providing the Service given that the Council must act in the best interest of the Service Users in procuring rapid quality assured Best Practice replacement of the affected Service.
- 30.7 Notwithstanding the provisions of clauses 30.2 and 30.3, if the Service Provider is issued with a Default Notice under clause 30.1 or Notice under clause 30.3, the Council shall have the right to treat this as a ground for immediate termination of the Service Agreement in respect

of which the Default Notice was issued and / or of the Supplier Agreement in accordance with clause 31.4.

308 For the avoidance of doubt the Council's powers pursuant to the preceding sub-clauses of this Clause 30 are in addition to the Council's ability to obtain any other remedy for any breach or non-observance of the this Supplier Agreement or any Service Agreement entered into by the Service Provider. The Council is entitled to recover from the Provider the full and entire costs and expenses incurred (on a Quasi Basis) by the Council due to the Service Provider's breach or other non-observance of this Supplier Agreement or any Service Agreement entered into.

### **31. TERMINATION OF SUPPLIER AGREEMENT OR SERVICE AGREEMENT**

31.1 Notwithstanding any other provision of this Supplier Agreement the Council may terminate this Supplier Agreement on a no fault basis at any time by giving the Service Provider 30 calendar days' notice in writing. The Council may extend the period of notice at any time before it expires subject to agreement on the level of services to be provided by the Service Provider during the period of extension.

31.2 Due to the nature of the Services being provided, the Council may terminate a Service Agreement awarded under this Supplier Agreement at any time, by giving the Service Provider immediate notice.

31.3 If either party commits a fundamental breach of its obligations under this Supplier Agreement including in relation to a Service Agreement awarded under it then the other party may, without prejudice to any accrued rights or remedies, terminate this Supplier Agreement or the Service Agreement concerned by notice in writing having immediate effect.

31.4 The Council may terminate this Supplier Agreement or a Service Agreement awarded under it by notice in writing having immediate effect, without prejudice to any accrued rights or remedies, if any one

or more of the following occurs:

- 31.4.1 the Service Provider has been issued a Default Notice or Notice under clause 30.3;
- 31.4.2 any information provided by the Service Provider during the process of selection of the Service Provider for the award of this Supplier Agreement or of a Service Agreement proves materially untrue or incorrect;
- 31.4.3 the Service Provider has obtained or received by whatever means any information which has given or was intended or likely to give the Service Provider any unfair advantage over any other participant in relation to the process for the award of this Supplier Agreement or the award of any Service Agreement under it;
- 31.4.4 an event described in Clause 23 (Corruption);
- 31.4.5 the Service Provider's directors become bankrupt or the Service Provider makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme of arrangement approved in accordance with the Insolvency Act 1986;
- 31.4.6 the Service Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed;
- 31.4.7 the Service Provider has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 31.4.8 the Service Provider has possession taken, by or on behalf of the holder of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 31.4.9 the Service Provider is in circumstances that entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver or which entitle the Court to make a winding-up order;

- 31.4.10 if there is a change of control in the share holding of the Service Provider;
- 31.4.11 where the Council has, on grounds of breach of contract, terminated a contract between itself and the Service Provider other than this Supplier Agreement;
- 31.4.12 where the Service Provider or any of its employees or sub-contractors becomes embroiled in matters attracting significant negative publicity liable to reflect adversely on the Council, including but not limited to any occasion on which any of these persons is convicted of an arrestable offence;
- 31.4.13 where the Service Provider is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or any amendment thereto.

31.5 If the Council terminates this Supplier Agreement or a Service Agreement awarded under it under this Clause 31 or any other clause the Council shall:

31.5.1 cease to be under any obligation to make further payment to the Service Provider until all costs and damage resulting from or arising out of termination of this Supplier Agreement or a Service Agreement awarded under it have been calculated; and

31.5.2 be entitled to deduct such costs from any sum or sums which would have been due to the Service Provider and/or be entitled to recover the costs from the Service Provider as a debt; and

31.5.3 be entitled to carry out this Supplier Agreement or any Service Agreement awarded under it itself in whole or in part or engage any other person to provide the Services.

31.6 Where the Supplier Agreement or a Service Agreement awarded under it shall terminate for whatsoever reason the Service Provider shall within 14 days from termination (or such reasonable period specified by the Council)



provide the Council with sufficient information, material and documentation necessary to enable the Council or a third party to continue or to re-procure the provision of the Service(s). Without prejudice to the Council's other remedies, failure to comply with this Clause 31 may result in the Council withholding any payment due until reasonable compliance by the Service Provider.

- 31.7 In addition and without prejudice to this Clause 31 if the Council terminates the Supplier Agreement or a Service Agreement awarded under it in accordance with 31.2 or 31.3 the Service Provider shall fully indemnify the Council in respect of any loss or damage suffered as a consequence of termination including the cost of providing the Services for the remainder of the period of the Supplier Agreement or Service Agreement awarded under it to the extent that such cost exceeds the payment that otherwise would have been payable to the Service Provider.
- 31.8 The rights of the Council under this clause are in addition to, and without prejudice to, any other rights that the Council may have at law or under this Supplier Agreement.
- 31.9 Clauses 19 (Confidentiality), 20 (IPR), 21 (Data Protection) and 22 (FOIA) shall survive the termination of this Supplier Agreement and of any Service Agreement awarded under it.

## **32. DISPUTE RESOLUTION**

- 321 In the event of a disagreement or dispute between the parties in relation to the Services or in relation to the interpretation of the terms of and applicable under this Supplier Agreement, the parties shall, in the first instance, endeavour to resolve the disagreement or dispute themselves (or through their representatives).
- 322 In the event of a failure to reach an agreement in accordance with Clause 32.1 above within a reasonable time then the disagreement or dispute shall be referred to any mediation or conciliation procedure either within the Council or by reference to a third independent party agreed by the parties or failing agreement, appointed by the Authorised Officer. Any such mediation or conciliation will not be binding on the parties.
- 323 If such dispute or difference is not resolved within twenty-one days of the dispute being referred to mediation or conciliation under Clause 32.2 above then such dispute or difference shall be settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (EDR) Model Mediation Procedure.
- 324 The costs of mediation or conciliation shall be shared equally between the parties and the arbitrator shall determine which party shall pay any costs subsequently incurred.

## **33. NOTICES**

- 331 Notices served under this Supplier Agreement including in respect of any Service Agreement awarded under it shall be issued via the DPS to the appropriate Contract Manager. Any notices sent by post shall be deemed to have been received by the addressee 2 days after the day on which they were posted (excluding weekends and public holidays).

332 Notices served under this Supplier Agreement by a Service Provider should be sent by email, and copied by post, to the Authorised Officer listed in Schedule 1 or other such person as nominated from time to time by the Council.

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

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

#### **35. GOVERNING LAW**

35.1 The terms applicable under this Supplier Agreement are governed by, and are to be construed in accordance with, the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

#### **36. CONTRACT EXECUTION COSTS**

36.1 Each party shall bear its own costs of and incidental to the preparation and execution of this Supplier Agreement and of any Service Agreement awarded under it.

#### **37. STAFF RECRUITMENT, VETTING AND TRAINING**

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

37.2 The Service Provider shall ensure that it complies with its statutory duties under the Asylum and Immigration Act 1996 in relation to the engagement of Staff.

37.3 The Service Provider must operate an equal opportunities policy with regard to all aspects of the engagement of Staff and comply with

equality and diversity provisions of the Council's Code of Practice for Suppliers, Contractors and Providers referred to in the Service Specification.

- 37.4 The Service Provider shall comply with any statutory requirements in relation to the recruitment of persons who have a criminal record and to disclosures under the Police Act 1997. The Service Provider shall ensure that all Staff who may be required to come into contact with children or vulnerable adults have, before they are so engaged, appropriate levels of Disclosure and Barring Service checks done having regard to the nature of the work they are required to do.
- 37.5 The Service Provider shall upon reasonable request produce evidence to the Council that the checks done in accordance with clause 37.4 are satisfactory.
- 37.6 The Service Provider shall ensure that all Staff who may be required to come into contact with children or vulnerable adults in the provision of the Services are appropriately trained and up to date with current practice and perform their duties in accordance with the requirements of any child and vulnerable adult protection procedures laid down by the Council's Safeguarding Team and any other relevant statutory requirements and government guidance relating to safeguarding children and vulnerable adults and have an understanding of their roles and responsibilities with regards to safeguarding their welfare as appropriate.
- 37.7 The Service Provider shall ensure that managers in charge of recruitment, vetting and monitoring of Staff are adequately trained.
- 37.8 The Service Provider shall provide training on a continuing basis

for all Staff employed in delivering the Supplier Agreement and any Service Agreements awarded under it.

37.9 The Council reserves the right to visit the Service Provider's organisation to audit, inspect and monitor the Service Provider's compliance with this clause 37.

## **38. TUPE COMPLIANCE**

38.1 The Council and the Service Provider acknowledge that in certain circumstances, the provisions of TUPE may apply and can mean that staff are transferred from one employer to another employer. For example, this can happen:

- when a service is transferred from the Council to a service provider or
- when a contract for the provision of a Service ends and a different service provider takes over the provision of the same service.

This clause only applies if the provisions of TUPE do apply.

38.1.1 The Service Provider acknowledges that TUPE may apply to employees of the Previous Provider (which may be the Council or another organisation). Therefore, such employees ("the Staff") will if still employed by the Previous Provider immediately prior to the Commencement Date transfer to the Service Provider's employ with effect from the Commencement date of a Service Agreement pursuant to TUPE and/or the ARD on the same terms and conditions as they had immediately prior to the Commencement Date.

38.1.2 The Service Provider must keep the Previous Provider fully indemnified against:

- a. all emoluments and outgoings in respect of the Staff including (without limitation) all wages, bonuses, commission, PAYE, national insurance contributions and pensions contributions which may accrue after the

Commencement Date and before the Completion Date;

- b. all and any costs, claims, liabilities and expenses (including reasonable legal expenses) arising due to or in connection with the termination or purported termination of the employment of any of the Staff on or after the Commencement Date and before the Completion Date and against all costs, damages, fines, judgements, expenses and liability whatsoever reasonably incurred in relation to any such claim;
- c. all actions, proceedings, costs, claims, demands, awards, fines, orders and liabilities whatsoever the cause of action of which arose as a result of the acts or omissions of the Service Provider after the Commencement Date and before the Completion Date in relation to the employment of the Staff; and
- d. all and any costs, claims, liabilities and expenses (including reasonable legal expenses) arising due to or in connection with any action or claim by any of the Staff pursuant to Regulations 10 and 11 of TUPE in relation to a failure by the Provider to inform and consult with an appropriate representative with regard to affected employees as required by TUPE.

38.1.3 The Service Provider hereby warrants and undertakes that prior to the Commencement Date it has complied and will in future comply in all respects with its obligations in relation to TUPE and will keep the Previous Provider indemnified in respect of all actions, damages, losses and claims in respect thereof.

38.1.4 The Service Provider must allow all staff who were employed by the Previous Provider to transfer their accrued pension rights to (unless where prohibited by law) or to join (if not

current members) the Service Provider's own pension scheme (where one exists). Where the Previous Provider was the Council, this must be (and remain) certified by the Government Actuaries Department as being broadly comparable to the Council's current scheme.

- 38.1.5 At any time during the period of six (6) months before the Completion Date the Service Provider must:-
- a. not hire or employ, transfer or terminate or give notice to terminate the employment of any of the Service Provider's Staff without the prior written consent of the Council;
  - b. not alter any of the terms and conditions of employment of any of the Service Provider's Staff without the prior written consent of the Council;
  - c. provide to the Council as and when requested information requested by the Council about the Service Provider's Staff, whether contractual or not, which affects or might affect the contract of employment, the employment rights or the termination of employment of any of the Service Provider's Staff but only so far as it is lawful for the Service Provider to do so. The Service Provider hereby authorises the Council to use or disclose such information as it may consider necessary for the purposes of its business, including forwarding such information to any potential or actual Successor Provider;
  - d. not employ more staff than are reasonably required for the continued provision of the Services ("Excess Staff"). If the Service Provider does employ excess staff, the Service Provider must indemnify the Council for and against all statutory redundancy and other payments incurred by the Council (whether directly or indirectly) in the event that the Council or any Successor Provider dismisses any such Excess Staff within three months of the Completion Date.

38.1.6 The Council and the Service Provider acknowledge that TUPE may or may not apply on the Completion Date and all parties will co-operate at all times in respect of the application or possible application of TUPE. This means that the Council can require the Service Provider to provide information and assistance to any prospective Successor Provider.

38.1.7 If TUPE does not apply on the Completion Date the Service Provider must pay and be responsible for and must indemnify the Council against all actions or liabilities (including reasonable legal expenses) arising in respect of any claims which are made by or on behalf of any of the Service Provider's Staff as a result of the termination (however occurring) of this Supplier Agreement or of the termination of their employment with the Service Provider whether such claims arise pursuant to TUPE or otherwise. The Service Provider must co-operate with the Council or any Successor Provider who may wish to offer employment to any of the Service Provider's Staff and must co-operate with the Council and/or any Successor Provider in relation to the transfer of any such employees.

38.1.8 If TUPE does apply on the Completion Date, or any earlier date on which this Supplier Agreement terminates, the Service Provider must pay and be responsible for and must indemnify the Council against all actions or liabilities (including reasonable legal expenses) arising in respect of any claims which are made by or on behalf of any of the Service Provider's Staff as a result of the termination (however occurring) of this Supplier Agreement or of the termination of their employment with the Service Provider whether such claims arise pursuant to TUPE or otherwise. The Service Provider must co-operate with the Council or any Successor Provider who may wish to offer employment to any of the Service Provider's Staff and



must co-operate with the Council and/or any Successor Provider in relation to the transfer of any such employees.

38.1.9 The benefit of the indemnities contained in this Clause 38.1 are assignable by the Council and will apply mutatis mutandis to any Successor Provider during any period the Services is suspended in accordance with this Supplier Agreement and to whom staff are employed in the service provision.

## 382 Handover on termination

38.1.1 During the 12 months preceding the expiry of this Supplier Agreement or of a Service Agreement awarded under it or after the Council has given notice to terminate this Supplier Agreement or such Service Agreement or at any other time as directed by the Council, and within 15 working days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all Staff who are Relevant Employees as the Council may request, in particular but not necessarily restricted to any of the following:

- (a) a list of employees employed by the Service Provider;
- (b) a list of agency workers, agents and independent contractors engaged by the Service Provider;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those Staff;
- (d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date,

enhancement rates, any other factors affecting their redundancy entitlement

and any outstanding claims arising from employment.

38.1.2 The Service Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 38.1.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

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

38.1.4 During the 12 months preceding the expiry of this Supplier Agreement or of a Service Agreement awarded under it or where notice to terminate this Supplier Agreement or such Service Agreement for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

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

(b) materially increase or decrease the number of employees employed in connection with the Services; or

(c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

### **38.2 *Indemnities***

The Service Provider shall indemnify the Council and any Replacement Service Provider and keep the Council and any Replacement Service Provider indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses), which the Council and any Replacement Service Provider shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any Replacement Service Provider as a result of or in connection with the employment or termination of employment of any employee of the Service Provider during any period prior to the date of expiry or termination of this Supplier Agreement or of a Service Agreement awarded under it.

### **38.3 *Sub-contractors***

In the event that the Service Provider enters into any sub-contract in connection with this Supplier Agreement or a Service Agreement awarded under it, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Clause 38 and shall procure that the Sub-Contractor complies with such terms. The Service Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

## **SCHEDULES**

- 1. AUTHORISED OFFICER'S DETAILS**
- 2. SELF-BILLING AGREEMENT**
- 3. SERVICE SPECIFICATION**
- 4. SIGNATURE DOCUMENT**

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### **SCHEDULE 1 - AUTHORISED OFFICER'S DETAIL**

**NAME:** Keith Ottaway  
**POSITION:** Travel Assistance Manager  
**ADDRESS:**  
London SE6 4RU  
**TELEPHONE:** 020 3049 1425  
**EMAIL:** [keith.ottaway@lewisham.gov.uk](mailto:keith.ottaway@lewisham.gov.uk)

### **SCHEDULE 2 - SELF-BILLING AGREEMENT**

attached

### **SCHEDULE 3 – SERVICE SPECIFICATION**

attached

### **SCHEDULE 4 – SIGNATURE DOCUMENT**

attached

