

SUPPLIER AGREEMENT FOR THE PROVISION OF
PASSENGER TRANSPORT SERVICES

between

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF HARINGEY
("THE COUNCIL")

-and-

THE SERVICE PROVIDER

WHEREAS: -

- A. The Council is a London Borough Council constituted under the London Government Act 1963 and issues this Supplier Agreement pursuant to its powers under the Local Government Contracts Act 1997.
- B. The Council placed a Contract Notice ("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 Selection Criteria.
- D. The Council and the other Customers has each contracted with a third party, adam HTT Limited trading as adam (registered company 07718565) ("adam"), to provide a web-based software system, namely SProc.Net or such other technology as may be agreed between each Customer and adam from time to time (the "Application"), to enable each Customer to procure Services via the DPS in compliance with the regulation 34 of the Public Contract Regulations.

- E. The purpose of this Supplier Agreement is to set out the process by which any Customer may, from time to time, award to the Service Provider, once it is admitted to the DPS, Service Agreements for any Services the Customer requires and to set out terms and conditions applicable to those Service Agreements.
- F. The Parties acknowledge that no Customer shall be under any obligation to award any Service Agreements under this Supplier Agreement.
- G. The Parties further acknowledge that any Service Agreement is supplemental to this Supplier Agreement and may include additional terms and conditions governing the delivery of the Services.

NOW IT IS HEREBY AGREED AS FOLLOWS: -

1. DEFINITIONS AND INTERPRETATION

1.1 In this Supplier Agreement:

- (a) "Accreditation and Enrolment" means the process of approval of service providers for admission to the DPS via the evaluation of the Entry Submissions received from service providers to ensure these fulfil the Selection Criteria for delivery of the Services;
- (b) "adam" means adam HTT Limited trading as adam (registered company #07718565) which is the provider of the Application and shall also act as each Customer's payment service provider;
- (c) "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;
- (d) "Authorised Officer" means the person appointed by each Customer under Clause 14.1 of this Supplier Agreement whose details: (i) in the case of the Council 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; and (ii) in the case of each Third Party Customer as nominated by the Third Party Customer from time to time and whose details are notified in writing to the Service Provider;

- (e) "Award Criteria" means the criteria that a Customer will apply to rank Offers submitted by service providers participating in a tender to determine to which service provider a Service Agreement should be awarded;
- (f) "Best Value" means any method by which the maximum benefit can be derived from relevant resources;
- (g) "CCA" means the Civil Contingencies Act 2004;
- (h) "Change of Control" means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
- (i) "Charges" means the sums a Customer 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;
- (j) "Commencement Date" means the start date for delivery of Services as set out in a Service Agreement;
- (k) "Completion Date" means the end date for delivery of Services set out in a Service Agreement;
- (l) "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 relevant Authorised Officer and whose details are notified in writing to each Customer;
- (m) "Customer Data" means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are either supplied to the Service Provider by or on behalf of a Customer or which the Service Provider is required to generate, process, store or transmit on behalf of a Customer in connection with the

delivery of the Services under a Service Agreement awarded in accordance with this Supplier Agreement;

- (n) "Customer" means the Council or any Third Party Customer;
- (o) "Data Protection Act" or "DPA" means the Data Protection Act 2018;
- (p) "Data Protection Audits" means investigations which the Information Commissioner has power to carry out in the form of compulsory data protection audits under Article 58.1(b) of the GDPR;
- (q) "Data Protection Officer" means the role as defined under Chapter IV, Section 4 of the GDPR;
- (r) "Data Subject" means the identified or identifiable living individual to whom Personal Data relates;
- (s) "Dispute Resolution Procedure" means the procedure set out in Clause 32;
- (t) "Dynamic Purchasing System" or "DPS" means the dynamic purchasing system operated via the Application;
- (u) "DPS Entry and Operation Guide" means the guide made available by the Council on <http://demand.sproc.net> consisting of the DPS Entry and Operation Guide Part 1 and the DPS Entry and Operation Guide Part 2 and which details the general operation of the DPS;
- (v) "DPS Entry and Operation Guide Part 1" means that part of the DPS Entry and Operation Guide which gives an overview of the operation of the DPS, details the Selection Criteria for suppliers entering the DPS and the methodology for evaluating those criteria;
- (w) "DPS Entry and Operation Guide Part 2" means that part of the DPS Entry and Operation Guide which details the process by which a Customer will issue Requirements and award Service Agreements for the Requirements as well as other aspects of how the Council will operate the DPS;

- (x) "Entry Submission" means the Accreditation and Enrolment information and documents which the Council requires a service provider to submit via the Application as part of the Accreditation and Enrolment process;
- (y) "Environmental Information Regulations" or "EIR" means the Environmental Information Regulations 2004;
- (z) "Evaluation Methodology" means the methodology the Council will use to evaluate Entry Submissions and Offers and a Third Party Customer will use to evaluate Offers, including the Selection Criteria and the Award Criteria, which is set out in the DPS Entry and Operation Guide (Parts 1 and 2), and which, in relation to the evaluation of an Offer, may be further refined and/or amended from time to time (in relation to a specific Requirement and/or generally) in accordance with the DPS Entry and Operation Guide (Parts 1 and 2);
- (aa) "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);
- (bb) "FOIA" means the Freedom of Information Act 2000;
- (cc) "General Data Protection Regulation" or "GDPR" means the General Data Protection Regulation, Regulation (EU) 2016/679, as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same.
- (dd) "Good Industry Practice" means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the same type of undertaking under the same or similar circumstances as are contemplated by this Agreement;
- (ee) "Information" has the meaning given under Section 84 of FOIA, which shall include (but not be limited to) information in any form whether relating to the past, present or

future and may in particular consist of data, documentation, programmes, (including the source code of any programmes which the Council has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts, and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to information shall include reference to the medium in which it is stored;

- (ff) "Information Legislation" means the DPA, FOIA, GDPR and the EIR;
- (gg) "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 registrable rights any applications made in respect of such rights;
- (hh) "Intermission" means a suspension of the provision of Services under a specified Service Agreement between a Customer and the Service Provider in accordance with the provisions of Clause 2A of this Supplier Agreement;
- (ii) "Legislation" means all Law and in particular the Information Legislation;
- (jj) "Offer" means the Service Provider's tender in response to a Requirement consisting of the Service Provider's costs for carrying out the Requirement;
- (kk) "Open for Offers Period" means the period during which a service provider participating in a tender for a Requirement may submit Offers;
- (ll) "Other Information Law" means any applicable legislation or codes governing access to information other than FOIA;

- (mm) "Parties" means either the Supplier Agreement Parties or the Service Agreement Parties as the context requires, and "Party" shall be construed accordingly;
- (nn) "Personal Data" means personal data as defined in Article 4(1) of the GDPR, which is supplied to the Service Provider by a Customer or obtained by the Service Provider in the course of performing their obligations under a Service Agreement or this Supplier Agreement;
- (oo) "Pricing Details" means the Service Provider's costs for carrying out the Requirement referred to in a Service A
- (pp) greement as contained in the Offer referred to in the Service Agreement;
- (qq) "Processing" has the meaning attributed to it in Article 4(2) of the GDPR and "process" and "processed" shall be construed accordingly;
- (rr) "Record of Processing Activities" has the meaning attributed to it in Article 30 of the GDPR;
- (ss) "Public Contract Regulations" means the Public Contract Regulations 2015 as amended from time to time;
- (tt) "Relevant Employees" means the employees who are subject to a Relevant Transfer;
- (uu) "Relevant Transfer" means a relevant transfer for the purposes of TUPE;
- (vv) "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 a Customer receives, following the termination or expiry of a Service Agreement awarded to the Service Provider, in substitution for Services so provided by the Service Provider;
- (ww) "Replacement Service Provider" means a third party appointed by the relevant Customer from time to time to provide Replacement Services;

- (xx) "Requirement" means a request issued by any Customer on the Application from time to time identifying specific Services for which the Customer is seeking to award a Service Agreement and which may: (i) include terms and conditions applicable to the provision of those Services which supplement the terms and conditions set out in this Supplier Agreement that are incorporated into a Service Agreement; and (ii) in the case of a Third Party Customer include terms and conditions that supplement or amend the terms and conditions set out in the Specification to take account of the specific Services requirements and/or circumstances that relate to that Third Party Customer;
- (yy) "Resumption Notice" means a notice served on the Service Provider under Clause 31A.6;
- (zz) "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 Accreditation and Enrolment in the DPS;
- (aaa) "Self-Billing Invoice" means an invoice generated through the Application on the Service Provider's behalf in accordance with the Self-Billing Procedure;
- (bbb) "Self-Billing Procedure" means the arrangements agreed between the Service Provider and each Customer and set out in Schedule 2 under which invoices billing a Customer for Services provided to it by the Service Provider are generated at regular intervals through the Application and payment in respect of the invoices is processed;
- (ccc) "Serious Default" means a breach by the Service Provider of its obligations under a Service Agreement which in the reasonable opinion of the Customer materially prejudices the health, safety or welfare of a Service User;
- (ddd) "Service Agreement" means a contract awarded by a Customer accepting an Offer by the Service Provider and which is substantially in the form referred to in Schedule 3 and which shall incorporate and be subject to all terms and conditions set out in this

Supplier Agreement to the extent that such terms and conditions are relevant to a Service Agreement and/or the Services;

- (eee) "Service Agreement Parties" means the parties to any Service Agreement being the Service Provider and the relevant Customer, and "Service Agreement Party" shall be construed accordingly;
- (fff) "Service Category" means a category of service as described more particularly in the DPS Entry Guide in respect of which a service provider may be admitted to the DPS to provide services;
- (ggg) "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 Application for agreement by the relevant Customer;
- (hhh) "Service User" means a person who receives or who may receive the Services under a Service Agreement;
- (iii) "Services" means the passenger transport services deliverable under the DPS in accordance with the Supplier Agreement as described, in relation to any Customer's Service Agreements, in that Customer's Specification;
- (jjj) "Specification" means a description of the Services that a Customer may require from time to time under the DPS as set out on <http://demand.sproc.net>;
- (kkk) "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;
- (lll) "Sub-contractor" means a person to whom the Service Provider subcontracts any of its obligations under this Supplier Agreement;
- (mmm) "Subject Access Request" or "SAR" means a request for Personal Data falling within the provisions of Article 11, 12 and 15 of the GDPR;

- (nnn) "Supplier Agreement" means this overarching agreement, consisting of these terms and conditions and any schedules to them, setting out the arrangements for management of the DPS, the process to apply when a Customer wishes to award Service Agreements via the DPS and the terms and conditions applicable to the carrying out of Service Agreements;
- (ooo) "Supplier Agreement Parties" means the parties to this Supplier Agreement being the Service Provider and the Council, and "Supplier Agreement Party" shall be construed accordingly;
- (ppp) "Suspension Notice" means a notice served on the Service Provider under Clause 31A.2;
- (qqq) "Third Party Customer" means any of the contracting bodies referred to, identified or described in the Contract Notice, which in each case has subsequently been permitted by the Council to procure Services under the DPS as a Customer as notified by the Council to the Supplier from time to time;
- (rrr) "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 Service Provider, 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 DPS Entry and Operation Guide.

1.8 None of the provisions of this Supplier Agreement and/or of any Service 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 a Customer 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 Each Customer may from time to time procure Services from the Service Provider via the DPS in accordance with the procedure set out in the DPS Entry and Operation Guide and this Supplier Agreement but a Customer shall not be obliged to award any Service Agreements via the DPS to the Service Provider and even where the Customer has followed the procedures in the DPS Entry and Operation 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 each Customer with any Services required in accordance with a Services 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.
- 2.5 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. The Service Provider further agrees to immediately notify the Customer should there be any change or variation to the Services which are outside the control of the Service Provider.
- 2.6 The Parties shall work together and individually, in accordance with this Supplier Agreement and each Service Agreement, to achieve a transparent and co-operative exchange of information in all matters relating to this Supplier Agreement and each Service Agreement.
- 2.7 The Council may update the DPS Entry and Operation Guide at any time throughout the duration of the DPS, provided that the Council provides all suppliers with fair and open access to such updates with reasonable advance notice.
- 2.9 The Service Provider acknowledges that once awarded by a Customer and accepted by the Service Provider, a Service Agreement shall be a legally binding agreement between the Service Provider and that Customer.
- 2.10 The Service Provider acknowledges that in entering into this Supplier Agreement no form of exclusivity or volume guarantee has been granted by the Council or any Third Party Customer in respect of any of the Services and that the Council and Third Party Customer are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the services covered by the DPS.

2.11 The Council and adam shall not in any circumstances be liable to the Service Provider or to any Third Party Customer in respect of any Services provided by the Customer to any Third Party Customer.

2.12 The Service Provider acknowledges and accepts that payments made pursuant to the Services Agreement shall be made by adam as the Council's payment service provider. For the avoidance of doubt, the Service Provider and the Council acknowledge that adam's acting as the Council's payment service provider shall not operate to transfer any debt or amount owed between the Council and the Service Provider to adam and the Service Provider acknowledges that payment via adam shall be dependent upon adam receiving cleared funds from the Council.

2A INTERMISSION

2A.1 In such circumstances as a Customer reasonably considers appropriate, the Customer may serve notice on the Service Provider (an "Intermission Notice") that it will be exercising its rights under this Clause 2A to require a suspension of the provision of the Services under any specified Service Agreement between the Customer and the Service Provider (an "Intermission"). The Intermission Notice shall set out the date upon which the Intermission shall commence and the Council's estimate of the duration of the Intermission. The Customer shall serve the Intermission Notice as soon as reasonably practicable.

2A.2 Following the service of an Intermission Notice, the Service Provider shall cooperate with the reasonable instructions of the Customer in respect of the Intermission.

2A.3 For so long as the Intermission is continuing, then:

2A.3.1 the Service Provider shall not be obliged to provide the Services;

2A.3.2 any Charges due and payable to the Service Provider in respect of the Services during the Intermission period shall be as set out in the relevant Service Agreement;

2A.3.3 the Customer shall use reasonable endeavours to keep the Service Provider updated regarding the likely duration of the Intermission; and

2A.3 4 the Service Provider shall use best endeavours to keep the Customer updated regarding any circumstances that might have given rise to the Intermission.

2A.4 At such time as the Customer reasonably considers appropriate the Customer may serve notice on the Service Provider (a "Recommendation Notice") to require the recommencement of the Services following an Intermission (a "Recommendation"). The Recommendation Notice shall specify the date on which the Services shall be recommenced.

2A.5 The Service Provider shall recommence the provision of the Services in accordance with the Recommendation Notice and shall co-operate with the reasonable instructions of the Customer in respect of the Recommendation.

2A.4 For the avoidance of doubt the Service Provider shall bear its own costs in relation to any Intermission and Recommendation except to the extent expressly set out to the contrary in the relevant Service Agreement.

3. DURATION OF THIS SUPPLIER AGREEMENT

3.1 This Supplier Agreement shall commence on the date that the Supplier joins the DPS and shall continue for the duration of the DPS subject to termination under this Supplier Agreement or at law.

3.2 The duration DPS shall be a period of 8 years from the establishment of the DPS on publication of the Contract Notice in the Official Journal of the European Union.

3.2 For the removal of doubt, the termination of this Supplier Agreement shall not by itself terminate any Service Agreement issued under it.

4. SERVICE AGREEMENT AWARD PROCEDURE

4.1 Subject to clause 4.3, where a Customer requires specific Services for which it seeking to award a Service Agreement under the DPS it shall:

- (a) identify the relevant Service Category which the Services required fall into;
- (b) issue a Requirement via the Application 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 provided that the duration of the Open for Offers Period shall be reasonable and proportionate to the nature of the Requirement;
- (c) detail within the Application the Evaluation Methodology that applies in respect of the Requirement;
- (d) conduct a tender via the Application among the service providers to whom the Requirement has been issued;
- (e) evaluate the Offers submitted by each service provider in accordance with the Evaluation Methodology;
- (f) subject to clauses 4.1(g), award the Service Agreement for the Requirement to the service provider which has, at the close of the Open for Offers Period, submitted the most economically advantageous Offer in accordance with the Evaluation Methodology;
- (g) 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 to opt not to do so.

- 4.2 Where the costing of an Offer received by a Customer in the course of a tender conducted under clause 4.1 appears abnormally low, the Customer may reject the Offer provided it:
- (a) requests in writing from the service provider submitting the Offer details of the constituent elements of the costing 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 at the proposed costing.
- 4.3 Each Customer reserves the right to award a Service Agreement without following a competitive tendering procedure (including, for the avoidance of doubt without following the competitive tendering procedure described in Clause 4.1) where the Customer reasonably considers that there is a requirement for the relevant Services to be commenced with such degree of urgency as to render impracticable the conduct of a competitive tendering procedure. For the avoidance of doubt, each Customer may exercise its rights under this Clause 4.3 to award a Service Agreement to any service provider appointed to the DPS (See Entry Guide Part 2)
- 4.4 In the event that a Customer awards a Service Agreement pursuant to Clause 4.3, a retrospective Requirement and Offer shall be submitted onto the Application in respect of the relevant Service Agreement.

5. WARRANTIES AND REPRESENTATIONS

5.1 The Service Provider warrants and represents to the Council and each Third Party Customer 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 Entry Submission (including statements made in relation to the selection criteria referred to in Regulations 57 and 58 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 misleading;

6. PAYMENT AND VAT

6.1 In consideration of the Service Provider undertaking to provide any Services required by a Customer under a Service Agreement awarded under this Supplier Agreement, and satisfactory delivery of those Services, that Customer undertakes to pay the Service Provider the Charges for such Services.

6.2 The Service Provider and each Customer acknowledges that it shall act as the relevant Customer'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 in a Self-Billing Invoice, within 30 days of a Self-Billing Invoice having been raised in accordance with the Self-Billing Procedure, the Charges in the Self-Billing Invoice shall be payable by the relevant Customer.
- 6.4 The Service Provider shall not suspend the provision of the Services if any payment (or part thereof) is overdue unless it is entitled to terminate the relevant Service Agreement awarded under it pursuant to Clause 31.2 for failure to pay the Charges.
- 6.6 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 4 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.
- 6.7 The Council shall have the right to withhold payment, or to receive a refund of payment of all or part of the Charges where the Service Provider has failed to provide the whole or part of the agreed Services in accordance with the Service Agreement.
- 6.8 The Charges are exclusive of VAT which shall be added at the prevailing rate as applicable and paid by the relevant Customer following delivery of a valid VAT invoice.
- 6.9 If a Customer and the Service Provider fail to reach agreement on any VAT matter pursuant to a Service Agreement and/or, in the case of the Council, in respect of this Supplier Agreement, the Customer and the Service Provider may refer the matter to Her Majesty's Revenue and Customs or a VAT tribunal for determination.

- 6.10 The Service Provider shall indemnify each Customer against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on that Customer 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 a Service Agreement and/or, in the case of the Council, under this Supplier Agreement.
- 6.11 For the avoidance of doubt, the Customer will not be liable for any Charges (or part thereof) under the Service Agreement unless and until the Services have been or are in the course of being delivered.

7. RECOVERY OF SUMS DUE

- 7.1 Wherever under this Supplier Agreement and/or any Service Agreement any sum of money is recoverable from or payable by the Service Provider to a Customer, that sum may be deducted from any sum then due, or which at any later time may become due to the Service Provider under any Service Agreement and/or, in the case of the Council, this Supplier Agreement or any other agreement which the Service Provider has with the relevant Customer.
- 7.2 The Service Provider shall make any payments due to each Customer 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 relevant Customer 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 each Customer.
- 8.2 Each Customer 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 any Customer and as to the accuracy and sufficiency of the Charges provided for by the Pricing Details of any 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 any Customer. Neither the Service Provider nor its employees or agents shall in any circumstances hold themselves out as being the employee or agent of any Customer nor are they authorised to enter into any contract on behalf of any Customer or in any other way to bind any Customer to the performance, variation, release or discharge of any obligation.

10.2 The Service Provider is responsible for the acts and omissions of its employees and agents and each Customer shall not be 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.

11. ADVERTISING

11.1 Save to the extent that any Service Agreement and/or, in the case of the Council, this Supplier Agreement indicates otherwise, no advertisement of any description indicating that the Service Provider is acting for any Customer is permitted on premises, equipment, materials or consumables utilised in the provision of the Services without the prior written consent of the relevant Authorised Officer which shall not be unreasonably withheld. Any advertisement which is placed on a Customer'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 Each Customer 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 each Customer to identify develop and deliver Best Value services under the terms and conditions of the relevant Service Agreement(s) and, in addition in the case of the Council, of this Supplier Agreement within available resources.

12.2 Types of requirements of the Service Provider by each Customer 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 Customer's priorities.

12.3 The Service Provider shall facilitate periodical and regular inspections and reviews by each Customer 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 each Customer 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 Each Customer 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 each relevant 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 Contract Manager will meet regularly with each Authorised Officer ("the Liaison Meeting") to discuss the Services being provided and to provide the relevant Customer with progress reports. Upon receiving a request to do so the Service Provider shall attend any meeting(s) arranged by each Authorised Officer (or his representative) for the purpose of reviewing the Service Provider's performance. For the avoidance of doubt, in the case of the Liaison Meetings conducted with the Authorised Officer of the Council, the Liaison Meeting may (at the request of the Authorised Officer of the Council) relate to the Services being provided to any or all of the Third Party Customers as well as the Services being provided in respect of the Council.

- 14.5 At Liaison Meetings each Authorised Officer and Contract Manager will review, among other things, issues relating to the day to day provision of the Services, and any monitoring systems detailed in the Specification, including but not limited to, such things as user feedback.
- 14.6 The Contract Manager shall keep minutes of all Liaison Meetings.
- 14.7 The Service Provider shall permit each Customer to access to its premises for contract compliance visits. Site visits may be announced or unannounced. The relevant Customer will supply the Service Provider with a copy of any report compiled following a contract compliance visit.
- 14.8 The Service Provider shall provide each Customer with monitoring information in accordance with its requirements and within any timescales communicated to it by the relevant Authorised Officer (and without cost to the Customer). Further monitoring requirements may be contained in the 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 must be separate in respect of each Customer. All documents relevant to the Services and, in the case of the Council, this Supplier Agreement must be made available for inspection by the relevant Authorised Officer.
- 14.10 If, following a review of the Services, it is apparent to a Customer that the Services are not being carried out to the satisfaction of the Customer the Service Provider and the relevant Customer will agree a plan and timescale for corrective action. If this is not achieved to the relevant Customer's satisfaction, the Customer may issue a Default Notice in accordance with the provisions of Clause 30.

15 THE SERVICE PROVIDER'S INDEMNITIES AND INSURANCES

- 15.1 The Service Provider shall indemnify the Customer 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 that Customer 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 relevant Customer, 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 £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event;
- 15.4.2 employer's liability insurance in a sum of not less than £10,000,000.00 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event and which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988;

15.4.3 in cases where a contractor escort or travel buddy (as described in the Specification) is used in the provision of the Services, professional indemnity insurance that covers the risk of professional negligence on the part of the Service Provider and persons engaged by it in a sum of not less than £1,000,000.00 (one million pounds) for any one occurrence or series of occurrences arising out of any one event.

15.5 The Service Provider shall supply to each Customer 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 each Customer 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 servants, employees or agents of the Service Provider and of its Subcontractors 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 each Customer 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 any Customer, the Service Provider shall fully cooperate with that Customer at its own expense in connection with any legal proceedings, ombudsman inquiries or arbitration in which that Customer may become involved arising from any breach of that Customer'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 Subcontractors 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 each Customer in respect of any cost claim or damages that that Customer 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 any Services Agreement and/or, in the case of the Council, 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 and maintain and make available for inspection by each Customer's Authorised Officer all records reasonably requested by the relevant Customer relating to the Service Provider's compliance with Clause 18.1.

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

19. CONFIDENTIALITY AND PROTECTION OF INFORMATION

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

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 performance of this Supplier Agreement or the Service Agreement to which the Confidential Information relates; and,
- (c) shall not use any Confidential Information otherwise than for the purposes of the Supplier Agreement or the Service Agreement to which the Confidential Information relates.

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 this Supplier Agreement or obtained from any Customer under or in connection with a Service Agreement:-

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Supplier Agreement or the Service Agreement as is strictly necessary for the performance of the Supplier Agreement or the Service Agreement and then only to the extent necessary for the activities of each member of Staff or of such professional advisors or consultants in the performance of the Supplier Agreement or the Service Agreement;
- (b) is treated as confidential and not disclosed (without prior approval of the Council in relation to the Supplier Agreement or the relevant Customer in relation to a Service Agreement) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Supplier Agreement or of the Service Agreement.

19.5 Where it is considered necessary in the opinion of the Council in relation to the Supplier Agreement, or of a Customer in relation to any of the Customer's Service Agreements, the Service Provider shall ensure that it's Staff or such professional advisors or consultants sign a confidentiality undertaking before

commencing work in connection with the Supplier Agreement or of the Service Agreement.

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); 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 shall prevent the Council or a Customer:-

- (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 or other Customer's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council or the Customer has used its resources;
- (d) disclosing any information obtained from the Service Provider to any person engaged in providing any services to the Council or to a Customer for any purpose relating to or ancillary to this Supplier Agreement or a Service Agreement;

provided that in disclosing information under sub-paragraph (d) the Council or the Customer 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 of any Service Agreement awarded under it and indefinitely after their expiry or termination.

20. INTELLECTUAL PROPERTY RIGHTS

20.1 The Service Provider hereby grants to each Customer an irrevocable nonexclusive 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 20.1, 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 relevant Customer 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 each Customer may request from time to time in order to perfect or confirm the Customer'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 any Customer are owned by a third party the Service Provider shall obtain the necessary licence for use of such material by the relevant Customer.

20.5 The Service Provider shall keep each Customer fully indemnified against all losses and all actions claims proceedings costs and damages (including any damages or compensation paid by the relevant Customer on the advice of its legal advisor and after consultation with the Service Provider to compromise or settle any claim and all legal costs or other expenses) arising out of any breach of IPR of a third party in material supplied by the Service Provider in the provision of the Services.

21. DATA PROTECTION

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

21.2. All Personal Data acquired by the Service Provider from the Council in connection with this Supplier Agreement shall only be used for the purposes of this Supplier Agreement and shall not be further processed or disclosed without the prior written consent of the Council. Similarly all Personal Data acquired by the Service Provider from a Customer in connection with a Service Agreement awarded by the Customer shall only be used for the purposes of the Service Agreement and shall not be further processed or disclosed without the prior written consent of the Customer.

21.3. If and when applicable the Service Provider shall comply with the GDPR requirements with regards to appointing a Data Protection Officer.

21.4. The Service Provider shall comply with all relevant codes of practice issued under the DPA and GDPR.

- 21.5. The Service Provider shall assist the Council and other Customers in safeguarding the legal rights of the Data Subjects.
- 21.6. The Service Provider will have in place at all times appropriate technical and organisational security measures to safeguard Customer Data in compliance with DPA and the National Cyber Security Centre (NSNC) guidance and the GDPR.
- 21.7. The Service Provider shall indemnify the Council and each Customer against loss, destruction or processing contrary to Information Legislation caused by itself, its employees, contractors or agents in the provision of Services to the Council and other Customers.
- 21.8. The Service Provider shall ensure the reliability and training of all its relevant employees to ensure awareness of and compliance with the Service Provider's obligations under the DPA and the GDPR.
- 21.9. The Council shall respond to all Subject Access Requests relating to Personal Data processed in connection with the Supplier Agreement and each Customer shall respond to all Subject Access Requests from Data Subjects relating to Personal Data processed in connection with one of the Customer's Service Agreements, whether the requests are received by the Service Provider or the Council or a Customer, and the Service Provider shall provide to the Council in relation to requests in connection with the Supplier Agreement or to the relevant Customer in relation to requests in connection with any of the Customer's Service Agreements the Personal Data requested by the Data Subject within 10 working days of receipt of an instruction by the Council or the relevant Customer for supply of the Personal Data.
- 21.10. The Service Provider shall immediately notify the Authorised Officer in relation to this Supplier Agreement or the relevant Customer's Authorised Officer if it receives:
- 21.10.1. a request from any person whose Personal Data it holds respectively in connection with the Supplier Agreement or any of the Customer's Service Agreements to access his Personal Data; or

- 21.10.2. a complaint or request relating respectively to the Council's obligations under the DPA and/or the GDPR or the Customer's obligations under the DPA and/or the GDPR in connection with any of the Customer's Service Agreements.
- 21.11. The Service Provider will assist and co-operate with the Council and with each Customer in relation to any complaint or request received respectively in connection with this Supplier Agreement or in connection with any of the Customer's Service Agreements, including:
- 21.11.1. providing full details of the complaint or request;
- 21.11.2. providing the Council or Customer, as appropriate, with any information relating to a SAR within 10 working days of receipt of the request;
- 21.11.3. promptly providing, as appropriate, either the Council's or Customer's Authorised Officer with any Personal Data and other information requested by him.
- 21.12. The Service Provider shall not process Personal Data held in connection with either the Supplier Agreement or any Customer's Service Agreements outside of the European Economic Area without full prior written consent respectively from the Council or the Customer.
- 21.13. The Service Provider shall cooperate with Data Protection Audits as and when requested.
- 21.14. The Service Provider shall comply with GDPR requirements for maintaining accurate, current and comprehensive Records of Processing Activities.
- 21.15. The Service Provider shall be liable for and shall indemnify the Council and each Customer against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements) and demands incurred by the Council or the Customer which arise directly from a breach by the Service Provider of

its obligations under the DPA in connection with this Supplier Agreement in the case of the Council and, in the case of a Customer, in connection with the Service Provider's performance of any of the Customer's Service Agreements awarded under this Supplier Agreement, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the DPA and/or GDPR by the Service Provider or its employees, servants, agents or sub-contractors.

22. FREEDOM OF INFORMATION

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

22.2 Notwithstanding anything in any Services Agreement and/or, in the case of the Council, in this Supplier Agreement to the contrary, in the event that any Customer receives a request for information under the FOIA or any Other Information Law, that Customer 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 Customer believes is Exempt Information, the Customer 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 Customer; or
- (b) disclose the information requested,

to the extent that in the Customer'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 any Customer 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 Customer within 14 days of receiving the Customer's request for consultation.
- 22.4 The Service Provider shall indemnify each Customer for any costs that the relevant Customer incurs, including but not limited to external legal costs, in seeking to maintain the withholding of information arising out of or under any Services Agreement and, in the case of the Council, 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 each Customer shall have no liability for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempt Information or other information relating to any Services Agreement and, in the case of the Council, this Supplier Agreement under FOIA or Other Information Law.
- 22.6 The Service Provider will at all times assist each Customer to enable that Customer to comply fully with its obligation governing access to information under FOIA or Other Information Law or related guidelines or codes of practice. In particular it acknowledges that each Customer is entitled to any and all information relating to or arising in the course of the performance of any Services Agreement and/or, in the case of the Council, this Supplier Agreement. In the event that any Customer 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 Customer's request (or other reasonable time period specified by the Customer when making the request).

22.7 Other than as set out above each Customer shall have no obligation to consult the Service Provider where any request for information, whether under the FOIA or otherwise, touches or concerns any Services Agreement and/or, in the case of the Council, 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 relevant Customer.

23. CORRUPTION

23.1 The Service Provider shall not offer or give, to any employee, agent, servant or representative of any Customer 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 any Services Agreement, the Supplier Agreement or any other contract with any Customer, or for showing or refraining from showing favour or disfavour to any person in relation to any Services Agreement, the Supplier Agreement or any other contract with any Customer. 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 1972.

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 any Services Agreement, the Supplier Agreement or any other contract with any Customer, the Customer that is a party to the relevant contract has the right to:

- (a) terminate any Service Agreement and recover from the Service Provider the amount of any loss suffered by the Customer resulting from the termination; or

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

24. ILLEGALITY

- 24.1 If any provision or term of the Supplier Agreement or any part of it or any 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 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 or relevant Service Agreement by any act of God, war, riot, civil commotion, explosion, fire, radiation, accident, government action, interruption in the supply of power, labour dispute other than a dispute concerning the Service Provider's employees or the employees of its sub-contractors, epidemic or other circumstances beyond the control of the Parties which prevents a Party from, or hinders or delays a Party in, performing its obligations under this Supplier Agreement or relevant Service 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 or any Service Agreement that Party shall as soon as reasonably practicable notify the other in writing of such prevention, hindrance or delay and the reasons therefore whereupon the operation of this Supplier Agreement or of any relevant Service Agreement awarded under it that is affected shall be suspended. The Customer 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 one month either Party may immediately terminate the Supplier Agreement or the relevant Services Agreement, whichever may be affected, upon service of one month's written notice to the other Party.

26. BUSINESS CONTINUITY

26.1 The Service Provider acknowledges and accepts that each Customer 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 relevant Customer may reasonably require in

order to enable the Customer 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 relevant Customer in relation to such Emergency, notwithstanding that such instructions may be given by an officer of the Customer other than the officer(s) the Service Provider would usually deal with in respect of the relevant Service Agreement and/or, in the case of the Council, this Supplier Agreement.
- 26.4 Each Customer 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 that Customer's instructions during and in respect of an Emergency.
- 26.5 Each Customer 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 Customer under the relevant Services Agreement and/or, in the case of the Council, 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;
- (iii) failure of or disruption to the IT and communications systems, or the loss of data and/or records of, the Service Provider;
- (iv) loss of or damage to equipment, resources or materials of the Service Provider;
- (v) a disruption in provision of goods or services to the Service Provider by any third party.

26.8 If at any time during the subsistence of a Service Agreement awarded under this Supplier Agreement after receipt of a Business Continuity Plan, the relevant Customer reasonably considers that changes to the Business Continuity Plan are required, the Service Provider shall upon notification by the Customer of these changes record the changes in the Business Continuity Plan and implement them.

26.9 The Service Provider shall use its best endeavours to ensure that its contracts with its Sub-contractors engaged in or about the execution of a Service Agreement awarded under this Supplier Agreement 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.

26.10 The Service Provider shall indemnify and keep indemnified each Customer for any claims, loss or damage incurred by that Customer 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 any Services Agreement and/or, in the case of the Council, this Supplier Agreement without the prior written consent of the relevant Customer, which may be given or withheld in the Customer's sole discretion and subject to any conditions which the Customer sees fit to impose.
- 27.2 In the event that a Customer 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 relevant 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 relevant Customer immediately.
- 27.3 It shall be a condition of any sub-contract entered into by the Service Provider that the Sub-Contractor shall not enter into a further sub-contract in respect of the Services or any part of the Services under the subcontract without notifying and obtaining the written consent of the Service Provider. Upon receipt of any such notification from the Sub-contractor and before giving the Sub-contractor its consent, the Service Provider shall inform the relevant Customer of the Sub-contractor's intention to further sub-contract the Services or part of the Services and shall obtain the Customer's written consent thereto, which consent may be given or withheld at the Customer's sole discretion and subject to any conditions the Customer may see fit to impose.
- 27.4 Nothing in this Clause 27 shall alleviate the Service Provider of its obligations in relation to the provision of the Services under a Service Agreement or under this Supplier Agreement generally. In particular, notwithstanding the grant of consent or imposition of conditions by a Customer under Clause 27.1, the Service Provider shall remain ultimately responsible for any choice of subcontractors and for the provision of the Services in all respects.

28. WAIVER

28.1 Failure by a Customer at any time to enforce the provisions of and applicable under any Service Agreement and/or, in the case of the Council, this Supplier Agreement or to require performance by the Service Provider of any of the provisions of and applicable under any Service Agreement and/or 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 any Service Agreement and/or this Supplier Agreement or any part thereof or the right of the Customer to enforce any provision in accordance with the terms of such agreement.

29. VARIATION

29.1 Subject to Clause 29.3, a variation to this Supplier Agreement or of any Service Agreement awarded under it shall only be valid if it has been agreed by the Parties in written form.

29.2 For the avoidance of doubt, a variation to a Service Agreement as referred to in Clause 29.1 may include an extension to the duration of the Service Agreement.

29.3 Upon the provision to the Supplier of written notice the Council reserves the right to amend with immediate effect the provisions of this Supplier Agreement that relate to the process for awarding a Service Agreement (including without limitation Clause 4) without obtaining the agreement of the Supplier.

30. PERFORMANCE DEFAULT

30.1 Without prejudice to a Customer's right to terminate and/or suspend the provision of Services under any Services Agreement and/or to the Council's right to terminate this Supplier Agreement and/or to suspend a supplier's participation in the DPS in accordance with the terms and conditions of the relevant agreement and without prejudice to any other claim or remedy the Customer may have against the Service Provider, a Customer may, in the event that the Service Provider in the reasonable opinion of the relevant Authorised Officer: -

- a fails to provide the Services or any part of them; or
- b fails to provide the Services to a reasonable standard; or
- c is otherwise in material breach of any of the terms and conditions of this Supplier Agreement or of a Service Agreement,

issue the Service Provider with a written notice (a "Default Notice") detailing the default, the actions (if any) to be taken to rectify the default and the timeframe for doing so.

- 30.2 If the Service Provider fails to comply with the Default Notice to the reasonable satisfaction of the Customer or if the default is a breach that is incapable of remedy, the Customer shall be entitled to deduct from any monies that may be due to the Service Provider such sums to reflect the actual loss to the Customer arising out of the breach including administration costs.
- 30.3 If the Service Provider complies with a Default Notice to the reasonable satisfaction of the Customer, the Service Provider may be charged the Customer's reasonable costs (if any) arising from the breach.
- 30.4 Without prejudice to the remedies available to a Customer under Clauses 30.2 and 30.3, if the Service Provider is issued with three Default Notices under Clause 30.1 in respect of a specific Service Agreement, the relevant Customer shall have the right to treat this as a persistent breach of that Service Agreement for the purposes of Clause 31.3.

31. TERMINATION OF SERVICE AGREEMENT

- 31.1 Notwithstanding any other provision of a Service Agreement and/or, in the case of the Council, of this Supplier Agreement, either Party may terminate any Service Agreement by giving at least 28 days' written notice to the other. This period may, however, be reduced if mutually agreed between the relevant

Parties. The period of notice will run from receipt of notification (notification can be by e-mail, fax or post). During the period of notice both parties shall cooperate to ensure that the interests of the Service User shall be met under whatever new arrangements may be proposed.

31.2 If a Party commits a fundamental breach of its obligations under any Service Agreement including under any terms deemed to be incorporated from this Supplier Agreement then the other Party may, without prejudice to any accrued rights or remedies, terminate the Service Agreement concerned by notice in writing having immediate effect.

31.3 A Customer may terminate a Service Agreement by notice in writing having immediate effect, without prejudice to any accrued rights or remedies, if any one or more of the following occurs:

31.3.1 the Service Provider has committed a persistent breach of the Service Agreement under Clause 30.4;

31.3.2 any information provided by the Service Provider during the process of selection of the Service Provider for admission to the DPS or the award of a Service Agreement proves materially untrue or incorrect;

31.3.3 the Service Provider has obtained or received by whatever means any information which has given or was intended or likely to give the Service Provider any unfair advantage over any other participant in relation to the process for admission to the DPS or the award of any Service Agreement under this Supplier Agreement;

31.3.4 an event described in Clause 23 (Corruption);

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

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

- 31.3.7 the Service Provider has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
 - 31.3.8 the Service Provider has possession taken, by or on behalf of the holder of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
 - 31.3.9 the Service Provider is in circumstances that entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver or which entitle the Court to make a winding-up order;
 - 31.3.10 if there is a change of control in the shareholding of the Service Provider;
 - 31.3.11 where the Customer has, on grounds of breach of contract, terminated a contract between itself and the Service Provider other than the relevant Service Agreement;
 - 31.3.12 where the Service Provider or any of its employees or subcontractors becomes embroiled in matters attracting significant negative publicity liable to reflect adversely on the Customer, including but not limited to any occasion on which any of these persons is convicted of an arrestable offence;
 - 31.3.13 where the Service Provider is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or any amendment thereto.
- 31.4 If a Customer terminates a Service Agreement under this Clause 31 or otherwise the Customer shall:
- 31.4.1 cease to be under any obligation to make further payment to the Service Provider until all costs and damage resulting from or arising out of termination of the Service Agreement have been calculated; and
 - 31.4.2 be entitled to deduct such costs from any sum or sums which would have been due to the Service Provider and/or be entitled to recover the costs from the Service Provider as a debt; and
 - 31.4.3 be entitled to carry out the Service Agreement itself in whole or in part or engage any other person to provide the Services.

- 31.5 Where a Service Agreement shall terminate for whatsoever reason the Service Provider shall within 21 days from termination (or such reasonable period specified by the Customer) provide the Customer with sufficient information, material and documentation necessary to enable the Customer or a third party to continue or to re-procure the provision of the Services. Without prejudice to the Customer's other remedies, failure to comply with this Clause 31 may result in the Customer withholding any payment due until reasonable compliance by the Service Provider.
- 31.6 In addition and without prejudice to this Clause 31 if the Customer terminates a Service Agreement in accordance with Clauses 31.2, 31.3 or 31A.9 the Service Provider shall fully indemnify the Customer 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 Service Agreement to the extent that such cost exceeds the payment that otherwise would have been payable to the Service Provider.
- 31.7 The rights of a Customer under this Clause 31 are in addition to, and without prejudice to, any other rights that the Customer may have at law, under the relevant Service Agreement and/or, in the case of the Council, under the Supplier Agreement.
- 31.8 The provisions of Clauses 15.1, 15.2 (Service Provider's Indemnities), 19 (Confidentiality and Protection of Information), 20 (IPR), 21 (Data Protection), 22 (FOIA) and 38 (TUPE Compliance on Termination) shall survive the termination of any Service Agreement together with any other provision which is either expressed to or by implication is intended to survive termination of a Service Agreement.

31A. SUSPENSION OF A SERVICE AGREEMENT

- 31A.1 If the Service Provider is in Serious Default of any Service Agreement then the Customer shall be entitled to arrange for a competent person (which may be one

of the Customer's employees) to carry out an investigation into the Serious Default.

31A.2 If the Customer, acting reasonably, considers that:

31A.2.1 the Serious Default is of such seriousness, and/or

31A.2.2 there is a continuing threat to the health, safety and/or welfare of any Service Users,

such that it is not appropriate for the Service Provider to carry on providing any or all of the Services, then the Customer shall be entitled to serve on the Service Provider a Suspension Notice, which shall set out the Services that it relates to under any Service Agreement between the Customer and the Service Provider, and if the Customer is a Third Party Customer it shall notify the Council at the same time as it serves the Suspension Notice on a Service Provider.

31A.3 If a Customer serves a Suspension Notice then:

31A.3.1 the Service Provider will cease providing the Services set out in the Suspension Notice pending the outcome of the investigation of the Serious Default; and

31A.3.2 the Customer will be entitled for as long as the Suspension Notice is in force to either provide some or all of the Services itself or engage any other person to do.

31A.4 The Customer shall use reasonable endeavours to ensure that any investigation is carried out as quickly and as reasonably as possible. The Customer will make available to the Service Provider and to the Council a copy of the report of the investigation's findings as soon as reasonably possible after it has been made available to the Customer. The Service Provider will cooperate fully in the conduct of any such investigation.

31A.5 If the Service Provider has been served with a Suspension Notice then as soon as reasonably possible after the Customer has received the report of the investigation the Customer shall, acting reasonably, consider whether or not the

Service Provider should resume provision of some or all of the suspended Services.

31A.6 If the Customer considers that the Service Provider should resume provision of some or all of the suspended Services then the Customer shall serve on the Service Provider a Resumption Notice which shall set out the Services to be resumed and the date upon which they are to be resumed.

31A.7 The Customer will be entitled to set out in the Resumption Notice such conditions relating to the Service Provider's resumption of the Service as it considers appropriate.

31A.8 The Service Provider shall resume the provision of the suspended Services on the date and subject to any conditions set out in the Resumption Notice.

31A.9 If the Customer considers that the Service Provider should not resume the provision of some or all of the suspended Services then:

31A.9.1 the Customer will be entitled to terminate the application of the Service Agreement to the specific Services concerned with immediate effect; or

31A.9.2 if the Customer, acting reasonably, considers that the findings of the investigation reflect on the Service Provider's ability to carry out the Services generally, the Customer will be entitled to terminate the Service Agreement with immediate effect.

31A.10 During any period of suspension under this Clause 31A the Customer may at its sole discretion continue to pay the Charges but if the Customer exercises its right to terminate in accordance with Clause 31A.9.1 or 31A.9.2, the Service Provider must repay to the Customer all sums paid during the period of suspension which relate to the suspended Services concerned. If the Service Provider does not repay these sums within 30 days of any notice of termination then the Customer will be entitled to recover these sums as a debt.

31A.11 Following service of a Resumption Notice if the Customer has not already done so it will pay such proportion of the Charges for the period during which the Services were suspended as the Customer reasonably determines.

31A.12 The rights of a Customer under this clause 31A are in addition to, and without prejudice to, any other rights that the Council may have at law or under the relevant Service Agreement.

31B. TERMINATION OF THE SUPPLIER AGREEMENT

31B.1 The Service Provider shall notify the Council in writing with immediate effect in any of the following circumstances:

31B.1.1 the Service Provider undergoes a Change of Control;

31B.1.2 any change occurs in relation to the information contained in the Entry Submission of the Service Provider that may result in the Service Provider no longer complying with the Selection Criteria; and/or

31B.1.3 the Service Provider becomes aware of any other reason that may affect the compliance by the Service Provider with the Selection Criteria.

31B.2 Without prejudice to Clause 31B.1 the Service Provider shall at such times as the Council reasonably requires:

31B.2.1 confirm that there has been no change to the information contained in the Entry Submission of the Service Provider that may result in the Service Provider no longer complying with the Selection Criteria;

31B.2.2 provide to the Council such information as the Council reasonably requires in relation to the on-going compliance of the Service Provider with the Selection Criteria; and/or

31B.2.3 provide to the Council such information as the Council reasonably requires to enable the Council to determine whether any of the grounds for exclusion pursuant to regulation 57 of the Public Contracts Regulations apply in respect of the Service Provider.

31B.3 The Council shall be entitled to terminate this Supplier Agreement with immediate effect in the event that:

31B.3.1 the Service Provider fails to provide the confirmation or further information required by the Council under Clause 31B.2.1, 31B.2.2 or 31B.2.3; and / or

31B.3.2 the Service Provider does not comply with the Selection Criteria, including where any document provided by the Service Provider as part of its Entry Submission that has an expiry date has expired and the Service Provider has failed to meet any deadline set by the Council for providing unexpired documents;

31B.3.3 any of the grounds for exclusion pursuant to regulation 57 of the Public Contracts Regulations apply in respect of the Service Provider; and / or

31B.3.4 the Council receives, pursuant to Clause 31A.4, a copy of the report of the findings of an investigation carried out under Clause 31A.1, whether on the initiative of the Council or of a Third Party Customer, and the findings are such that the Council concludes that it is not appropriate for the Service Provider to be awarded further Service Agreements under this Supplier Agreement.

31B.4 In the event that the Council is entitled to terminate this Supplier Agreement pursuant to Clause 31B.3 the Council may decide (at its sole discretion) to suspend the Service Provider's participation in the DPS until such point that the Service Provider has demonstrated to the Council's satisfaction that the grounds for termination pursuant to Clause 31B.3 no longer apply, provided that the Council may at any time during the suspension decide (at its sole discretion) to exercise its right to terminate pursuant to Clause 31B.3. For the avoidance of doubt, during the period of such suspension the Service Provider shall not be entitled to participate in the Service Agreement award procedure under Clause 4.

31B.5 Notwithstanding any other provision of this Supplier Agreement, the Council may terminate the DPS (including this Supplier Agreement) on a no fault basis at any time by giving the Service Provider 120 days' notice in writing. The Council may extend the period of notice at any time before it expires.

31B.6 Where, for whatever reason, the Supplier Agreement has been terminated and/or the Council exercises its right to suspend the Service Provider's participation in the DPS, the Service Provider shall within 21 days (or such reasonable period specified by the Council) of the termination and/or the suspension provide the Council with such information regarding the Supplier Agreement and/or the Service Provider's participation in the DPS as the Council reasonably requires.

31B.6 In addition and without prejudice to this Clause 31B if the Council terminates the Supplier Agreement in accordance with 31B.3 and/or the Council exercises its right to suspend the Service Provider's participation in the DPS, the Service Provider shall fully indemnify the Council in respect of any loss or damage suffered by the Council as a consequence of the termination and/or such suspension.

31B.7 The rights of the Council under this Clause 31B are in addition to, and without prejudice to, any other rights that the Council may have at law or under the Supplier Agreement and any Service Agreement.

31B.8 The provisions of Clauses 19 (Confidentiality and Protection of Information), 20 (IPR), 21 (Data Protection) and 22 (FOIA) shall survive the termination of the Supplier Agreement together with any other provision which is either expressed to or by implication is intended to survive termination of the Supplier Agreement.

32. DISPUTE RESOLUTION

32.1 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 any Services Agreement and/or this Supplier Agreement, the Parties shall, in the first instance, endeavour to resolve the disagreement or dispute themselves (or through their representatives).

32.2 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 relevant Customer or by reference to a third independent party agreed by the Parties or failing agreement, appointed by the relevant Authorised Officer. Any such mediation or conciliation will not be binding on the Parties.

32.3 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 if so agreed by the Parties be referred to an arbitrator agreed between the Parties or in default of such agreement to be nominated by the President of the Chartered Institute of Arbitrators and such a referral to arbitration shall be deemed to be a referral in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.

32.4 The costs of mediation, conciliation and/or the appointment of the arbitrator shall be shared equally between the Parties and the arbitrator shall determine which Party shall pay any costs subsequently incurred.

33. NOTICES

33.1 All notices served under any Service Agreement and/or this Supplier Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class recorded delivery post or by facsimile, in the case of the Council to the Council's Authorised Officer's address stated in Schedule 1 or in the case of each Third Party Customer to the address of the Third Party Customer's Authorised Officer as notified by that Third Party Customer or in the case of the Service Provider to its address as stated in the relevant Service Agreement, which addresses may themselves be amended by notice in accordance with this Clause 33. Notices sent by post shall be deemed to have been received by the addressee 2 days after the day on which they were posted (excluding weekends and public holidays). Notices sent by facsimile during normal business hours shall be deemed to have been received on the date of dispatch (or on the next working day if sent after normal business hours). All facsimile notices shall be confirmed by post.

34. CONTRACTS (RIGHTS OF THIRD PARTIES)

34.1 Subject to Clause 34.2, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Supplier Agreement and/or to any Service Agreement and no person who is not a Party to this Supplier Agreement and/or any Service Agreement shall be entitled to enforce any of the provisions of this Supplier Agreement and/or any Service Agreement pursuant to that Act.

34.2 Any provision of this Supplier Agreement which expressly or by implication is intended to grant a right to and/or confer a benefit on any Customer in relation to the process for awarding a Service Agreement (including without limitation Clauses 4 and 5) shall be enforceable directly by the relevant Third Party Customer pursuant to the Contracts (Rights of Third Parties) Act 1999.

35. GOVERNING LAW

35.1 The terms applicable under this Supplier Agreement and/or any Service 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 any Service Agreement awarded under this Supplier Agreement.

37. SERVICE PROVIDER 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 (evidenced by appropriate references and certifications where applicable).

- 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.
- 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 are checked by the Disclosure and Barring Service and any Staff who may be required to come into contact with children or vulnerable adults have, before they are so engaged, suitable 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 produce evidence to the Authorised Officer of any Customer upon commencement of any Service Agreement or on demand by any Customer 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 Haringey Local Safeguarding Children or Adults Boards (or in the case of any Third Party Customer the Local Safeguarding Children or Adult Boards (or similar) of that Third Party Customer) and with 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 and provide evidence of such training upon reasonable request by any Authorised Officer.

37.9 Each Customer shall have the right to visit the Service Provider's organisation to audit, inspect and monitor the Service Provider's compliance with this Clause 37.

37A. PREVENT DUTY

37A.1 The Service Provider shall comply with the reasonable instructions of each Customer to enable that Customer to comply with its obligations under sections 26 and 29(2) of the Counter-Terrorism and Security Act 2015.

38. TUPE COMPLIANCE ON TERMINATION

38.1 Handover on termination

38.1.1 During the 12 months preceding the expiry of a Service Agreement awarded under this Supplier Agreement or after the relevant Customer has given notice to terminate any such Service Agreement or at any other time as directed by a Customer, and within 15 working days of being so requested by the Customer, the Service Provider shall fully and accurately disclose to the relevant Customer any and all information in relation to all Staff who are Relevant Employees as the Customer 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 each Customer pursuant to Clause 38.1.1 and authorises the Customer 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 any Service Agreement awarded under this Supplier Agreement where notice to terminate any such Service Agreement for whatever reason has been given, the Service Provider shall allow the relevant Customer or such other persons as may be authorised by the Customer to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Customer may reasonably request.
- 38.1.4 During the 12 months preceding the expiry of a Service Agreement awarded under this Supplier Agreement or where notice to terminate any such Service Agreement for whatever reason has been given, the Service Provider shall not without the prior written consent of the relevant Customer 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 each Customer and any Replacement Service Provider and keep each Customer 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 that Customer and any Replacement Service Provider shall take all reasonable steps to mitigate, awarded against or incurred or paid by that Customer 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 a Service Agreement awarded under it.

38.3 Sub-contractors

In the event that the Service Provider enters into any sub-contract in connection a Service Agreement awarded under this Supplier Agreement, 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 each Customer and keep each Customer 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 that Customer as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

SCHEDULES

1. THE COUNCIL'S AUTHORISED OFFICER'S DETAILS
2. SELF-BILLING PROCEDURE
3. SAMPLE SERVICE AGREEMENT

SCHEDULE 1

THE COUNCIL'S AUTHORISED OFFICER'S DETAILS

Name Nneka Keazor

Position Transport & Travel Contracts
Team Manager

Address Children's Services
Haringey Council
Alexandra House 2nd Floor
10 Station Rd
London N22 7TR

Tel. 020 84895768

Email nneka.keazor@haringey.gov.uk

SCHEDULE 2

SELF-BILLING PROCEDURE

1. The Service Provider agrees:
 - i. subject to paragraph 9, to complete and submit on the Application, at weekly intervals or such other regular intervals as shall be determined by the relevant Customer, a Service Receipt relating to the period preceding its submission;
 - ii. to accept the electronic delivery of Self-Billing Invoices raised on its behalf by the relevant Customer in respect of Services provided to the Customer based on the Service Receipts submitted under paragraph (i);
 - iii. not to issue VAT invoices in respect of the Services;
 - iv. where for internal compliance reasons the Service Provider raises dummy invoices, that it will reconcile such dummy invoices against the Self-Billing Invoices;
 - v. to reconcile its accounts with any factoring company as may be applicable from time to time;
 - vi. to only submit a paper-copy Service Receipt where pre-agreed in writing with the relevant Customer;
 - vii. subject to (vi) above, to ensure the Application's Service Receipt submission system is used to capture all hours worked in the provision of the Services;
 - viii. to ensure that hours, hour types, rates and expenses are verified prior to submission of Service Receipts;
 - ix. to raise any discrepancies between a Self-Billing Invoice raised by the relevant Customer and invoicing data in its internal records within seven (7) days of its receipt of such Self-Billing Invoice;
 - x. to notify the relevant Customer immediately if it changes its VAT registration number, ceases to be VAT registered or sells or otherwise disposes of all or part of its business;
 - xi. to respond to any request for confirmation of its VAT registration details within seven (7) days of receipt of the request.

2. The Service Provider agrees and acknowledges that:
 - i. any Customer obligations under this Self-Billing Procedure may be carried out on its behalf via the Customer's third-party payment service provider, adam;

- ii. where there is a material breach of paragraph 1 above, the relevant Customer may in its sole discretion delay processing payment of the Charges due to the Service Provider under the Self-Billing Invoice that the breach pertains to until or unless the breach is remedied.
3. The Service Provider warrants the accuracy of the information it completes and uploads within the Application including but not limited to the bank details it submits and undertakes to inform each Customer immediately of any changes to this information.
4. Each Customer agrees:
 - i. to only raise a Self-Billing Invoice on behalf of the Service Provider once an appropriate Service Receipt has been created and agreed between the parties within the Application;
 - ii. wherever reasonably possible, to deliver a valid Self-Billing Invoice electronically to the Service Provider at weekly intervals or such other regular intervals as may be determined by the relevant Customer;
 - iii. to include on each such invoice the Service Provider's name, address and VAT registration number, invoice total and details of applicable VAT at the prevailing rate;
 - iv. to inform the Service Provider of any relevant changes to the Customer's VAT registration status and to agree a new Self-Billing Procedure with the Service Provider should this be necessary as a result.
5. Each Customer will not accept any liability for payment of any of the Service Provider's services where the Service Provider does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the Application's online Service Receipt system, SProc.Net, or such other application as directed by the relevant Customer from time to time.
6. For the avoidance of doubt, any payment properly due to the Service Provider will be made in accordance with the terms and conditions of any Service Agreement and/or this Supplier Agreement (as appropriate).
7. The Parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue and Customs in respect of self-billing invoicing procedures.
8. For the avoidance of doubt, this Self-Billing Procedure shall continue to apply as long as any Service Agreement is active but shall be subject to annual review by the Parties.
9. In the event that the Service Provider is unable (having made reasonable endeavours to do so) to complete and submit on the Application a Service Receipt at such interval as is required in accordance with paragraph 1(i) then the Service Provider may retrospectively complete and submit on the Application a Service Receipt in respect of the relevant Services provided that it does so as soon as reasonably practicable.

SCHEDULE 3

SAMPLE SERVICE AGREEMENT

Service Agreement - # SA67585 (Status: Active)



Service Agreement #: SA67585
 Service Template: Ad-Hoc Services
 Supplier: 765 testing - 1 test road
 Client: London Borough of Haringey
 Client Location: London Borough of Haringey
 Status: Active
 Requirement #: RQ84835
 Offer #: OF168107

Supplier Contact: LBH TA
 Client Owner: Nneka Keazor
 Client Manager: Nneka Keazor

Start Date: 02/09/2018
 End Date: 28/06/2019

Pick Up: NN12
 Supplier Escorts:
 Number Of Passengers: 3.00
 Final Drop Off: NN13
 Route Code/ Job Number: 123456789
 PO Number/ Booking Cost Code: 123456789

This Service Agreement is subject to the terms and conditions of Haringey Council's Supplier Agreement accepted by the Supplier at the point of Accreditation and Enrolment, as supplemented by any further service details and by the pricing details set out respectively in the Requirement and the Offer referred to above.

Service Agreement Info

- ▶ Cost Codes **1**
- ▶ Service Agreement Documents **0**
- ▶ Service Agreement Notes **0**
- ▶ Subjective Codes **1**

Admin

- ▶ Adjustment Receipt Approvers **1**
- ▶ Change Order Approvers **4**
- ▶ Printable Detail
- ▶ Rate Ranges **0**
- ▶ Receipt Approvers **2**
- ▶ Receipt Item Categories **1**
- ▶ Show Report Map

Transactions

- ▶ All Intermissions **0**
- ▶ Change Orders **0**
- ▶ Transaction Activity

Change Orders **0**

