

Dated

17 January

2017

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON**
- (2) **ADVERDE LIMITED**

Contract for grounds maintenance (Lot 2)

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SECTION A: PRELIMINARY

THE CONTRACT is made on the 17th day of January 2017

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Bernard Weatherill House, 8 Mint Walk, Croydon, CR0 1EA (the "**Council**"); and
- (2) **DVERDE LIMITED** (Company Number 03542918) whose registered office is at Landscapes House 3 Rye Hill Office Park, Birmingham Road, Allesley, Coventry, West Midlands, CV5 9AB (the "**Contractor**"),

each being a "**Party**" (and, together, the "**Parties**").

BACKGROUND

- (A) The South London Waste Partnership (the "**Partnership**") is formed between the London Boroughs of Croydon, Merton and Sutton and the Royal Borough of Kingston upon Thames.
- (B) Each Borough has various duties and powers pursuant to the EPA 1990 and other relevant legislation in respect of (without limitation) waste collection, keeping land in their area clear of litter and refuse, keeping public open space in their area in a good and decent state, trees and the provision of allotments, and each is a burial authority under section 214 of the Local Government Act 1972.
- (C) The Partnership has delegated to the Council, or its successors, the function to enter into this Contract as the contracting authority on behalf of the Partnership.
- (D) The Partnership, through its lead authority The Mayor and Burgesses of the London Borough of Croydon (the "**Council**") wishes to engage the Contractor to provide the Services identified in **Schedule 1** (Specification) (as those terms are defined below).

1 DEFINITIONS AND INTERPRETATION

- 1.1 In the Contract Documents, except where the context otherwise requires, the following expressions shall have the meaning hereby ascribed to them:

ACORN

the Contractor's real-time service management system, which will schedule and record work undertaken and progress made, by (or on behalf of) the Contractor in respect of this Contract, which the Boroughs will have access to throughout the Contract Period in accordance with the Specification and the ICT Implementation Plan.

Ad Hoc Asset Investment and Project Services	those Services more fully described as 'Service Category I' in paragraph 13 of Schedule 1 (Specification).
Ad Hoc Asset Investment and Project Services Payment (AHI)	means the payment for Ad Hoc Asset Investment and Project Services as set out at paragraph 11.1 of Schedule 5 (Payment Mechanism).
Ad Hoc Cemeteries Services Payment (ACE_i)	means the payment for ad hoc Cemeteries Services as set out at paragraph 9.1.2 of Schedule 5 (Payment Mechanism).
Ad Hoc Commissioned Labour Services	those Services more fully described as 'Service Category J' in paragraph 14 of Schedule 1 (Specification).
Ad Hoc Commissioned Labour Services Payment (ACL_i)	means the payment for Ad Hoc Commissioned Labour Services as set out at paragraph 12.1 of Schedule 5 (Payment Mechanism).
Ad Hoc Horticultural Services Payment (AHS_i)	means the payment for ad hoc Horticultural Services as set out at paragraph 3.1.2 of Schedule 5 (Payment Mechanism).
Ad Hoc Works Order	means a request for ad hoc Services made in accordance with Appendix F (Ad Hoc Works Order) of Schedule 1 (Specification).
Ad Hoc Works Order Form	means the form set out in Appendix 1 to Appendix F (Ad Hoc Works Orders) of Schedule 1 (Specification).
Adjoining Owners	means all owners and occupiers of Contract Locations.
Administering Authority	the Council in its capacity as administering authority of the London Borough of Croydon Pension Fund.
Admission Agreement	an admission agreement between the Administering Authority and the Contractor entered into in accordance with the LGPS Regulations.
Admitted Body Status	participation in the LGPS as a body specified in the LGPS Regulations.
Adventure Golf Guarantee	means the Guaranteed Income Payment relating to

Payment (AG_i)	adventure golf as set out at paragraph 13.1.3 of Schedule 5 (Payment Mechanism).
Agreement on Liabilities	shall have the meaning assigned to it in clause 22.27.
Allocated Opening Time	means, in respect of a Site which (in accordance with Appendix C (Existing Services Information) to the Specification) is to be locked overnight, the time (as set out in Appendix C (Existing Services Information) to the Specification, or as otherwise agreed in writing with the Authorised Officer from time to time), by which such Site must be Open.
Annual Allotments Rent Payment (AAR_i)	means the payment in respect of allotments, as set out at paragraph 3.2 of Schedule 5 (Payment Mechanism).
Annual Conservation Plan	a list of conservation priorities for each Borough for the forthcoming year, created in conjunction with the relevant conservation bodies (which may include Organised Groups) and the relevant Boroughs' biodiversity officer(s) (or equivalent) and agreed between the Authorised Officer and the Contractor at the Annual Review.
Annual Contract Payment	means, in each Contract Year, the sum set out in row 29 ('Total Annual Contract Payment') of the sheet entitled 'Pf 1 – NPV' in the Base Case, for the relevant Contract Year.
Annual Payments	means those payments more fully described in paragraph 2.2 of Schedule 5 (Payment Mechanism).
Annual Report	the annual report to be provided by the Contractor to the Authorised Officer pursuant to clause 29 and in accordance with Schedule 6 (Reporting Requirements).
Annual Review	the annual review of the operation and performance by the Contractor of the Services provided under the Contract pursuant to clause 40 .
Arboriculture Service Types	the different Arboriculture Services work types listed in the Schedule of Rates for Service Category F.

Arboriculture Services	those Services more fully described as 'Service Category F' in paragraph 10 of Schedule 1 (Specification).
Arboriculture Services Payment (ARB_i)	means the payment for Arboriculture Services as set out at paragraph 8.1 of Schedule 5 (Payment Mechanism).
Asset	any vehicle, equipment, material and/or consumables, including Council Assets, used from time to time in the provision of the Services.
Asset Register	the full and accurate list of assets (including Council Assets) used from time to time in the provision of the Services, to be recorded by the Contractor in the form set out in Schedule 11 (Form of Asset Register) (or such other form as agreed between the Parties in writing) as updated and maintained by the Contractor in accordance with clause 23.3 (Vehicles, Equipment, Materials and Consumables).
Authorised Officer	the person(s) notified from time to time by the Council to the Contractor.
Base Case	means the transparent, fully auditable financial model (including a written record of any assumptions and model inputs) set out at Part 1 of Schedule 10 (Base Case and Revision of Base Case) (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Monthly Contract Payment, to be read and interpreted in accordance with the instructions set out at Part 2 of Schedule 10 (Base Case and Revision of Base Case).
Baseline Asset and Conditions Survey	the survey to be conducted by the Contractor (acting reasonably at all times) during the Mobilisation Period, to accurately record the standard of repair of all assets listed in the Asset Register.
Bill(s) of Quantity	means an Ad Hoc Works Order Form.
Biodiversity Action Plan	the biodiversity action plan created for each Borough by the relevant Boroughs' biodiversity officer, as updated

from time to time.

Borough	each of the London Boroughs of Croydon, Merton and Sutton and the Royal Borough of Kingston upon Thames and "relevant Borough" or "relevant Boroughs" means such Borough or Boroughs as the context requires.
Business Continuity Plan	the business continuity plan to be provided by the Contractor, agreed between the Parties and adhered to in accordance with Schedule 1 (Specification).
Business Day	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.
Business Development Plan	the Contractor's plan for progress and change (which shall include proposals for the generation of additional income to be shared with the Council and the Boroughs) over the remainder of the Contract Period, to be updated on an annual basis in accordance with clause 29 (Annual Report and Business Development Plan).
Capital Expenditure	any expenditure which falls to be treated as capital expenditure in accordance with International Financial Reporting Standards (IFRS) from time to time.
Cemeteries Services	those Services more fully described as 'Service Category G' in paragraph 11 of Schedule 1 (Specification).
Cemeteries Services Guarantee Payment (CEGP)	means the Guaranteed Income Payment relating to Cemeteries Services as set out at paragraph 13.1.2 of Schedule 5 (Payment Mechanism).
Cemeteries Services Payment (CE_i)	means the payment for Cemeteries Services as set out at paragraph 9 of Schedule 5 (Payment Mechanism).
Cessation Date	any date (other than the date of termination of this Contract) on which the Contractor ceases to have Admitted Body Status.
Change in Law	the coming into effect after the Contract Date, of: (a) Legislation; or

(b) any applicable judgment of a relevant court of law which changes a binding precedent.

Change in Ownership

means:

(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or

(b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above.

Change Mechanism

the Contractor's change mechanism (in a form similar to that proposed in the Contractor's final tender submission in the procurement for this Contract), which the Parties may use as a tool for reference throughout the Contract Period.

CHAS

the Contractors Health and Safety Assessment Scheme.

Clinical Waste

has the meaning given in the Controlled Waste (England & Wales) Regulations 2012 (SI 2012/811).

Cleaning and General Maintenance Services

those Services more fully described as 'Service Category D' in paragraph 8 of **Schedule 1** (Specification).

Cleaning and General Maintenance Services Payment (CL_i)

means the payment for Cleaning and General Maintenance Services as set out at paragraph 6.1 of **Schedule 5** (Payment Mechanism).

Code

the Code of Practice for Litter and Refuse issued by the Secretary of State under section 89(7) of the Environmental Protection Act 1990 or any successive Legislation.

Commercial Waste

shall have the meaning given in section 75 of the EPA 1990 and the Controlled Waste (England and Wales)

	Regulations 2012 (SI 2012/811).
Commercially Sensitive Information	the subset of Confidential Information listed in Schedule 8 (Commercially Sensitive Information).
Communications and Engagement Plan (Encouraging Participation)	means the plan more fully described in Schedule 16 (Communications and Stakeholder Engagement).
Communications and Engagement Plan (Organised Groups)	means the plan more fully described in Schedule 16 (Communications and Stakeholder Engagement).
Communications and Stakeholder Engagement Protocols	means the communications and stakeholder engagement protocols set out in Appendix 1 (Communications and Stakeholder Engagement Protocols) of Schedule 16 (Communications and Stakeholder Engagement).
Compensation Regulations	the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 and the Local Government Pension Scheme Regulations 2013.
Complaint	any expression of dissatisfaction however minor, with any part of the Services provided by the Contractor, made by or on behalf of a Service User.
Composting	the biological treatment of waste where the decomposition and stabilisation of the waste is achieved through microbial activity from an aerobic or anaerobic process and the terms " Compost ", " Composted " and " Compostable " shall be interpreted accordingly.
Conditions of Contract	the conditions of contract contained within clauses 1 to 72 .
Conduits	means all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus and includes any fixtures,

louvers, cowls and any other ancillary apparatus.

Confidential Information

(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to, prejudice the commercial interests of a person, trade secrets, Intellectual Property Rights, know-how, of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and

(b) Commercially Sensitive Information.

Contingency Delivery Point

means any delivery point(s) notified to the Contractor by the Authorised Officer from time to time for contingency use.

Contract

the agreement entered into between the Council and the Contractor embodied in the Contract Documents.

Contract Date

the date of this Contract.

Contract Documents

these Conditions of Contract and the Schedules.

Contract Locations

means the Sites, Depots, and/or Service User Facilities, as the context required. The term "**Contract Location**" shall be construed accordingly.

Contract Location Conditions

means the conditions of the Contract Locations including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions.

Contract Manager

[REDACTED]

Contract Month

means a Month during the Contract Period.

Contract Period

means the period from and including the Contract Date to

and including the Expiry Date, unless terminated earlier.

Contract Waste

means:

- (a) Household Waste;
 - (b) Commercial Waste;
 - (c) Litter; and
 - (d) any other Waste as directed by the Authorised Officer,
- arising in the Contract Locations and/or available to the Contractor as a result of the performance of any of the Service Categories.

Contract Year

means each year of the Contract Period commencing on the Services Commencement Date (or the anniversary thereof).

Contractor Default

means any one of the following events:

- (a) a breach by the Contractor of any of its obligations under the Contract which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Contractor be wound up or a resolution for a voluntary winding up of the Contractor passed;
- (d) any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts, or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor;
- (f) an administration order is made or an administrator is

appointed in respect of the Contractor or a notice of intention to appoint an administrator is filed at court;

- (g) the Contractor abandons the Contract;
- (h) a breach by the Contractor of its obligations to take out and maintain the insurances required under the Contract;
- (i) a breach by the Contractor of its obligations under **clause 2** (Parent Company Guarantee);
- (j) a breach by the Contractor of its obligations under **clause 48** (Termination on Corrupt Gifts and Fraud);
- (k) a breach of breach by the Contractor of its obligations under **clause 57.2** (Change in Ownership);
- (l) the Contractor incurs Deductions pursuant to **Appendix A** (Service Performance Indicators) to **Schedule 1** (Specification) (but not including any Deductions incurred in respect of SPI 1(c) or SPI 1(d) in any Contract Year) in excess of £75,000 in any Contract Year;
- (m) a breach of **clause 23.3** (Vehicles, Equipment Materials and Consumables) occurs;
- (n) the Contractor commits a material breach of the provisions of **clause 30** (Third Party Income);
- (o) the Contractor commits a material breach of the General Obligations; or
- (p) the Contractor commits a material breach of its obligations in respect of any Service Category.

Contractor Default Notice a written notice issued to the Contract Manager by the Authorised Officer pursuant to **clause 46**.

Contractor Liaison Meeting has the meaning given in **clause 39.1(d)**.

Contractor Premises any property owned or leased or otherwise in the

possession of the Contractor which is used by the Contractor for the performance of the Services.

Contractor Related Party	means the Contractor, its ultimate parent or any of its ultimate parent's subsidiaries, and the Contractor's (or any of its ultimate parent's, or ultimate parent's subsidiaries') agents and Sub-Contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen when acting in relation to the Services and any person involved with the Services at the express or implied invitation of the Contractor or any subsidiary of the Contractor's ultimate parent (other than the Council or a Borough).
Contractor Scheme	the retirement benefits scheme established or to be established under clause 15.7 .
Contractor Variation	any change requested by the Contractor pursuant to clause 24.12 .
Contractor Variation Proposal	a notice given by the Contractor pursuant to clause 24.12 .
Core Cemeteries Services Payment (CCE_i)	means the payment for core Cemeteries Services as set out at paragraph 9.1.1 of Schedule 5 (Payment Mechanism).
Core Horticultural Services Payment (CHS_i)	means the payment for core Horticultural Services as set out at paragraph 3.1.1 of Schedule 5 (Payment Mechanism).
Council Assets	the assets listed within Schedule 9 (Council Assets).
Council Default	one of the following events: (a) a failure by the Council to make payment of any amount of money exceeding the aggregate of two (2) consecutive Monthly Contract Payments that is due and payable by the Council under the Contract within twenty (20) Business Days of service of a formal written demand by the Contractor, where that amount

fell due and payable two (2) (or more) Months prior to the date of service of the written demand; or

(b) a breach by the Council of its obligations under the Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under the Contract for a continuous period of two (2) Months.

Council Default Notice a written notice issued to the Authorised Officer by the Contract Manager pursuant to **clause 47**.

Council Premises any property owned or leased or otherwise in the possession of the relevant Borough consisting of offices, buildings and land, which is used by the Contractor, whether exclusively or together with the Boroughs or any other third party, for the performance of the Services.

Council Variation a change in the Services requested by the Council which the Contractor is obliged to implement under **clause 24.1**.

Council Variation Order a notice served by the Council in accordance with **clause 24.2**.

CRM means customer relationship management.

Croydon the London Borough of Croydon.

Customer Satisfaction Survey the survey of customer satisfaction in respect of the parks and green spaces in Merton and Sutton, to be carried out in accordance with the Council's requirements from time to time by the Contractor and an independent third party market researcher; such survey is to be carried out on an annual basis (or at such other frequency as agreed between the Parties from time to time).

Customer Survey Payment (CSP₁) means the payment in relation to the Perpetual Customer Survey as set out at paragraph 18.1 of **Schedule 5** (Payment Mechanism).

Day a calendar day for the period from midnight to midnight.

Deduction	means a performance deduction as set out in Appendix A (Service Performance Indicators) to Schedule 1 (Specification) .
Deductions Payment (D_i)	means the payment in respect of Deductions incurred by the Contractor as set out at paragraph 16.1 of Schedule 5 (Payment Mechanism) .
Delivery Point	means the 'Viridor Beddington' site at 105 Beddington Lane, Beddington CR0 4TD or any other delivery point(s) (including any Contingency Delivery Point(s)) as notified to the Contractor by the Authorised Officer from time to time.
Depots	<p>the following depots (used for the storage of vehicles and equipment in connection with the Services) and buildings and/or stores (to be used by the Staff during their working hours and for the purpose of carrying out their duties in accordance with the provision of the Services and/or for the local storage of some equipment used in the delivery of the Services) located in or around the Sites:</p> <ul style="list-style-type: none"> (a) the depot at Hillcross Avenue, Morden SM4 4AZ; (b) the depot at Canons Recreation Ground, Madeira Road, Mitcham, Merton; (c) the depot at the Pavillion, Wimbledon Park, Revelstoke Road, Merton SW19 5AF; and (d) the depot at Cheam Park, Tudor Close, Cheam, Sutton SM3 8QS, (e) the depot at Cannizaro Park, Merton, SW19 4UE (f) depot at John Innes Park, Mostyn Road, Merton Park, SW19 3LL; (g) the depot at Merton and Sutton Joint Cemetery, Garth Road, Morden, SM4 4NW;

- (h) the depot at Manor Park, Manor Park Lodge, Sutton, SM1 4AH;
- (i) the depot at Beddington Park, Wallington, Sutton, SM6 7NN;
- (j) the depot at Oaks Park, Croydon Lane, Banstead, Sutton, SM7 3BA;
- (k) the depot at Sutton Cemetery, Alcorn Close, Sutton, SM3 9PX;
- (l) the depot at Bandon Hill Cemetery, Plough Lane, Wellington, Sutton, SM6 8JQ; and
- (m) the depot at London Road Cemetery, London Road, Mitcham, CR4 3LB,

in each case as more fully described in the relevant Lease (and the term "**Depot**" shall be construed accordingly).

Detritus

shall have the meaning given to it in the Code.

Dispute Resolution Procedure

means the procedure for resolving disputes in **clauses 52 and 53**.

Eligible Employees

means the Relevant Employees who are:

- (a) active members, or eligible to be active members of, the LGPS immediately prior to any Relevant Transfer Date; or
- (b) active members, or eligible to be active members of, a broadly comparable pension scheme provided by their existing employer on any Relevant Transfer Date,

and in all cases are Relevant Employees who were employees of the Council or any Borough who as a result of the application of TUPE in relation to the provision of services which become the Services became employees of someone other than the Council or any Borough.

Emergency Response Plan	the up-to-date emergency response plan for Merton or Sutton (as applicable).
Employment Liabilities	any costs, claims, demands, fines or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities (including any incurred as a result of an indemnity or warranty given or to be given by the Council, a Borough or a Future Service Provider).
Environmental Information Regulations	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.
Environmental Laws	means: <ul style="list-style-type: none"> (a) Legislation; and/or (b) Guidance (relating to England and which the Contractor is legally bound to comply with);and/or (c) the requirements of any governmental or administrative authority or any Relevant Authority, in each case, relating to pollution or protection of the environment and which affects the construction, management, operation or maintenance of the Contract Locations.
Environmental Permit	a permit issued by the Environment Agency under the terms of the Environmental Permitting (England and Wales) Regulations 2010.
EPA 1990	the Environmental Protection Act 1990 (as amended)
Estimate	has the meaning given in clause 24.3(a) .
Event Plan	the event-specific plan developed by a Borough.
Events Services	those Services more fully described as 'Service Category E' in paragraph 9 of Schedule 1 (Specification).

Events Services Payment (EV_i)	means the payment for Events Services as set out at paragraph 7.1 of Schedule 5 (Payment Mechanism).
Excess Revenue Share Payment (ERS_i)	means the payment for excess revenue share as set out at paragraph 14 of Schedule 5 (Payment Mechanism).
Exit Plan	the exit plan described in clause 51.1 which shall form part of Schedule 4 (Services Delivery Plan).
Expiry Date	shall mean the date which is eight (8) years less one (1) day from the Services Commencement Date, unless the Parties agree to extend the Contract in accordance with clause 3.2 , in which case the Expiry Date shall mean the date which is agreed by the Parties as being the last day of the extended Contract Period (provided that such date shall be no later than the Long Stop Termination Date).
Fees Regulations	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
Fly-Posting	all materials illegally fly-posted or attached to surfaces on land within the Boroughs' administrative area, and any implements or components used to affix such materials to the relevant surface. The terms " Fly-Post ", " Fly-Posted ", " Fly-Poster " or " Fly-Posting " shall be construed accordingly.
Fly Tipped Material	all materials deposited illegally on land within the Boroughs' administrative area; for the avoidance of doubt, deposits of building rubble, or the contents of skips shall constitute Fly Tipped Material, and Abandoned Vehicles shall not constitute Fly Tipped Material. The terms " Fly-Tip ", " Fly-Tipped ", " Fly-Tipper " or " Fly-Tipping " shall be construed accordingly.
FOIA	the Freedom of Information Act 2000 and any subordinate Legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time (including the Fees Regulations) together with any guidance and/or codes of

practice issued by the Information Commissioner or relevant Government Department in relation to such Act.

Force Majeure Event

any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents (including without limitation, act of God, war or national emergency, an act of terrorism, fire, explosion, flood, storm or epidemic) but only to the extent that such act, event, omission or accident is beyond the reasonable control of the affected Party and excluding always any industrial action and/or dispute relating to the Contractor or any other failure of the Contractor or a sub-contractor of the Contractor.

Future Service Provider

any party which provides services the same as or similar to all or part of the Services from, on or around the Termination Date.

General Obligations

the general requirements that the Contractor shall comply with in the provision of the Services, as set out in paragraph 3 of **Schedule 1** (Specification).

Good Industry Practice

the exercise of that degree of skill, diligence, prudence, operating practice and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Contractor under the same or similar circumstances at the relevant time for such exercise.

Green Flag

the nationally recognised 'Green Flag' award scheme.

Green Waste

means any Waste produced in the management and performance of the Services comprising of (amongst other things and without limitation) a combination of leaves, wood, grass clippings, prunings, discarded plants, soil and other natural organic matter or horticultural waste discarded or arising from Contract Locations.

Guarantee Criteria

shall be that:

(a) the Guarantor's last statutory accounts shall demonstrate that the Guarantor has consolidated net assets of not less than £10,000,000 (ten million pounds sterling) (Indexed); and

(b) the Guarantor files its statutory accounts in accordance with the provisions of relevant Legislation provided that this criterion shall be satisfied if the Guarantor files its accounts up to and including the twentieth (20th) Business Day following the date required by Legislation.

Guaranteed Income Indexation Factor (GI_I) means the indexation factor in respect of the Guaranteed Income Payment as set out at paragraph 20.1.3 of **Schedule 5** (Payment Mechanism).

Guaranteed Income Payment (GI_P) means the payment in respect of guaranteed income as set out at paragraph 13.1 of **Schedule 5** (Payment Mechanism).

Guarantor at the Contract Date shall be Idverde SAS a company incorporated under the laws of France (Company No. 339 609 661 Nanterre) whose registered office is at 38 Rue Jacques Ibert, 92300 Levallois-Perret, Paris.

Guidance any applicable guidance or directions issued or made by a Relevant Authority with which the Contractor is bound to comply.

Hazardous Waste waste as defined by the Hazardous Waste Regulations England and Wales (SI/2005/894) and the Hazardous Waste Directive 91/689/EEC as amended from time to time, and the term "**Hazardous**" shall be interpreted accordingly.

High Quality means the standard described in sections H1 and H2 of **Appendix C** (Existing Services Information) to **Schedule 1** (Specification).

Horticultural Services those Services more fully described as 'Service Category

	A' in paragraph 5 of Schedule 1 (Specification).
Horticultural Services Payment (HS_i)	means the payment for Horticultural Services as set out at paragraph 3.1 of Schedule 5 (Payment Mechanism).
Household Waste	shall have the meaning given in section 75(5) of the Environmental Protection Act 1990 and the Controlled Waste (England & Wales) Regulations 2012 (SI 2012/811), and (for the avoidance of doubt) includes Residual Waste and Recyclates, unless the Contractor is notified otherwise by the Authorised Officer from time to time.
ICCM	the Institute of Cemetery and Crematorium Management.
ICT Implementation Plan	means the plan set out at Schedule 17 (ICT Implementation Plan).
Indexation Cap	the cap on indexation, as set out in paragraph 20.1.2 of Schedule 5 (Payment Mechanism).
Indexed	shall mean indexed annually each 1 February, from February 2016, in accordance with RPIx (and the base date for such indexation shall be 1 February 2015).
Information	has the meaning given under section 84 of FOIA.
Intellectual Property Rights	all copyright, patents or patents rights, registered and unregistered design rights, database rights, trademarks, service marks and all other intellectual or industrial property rights wherever in the world enforceable.
Invasive Species Management Plan	means the invasive species management plan set out in Schedule 4 (Services Delivery Plan).
Kingston	the Royal Borough of Kingston.
Lease Completion Date	the relevant date(s) that the Leases are executed and dated by the relevant parties.
Leases	has the meaning as defined within clause 22.9 and Lease means any one of those Leases.

Legislation	any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom.
LGPS	the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time.
LGPS Actuary	the actuary appointed to the LGPS fund administered by the Administering Authority.
LGPS Regulations	the Local Government Pension Scheme Regulations 2013.
Licences	means all licences, permissions and permits required in order to perform the Services in accordance with the provisions of this Contract, including without limitation any Environmental Permit and/or planning permission, and the term "Licence" shall be construed accordingly.
Litter	anything that is dropped or thrown, left or deposited that causes defacement in a public place. Litter includes mainly synthetic material, often associated with smoking, eating and drinking, and includes Recyclates. Litter may also include putrescible or Clinical Wastes or faeces such as dog, bird and other animal faeces.
Litter Bin	means bins for Litter and/or Waste and/or Recyclate and/or dog waste.
Local Government Ombudsman	means the local government ombudsman appointed in accordance with the Local Government Act 1974 (or any equivalent body responsible for investigating complaints made against public bodies from time to time).
London Living Wage	the London living wage as amended or updated from time to time by, or on behalf of, the Greater London Authority

(or any equivalent body responsible for setting the London living wage from time to time).

Long Stop Termination Date the date which is twenty four (24) years less one (1) day from the Contract Date.

Lot 1 Contract means the contract for Contract for waste and recycle collection and marketing, winter maintenance, vehicle maintenance and street cleaning services between the Council and the Lot 1 Contractor dated on or around the Contract Date (or such other date as notified to the Contractor from time to time by the Authorised Officer).

Lot 1 Contractor means the contractor for the Lot 1 Contract as notified to the to the Contractor by the Authorised Officer.

Merton the London Borough of Merton.

Mobilisation Period the period from and including the Contract Date to and including the day before the Services Commencement Date.

Mobilisation Plan the mobilisation plan as set out in **Schedule 2** (Mobilisation Plan).

Month a calendar month, and the term "**Monthly**" shall be construed accordingly.

Monthly Contract Payment (MCP) is as defined in paragraph 2 of **Schedule 5** (Payment Mechanism).

Monthly Contract Payment Indexation Factor (MPI) is as defined in paragraph 20 of **Schedule 5** (Payment Mechanism).

Monthly Report the Monthly report to be provided by the Contractor to the Authorised Officer pursuant to **clause 27** and in accordance with **Schedule 6** (Reporting Requirements).

National Accreditation Council for Certification Bodies means the United Kingdom Accreditation Service or any such other accreditation service with such powers from time to time.

National Non-Domestic Rates (NDR)	the national non-domestic rates charged by the relevant Borough from time to time.
Nature Conservation Services	those Services more fully described as 'Service Category H' in paragraph 12 of Schedule 1 (Specification).
Nature Conservation Services Payment (NC_i)	means the payment for Nature Conservation Services as set out at paragraph 10.1 of Schedule 5 (Payment Mechanism).
New Employees	those Staff who will be working alongside the Relevant Employees (where the latter were previously employees of a relevant Borough).
Open	means (in respect of a Site which (in accordance with Appendix C (Existing Services Information) to Schedule 1 (Specification)) is to be locked overnight) when all gates and/or entrances and/or exits to such Site are unlocked and open in order to allow full, free and unobstructed access to, from and through such Site.
Organised Group	means the list of groups (including local friends groups, sports groups and allotment societies) provided, and updated, by the Authorised Officer from time to time.
Partnership	the London Borough of Croydon, the London Borough of Sutton, the London Borough of Merton and the Royal Borough of Kingston, collectively known as the South London Waste Partnership.
Party	the Council and the Contractor so that " Party " shall mean either of them, and the term " Parties " shall be construed accordingly.
Pass Through Costs	means the pass through costs more fully described in paragraph 15 of Schedule 5 (Payment Mechanism).
Pass Through Costs Payment (PTC_i)	means the payment for the Pass Through Costs as set out in paragraph 15 of Schedule 5 (Payment Mechanism).

Payment Mechanism	means Schedule 5 (Payment Mechanism).
Pension Fund	the London Borough of Croydon Pension Fund.
Perpetual Customer Survey	means the customer survey carried out in accordance with Appendix E (Perpetual Customer Survey) to Schedule 1 (Specification).
Persistent Breach	means: <ul style="list-style-type: none"> (a) a breach for which a final warning notice has been issued pursuant to clause 46.5, which has continued or recurred three (3) or more times within six (6) Months after the date on which such final warning notice is served on the Contractor; or (b) a breach for which a formal warning notice has been issued pursuant to clause 46.8.
Play and Leisure Facilities Services	those Services more fully described as 'Service Category C' in paragraph 7 of Schedule 1 (Specification).
Play and Leisure Facilities Services Payment (PLF)	means the payment for Play and Leisure Facilities Services as set out at paragraph 5.1 of Schedule 5 (Payment Mechanism).
PPE	personal protective equipment.
Pre-Existing Services	means the Boroughs' existing services for parks and grounds maintenance prior to the Services Commencement Date.
Prohibited Act	(a) offering, giving or agreeing to give to any servant of the any of the Boroughs any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with the Council and/or the relevant Boroughs; or

- (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Council and/or the relevant Boroughs;
- (b) entering into the Contract or any other contract with the Council and/or the relevant Boroughs in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to the Contract or any other contract with the Council and/or any relevant Boroughs; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council and/or any relevant Borough.

PQMS the 'Performance Quality Monitoring System' for the Services as set out in **Appendix D** (Performance Quality Monitoring System) to **Schedule 1** (Specification).

PQMS Payment (PQMS) means the payment in relation to the PQMS as more fully described in paragraph 17.1 of **Schedule 5** (Payment Mechanism).

PQMS Target the target PQMS score to be agreed between the Parties for the next Contract Year at the Annual Review preceding such Contract Year.

PQMS Year	<p>means:</p> <p>(a) in the first Contract Year, the period from and including the Services Commencement Date, to and including 30 November in the first Contract Year; and</p> <p>(b) for the remainder of the Contract Period, the period from and including 1 December in any given Contract Year, to and including either: (i) 30 November in the subsequent Contract Year; or (ii) the final day of the Contract Period, whichever is earlier (and provided that a 'PQMS Year' cannot be longer than twelve (12) Contract Months).</p>
Rechargeable Services	<p>those Services for which the Boroughs may recharge the cost to third parties as set out in paragraph 1.6.3 of the Schedule 1 (Specification) and more fully described in Appendix 2 to Schedule 5 (Payment Mechanism).</p>
Recycle	<p>to treat, process or reprocess, in a production process, Recyclate (but, for the avoidance of doubt Recyclate shall not be regarded as Recycled where it is burnt as a fuel), and the terms "Recyclable", "Recycled" and "Recycling" shall be construed accordingly.</p>
Recyclate(s)	<p>any Household Waste materials collected separately or otherwise separated from Residual Waste that are capable of Reuse, Recycling or Composting.</p>
Relevant Authority	<p>any court within the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Government or Parliament of the United Kingdom or of the European Union including for the avoidance of doubt the Environment Agency and the Department for Environment, Food and Rural Affairs.</p>
Relevant Employee	<p>the persons employed wholly or mainly by:</p> <p>(a) the Council or any Borough prior to the Services Commencement Date in provision of services which</p>

become the Services; or

(b) a contractor to the Council or any Borough in provision of services which become the Services.

Relevant Regulatory Authority	means any Relevant Authority or other regulatory body exercising its powers under Environmental Laws.
Relevant Transfer Date	the date on which an Eligible Employee transfers to the Contractor.
Reporting Requirements	means the Contractor's reporting requirements as set out in Schedule 6 (Reporting Requirements).
Request for Information	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).
Required Action	has the meaning given in clause 25.3 .
Residual Waste	Household Waste materials that are not presented for Reuse, Recycling or Composting.
Resourcing and Event Plan	the detailed resourcing plan agreed between the Authorised Officer and the Contractor for each event for which the Contractor provides Events Services.
Restructuring Costs Payment (RCP)	means the payment of the sum to be paid by the Council to the Contractor in respect of the Actual Restructure Costs pursuant to clause 14A.4 (Restructuring Costs), as set out at paragraph 19 of Schedule 5 (Payment Mechanism).
Retention Fund Account	has the meaning given in clause 51.8(f) .
Returning Employees	has the meaning given in clause 14.10 .
Reuse	means items removed from the Contract Waste stream for their original or different purpose without Recycling or processing or treatment in a waste recovery operation (other than for repairing or refurbishing), and the terms " Reused ", " Reusable " and " Reusing " shall be construed

accordingly.

RHS	means the Royal Horticultural Society.
ROSPA	the Royal Society for the Prevention of Accidents.
RPIx	is the indexation factor more fully described in paragraph 20 of Schedule 5 (Payment Mechanism), or such other replacement indexation factor as agreed between the Parties in writing from time to time.
Safety Advisory Group	means any safety advisory group for an event, co-ordinated by Merton and/or Sutton and comprising of representatives from the Borough(s), the emergency services and any other relevant bodies for the event.
Schedule of Rates	the Schedule of Rates set out at Appendix 1 (Schedule of Rates) to Schedule 5 (Payment Mechanism).
Schedules	the Schedules 1 to 17 affixed hereto.
Service Category	means Service Category A, B, C, D, E, F, G, I and/or J as set out in Schedule 1 (Specification) as the context requires.
Service Category A	means the Horticultural Services.
Service Category B	means the Sports Pitches Services.
Service Category C	means the Play and Leisure Facilities Services.
Service Category D	means the Cleaning and General Maintenance Services.
Service Category E	means the Events Services.
Service Category F	means the Arboriculture Services.
Service Category G	means the Cemeteries Services.
Service Category H	means the Nature Conservation Services.
Service Category I	means Ad Hoc Asset Investment and Project Services.
Service Category J	means the Ad Hoc Commissioned Labour Services.

Service Charter	the service charter included in Appendix B (Service Charter) to Schedule 1 (Specification).
Service Improvement Notice	a notice issued pursuant to clause 35.2 .
Service Performance Indicators (SPIs)	the service performance indicators detailed in Appendix A (Service Performance Indicators) to Schedule 1 (Specification).
Service User	any person (including, for the avoidance of doubt, any company, organisation, local group, school or other education establishment) expressly or impliedly authorised to utilise the Services.
Service User Contact Centre	means the existing contact centre(s) for Service Users for the Boroughs and any other contact centre developed during the Contract Period to provide services in relation to any Service Category.
Service User Facilities	facilities located on or near Sites for the use of Service Users (including changing rooms, public toilets, pavilions, shelters and other facilities).
Services	each of the services to be provided by the Contractor to the Council under this Contract (including the services to be provided in accordance with each Service Category) and where the context permits, the term "Services" shall include any additional services implemented pursuant to the variation procedure in clause 24 . The term " Service " shall be construed accordingly.
Services Commencement Date	1 February 2017.
Services Delivery Plan	the first, and all subsequent revisions of the Contractor's means and method of performing the Services in accordance with its obligations under the Contract and set out in Schedule 4 (Services Delivery Plan), with all subsequent revisions to be subject to the Council's consent pursuant to clause 17 .

Sites	all parks, green spaces, allotments, cemeteries, open spaces and conservation areas, and all roundabouts, highway verges and central reservations within the administrative areas of Merton and Sutton as set out in sections H1 and H2 of Appendix C (Existing Services Information) to Schedule 1 (Specification), and including those notified to the Contractor by the Authorised Officer in writing from time to time (but excluding those expressly notified by the Authorised Officer as being excluded from this definition) at which the delivery of the Services by the Contractor shall take place pursuant to this Contract. The term " Site " shall be construed accordingly.
SLWP	means the Partnership.
Specification	the description of the Services set out in Schedule 1 (Specification) and any modification or variation thereof or addition thereto as may be agreed by the Parties.
SPI	means a Service Performance Indicator.
Sports Pitch	means a sports pitch in a park in the Sites, whether or not recognised as being full-sized for the sport in question, and the term " Sports Pitches " shall be construed accordingly.
Sports Pitches and Play and Leisure Facilities Services Guarantee Payment (SLGP₁)	means the Guaranteed Income Payment relating to Sports Pitches Services, and to Play and Leisure Facilities Services, as set out at paragraph 13.1.1 of Schedule 5 (Payment Mechanism).
Sports Pitches Services	those Services more fully described as 'Service Category B' in paragraph 6 of Schedule 1 (Specification).
Sports Pitches Services Payment (SP₁)	means the payment for Sports Pitches Services as set out at paragraph 4.1 of Schedule 5 (Payment Mechanism).
Staff	all employees or workers or self-employed persons employed or engaged, by or on behalf of the Contractor or any sub-contractor, from time to time in the performance

	of the Services.
Stakeholder Engagement Strategy	the Contractor's stakeholder engagement strategy as more fully described in Schedule 16 (Communications and Stakeholder Engagement).
Standard Quality	means the standard described in sections H1 and H2 of Appendix C (Existing Services Information) to Schedule 1 (Specification).
Sub-Contractor	any person or entity engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Services, including: I & J Bushell Limited (Company Number 05757506) whose registered office is at Plurenden Manor Farm, Plurenden Lane High Halden, Ashford, Kent, TN26 3JW.
Sustainability Plan	the Contractor's sustainability plan to be agreed and updated on an annual basis at the Annual Review, including targets for reducing utilities costs for the forthcoming Contract Year and an action plan for achieving such targets, and other 'green' initiatives.
Sutton	the London Borough of Sutton.
Termination Date	the date on which this Contract (or part thereof, as the case may be in the event of the Council exercising its rights to terminate part of this Contract) expires or terminates in accordance with its terms.
Third Party Income	the income generated by the Contractor as more fully described in Schedule 13 (Third Party Income).
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or the Acquired Rights Directive 2001/23/EC.
Waste	has the meaning given to it in section 75 of the EPA 1990.
Waste Transfer Note	means the written information required for the transfer of Waste pursuant to paragraph 35 of the Waste (England

and Wales) Regulations 2011 (SI 2011/988).

WEEE or Waste Electrical and Electronic Equipment has the meaning set out in the Waste Electrical and Electronic Equipment Regulations 2013 and "WEEE" shall be construed accordingly.

- 1.2 Reference to any Act of Parliament, or any order, regulation, Statute, Statutory Instrument, code of practice, bylaw, Directive or the like, whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it.
- 1.3 Headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.4 References to times of the day are to the time in London, England.
- 1.5 References to any building, Site, Depot, or Service User Facility whether by name, description, address or where termed "facility" or "premises" shall be construed as including the curtilage of that building for which the Contractor is responsible as detailed in **Schedule 1** (Specification).
- 1.6 References to clauses, sections and Schedules are unless otherwise provided, references to clauses, sections and Schedules referred to within these Conditions of Contract.
- 1.7 The masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 1.8 Any phrase in this Contract introduced by the term "include", "including", "in particular" or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.
- 1.9 The Council is acting as contracting authority on behalf of the Partnership and the Contractor acknowledges that in bringing any claim or other proceedings under this Contract, the Council may claim either or both in respect of its own losses and expenses and on behalf of the Partnership in respect of the losses and expenses incurred by all or any members of the Partnership

- 1.10 The Schedules to this Contract form part of this Contract.
- 1.11 In the event of any inconsistency the following order of precedence shall apply between the Contract Documents:
- (a) these Conditions of Contract;
 - (b) **Schedule 1** (Specification);
 - (c) **Schedule 5** (Payment Mechanism);
 - (d) **Schedule 13** (Third Party Income);
 - (e) other Schedules.

2 PARENT COMPANY GUARANTEE

- 2.1 The Contractor shall procure the execution on or before the date of this Contract (and as a condition of this Contract) of a parent company guarantee in favour of the Council in the form set out in **Schedule 7** (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Council.
- 2.2 Unless and until otherwise agreed by the Parties, the form of guarantee set out at **Schedule 7** (Parent Company Guarantee) shall be the relevant specified form for the purposes of this Contract.
- 2.3 If, during the Contract Period, the Guarantor shall cease to meet the Guarantee Criteria, the Contractor shall, within twenty (20) Business Days following a written request from the Council, at its own cost and expense, procure that a substitute Guarantor which at the relevant time and thereafter shall meet the Guarantee Criteria shall become the Guarantor and shall provide a parent company guarantee in favour of the Council substantially in the form set out in **Schedule 7** (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Council.
- 2.4 In the event that the Contractor shall fail to comply with **clause 2.3**, the Contractor shall within twenty (20) Business Days of a written request from the Council provide suitable alternative security to the Council throughout the Contract Period to a value of not less than £800,000 (eight hundred thousand pounds sterling) (Indexed) (which may take the form (without

limitation) of an alternative guarantee, the provision of funds or reserves by a third party under guarantee, performance bond, cash, deposit or escrow account) as the Council may approve (such approval not to be unreasonably withheld or delayed).

2.5 If the Contractor fails to provide the alternative security in accordance with the requirements of **clause 2.4**, and without prejudice to its rights under **clause 46**, the Council shall be entitled (but not obliged) (for so long as the failure continues) to procure such alternative security for itself and recover the cost of so doing from the Contractor, either by retaining some or all of any subsequent Monthly Contract Payment or by claiming the relevant amount as a debt.

2.6 If the Contractor shall fail to comply with any of the provisions of **clauses 2.1 and 2.4** then the Council may, without prejudice to any other right or remedy available to it, terminate the Contract by notice to the Contractor having immediate effect.

3 COMMENCEMENT AND DURATION OF THE CONTRACT

3.1 The Contract shall start on the Contract Date and shall end at the end of the Contract Period.

3.2 The Parties may extend the Contract Period for two further periods, each period being up to eight (8) years, by agreement in writing no later than forty-two (42) Months prior to the end of the then current Contract Period, provided that this Contract shall terminate automatically on the Long Stop Termination Date (unless terminated earlier in accordance with **clauses 2.6, 42, 46, 47 or 48** of the Contract or otherwise).

3.3 The Council may notify the Contractor on or around the date that is fifty-four (54) Months prior to the end of the then current Contract Period that it wishes to meet to discuss an extension to the then current Contract Period. The Contractor shall use all reasonable endeavours to provide information and resource to facilitate such discussions, with a view to concluding such discussions on or before the date falling forty-five (45) Months prior to the end of the then current Contract Period, in order to allow the Parties sufficient time (in the event that the Parties wish to extend the then current Contract Period) to proceed through their internal approvals processes and reach agreement in accordance with **clause 3.2**.

3.4 In the event that the Contract Period is extended pursuant to **clause 3.2**, the Council shall procure that the relevant Borough shall grant, and the Contractor shall accept, the First New Lease (as such term is defined within the Leases) in respect of each Depot in accordance with the relevant provisions within the Leases. In the event that the Contract Period is further extended pursuant to **clause 3.2**, the Council shall procure that the relevant Borough shall

grant, and the Contractor shall accept, the Second New Lease (as such term is defined within the Leases) in respect of each Depot in accordance with the relevant provisions within the Leases.

4 GENERAL OBLIGATIONS AND WARRANTIES

4.1 Each Party shall wherever possible endeavour to inform the other fully and as soon as possible of any circumstance which might lead to any subsequent material change in the provision of the Services or any other circumstance which could materially prejudice the provision of the Services.

4.2 Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty in relation to the Services and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity, lead to any liability under this Contract (howsoever arising) on the part of the Council to the Contractor.

4.3 The Contractor warrants and acknowledges that:

- (a) it will perform the Services in accordance with all relevant Legislation, Guidance and Good Industry Practice;
- (b) it has confirmed the accuracy and sufficiency of **Schedule 1** (Specification), **Schedule 4** (Services Delivery Plan) and **Schedule 5** (Payment Mechanism) which shall (subject to the terms of the Contract) cover all the Contractor's obligations under the Contract;
- (c) it will obtain and maintain all rights, agreements, approvals, consents, permits, Licences, facilities, permission and certificates lawfully or necessarily required in connection with the Services, except where the Council has advised in writing that it will obtain these;
- (d) during the Contract Period the Contractor shall provide the Services in a proper, skilful and workmanlike manner and shall employ sufficient persons sufficiently instructed, supervised and skilled to ensure that it can comply with its obligations under the Contract;

- (e) during the Contract Period the Contractor shall provide sufficient vehicles, plant, equipment and facilities to ensure that it can comply with its obligations under the Contract (and shall record any such assets in the Asset Register and update it accordingly throughout the Contract Period);
- (f) it has gathered all information necessary to perform its obligations under the Contract, including:
 - (i) information as to the nature, location, suitability and conditions of the Contract Locations at which, and the land on which, the Services will be provided (including hydrological, geological, geotechnical and sub-surface conditions); and
 - (ii) information relating to archaeological finds, areas of archaeological, scientific or natural interest, local conditions and facilities and the quality of existing structures;
- (g) it will inform the Council fully and as soon as possible of any circumstances which might prejudice the Contractor's ability to provide the Services whether temporarily or permanently including, without limitation, any litigation, arbitration, adjudication or mediation proceedings before or of any court, arbitrator or relevant authority which may be threatened or pending and shall, for so long as such proceedings subsist, keep the Council fully informed of the same;
- (h) it will not without the prior written consent of the Council (and whether by a single transaction or by a series of related transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets so as to materially affect the ability of the Contractor to perform its obligations under this Contract;
- (i) it will not cease to be resident in the United Kingdom or transfer the whole or in part its undertaking, business or trade outside the United Kingdom;
- (j) it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor (approved by the Council under **clause 57.3**);
- (k) it shall not materially change its business or cease its business;

- (l) it shall give the Council prior written notice in the event that it starts any other business which is materially different from that business to be carried on by it under this Contract;
- (m) it shall transact all its business on normal arm's length terms in the ordinary and usual course of business.

5 THE ROLE OF THE COUNCIL'S OFFICERS

- 5.1 The Authorised Officer may nominate representatives to be responsible for a particular Service Category, part of the Services or a particular type of work.
- 5.2 The Authorised Officer's representatives shall not have any power to vary any terms of the Contract nor relax any standard set out in the Contract but shall have power to instruct the Contractor to carry out work which is part of the Services. Any instructions shall be issued in accordance with **clauses 24 and 54**.
- 5.3 For the avoidance of doubt, the Authorised Officer or his representatives shall be entitled to monitor the performance of the Services by the Contractor and shall have the power to intervene in the case of any Contractor failure, using the mechanisms set out in **clauses 34, 35 and 37**.
- 5.4 If any clarification of the powers and duties of individual officers is required by the Contractor, then this shall be sought in writing from the Authorised Officer. The Contractor shall accept the authority of the officers to the extent that it has been delegated to them by the Authorised Officer.

SECTION B: REGULATORY

6 OBSERVANCE OF STATUTORY REQUIREMENTS

- 6.1 The Contractor shall comply with all relevant Legislation and Guidance in connection with the Services.
- 6.2 The Contractor shall obtain, maintain and comply fully with all Licences and consents.
- 6.3 The Contractor shall at all times in providing the Services comply with all legal duties imposed upon it whether arising by way of statute or common law, including without limitation any

provision in any Licence, conveyance, lease or licence.

- 6.4 The Contractor shall not voluntarily enter into any arrangement which might result in a conflict between a legal duty and its other obligations under the Contract.
- 6.5 The Contractor shall indemnify and keep indemnified the Council against all losses, liabilities, demands, damages, costs, claims and expenses suffered by the Council, the Partnership or a relevant Borough as a result of any breach of its obligations under **clauses 6.1 to 6.4** inclusive, and also against injury to, or death of, any person, or loss of, or damage to, any property, including property belonging to the Council or a relevant Borough or any other body or person lawfully authorised by the Council or a relevant Borough to be present at any Contract Location or any other facility operated by the Contractor in connection with the provision of the Services except and to the extent that it may arise out of the act, omission, default or negligence of the Council or a relevant Borough, their employees or agents, not being the Contractor or employed by the Contractor and except as aforesaid, against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 6.6 Where the Contractor wishes to alter the design, construction, operation, maintenance and/or management of any Contract Location then the Contractor shall in the first instance seek and gain the written approval of the Authorised Officer, and then the Contractor shall apply for a variation to the Environmental Permit and any other relevant Licences or consents for the relevant Contract Location(s).
- 6.7 The Council is the client for the purposes of the Contract on its own behalf and on behalf of the other Boroughs and the Contractor must at all times act in the best interests of the Council and the Boroughs so that the Council and the other Boroughs are not, as a result of the Contractor's actions or default, in breach of their own legal obligations.
- 6.8 The Contractor must inform the Authorised Officer in writing of any matter which comes to its notice and which in its opinion appears to or might contravene the provisions of any relevant Legislation, Good Industry Practice, Guidance or Licence.
- 6.9 The Contractor will supply expeditiously and at no charge to the Council on request any information, records or advice required by the Council to answer any complaints arising out of acts or omissions of the Contractor made to the Local Government Ombudsman about any matter dealt with on behalf of the Council by the Contractor. On such occasions the Authorised Officer will meet the Contractor and will ensure that the Contractor's reasonable

representations are made as part of any response to an Ombudsman's investigation.

- 6.10 The Contractor will be required to co-operate with the Local Government Ombudsman on any investigation concerning the Services.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Council and the Contractor shall not in connection with the performance of the Services, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any third party Intellectual Property Rights.

- 7.2 Any and all Intellectual Property Rights developed under the Contract or arising from the provision of the Services by the Contractor shall belong to the Council and the Contractor agrees that it shall execute without delay or cause to be executed (by its Staff if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council (or such other Borough as the Council may direct).

- 7.3 The Council hereby grants to the Contractor a non-exclusive, royalty free licence to use all Intellectual Property Rights referred to in **clause 7.2**, for the purposes of carrying out the Services during the Contract Period.

- 7.4 Copyright in the documents comprising the Contract shall vest in the Council but the Contractor may obtain or make at its own expense any further copies required solely for use by it in performing the Contract.

8 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 8.1 The Contractor hereby indemnifies the Council against all liabilities, losses, demands, damages, costs, claims, expenses suffered by the Council, the Partnership or a relevant Borough as a result of any infringement or alleged infringement of any copyright, patent, trade secret or other Intellectual Property Right of any third party arising from or out of the provision of the Services.

- 8.2 The Council shall promptly notify the Contractor if any claim or demand is made or action brought against the Council to which **clause 8.1** may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Council hereby agrees to grant to the Contractor exclusive control of any such

litigation and such negotiations.

- 8.3 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights to which **clause 8.1** may apply.
- 8.4 The Council hereby indemnifies the Contractor against all liabilities, losses, demands, damages, costs, claims, expenses suffered by the Contractor as a result of any infringement or alleged infringement of any copyright, patent, trade secret or other Intellectual Property Right of any third party arising from the use of software provided directly or indirectly by the Council.
- 8.5 The Contractor shall promptly notify the Council if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right. The Council shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Contractor hereby agrees to grant to the Council exclusive control of any such litigation and such negotiations.
- 8.6 The Contractor shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights to which **clause 8.4** may apply.

9 HEALTH AND SAFETY

- 9.1 The Contractor shall at all times comply with all relevant statutory health and safety requirements including the Health and Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999, the Electricity at Work Regulations 1989, and any other relevant Legislation or Guidance pertaining to the health and safety of its own Staff and Sub-Contractors, the Council's employees and those of the Boroughs, members of the public and others who may be affected by its performance of the Services.
- 9.2 The Contractor shall (and shall procure that any Sub-Contractor shall) operate a health and safety management system relevant to the Services that meets the standards of BS OHSAS 18001 (or any amendment, re-enactment or replacement of it).
- 9.3 The Contractor shall nominate a person to be responsible for the health and safety matters as required by health and safety Legislation and shall promptly confirm the name and contact details of such person to the Council following his/her nomination, and any subsequent

appointment.

- 9.4 While on the Council Premises and any other premises of the Council or another Borough, the Contractor shall:
- (a) ensure that its Staff are fully conversant with the Contractor's health and safety policies;
 - (b) require its Staff to comply with the lawful requirements of the Council's (or relevant Borough's) authorised safety officer and/or the Council's (or relevant Borough's) safety advisers and any safety policy specific to those Council Premises;
 - (c) ensure that its Staff take all such precautions as are necessary to protect the health and safety of Staff, Council staff, Service Users, the public and other users of the premises;
 - (d) ensure the premises are safe and secure at all times; and
 - (e) (without prejudice to the generality of the foregoing) ensure that its Staff are properly trained and instructed with regard to fire risks and fire precautions.
- 9.5 The Contractor shall comply with the safety provisions set out in **Schedule 1** (Specification) at all times.
- 9.6 Upon becoming aware of any failure by it to comply with health and safety matters, the Contractor shall promptly notify the Authorised Officer.
- 9.7 Where appropriate, following any failure by the Contractor to comply with health and safety matters (notified to the Authorised Officer in accordance with **clause 9.5** or otherwise), the Authorised Officer shall allow the Contractor a reasonable period to rectify such failure. The Council may give directions as to the steps which the Contractor shall take to remedy any such failure and this may require the Contractor to provide a rectification plan to the Council's satisfaction detailing the steps that the Contractor is required to take to remedy the failure. This clause operates without prejudice to any rights or remedies of the Council under this Contract including, without limitation, the Council's right to take action under **clause 25**.

10 EQUAL OPPORTUNITIES

- 10.1 In performing this Contract, the Contractor must have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by that Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in that Act) and persons who do not; and
 - (c) foster good relations between persons who share a relevant protected characteristic (as defined in that Act) and persons who do not,
 - (d) and for the avoidance of doubt this obligation will apply whether or not the Contractor is a public authority for the purposes of section 149.
- 10.2 The Contractor shall take all reasonable steps to secure the observance of this clause by its Staff employed to provide the Services.
- 10.3 The Contractor shall nominate a person responsible for equal opportunity matters as required by the Equality Act 2010. The Contractor shall ensure that all his employees are fully conversant with and comply with the requirements of all relevant equal opportunity Legislation and Guidance in performance of the Contract.
- 10.4 Upon becoming aware of any event of non-compliance with equal opportunity matters by it, the Contractor shall promptly notify the Authorised Officer.
- 10.5 Where appropriate, following any failure by the Contractor to comply with health and safety matters (notified to the Authorised Officer in accordance with **clause 10.4** or otherwise), the Authorised Officer shall allow the Contractor a reasonable period to rectify such failure. In the event of continued non-compliance, the Authorised Officer shall be empowered to suspend the provision of the Services. The Contractor shall not resume provision of the Services until the Authorised Officer is satisfied that the non-compliance has been rectified. The Parties acknowledge that this clause operates without prejudice to any rights or remedies of the Council which otherwise accrue under this Contract.
- 10.6 If any court or tribunal, or the Equality and Human Rights Commission (or any other body

promoting equal opportunity) shall make any finding of unlawful discrimination against the Contractor, then the Contractor shall immediately notify the Authorised Officer of such a finding. The Authorised Officer shall discuss with the Contractor the appropriate steps the Contractor needs to take to prevent repetition of the unlawful discrimination and the Contractor shall provide the Authorised Officer with details in writing of any such steps taken. The Authorised Officer shall have the power to suspend the provision of the Services in accordance with **clause 10.4** until satisfied that appropriate steps have been taken to prevent such repetition.

10.7 The Contractor must provide to the Council any information that the Authorised Officer may reasonably require to:

(a) monitor the equity of access to the Services; and

(b) fulfil their obligations under Legislation.

10.8 The Contractor's equal opportunities policy shall be set out in any instructions circulated to those members of the Contractor's Staff concerned with recruitment, training, and promotion; in relevant documentation available to its Staff and others; and in its recruitment advertisements and other relevant literature. The Contractor may be required to provide to the Council copies of such instructions, documents, advertisements and other literature.

10.9 The Contractor shall pay its Staff at least the London Living Wage and shall act at all times in compliance with the National Minimum Wage Act 1998 and all relevant employment Legislation including ensuring access to employee representation.

11 ENVIRONMENTAL POLICY

11.1 The Contractor shall at all times at its own cost comply with the relevant requirements of the EPA 1990 and any other Legislation or Guidance pertaining to the protection of the environment, water protection and disposal of Waste.

11.2 The Contractor shall nominate a person responsible for environmental protection matters and shall ensure that all his employees are fully conversant with and comply with the requirements of all relevant environmental protection Legislation and Guidance in the course of performance of the Contract.

11.3 Upon becoming aware of any event of non-compliance with environmental protection matters

by it, the Contractor shall promptly notify the Authorised Officer.

- 11.4 Where appropriate, following any failure by the Contractor to comply with environmental protection matters (notified to the Authorised Officer in accordance with **clause 11.3** or otherwise), the Authorised Officer shall allow the Contractor a reasonable period to rectify such non-compliance. In the event of continued non-compliance, the Authorised Officer shall be empowered to suspend the provision of the Services. The Contractor shall not resume provision of the Services until the Authorised Officer is satisfied that the non-compliance has been rectified. The Parties acknowledge that this **clause 11** operates without prejudice to any rights or remedies of the Council which otherwise accrue under this Contract.
- 11.5 The Contractor shall indemnify the Council against all losses, liabilities, demands, damages, costs, claims and expenses suffered by the Council, the Partnership or a relevant Borough in respect of any breach by the Contractor, its servants or agents of the duty of care under section 34 of the EPA 1990 as respects any waste resulting from or coming under its control by reason of any activity or operation directly or indirectly connected with its performance of its obligations under the Contract.

12 DATA PROTECTION AND DATA SECURITY

- 12.1 In this **clause 12**, the terms "data controller", "data processor", "data subject", "personal data", "sensitive personal data" and "processing" shall have the meaning given to them in the Data Protection Act 1998 (the "DPA"), and "Data" shall mean the personal data and sensitive personal data provided by the Council to the Contractor pursuant to this Contract or which is otherwise processed by the Contractor on behalf of the Council pursuant to this Contract, including in accordance with **clause 14** (TUPE) and **clause 15** (Pensions), and Service Category B, Service Category C, Service Category E and Service Category G.
- 12.2 The parties acknowledge that the Council is a data controller and the Contractor is a data processor in relation to the Data. The parties also acknowledge that, in relation to certain processing of the Data, the Contractor may also be a data controller and the Contractor agrees, in relation to Data for which it is a data controller, to comply with its obligations under the DPA.
- 12.3 The Contractor and the Council shall each comply with their respective obligations under the Data Protection Act 1998 and other applicable statutory provisions or provisions of any European Directive in respect of appropriate records. The Contractor shall, from 25 May 2018, comply with its obligations under the General Data Protection Regulation (EU)

2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR") as a data processor and to the extent the Contractor is a data controller, the Contractor shall comply with its obligations under the GDPR as a data controller. For the purpose of this **clause 12**, a reference in this Contract to the DPA shall from 25 May 2018 be construed as being a reference to the GDPR and the terms referred to in **clause 12.1** shall have the meaning given to them in the GDPR. Any reference in this Contract to "**sensitive personal data**" shall from 25 May 2018 be construed as meaning "special categories of personal data" as referred to in the GDPR.

12.4 The Contractor shall:

- (a) process the Data only on the written instructions of the Council to perform its obligations under this Contract and if the Contractor is aware, or of the opinion, that any instruction given by the Council breaches the DPA or the GDPR or data protection law of any European Union member state, the Contractor shall immediately inform the Council of this giving details of the breach or potential breach;
- (b) comply with such technical and organisational measures as are necessary to ensure compliance with the GDPR by the Contractor and the Council from 25 May 2018 and to protect the rights of relevant data subjects;
- (c) assist the Council to comply with its obligations in relation to security and protection of the personal data under the DPA or the GDPR (as applicable) including but not limited to prompt assistance with the Contractor's obligations pursuant to the GDPR and any other applicable Legislation regarding notification of security breaches to any relevant regulatory authority and notification of personal data breaches to data subjects in accordance with the timescales set out in, and the requirements of, the GDPR;
- (d) provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction of or damage to the Data;
- (e) notify the Council immediately if the Contractor becomes aware of a breach of the DPA or the GDPR (as applicable) in relation to the personal data and/or if it becomes aware of a breach of the provisions of this **clause 12** and the Contractor shall immediately provide full details of the relevant breach;

- (f) take all reasonable steps to ensure the reliability of the Staff who have access to the Data and ensure that access to the Data is limited to such authorised Staff only who require access to it for the purpose of complying with the obligations under this Contract and who will maintain the confidentiality and security of the Data;
- (g) not process or transfer Data outside of the European Economic Area (or any country deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC) without the prior written consent of the Council and without putting in place adequate protection for the Data to enable compliance by the Council and the Contractor with their obligations under the DPA and the GDPR (as applicable);
- (h) at all times perform its obligations under this Contract in such a manner as not to cause the Council in any way to be in breach of the DPA or the GDPR (as applicable);
- (i) process Data for no longer than necessary for the purpose of performing its obligations under this Contract and return and/or destroy Data as instructed by the Council from time to time in writing and in any event return or destroy (as directed by the Council) all Data on termination of this Contract;
- (j) provide such information as is reasonably necessary to enable the Council to satisfy itself of the Contractor's compliance with this **clause 12** and compliance by a third party with their obligations imposed in accordance with the provisions of **clause 12.6** and allow the Council and its authorised representatives, upon reasonable prior written notice to the Contractor, reasonable access to any relevant premises to inspect the procedures and measures referred to in this **clause 12**;
- (k) perform its obligations under this Contract (and any other agreement relating to the provision of the Services) in full compliance with all applicable guidelines, statutory orders, supplementary laws and codes of practice issued by relevant regulators pursuant to or in connection with the DPA and the GDPR, including as may be issued by the UK Information Commissioner's Office, data protection regulators of other European Union member states or as may be issued by the European Commission or the Board and "Board" shall have the meaning given in the GDPR;
- (l) assist the Council with compliance with data subject rights under the DPA and the GDPR including rights of rectification, erasure (right to be forgotten), restriction of processing, portability, right to object to processing, rights in relation to automated individual decision making (including profiling);

- (m) immediately inform the Council if in relation to the Data processed pursuant to this Agreement it receives any subject access request, or request by a data subject to transfer, rectify, erase or destroy their personal data and the Contractor shall provide prompt assistance to the Council in complying with any such request;
- (n) immediately inform the Council of and promptly provide assistance with responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner's Office or other regulatory authority in respect of the Data; and
- (o) immediately inform the Council of any request for disclosure of the Data from a third party which the Contractor receives directly and provide a copy of such request and the Contractor shall not disclose or release any Data without first consulting with and obtaining the consent of the Council, except where required by applicable Legislation or any court of competent jurisdiction.

12.5 The Contractor acknowledges and agrees that in the performance of the Services, the Contractor shall:

- (a) consider all relevant DPA and GDPR requirements and shall assist the Council to implement all necessary DPA and GDPR compliance requirements;
- (b) assist the Council to comply with its obligations under the DPA and the GDPR, including but not limited to, assisting the Council with:
- (c) transparent information collection (including but not limited to the issuing of relevant data protection notices);
- (d) obtaining any necessary consents from data subjects;
- (e) compliance with restrictions regarding personal data processing which are imposed by European Union or European Union member state law pursuant to the GDPR; and
- (f) conduct of data protection impact assessments in relation to any processing of Data and where required by the GDPR or otherwise by relevant data protection laws, assist with consultation with, and provision of, information to the Information Commissioner's Office or other relevant regulator or data protection authority in relation to such data protection impact assessment(s).

- 12.6 The Contractor shall put in place in writing with any third party, including consultant, Sub-Contractor, agent or professional adviser or other third party which may receive and/or have access to Data ("**Sub-Processor**"), contractual obligations which are at least equivalent to the obligations imposed on the Contractor pursuant to this **clause 12** and **clause 59** (Confidentiality) and the Contractor shall be liable to the Council for any failure of any such Sub-Processor to comply with such equivalent data protection obligations (whether or not imposed in writing on the Sub-Processor). The Contractor shall not appoint any such Sub-Processor (whether in writing or otherwise) without the prior written consent of the Council and if any such Sub-Processor has:
- (a) not given or will not give such contractual commitments or otherwise if such Sub-Processor is willing to give such commitments but the Council reasonably believes that such Sub-Processor will not comply with such commitments, the Council may at its discretion withhold such consent; or
 - (b) been appointed but has breached such commitments or otherwise if the Council believes that such Sub-Processor has not complied or will not comply with such commitments the Council may require the Contractor to terminate such third party's appointment immediately.
- 12.7 In the event that the Contractor becomes aware that it or any third party processing Data pursuant to or in connection with this Contract is processing, or has processed, the Data in contravention of this Contract or relevant sub-contract, the Contractor shall promptly and in writing, notify the Authorised Officer with full details of the contravention.
- 12.8 Copies of Council systems and data will be kept at a secure offsite storage location by the Contractor at its own expense. The storage media will be accessible only to authorised Staff of the Contractor and the authorised employees of the Council.
- 12.9 Subject to **clause 12.10**, the Contractor shall ensure that the Council's data or information is not provided to another party and that no data is destroyed or deleted by the Contractor unless instructed by the Authorised Officer.
- 12.10 The Contractor shall, on termination of this Contract or any part of it, and at any time on the request of the Council, return to the Council (securely and in such format and such media as the Council may reasonably require), or if requested by the Council, securely destroy the Data (including all copies of it) immediately (provided that in relation to any partial termination of the Services it shall not be required to do so where this would adversely affect the Contractor's

ability to provide the remaining services).

- 12.11 The Contractor shall (and shall procure that any Sub-Contractor shall) operate, or be able to demonstrate it is working towards implementation by the Contract Commencement Date of, a verifiable system that guarantees compliance with a security system relevant to the Services and based on the principles in ISO 27001:2013 (or any amendment, re-enactment or replacement of it) or any other equivalent security measures.
- 12.12 The Contractor warrants that it is not, at the Contract Date, aware of any matter or circumstance which would cause it to be unable to fully comply with the provisions of this **clause 12**.
- 12.13 The Contractor shall indemnify and keep indemnified the Council against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this **clause 12** by the Contractor, its Sub-Processors and/or its representatives.

13 FREEDOM OF INFORMATION

- 13.1 The Contractor understands and acknowledges that the Council and the Boroughs are subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's or the Borough's (at the Council's discretion) compliance with their Information disclosure requirements pursuant to the same in the manner provided for in **clauses 13.1 to 13.3** (inclusive).
- 13.2 Where the Council receives a Request for Information in relation to Information that the Contractor is holding on its behalf the Council shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:
- (a) provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
 - (b) provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or

Regulation 5 of the Environmental Information Regulations.

- 13.3 Following notification under **clause 13.2**, and up until such time as the Contractor has provided the Council with all the Information specified in **clause 13.2**, the Contractor may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining at its absolute discretion:
- (a) whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and/or
 - (b) whether the Information is to be disclosed in response to a Request for Information,
- and in no event shall the Contractor respond directly or allow its Sub-Contractors to respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 13.4 Without prejudice to **clause 13.3**, if the Council or a Borough, at the Contractor's request seeks to rely upon a FOIA exemption, the Contractor shall indemnify the Council for any costs, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commission, in each case whether incurred by the Council or a Borough.
- 13.5 The Contractor shall ensure that all Information held on behalf of the Council is retained for disclosure for at least seven (7) years from the date it is acquired and shall permit the Council to inspect such Information as requested from time to time.
- 13.6 The Contractor shall transfer to the Council any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days of receiving it.
- 13.7 The Contractor acknowledges that any lists provided by it listing or outlining Confidential Information or Commercially Sensitive Information, are of indicative value only and that the Council may nevertheless be obliged to disclose the Confidential Information.
- 13.8 In the event of a request from the Council pursuant to **clause 13.2**, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Council of the Contractor's estimated costs of complying with the request to the

extent these would be recoverable if incurred by the Council under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations the Council shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under section 10 of the FOIA. In such case, the Council shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Council is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

13.9 The Contractor acknowledges that (notwithstanding the provisions of **clause 59** the Council may, acting in accordance with the Secretary of State for Justice's Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (or such other replacement code of practice from time to time) (the "FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:

- (a) in certain circumstances without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken their views into account.

13.10 Provided always that where **clause 13.9** applies, the Council shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

14 TUPE

14.1 The Council and the Contractor agree that the commencement of the Services shall constitute a relevant transfer for the purposes of TUPE and that the contracts of employment of any Relevant Employees together with any collective agreement relating to the Relevant Employees shall have effect thereafter as if originally made between the Contractor and/or its Sub-Contractors and the Relevant Employees (or between the Contractor and/or its Sub-Contractors and the relevant trade union, as the case may be) except (subject to **clause 15**) in so far as such contracts and such agreements relate to benefits for old age, invalidity or

survivors under any occupational pension scheme or to any Relevant Employee who objects under Regulation 4(7) of TUPE.

- 14.2 The Contractor shall be responsible for, and shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements, outgoings and damages, penalties, awards, legal costs, expenses and any other liabilities in respect of the Staff including all wages, holiday pay, bonuses, commission, payment PAYE, national insurance contributions, pension contributions and otherwise, from and including the Services Commencement Date. The Contractor shall indemnify the Council and any relevant Borough against any claims made against the Council or a relevant Borough or any third party in connection with such matters.
- 14.3 The Contractor shall and shall procure that any Sub-Contractor shall to the extent required by TUPE recognise and continue to recognise the trade unions representing the Relevant Employees after the commencement of the Services as they were recognised immediately before the Services Commencement Date.
- 14.4 Without prejudice to any obligations under regulation 13 of TUPE, the Contractor shall and shall procure that any Sub-Contractor shall provide such assistance and such information and co-operation as the Council and any relevant Borough may require to ensure the smooth transfer of the Relevant Employees and the rights, powers, duties and liabilities relating to it/them and to enable the Council and any relevant Borough to discharge its or their obligations to inform and consult any appropriate representatives (as defined by Regulation 13 of the Transfer Regulations) about the transaction contemplated by this Contract far enough in advance of the transaction to enable meaningful consultation to take place.
- 14.5 The Contractor shall be liable for and shall indemnify the Council for, each of the Boroughs and any Future Service Provider against any Employment Liabilities incurred by the Council, any of the Boroughs or a Future Service Provider which arise out of or in connection with:
- (a) the employment or termination of employment of any person (including the Relevant Employees) engaged in connection with the provision of the Services at any time on or after the Services Commencement Date during the period from and including the Services Commencement Date to (and including) the Termination Date;
 - (b) any act or proposal by the Contractor or any Sub-Contractor of the Contractor prior to or following the Services Commencement Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of TUPE and/or to make a

substantial change in working conditions of any Relevant Employee to the material detriment of that Relevant Employee. For the purposes of this sub-clause the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of TUPE;

- (c) any failure of the Contractor or any of its Sub-Contractors to provide the information and co-operation referred to in **clause 14.4** above or failure to comply with the obligations under Regulations 13 and 14 of TUPE.

14.6 The Council shall indemnify and keep indemnified in full the Contractor against all Employment Liabilities incurred by the Contractor in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of that Relevant Employee prior to the Services Commencement Date provided that this arises from any act, fault or omission of the Council or any Borough in relation to the Relevant Employee prior to the Services Commencement Date (save where such act, fault or omission arises as a result of the Contractor's or any relevant Sub-Contractor's failure to comply with Regulation 13 of TUPE) and any such claim is not in connection with the relevant transfer.

14.7 Without prejudice to other provisions of this **clause 14**, the Contractor shall (and shall procure that any Sub-Contractor shall) from the earlier of: (i) the first day of the period of twelve (12) Months immediately preceding the expiry of this Contract; or (ii) the service of a notice of termination (in whole or in part and in any circumstances); or (iii) the Council notifying the Contractor of its intention to re-tender this Contract, until the expiry or termination of the Contract (in each case the "**Restricted Period**");

- (a) subject to any data protection legislation, on receiving a request from the Council provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services (the "**Assigned Employees**") or in respect of partial termination, in the relevant part of the Services, full and accurate details regarding the identity, number, job titles, sex, job descriptions, salary or wages information (including average salary per function and total of all salaries added together), length of service, notice periods, hours of work, overtime records (over at least twelve (12) Month periods), redundancy entitlements, retirement age, entitlement to holiday, sick leave/sick pay, maternity, paternity, adoption, special leave, any loan or leasing schemes, collective agreements, flexi-time arrangements and any other benefits or matters relating to terms and conditions of employment of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-Contractor as the case may be until immediately before

the Termination Date, would be Returning Employees (as defined at **clause 14.10**) the "**Re-tendering Information**";

- (b) provide the Re-tendering Information promptly and at no cost to the Council;
- (c) notify the Council promptly in writing of any material changes to the Re-tendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business;
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent; and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent.

14.8 Without prejudice to the rights and obligations regarding employee liability information under TUPE the Contractor shall indemnify and shall keep indemnified in full the Council, each of the Boroughs and any Future Service Provider against all losses, damages, penalties, awards, legal costs, expenses and any other liabilities suffered or incurred by the Council, a relevant Borough or a Future Service Provider arising from any claim by any party as a result of the Contractor or Sub-Contractor failing to promptly provide the Council with any Re-tendering Information or to provide full Re-tendering Information or as a result of any material inaccuracy in or omission from the Re-tendering Information including but not limited to a failure to notify the Council of any changes to the Re-tendering Information in accordance with **clause 14.7(c)**.

14.9 On the Termination Date, the Council and the Contractor agree that it is their expectation that TUPE shall apply in respect of the provision thereafter of any service which is fundamentally the same as all or any part of the Services but the position shall be determined in accordance with the Legislation at the Termination Date as the case may be and this clause is without prejudice to such determination.

14.10 For the purposes of **clause 14** and this **clause 14.10 "Returning Employees"** shall mean

those employees wholly or mainly engaged in the provision of the Services or in respect of partial termination, the relevant part of the Services, immediately before the Termination Date whose employment transfers to the Council or a relevant Borough or a Future Service Provider pursuant to TUPE and whether employed by the Contractor or any Sub-Contractor. Upon the Termination Date, the provisions of this **clause 14.10** will apply to the extent that TUPE then applies:

- (a) the Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or Sub-Contractors up to the Termination Date are satisfied;
- (b) without prejudice to any other provision of **clause 14**, the Contractor shall:
 - (i) remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's or Sub-Contractor's employees (other than the Returning Employees) on or after the Termination Date and the Contractor shall indemnify the Council, each of the Boroughs and any Future Service Provider against all Employment Liabilities resulting from any claim whatsoever including but not limited to any claim that their employment or claims and liabilities arising out of their employment or its termination has transferred to the Council, any of the Boroughs or a Future Service Provider pursuant to or by virtue of TUPE whether arising before, on or after the Termination Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Returning Employees;
 - (ii) in respect of those employees who constitute Returning Employees the Contractor shall indemnify the Council, each of the Boroughs and any Future Service Provider against all losses, damages, penalties, awards, costs, expenses and any other liabilities incurred by the Council or a relevant Borough or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Termination Date (whether any such claim, attributable to the period up to and on the Termination Date, arises before, on or after the Termination Date) including any failure by the Contractor or any Sub-

Contractor to comply with its or their obligations under Regulation 13 of TUPE.

- 14.11 The Contractor shall if so requested during the period of 3 months preceding the Termination Date fully co-operate with the Council, each of the Boroughs and any Future Service Provider regarding any pre-transfer consultation that the Council, any of the Boroughs or a Future Service Provider wishes to undertake with representatives of the Returning Employees for the purposes of s188 to s198 of the Trade Union and Labour Relations (Consolidation) Act 1992 and shall, for the purposes of s198A(3)(a) of that Act, provide its agreement to the Council, each of the Boroughs or a Future Service Provider as may be requested.
- 14.12 If TUPE does not apply on the Termination Date, the Council, any Borough or a Future Service Provider may at its discretion offer employment to the persons employed by the Contractor or a Sub-Contractor wholly or mainly in the provision of the Services immediately before the Termination Date.
- 14.13 If an offer of employment is made in accordance with **clause 14.12**, the employment shall be on such terms and conditions as the Council or the relevant Borough or the Future Service Provider (as the case may be) deem appropriate.
- 14.14 Where any such offer as referred to in **clause 14.12** is accepted, the Contractor shall indemnify and keep indemnified in full the Council, each of the Boroughs and any Future Service Provider on the same terms and conditions as those set out in **clause 14.13** as if there had been a relevant transfer (within the meaning of TUPE) in respect of each and every employee who has accepted any such offer and for the purposes of this **clause 14.14** each and every such employee shall be treated as if they were a Returning Employee.
- 14.15 For the avoidance of doubt, where any such offer as referred to in **clause 14.12** is not accepted or such offer is not made and, in each case, TUPE does not apply, the employee shall remain an employee of the Contractor or Sub-Contractor as appropriate and the Contractor shall indemnify the Council, each of the Boroughs, and any Future Service Provider against all losses, damages, penalties, awards, costs, expenses and other liabilities incurred by the Council, the Boroughs or any Future Service Provider resulting from any claim whatsoever by or on behalf of such person.
- 14.16 The Contractor shall indemnify and keep the Council, each of the Boroughs and any Future Service Provider indemnified in full against all losses, damages, penalties, awards, costs, expenses and any other liabilities incurred by the Council, the Boroughs, any third party or

any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this **clause 14** and/or the Sub-Contractor's failure to comply with such terms.

14.17 Each Party undertakes, if a claim, demand or action is made or threatened that may give rise to a claim for indemnity under this **clause 14** then that Party shall as the case may be:

- (a) notify the indemnifying Party of the claim, demand or action in writing within five (5) Business Days of it first being made or threatened or if not reasonably practicable to do so then as soon as reasonably practicable;
- (b) give the indemnifying Party promptly all reasonable co-operation, assistance and information which may be relevant to the claim, demand or action; and
- (c) not admit, defend, compromise, negotiate or settle the claim or action without the consent of the indemnifying Party (such consent not to be unreasonably withheld) in writing.

14A RESTRUCTURING COSTS

14A.1 For the purposes of this **clause 14A**:

- (a) "**Actual Restructure Costs**" means those Restructure Costs which are in fact incurred by the Contractor in relation to Relevant Employees in the Charges Adjustment Period.
- (b) "**Charges Adjustment End Date**" means 31 December 2017 (or such other date as agreed between the Contractor and the Authorised Officer in writing).
- (c) "**Charges Adjustment Period**" means the period commencing on the Services Commencement Date and ending on the Charges Adjustment End Date.
- (d) "**Discrepancy**" shall have the meaning given to it in **clause 14A.3(b)**.
- (e) "**Estimated Restructure Costs**" means those Restructure Costs set out in **Schedule 14** (Estimated Restructure Costs) which as at the Contract Date the Contractor anticipates incurring in the Charges Adjustment Period calculated by reference to the Supplied TUPE Data and the assumptions set out in **Schedule 14** (Estimated Restructure Costs).

- (f) **"Pension Strain Costs"** means any employer contributions payable by the Contractor to the LGPS in respect of any Relevant Employee whose employment is terminated by the Contractor solely on the grounds of redundancy during the Charges Adjustment Period (and the Parties agree that this shall include the contributions which the Contractor would remain liable for in accordance with **clauses 15.16(a)** and **15.16(c)** (Pensions), but for the provisions of this **clause 14A**).
- (g) **"Restructure Costs"** means in respect of any Relevant Employees who transfer to the Contractor under TUPE on or following the Services Commencement Date whose employment is terminated by the Contractor solely on grounds of redundancy (within the meaning of section 139 Employment Rights Act 1996) and whose effective date of termination falls within the Charges Adjustment Period, the redundancy sums reasonably incurred by the Contractor in respect of such termination being:
- (i) contractual notice pay (to the extent it was not reasonably practicable for notice to be worked and not including amounts payable by the Council or the Boroughs under **clause 14A.1(g)(iii)**) below;
 - (ii) statutory redundancy pay and any additional redundancy pay to which such Relevant Employees are contractually entitled;
 - (iii) the cost of salary, employee-related benefits and associated payroll-related taxes (including all employer and employee National Insurance Contributions) in respect of such Relevant Employees for the period from the Services Commencement Date up to their effective date of termination; and
 - (iv) the Pension Strain Costs,

provided in each case that the Contractor has not amended any terms and conditions of employment of any Relevant Employees so that any such sums are higher than they would have been if calculated in accordance with the terms and conditions which applied immediately prior to the Services Commencement Date, but excluding:

- (v) any payments made pursuant to a settlement agreement; and
 - (vi) any payments ordered to be paid by a court or tribunal of competent jurisdiction in respect of any breach of the Relevant Employees' rights, including any payments or awards made in respect of unfair dismissal, unlawful discrimination and/or failure to inform and consult.
- (h) **"Supplied TUPE Data"** the information relating to the Relevant Employees which was supplied to the Contractor by the Boroughs on 3 March 2016.

14A.2 The Contractor warrants that it has not included any Restructure Costs in the calculation of the Annual Contract Payment or any part thereof. For reference and information only, the Contractor has provided the Estimated Restructure Costs. The Parties acknowledge and agree that the Actual Restructure Costs shall be payable in full by the Contractor, and the Council shall reimburse the Contractor for those properly incurred costs by way of the sum calculated in accordance with **clause 14A.4** below.

14A.3 No later than ten (10) Business Days following the expiry of the Charges Adjustment Period, the Contractor shall provide the Council with the following information:

- (a) details of the Actual Restructure Costs; and
- (b) details of any difference between the Estimated Restructure Costs and the Actual Restructure Costs (a "**Discrepancy**"),

and the Contractor shall provide such evidence of the Actual Restructure Costs (which may include certified evidence of the calculation and payment, or proposed payment, of such costs) and the basis for the Discrepancy (to include details of any inaccuracies or omissions in the Supplied TUPE Data, or changes in the Supplied TUPE Data between the date on which the Supplied TUPE Data was provided and the Services Commencement Date) as is reasonably requested by the Council to verify the figures being calculated.

14A.4 The Parties acknowledge and agree that the Actual Restructure Costs may be less than or greater than the Estimated Restructure Costs. As soon as reasonably practicable following the Contractor's provision of information pursuant to **clause 14A.3**, the Parties acting reasonably and in good faith will seek to agree the sum to be paid by the Council to the Contractor in respect of the Actual Restructure Costs (taking into account the Discrepancy, the information provided by the Contractor pursuant to **clause 14A.3**, and **clauses 14A.5 to 14A.7** below). Subject to **clauses 14A.5 to 14A.7** below, the Council shall pay the Contractor such agreed sum by way of the Restructuring Costs Payment in accordance with paragraph 19 of **Schedule 5** (Payment Mechanism).

14A.5 The Contractor agrees to use all reasonable endeavours to minimise the Actual Restructure Costs which shall include, where possible, redeployment by the Contractor to another available role in the provision of the Services or to another part of the Contractor's organisation and the Contractor shall provide the Council with such evidence of those endeavours as it may reasonably request.

14A.6 No account shall be taken (and no payment shall be made by the Council pursuant to **clause 14A.4** or otherwise) in respect of any Actual Restructure Costs which arise as a result of:

- (a) any failure by the Contractor to make any further enquiries in relation to any manifest errors in any of the Supplied TUPE Data to satisfy itself as to the accuracy and adequacy of the Supplied TUPE Data;
- (b) any liability for Restructure Costs incurred as a result of the Contractor deciding to terminate on the grounds of redundancy the employment of a greater number of Relevant Employees than the number identified in the breakdown of the Estimated Restructure Costs unless (subject to **clause 14A(c)** below) and to the extent that any such termination arose as a result of the number of Relevant Employees exceeding the number identified in the Supplied TUPE Data; or
- (c) any Restructure Costs relating to a Relevant Employee who was employed wholly or mainly by a contractor to the Council or any Borough in provision of services which become the Services, and the Parties agree that, notwithstanding **clause 14A.6(b)** above, any such Restructure Costs shall be payable in full by the Contractor and the Council shall not be liable to reimburse the Contractor for any such costs.

14A.7 Any issue or dispute in relation to this **clause 14A** shall be resolved in accordance with the Dispute Resolution Procedure.

15 PENSIONS

15.1 Contractor to Become an Admitted Body

Where the Contractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Contractor will procure that it becomes, before any Relevant Transfer Date, an admitted body for the purposes of the LGPS Regulations ("**Admitted Body**") and with effect from and including that Relevant Transfer Date and will execute the Admission Agreements before that Relevant Transfer Date.

15.2 Admission Agreement

The Council will before the Relevant Transfer Date and with effect from and including the Relevant Transfer Date execute the Admission Agreements referred to in **clause 15.1**.

15.3 Indemnity

Without prejudice to the generality of this **clause 15**, the Contractor agrees to indemnify the Council from and against all losses suffered or incurred by the Council or the Boroughs which

arise from any breach by the Contractor of the terms of this clause and/or the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

15.4 **Indemnity or Bond**

Without prejudice to the generality of the requirements of this **clause 15**, the Contractor shall, if required by the Council, obtain a parent company guarantee in the form referred to in the Admission Agreement.

15.5 **Right of Set Off**

The Council shall have a right of set off against any payment to the Contractor under this Contract of an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor under the Admission Agreement. For the avoidance of doubt, where no payment is due from the Council to the Contractor, the amount that would have been set off will be treated as a debt due and payable from the Contractor to the Council.

15.6 **Contractor ceases to be an Admitted Body**

If the Contractor employs any Eligible Employees from a Relevant Transfer Date and:

- (a) the Contractor does not wish to offer those Eligible Employees membership of the LGPS; or
- (b) the Council and the Contractor are both of the opinion that it is not possible to operate the provisions of **clauses 15.1 to 15.5** inclusive; or
- (c) if for any reason the Contractor ceases to be an Admitted Body other than on the date of termination or expiry of this Contract,

then the provisions of **clauses 15.1 to 15.5** inclusive will not apply and the provisions of **clause 15.7** will apply.

15.7 **Contractor Scheme**

- (a) The Contractor will, as soon as practicable after the Relevant Transfer Date or

Cessation Date (as the case may be) nominate to the Council in writing the scheme or schemes which it proposes will be the Contractor Scheme for the purposes of this Contract. Such scheme or schemes must be:

- (i) established three (3) Months prior to the Relevant Transfer Date or Cessation Date (as the case may be) and maintained throughout the Contract Period;
 - (ii) approved by Her Majesty's Revenue and Customs ("HMRC") as a registered scheme under the Finance Act 2004; and
 - (iii) certified by the Government Actuary's Department to provide benefits broadly comparable to those provided by the LGPS.
- (b) The Contractor undertakes to the Council (for the benefit of the Council itself, the Boroughs and for the Council as agent and trustee for the benefit of the Eligible Employees) to provide that the Eligible Employees will by three (3) Months before the Relevant Transfer Date or Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be).
- (c) The Contractor undertakes to the Council (for the benefit of the Council itself, the Boroughs and for the Council as agent and trustee for the benefit of the Eligible Employees) to procure that:
- (i) the Contractor Scheme will provide benefits in respect of periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) for each Eligible Employee who agrees to become a member of the Contractor Scheme which the Government Actuary's Department shall determine to be broadly comparable in each case to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS. If the Contractor Scheme is terminated, the Contractor will provide a replacement arrangement or arrangements for those of the Eligible Employees who are still employed wholly or partly in connection with the Services. The replacement arrangements must comply with this **clause 15.7** as if it were the Contractor Scheme;
 - (ii) within two (2) Months of the Relevant Transfer Date or Cessation Date (as the

case may be) the Contractor will offer or procure that there is offered to each Eligible Employee who agrees to become a member of the Contractor Scheme the opportunity to transfer the value of the benefits he had accrued under the LGPS into the Contractor Scheme. For each Eligible Employee who accepts such an offer in writing within two (2) Months of receipt of the offer, the Contractor will procure (subject to receipt of a transfer amount from the LGPS calculated in accordance with the LGPS Regulations by an actuary nominated by the Council) that the Contractor Scheme will provide benefits which, in the opinion of the Government Actuary's Department in respect of past service are equal in value to and no less favourable and in respect of future service are broadly comparable in value to and no less favourable than the benefits to which the Eligible Employee was entitled under the LGPS;

- (iii) the transfer value paid under **clause 15.7(c)(ii)** will, subject only to any HMRC limitations, be wholly applied under the Contractor Scheme in the provision of benefits for and in respect of the Eligible Employees in respect of whom that transfer was made, in respect of service before the Relevant Transfer Date or Cessation Date (as the case may be); and
- (iv) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Contractor Scheme undertake to the Council and to the Administering Authority in writing that they will procure compliance with obligations imposed on them by the provisions of this **clause 15**.

15.8 Undertaking from the Contractor

The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) to procure that:

- (a) all information which the Council or its professional advisers may reasonably request for the administration of the LGPS or in order to calculate any transfer value or concerning any other matters raised in **clauses 15.7** and **15.8** and which is in the ownership or control of the Contractor will be supplied to them as expeditiously as possible;
- (b) the Contractor will not without the consent in writing of the Council (which will only be given subject to the payment by the Contractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or

assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- (c) until the Relevant Transfer Date, no announcements (whether in writing or not) will be made to the Eligible Employees concerning the matters stated in **clauses 15.1 to 15.5** inclusive without it obtaining the consent in writing of the Council (such consent not to be unreasonably withheld or delayed) and the Administering Authority;
- (d) the Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council not to be unreasonably withheld or delayed provided that the Contractor will be so entitled without the requirement of consent of the Council to give effect to any pre-existing contractual obligations between the Council and any Eligible Employees; and
- (e) where:
 - (i) the Contractor is an Admitted Body in the LGPS, it shall (where permitted) award benefits to the Eligible Employees under the Compensation Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and
 - (ii) where the award of benefits in **clause 15.8(e)(i)** is not permitted under the Compensation Regulations or the Contractor is not an Admitted Body in the LGPS, the Contractor shall award benefits to the Eligible Employees which are broadly comparable to the benefits the Eligible Employees would have received under the Compensation Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council,

in either case, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council will provide prior to the Relevant Transfer Date). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall compensate the Eligible Employees in a

manner which is broadly comparable or equivalent in cash terms as determined by the actuary appointed by the Administering Authority.

15.9 **Claims from Eligible Employees or Trade Unions**

The Contractor hereby indemnifies the Council from and against all losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses (provided that such losses do not relate to a material act or omission of the Council):

- (a) relate to pension rights accrued in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- (b) arise out of the failure of the Contractor to comply with the provisions of this **clause 15** before the date of termination or expiry of this Contract.

15.10 **Transfer to another Employer**

- (a) If during the term of this Contract the Contractor transfers to another employer (by way of a transfer under TUPE) the employment of any Eligible Employee who is or will be engaged in the Services under this Contract, the Contractor will procure that:
 - (i) they consult with and inform those Eligible Employees of the pension provisions relating to the transfer; and
 - (ii) the employer to which the Eligible Employees are transferred (the "New Employer") complies with the provisions of this **clause 15**,

provided that references to the Contractor shall be construed as references to the New Employer; references to "Relevant Transfer Date" shall be construed as references to the date of the transfer to the New Employer and references to "Employee" in this **clause 15** shall be construed as references to the employees so transferred to the New Employer.

15.11 Sub-Contractors

Where a Sub-Contractor is appointed in accordance with **clause 57** of this Contract and employs any Eligible Employees from a Relevant Transfer Date, the Contractor shall procure that the Sub-Contractor shall deal with the provision of pension benefits in accordance with this **clause 15** as though references in those clauses to the Contractor were references to the Sub-Contractor.

15.12 Existing Contractor Employees

The Contractor will procure that with effect from the Relevant Transfer Date, Relevant Employees (excluding Eligible Employees) of any existing contractor whose contract of employment becomes by virtue of the application of TUPE in relation to what is done for the purpose of this Contract, a contract of employment with the Contractor, will be provided with pension benefits in accordance with sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005.

15.13 Pensions Issues on Expiry or Termination

Upon the Termination Date, the provisions of this **clause 15.13** shall apply in relation to pension provisions. The Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any Returning Employees (including identification of the Returning Employees);
- (b) promptly provide to the Council such documents and information mentioned in **clause 15.13(a)** which the Council may reasonably request in advance of the Termination Date;
- (c) fully co-operate (and procure that the trustees of any pensions scheme offered by the Contractor to the Returning Employees shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any Returning Employees on the Termination Date; and
- (d) ensure that if an offer of employment is made in accordance with **clause 14.12**, the employment shall be on such terms and conditions for entitlement to membership of a

pension scheme, as comply with:

- (i) this **clause 15** in respect of Eligible Employees; and
- (ii) the requirements of sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 as if there had been a "relevant transfer" under the Regulations in respect of Returning Employees who are not Eligible Employees,

who have accepted any such offer of employment.

15.14 **Notional Fund**

The Council shall procure that when the Contractor enters into the Admission Agreement pursuant to clause 15.1 the Contractor shall be credited by the Council as Administering Authority with a notional fund within the Pension Fund at the Relevant Transfer Date of such amount to meet the cost of providing the benefits of the Eligible Employees accrued in the Pension Fund before the Relevant Transfer Date (the "**Notional Fund**"). The amount of the Notional Fund shall be determined by the Administering Authority's Actuary using the ongoing actuarial methods and assumptions used in the actuarial valuation of the Pension Fund (or revision thereto) preceding the Relevant Transfer Date and shall be based on the Eligible Employees' pensionable pay immediately before the Relevant Transfer Date and shall make allowance for prospective salary increases for such Eligible Employees in accordance with those actuarial methods and assumptions.

15.15 **Employer Contributions**

Subject to **clause 15.16**, employer contributions to the Pension Fund shall be the responsibility of the Council in accordance with the terms of **Schedule 5** (Payment Mechanism).

15.16 **Contractor's obligations**

The Contractor shall at all times in respect of the period after the Relevant Transfer Date and up to the date that the Relevant Employees are transferred to a replacement contractor or the Council due to the expiry or termination of this Contract be responsible for the following:

- (a) any employer contributions or other amounts relating to the costs of early retirement

benefits payable under the LGPS Regulations arising on the redundancy or termination of employment on grounds of business efficiency of any Eligible Employee;

- (b) any employer contributions or other amounts relating to the payment of Pension Fund benefits to or in respect of any Eligible Employee on the grounds of ill health or infirmity of mind or body where the number of ill-health retirements exceeds the amount assumed in respect of the Contractor in the latest actuarial valuation of the Pension Fund at the relevant time;
- (c) any employer contributions or other amounts relating to any early retirement benefits paid to or in respect of any Eligible Employee where such benefits are put into payment with the consent of the Contractor;
- (d) any employer contributions or other amounts relating to any enhanced benefits paid to or in respect of any Eligible Employee made at the discretion of the Contractor; and
- (e) any increase to the employer contribution rate resulting from the award of pay increases by the Contractor in respect of the Eligible Employees that are in aggregate in excess of the local government awards.

15.17 **Exit Contributions**

Subject to clause 15.7 where the Administering Authority obtains an actuarial valuation under the LGPS Regulations and/or the terms of the Admission Agreement when the Admission Agreement ceases to have effect and the Contractor is required to pay any revised contribution or payment to the Pension Fund representing any funding deficit including but not limited to payments under Regulation 64 of the LGPS Regulations (the "**Exit Contribution**"), such contribution or payment shall be the responsibility of the Council except to the extent that the funding deficit is attributable to matters referred to in clauses 15.16(a) to 15.16(e) inclusive and in respect of which the Contractor has not already paid an additional contribution. For the avoidance of doubt this clause 15.17 shall survive the termination of this Contract.

- 15.18 Where an Exit Contribution is paid to the Pension Fund by the Contractor, the Contractor shall forthwith as the liability arises, invoice the Council for payment of an amount equal to the Exit Contribution and the Council shall make payment to the Contractor of the invoiced amount within 14 days of receipt of the invoice.

15.19 If the Council pays to the Contractor (or any Sub-Contractor) any amounts under **clause 15.18** then:

- (a) the Contractor (or Sub-Contractor) shall provide the Council within nine (9) months after the end of each Relevant Period with a statement showing the Tax Benefit obtained in such Relevant Period with sufficient details to show how that Tax Benefit has been obtained;
- (b) the Contractor (or Sub-Contractor) shall be entitled to provide the Council with a certificate of the Contractor's (or Sub-Contractor's) auditors of the Tax Benefit obtained in each Relevant Period. In the absence of manifest error, any auditor's certificate provided under this **clause 15.20(b)** shall be final as to the amount of Tax Benefit obtained; and
- (c) if any Tax Benefit is obtained in respect of a Relevant Period then the Contractor (or any Sub-Contractor) shall, on the day falling nine (9) months and one (1) day after the end of that Relevant Period, repay to the Council an amount equal to the Tax Benefit obtained in respect of that Relevant Period,

and in this **clause 15.19**:

"**Relevant Period**" means the whole period of time comprising the current accounting period of the Contractor (or Sub-Contractor) and each of its subsequent accounting periods up to and including the accounting period to which the Tax Benefit is finally exhausted.

"**Tax Benefit**" means the aggregate of the amount by which the Contractor's (or Sub-Contractor's) liability (or the liability of any other company to which the Contractor (or any Sub-Contractor) may from time to time surrender group relief) arising in consequence of the Contractor's (or Sub-Contractor's) payment to its pension scheme to pay corporation tax is reduced and/or the amount of any repayment of corporation tax to which the Contractor (or any Sub-Contractor) (or any such company) is entitled, which in either case, arises as a result of the payments referred to in **clause 15.18** above.

15.20 The contribution rate to be paid by the Contractor will be subject to reassessment and adjustment in accordance with the terms of the Admission Agreement and LGPS Regulations the first of which is due as at 31 March 2016 (implemented from 1 April 2017) and at 5 yearly intervals starting from the Contract Date during the Contract Period.

SECTION C: THE SERVICES

16 PERFORMANCE OF SERVICES

- 16.1 The Contractor shall ensure that the Services (if appropriate as modified pursuant to **clause 24**) shall be performed in accordance with the Contract Documents and all applicable Legislation, Guidance and Good Industry Practice.
- 16.2 The Contractor's management or supervisory employees shall supervise and inspect all work which forms part of the Services.
- 16.3 The Contractor shall ensure that the Services provided meet the Service Performance Indicators given in **Schedule 1** (Specification).
- 16.4 The Contractor shall immediately inform the Authorised Officer of any actual or potential action by any governmental or regulatory body that affects or may affect its ability at any time to fulfil its obligations under the Contract.
- 16.5 The Contractor shall immediately notify the Authorised Officer of any actual or potential industrial action, whether such action be by its own Staff or others or any other contingency of any kind that affects or might affect its ability at any time to fulfil its obligations under the Contract.

17 SERVICES DELIVERY PLAN

- 17.1 The Services Delivery Plan shall set out both the proposed method of performing the Services and full supporting details of the Staff and other resources which will be utilised to achieve the performance levels required by **Schedule 1** (Specification). The Services Delivery Plan shall detail the Contractor's management and control processes and clearly indicate how the Contractor proposes to manage the quality of the Services delivered.
- 17.2 The Mobilisation Plan shall set out the proposed method of mobilising each Service Category to enable the Contractor to perform the Services in accordance with the Services Delivery Plan and **Schedule 1** (Specification) from the Services Commencement Date.
- 17.3 The Services Delivery Plan may not be amended by the Contractor without the consent of the Council. Where the Services Delivery Plan is, or becomes in any other way unsatisfactory, the Council will notify the Contractor accordingly and the Contractor shall use its best

endeavours to supply a Services Delivery Plan which meets the requirements of the Council provided always that the Council is not acting capriciously, vexatiously or unreasonably.

17.4 The acceptance by the Council of the Services Delivery Plan does not constitute an acceptance by the Council that the Services Delivery Plan will deliver the desired performance and does not exonerate the Contractor from delivering the desired performance should the Services Delivery Plan prove inadequate for the purpose.

17.5 The Services Delivery Plan shall be supplemented by a Mobilisation Plan (as set out in **Schedule 2 (Mobilisation Plan)**) which shall set out the proposed method and timetable, and the resources required, for the mobilisation of the Services.

18 HUMAN RESOURCES

18.1 The Contractor shall at all times during the Contract Period assign to the Contract Staff whom the Contractor holds out as having sufficient skills and expertise for the proper performance of the Services.

18.2 The Contractor shall ensure that, while allocated to the performance of the Services, all Staff shall:

- (a) maintain strict discipline and good order and shall not engage in behaviour or activities which could be contrary to or detrimental to the Council's or the Boroughs' interests;
- (b) be effective and efficient workers, competent in their particular profession or skill;
- (c) abide by the standards, rules and regulations established by the Contractor for its own Staff;
- (d) comply with all relevant Legislation, Guidance and Good Industry Practice relating to the provision of the Services and to health and safety;
- (e) be advised of the need for controlling hazardous substances in the workplace as required by the Control of Substances Hazardous to Health Regulations 2002 (COSHH);
- (f) maintain the highest standards of courtesy and consideration to Service Users; and

- (g) be advised of the need to recognise situations which may involve any actual or potential danger of personal injury to any person and where possible without personal risk, to make safe such situations, and forthwith to report such situations to the Authorised Officer or in the event of an emergency to the appropriate officer of the relevant Borough.
- 18.3 Where, in the opinion of the Council, the Contractor has insufficient Staff engaged to discharge the Contractor's obligations under the Contract the Council shall inform the Contractor. If the Contractor does not respond to the reasonable satisfaction of the Council, then the Council shall be entitled to make alternative arrangements for the Services and to recover the full cost of doing so from the Contractor.
- 18.4 Should the circumstances described in **clause 18.3** prevail, the Council may either:
- (a) hire staff from an employment agency and charge the full cost of this to the Contractor; or
 - (b) commence any other arrangements necessary to ensure that the full management and operation of the Services is provided, and charge the full cost of this to the Contractor.
- 18.5 The Contractor shall ensure that members of its Staff give all reasonable assistance to the Council and (if directed by the Council to the Boroughs) in the investigation of complaints, disciplinary matters involving the Council's Staff, and similar matters.
- 18.6 The Contractor shall not employ any Staff under the age of sixteen (16) years.
- 18.7 Prior agreement must be obtained by the Contractor from the Authorised Officer to employ Staff attached to any Government training scheme. Any additional costs incurred must be borne by the Contractor. If the Contractor wishes to employ Staff that are attached to a Government training scheme, it will have to satisfy the Council that they are working to a pre-determined training scheme.
- 18.8 The Contractor shall cease to use any employment agency or staff recruitment service where the Council indicates that such agency or service is unacceptable.
- 18.9 The Council reserves the right to require removal from the Services of any individual used by the Contractor who, in the opinion of the Authorised Officer:

- (a) is or is deemed to be guilty of misconduct or negligence;
- (b) is acting in a manner which is detrimental to the Council's or the Boroughs' interests;
- (c) is not medically fit to perform the Services or provides a risk to the health of those with whom that person may come into contact during work on the Contract; and/or
- (d) is not complying with the Council's policies for use of the Council Premises,

provided always that the Council will not exercise its right to require removal without giving prior notification to the Contractor and taking account of the Contractor's representations other than in cases of fraud or misappropriation.

18.10 The Council shall in no circumstances be liable to the Contractor for any claim in respect of any such removal.

18.11 The right contained within this clause shall not be exercised arbitrarily, vexatiously or capriciously by the Authorised Officer.

19 SUPERVISION OF STAFF

19.1 The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity, email address and telephone numbers of the person appointed as the Contract Manager. The Contractor shall notify the Authorised Officer in writing of any subsequent appointment within one (1) week of that appointment.

19.2 The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity, address and telephone number of any person authorised to act for any period as deputy for the Contract Manager.

19.3 The Contractor shall ensure that the Contract Manager, or a competent deputy, duly authorised by the Contractor to act on its behalf, is available to the Authorised Officer in person at all times.

19.4 The Contractor shall provide a sufficient number of supervisory employees to ensure that the Staff engaged in and about the provision of the Services are at all times adequately supervised to ensure compliance with the requirements of the Contract.

- 19.5 The Staff engaged in the provision of the Services shall be under the control and direction of the Contractor's own supervisory employees, but must comply with all instructions given to them by the Authorised Officer in any matter in which health and safety is involved.
- 19.6 The Contractor shall ensure that its employees observe the security of all secured areas of the Council Premises and the Contractor shall provide and shall ensure that its employees wear at all times, when engaged on provision of the Services such identification (including photographic identification) as may be specified by the Council.
- 19.7 When requested to do so, or when communicating with other persons as a representative of the Contractor in the performance of the Services, any employee, representative, or agent of the Contractor shall disclose his identity and shall not attempt to avoid so doing.
- 19.8 The Contractor shall maintain current and accurate records of the employees who are engaged and provide the Services. These records shall include employee attendance and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Authorised Officer or his representatives at all reasonable times.
- 19.9 The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions, or levies of any kind, relating to or arising out of the employment of any person employed by the Contractor and shall fully and promptly indemnify the Council in respect of any such sums incurred by the Council or any Borough.

20 VETTING OF STAFF

- 20.1 The Contractor recognises that performance of the Contract may require some Staff to have contact with children or vulnerable adults, towards whom the Council and the Boroughs owe a special duty of care. The Contractor shall if required by the Council (or if directed by the Council or the Borough) obtain information concerning all such Staff to facilitate a Disclosure and Barring Service check (or any such replacement service from time to time) for criminal convictions (e.g. name, address, date of birth, place of birth, national insurance number), and conduct the required checks to the satisfaction of the Council. The Contractor shall conduct a Disclosure and Barring Service check (or any such replacement service from time to time) against all Staff engaged in the provision of Services where it is reasonable to expect that such Staff will be working in close proximity to children or vulnerable adults.
- 20.2 The Contractor will ensure that all such Staff have given their written permission (through

completion of a standard application form) for such a check to be made and that they are aware that any spent convictions will be disclosed on such a check. The Council may check to ensure that the Contractor has conducted the required police checks to its satisfaction. The Council will make the decision as to whether, following disclosure of conviction, the employment of individual Staff should be terminated and where appropriate will discuss the options, in the strictest confidence, with the Contract Manager.

- 20.3 The Council will carry out criminal record checks, as required, for smaller contractors whose size may not warrant registration as a registered body to undertake the checks, and the Council will make a charge for this service.
- 20.4 Any person whom the Authorised Officer deems to be unsuitable, either as a result of the check or by virtue of a lack of co-operation in facilitating the check, shall immediately be removed in accordance with **clause 18**. The right contained within this clause shall not be exercised arbitrarily, vexatiously or capriciously by the Authorised Officer.
- 20.5 The Contractor shall not be entitled to access any police report obtained by the Council nor make detailed inquiry as to the reason for the Authorised Officer's decision.

21 DRESS/UNIFORM AND IDENTIFICATION

- 21.1 Where the nature or the place of any duties upon which the Contractor's Staff are engaged in the provision of the Services makes the wearing of any special or protective clothing or footwear necessary or appropriate, the Contractor shall provide and shall require its Staff to wear such clothing or footwear. Such special or protective clothing or footwear shall be maintained and replaced as necessary by the Contractor.
- 21.2 All of the Contractor's Staff, when engaged in the delivery of the Services, shall wear a uniform with identification, to the approval of the Council prior to the Services Commencement Date.

22 USE OF COUNCIL PREMISES

- 22.1 The Contractor may be required to perform Services on Council Premises. The Contractor shall ensure that its Staff are adequately supervised whilst on Council Premises.
- 22.2 The Contractor and Council will treat any property or equipment respectively owned and used in the performance of or in connection with the Contract with due care and attention and shall

be responsible for the cost of any accidental or deliberate damage thereto.

- 22.3 In the event that the Council or Contractor is able to demonstrate that any damage as mentioned in **clause 22.2** has occurred the Party so affected shall be entitled to recover the reasonable costs of repair or reparation from the other.
- 22.4 The Contractor shall use utility services such as gas, electricity and water in the most economic and efficient manner.
- 22.5 The Contractor and Staff shall use the facilities and services only in connection with the provision of the Services and shall ensure that the Staff use Council Premises for the purposes of the Services.
- 22.6 The leasing or permitting of the use of Council Premises and services is personal to the Contractor and the Contractor's Staff and shall cease at the end of the Contract Period or upon the termination of the Contract.
- 22.7 The Contractor shall be responsible for the security of Council Premises which they use and occupy for the delivery of the Contract.
- 22.8 The Contractor shall adhere to any arrangements for entry and use of Council Premises (for example, the provision of security passes) as may be detailed in **Schedule 1 (Specification)**, any occupancy agreement or otherwise notified by the Authorised Officer.

Grant of Leases

- 22.9 The Council shall and shall procure that each of the Boroughs (as appropriate) shall (subject to statutory requirements) grant, and the Contractor shall accept, the leases of the Contract Locations substantially in the form as set out within **Schedule 12 (Agreed Form Lease)** (the "**Leases**") on the Lease Completion Date.
- 22.10 The Council shall grant and shall procure (where applicable) that the Leases are granted with vacant possession.
- 22.11 Not less than twenty (20) Business Days prior to the Lease Completion Date, the Authorised Officer shall deliver an engrossment of the relevant counterpart Lease to the Contract Manager.

- 22.12 The Contractor shall execute and deliver to the Authorised Officer the relevant counterpart Lease within ten (10) Business Days of receipt. The Parties confirm in relation to each Lease that a Landlord's Notice has been served on the Contractor and the Contractor or a person duly authorised by the Contractor has made a Tenant's Declaration.
- 22.13 The Council and the Contractor agree that the provisions of sections 24-28 (inclusive) of the Landlord and Tenant Act 1954 are to be excluded in relation to the tenancies to be created by the Leases.
- 22.14 The Contractor shall at all times observe and perform all of its obligations as under the Leases. Any breach by the Contractor of any provision of the Leases shall be deemed to be a breach of the Contract.

Registration

- 22.15 The Contractor shall (where freehold title is registered at HM Land Registry) apply for registration of the Leases at HM Land Registry and meet all fees in connection therewith as soon as reasonably practicable after the Leases have been completed and shall within ten (10) Business Days of completion of such application supply copies of the leasehold register entries and title plan to the Council's solicitors.
- 22.16 The Council shall use all reasonable endeavours to assist the Contractor in responding to any requisitions raised by HM Land Registry and the Council shall deliver to the Contractor prior to the completion of the Leases such consents as are required to be produced by virtue of the restrictions appearing on the Proprietorship Register for the title to the relevant Contract Location (where the freehold title to the relevant Contract Location is registered at HM Land Registry) to enable the relevant Lease to be registered.
- 22.17 Neither the Contractor nor any Contractor Related Party shall be entitled to any compensation on the expiry or earlier determination of any of the Leases save as set out in this Contract.
- 22.18 The Leases shall be granted with vacant possession but otherwise subject to, or where applicable, with the benefit (to the extent the Council is capable of transferring the same) of:
- (a) all existing rights privileges easements and liabilities existing as at the date hereof;
 - (b) all local land charges (whether registered or not before the date hereof) and all matters capable of registration as local land charges (whether or not actually

registered as such) affecting or relating to the Contract Locations or any part thereof or any building or other structure thereon whether general or specific;

- (c) all notices orders proposals or requirements whatsoever (whether registered or not before the date hereof) affecting or relating to the Contract Locations or any part thereof given or made by any government department or by any statutory undertaker or by any public local authority or other competent authority;
- (d) all actual or proposed charges (other than financial charges or liability for chancel repairs) orders proposals restrictions agreements notices or other matters whatsoever (whether registered or not before the date hereof) affecting or relating to the Contract Locations or any part thereof or any building or other structure thereon or any part thereof under Legislation; and
- (e) the matters mentioned or referred to in the registers to the freehold title to the Contract Locations as at the date of this Contract (save for financial charges)

and the Contractor shall be deemed to take the Leases with full knowledge thereof and shall raise no requisition thereon or objection thereto.

22.19 Title to the Contract Locations having been deduced to the Contractor or the Contract Manager prior to the date of this Contract the Contractor shall take the Leases with full knowledge thereof and shall raise no requisition thereon or objection thereto save in relation to any matters that have not been previously disclosed to the Contractor arising after the date of this Contract revealed by usual pre-completion searches at HM Land Registry or HM Land Charges Registry.

22.20 If this Contract is terminated for any reason prior to the end of the Contract Period:

- (a) any Leases granted to the Contractor shall automatically cease and determine in accordance with its terms with effect from the date of termination of this Contract (or, if not granted at the time, the obligation to grant the Leases);
- (b) the Contractor shall forthwith deliver to the lessor in accordance with the relevant Lease together with relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the relevant Lease; and

- (c) the Parties shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at HM Land Registry and the Land Charges Registry in relation to the relevant Lease.

22.21 Not later than twenty (20) Business Days before the last day of the Contract Period, the Council may, by written notice to the Contractor, require the Contractor to:

- (a) assign, with effect from the last day of the Contract Period, its unencumbered interest in the relevant Lease (as applicable) to such assignee as shall be notified by the Council to the Contractor in the notice by delivering to the Council within ten (10) Business Days a duly executed deed of assignment in such form as the Council and the Contractor shall agree (each acting reasonably) together with all relevant title deeds and releases from any charge; or
- (b) surrender, with effect from the last day of the Contract Period, its unencumbered interest in the relevant Lease (as applicable) to the relevant landlord by delivering to the Council within ten (10) Business Days a duly executed deed of surrender in such form as the Council and Contractor shall agree (each acting reasonably) together with all relevant title deeds and releases from any charge,

and, upon any such assignment or surrender, the Contractor and any guarantor shall be released from all future liability (but not any past or present liability) under the relevant Lease.

Adjacent Land and Third Party Consents

22.22 The Contractor shall use all reasonable endeavours not to do or permit or suffer to be done anything which might:

- (a) be or become a danger or nuisance or give rise to liability in tort to any Adjoining Owners or to members of the public generally; or
- (b) cause damage to any adjoining property; or
- (c) (unless permitted by a Third Party Consent and then only in accordance with the terms of the Third Party Consent) interfere with any Adverse Rights,

and the Contractor shall at its own expense in the carrying out of the Services take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or

interference and shall make good any damage so caused.

22.23 The Contractor shall make good any damage to any roads, footpaths, Conduits, services, landscaping and other works on any adjoining property which is caused by the Contractor or any Contractor Related Party.

22.24 Subject to the provisions of clauses 22.24 to 22.27, Contract Location Conditions shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract and the generality of the foregoing), the Contractor shall be deemed to have:

- (a) carried out a ground physical and geophysical investigation and to have inspected and examined the Contract Locations and its surroundings and (where applicable) any existing structures or works on, over or under the Contract Locations;
- (b) satisfied itself as to the nature of the Contract Location Conditions;
- (c) satisfied itself as to the adequacy of the means and rights of access to and through the Contract Locations and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Contract Locations);
- (d) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Council, its employees and agents) with access to or use of, or rights in respect of, the Contract Locations with particular regard to Adjoining Owners; and
- (e) satisfied itself as to the presence or absence of any Contamination.

22.25 Notwithstanding clause 22.26, the Contractor shall not be entitled to make any claim in relation to Contract Location Conditions against the Council of any nature whatsoever.

22.26 Subject to clause 22.25, the Council shall be responsible for, and shall release and indemnify the Contractor, its employees, agents and contractors on demand from and against all liability for complying with the requirements of, including the carrying out of any actions required by, a Relevant Regulatory Authority (whether required to be carried out by the Council or a Borough) in relation to Contamination present at, in, on, or under or escaping from the Contract Locations provided that the Council shall have no liability under this clause 22.27

where the Council demonstrates, on the balance of probabilities, that such liability was caused by the Contractor or a Sub-Contractor or was exacerbated by or would not have occurred but for an act or omission of the Contractor or a Sub-Contractor.

22.27 Clauses 22.24 to 22.27 constitute an agreement for the purposes of paragraph 7.29 of the Contaminated Land Statutory Guidance issued by DEFRA in April 2012 as may be amended for time to time (an "Agreement on Liabilities"). Each Party consents to the provisions of this clause 22 being disclosed to a Relevant Regulatory Authority. The Parties agree not to challenge the validity, existence or application of the Agreement on Liabilities in relation to any disclosure pursuant to clauses 22.24 to 22.27.

Storage

22.28 The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice.

COSHH Register

22.29 The Contractor shall maintain a COSHH register in accordance with Legislation and Good Industry Practice. The Council shall notify the Contractor of any items which are being used or stored by it (or on its behalf) at any of the Contract Locations and which are required to be included in such register.

23 VEHICLES, EQUIPMENT, MATERIALS AND CONSUMABLES

23.1 The Contractor shall at all times during the Contract Period provide and maintain sufficient Assets as are required for the proper and efficient performance of the Services (and shall record any such Assets in the Asset Register, and shall maintain and update the Asset Register accordingly throughout the Contract Period). Lack of suitable equipment will not be considered a defence for non-performance of the requirements of the Contract.

23.2 From the Services Commencement Date, the Council shall (to the extent it is able to do so) transfer (or shall procure the transfer of) the Council Assets to the Contractor, at no cost to the Contractor (and, following the completion of such transfer, the Contractor shall promptly update the Asset Register accordingly to reflect this), for use by the Contractor in the performance of the Services only.

- 23.3 The Contractor shall:
- (a) provide the Council with one (1) electronic copy of the Asset Register within thirty (30) Business Days of the Contract Date; and
 - (b) maintain and update the Asset Register on a regular basis, providing the Council with one (1) electronic copy of the updated Asset Register within thirty (30) Business Days of each anniversary of the Contract Date during the Contract Period (or at such other time as reasonably requested by the Council).
- 23.4 The Contractor shall at its own expense, put, keep and maintain all Assets in accordance with **Schedule 1** (Specification) and in proper repair and condition, in order that it is able to perform the Services throughout the Contract Period and comply with all relevant statutory requirements. The Contractor shall use all Assets with all reasonable skill and care and in accordance with Good Industry Practice.
- 23.5 The Contractor shall make its own arrangements for insurance, security and housekeeping of the Assets.
- 23.6 The Contractor shall ensure that any ICT facilities utilised in the performance of the Services:
- (a) are compatible with those operated by the Council and Boroughs; and
 - (b) allow the Authorised Officer (and other personnel notified to the Contractor by the Authorised Officer from time to time) the necessary access for on-line enquiries.
- 23.7 All Assets shall be replaced as necessary by the Contractor (at its own cost) with equipment of a similar type and of an equivalent standard (or suitable alternative items of equipment or vehicles, as agreed with the Authorised Officer) and the Contractor shall update the Asset Register accordingly.
- 23.8 The Contractor shall at all times permit the Authorised Officer access to the Assets. The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put any of the Council Assets, vehicle or item of equipment into such condition as is required by **clause 23.4** and the Contractor shall forthwith upon receipt of such notice cause all necessary works to be carried out to comply with such notice. In the event of the Contractor failing to carry out such works, the Council shall be at liberty to have such works carried out and the Contractor shall pay to the Council such sums as the Authorised

Officer shall certify to have been the cost of executing such works.

- 23.9 Prior to the Termination Date, the Council shall be entitled to serve upon the Contractor a notice requiring the Contractor to, where possible, transfer to the Council (or relevant Borough), or to such other third party as advised by the Council, on the Termination Date such Assets as may be specified in such notice and to transfer to the Council (or relevant Borough) on the Termination Date the benefit of all contracts relating to the hire (if applicable) of such Assets as may be specified in such notice, or in the event that is not possible, on or before on the Termination Date provide the Council or relevant Borough with the relevant contact details of companies from which the Contractor previously hired such Assets.
- 23.10 Following receipt of a notice under **clause 23.9** the Contractor shall deliver on the Termination Date such items to the Council (or relevant Borough) in the condition they are in at the date of such notice, at no cost to the Council (or relevant Borough).

24 VARIATIONS

Council Variation

- 24.1 The Council has the right to propose a variation ("**Council Variation**") in the Services in accordance with this **clause 24**.
- 24.2 If the Council requires a Council Variation, the Authorised Officer must serve a notice "**Council Variation Order**") on the Contractor.
- 24.3 The Council Variation Order shall:
- (a) set out the variation required in reasonably sufficient detail for the Contractor to be able to confirm the Council's estimate of costs (if any);
 - (b) in the event that the variation will require Capital Expenditure, state whether the Council intends to pay to the Contractor the costs involved in implementing the variation; and
 - (c) require the Contractor to provide the Council within fifteen (15) Business Days of receipt of the Council Variation Order with the Estimate.
- 24.4 As soon as practicable and in any event within fifteen (15) Business Days after having

received the Council Variation Order, the Contractor shall deliver to the Council an estimate (the "**Estimate**"). The Estimate shall include the opinion of the Contractor on:

- (a) whether relief from compliance with obligations under the Contract Documents is required during the implementation of the Council Variation;
- (b) any impact on the provision of Services;
- (c) any amendment required to any Contract Document as a result of the Council Variation;
- (d) any costs/loss of revenue that results from the Council Variation and/or any amendment required to the Council's estimate of costs (provided pursuant to **clause 24.3(a)**);
- (e) any Capital Expenditure that is required or no longer required as a result of the Council Variation; and
- (f) any regulatory approvals and consents which are required,

and the Contractor may use and/or refer to the Change Mechanism as a tool to assist it in producing the Estimate.

24.5 As soon as practicable after the Council receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate, including:

- (a) providing evidence that the Contractor has discharged its duties to mitigate increases in costs to the Council and maximise savings for the Council, and used reasonable endeavours (including, where applicable, the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, any foreseeable Change in Law at that time has been taken into account by the Contractor, and
- (c) demonstrating that any expenditure that has been avoided, which was anticipated to

be incurred to replace or maintain assets that have been affected by the Council Variation concerned, has been taken into account in the amount which, in the Contractor's opinion, has resulted or is required under **clause 24.4(d)** and/or **clause 24.4(e)**.

- 24.6 In such discussions the Council may modify the Council Variation Order. In each case the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, notify the Council of any consequential changes to the Estimate.
- 24.7 If the Contractor does not intend to use its own resources to implement any Council Variation it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money when procuring any work, services, supplies, materials or equipment required in relation to the Council Variation.
- 24.8 If the Parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with **clauses 52 and 53** provided that the Council reserves the right at any time to withdraw the Council Variation Order and seek (where practicable) alternative suppliers for the requirement.
- 24.9 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to **clauses 52 and 53**, the Council shall:
- (a) confirm the Estimate (as modified); or
 - (b) withdraw the Council Variation Order.
- 24.10 If the Council does not confirm in writing the Estimate (as modified) within twenty-one (21) Business Days of the contents of the Estimate having been agreed in accordance with **clause 24.5** or determined pursuant to **clause 24.8**, then the Council Variation Order shall be deemed to have been withdrawn. Where there is such a withdrawal (either pursuant to this **clause 24.9** or this **clause 24.10**) the Council shall pay to the Contractor the reasonable additional third party costs (if any) incurred by the Contractor in preparing such Estimate provided that:
- (a) the Contractor has used all reasonable endeavours to submit a reasonably priced Estimate;

- (b) the Contractor has made available to the Council a cost breakdown of the Estimate including an estimate of any third party costs to be incurred by the Council if the Council Variation Order is withdrawn or deemed to be withdrawn; and
- (c) the Council has:
 - (i) approved the estimate of third party costs referred to in **clause 24.10(b)** and the type of third party costs prior to such third party costs being incurred; and
 - (ii) agreed that, given the nature of the proposed Council Variation, it is reasonable to expect the relevant third party costs to be incurred in preparing the Estimate on the basis of the extent of the proposed change to the Services and the work required in submitting an accurate Estimate in compliance with this **clause 24**; and
 - (iii) the Contractor has provided the Council with such evidence as it may reasonably require in order to verify the additional third party costs incurred by the Contractor.

24.11 In the event that the Estimate has been confirmed by the Council, then the adjustment to the relevant element of the Monthly Contract Payment shall be made in accordance with **Schedule 5** (Payment Mechanism) and, if necessary, the Base Case shall be revised in accordance with **Schedule 10** (Base Case and Revision of Base Case).

Contractor Variation

24.12 If the Contractor wishes to introduce a variation in the Services ("**Contractor Variation**"), it must serve a notice ("**Contractor Variation Proposal**") on the Council.

24.13 The Contractor Variation Proposal must:

- (a) set out the proposed Contractor Variation in sufficient detail to enable the Council to evaluate it in full;
- (b) specify the Contractor's reasons for proposing the Contractor Variation;
- (c) request the Council to consult with the Contractor with a view to deciding whether to agree to the Contractor Variation and, if so, what consequential changes the Council

requires as a result;

- (d) indicate any implications of the Contractor Variation;
- (e) indicate, in particular, whether a variation to the Monthly Contract Payment is proposed (and, if so, give a detailed cost estimate of the proposed change); and
- (f) indicate if there are any dates by which a decision by the Council is critical,

and the Contractor may use and/or refer to the Change Mechanism as a tool to assist it in producing the Contractor Variation Proposal.

24.14 The Council shall evaluate the proposed Contractor Variation in good faith, taking into account all relevant issues, including whether:

- (a) a change in the relevant element of the Monthly Contract Payment will occur;
- (b) the Contractor Variation affects the quality of the Services or the likelihood of successful delivery of the Services;
- (c) the Contractor Variation will interfere with the relationship of the Council and/or any other Borough with third parties;
- (d) the financial strength of the Contractor is sufficient to perform the changed Services;
or
- (e) the Contractor Variation materially affects the liabilities, risks or costs to which the Council or any other Borough is exposed.

24.15 As soon as practicable after receiving the Contractor Variation Proposal, but in any event within fifteen (15) Business Days, the Parties shall meet and discuss the matter referred to in it. During their discussions the Council acting reasonably may propose modifications or accept or reject the Contractor Variation Proposal.

24.16 If the Council acting reasonably accepts the Contractor Variation Proposal (with or without modification), the Contractor Variation shall be implemented within a time period agreed between the Parties. The Parties shall enter into any documents to amend any Contract Document as necessary to give effect to the Contractor Variation.

- 24.17 If the Council acting reasonably rejects the Contractor Variation Proposal the Council shall notify the Contractor accordingly and shall be obliged to give its reasons for such a rejection.
- 24.18 Unless the Council's acceptance specifically agrees to an increase in the Monthly Contract Payment, there shall be no increase in the Monthly Contract Payment as a result of the Contractor Variation.
- 24.19 If Contractor Variation causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease, then there shall be a decrease in the Monthly Contract Payment by an equal amount in accordance with **Schedule 5** (Payment Mechanism).
- 24.20 If an adjustment to the Monthly Contract Payment is required pursuant to **clauses 24.18** or **24.19**, then the adjustment shall be made in accordance with **Schedule 5** (Payment Mechanism) and, if necessary, the Base Case shall be revised in accordance with **Schedule 10** (Base Case and Revision of Base Case).

25 COUNCIL STEP-IN

25.1 If the Council reasonably believes that it needs to take action in connection with the Services (or part thereof):

- (a) because a serious risk exists to the health or safety of persons or property or to the environment; or
- (b) because of a failure to manage the Service or any part thereof properly; and/or
- (c) to discharge a statutory duty,

then the Council shall be entitled to take action in accordance with **clauses 25.1** to **25.7** inclusive.

25.2 If **clause 25.1** applies and the Council wishes to take action, the Council shall notify the Contractor in writing of the following:

- (a) the action it wishes to take;
- (b) the element of the Services that will be affected;

- (c) the reason for such action;
- (d) the date it wishes to commence such action;
- (e) the time period which it believes will be necessary for such action; and
- (f) to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

25.3 Following service of such notice, the Council shall take such action as notified under **clause 25.2** and any consequential additional action as it reasonably believes is necessary (the "**Required Action**") and the Contractor shall give all reasonable assistance to the Council while it is taking the Required Action.

Step-in without Contractor Breach

25.4 If the Contractor is not in breach of its obligations under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

- (a) the Contractor shall be relieved from its obligations to provide such part of the Services; and
- (b) in respect of the period in which the Council is taking the Required Action, and provided that the Contractor provides the Council with reasonable assistance (such assistance to be at the expense of the Council or relevant Boroughs to the extent incremental costs are incurred) the Monthly Contract Payment due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

Step-in on Contractor Breach

25.5 If the Required Action is taken as a result of a breach of the obligations of the Contractor under the Contract, then for so long as and to the extent that the Required Action is taken and this prevents the Contractor from providing any part of the Services:

- (a) the Contractor shall be relieved of its obligation to provide such part of the Services;

and

- (b) in respect of the period in which the Council is taking Required Action the Monthly Contract Payment due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations in providing the Services affected by the Required Action over that period less an amount equal to all the Council's or relevant Boroughs' reasonable costs of operation in taking the Required Action.

Performance by the Council and Mitigation

25.6 The Council shall, in carrying out the Required Action:

- (a) carry out, or procure the carrying out of such Required Action to the same standards as the Contractor is obliged to perform any such obligations pursuant to the Contract; and
- (b) carry out or procure the carrying out of such steps in a prompt and diligent manner.

Mitigation

25.7 The Council shall take all steps reasonably necessary and consistent with Good Industry Practice to mitigate the consequences of carrying out or procuring the carrying out of the Required Action.

SECTION D: PAYMENT, PERFORMANCE AND REPORTING

26 METHOD OF VALUATION AND BASE CASE

- 26.1 The Council shall pay any monies owing and due to the Contractor for the proper provision of the Services in accordance with this Contract and **Schedule 5** (Payment Mechanism). Indexation will be in accordance with the provisions of paragraph 20 of **Schedule 5** (Payment Mechanism).
- 26.2 The original Base Case (with instructions for use setting out how to view, verify and amend the Base Case) is set out in **Schedule 10** (Base Case and Revision of Base Case).
- 26.3 The Contractor shall ensure that the original Base Case has a version number and date.

26.4 The Base Case shall be accompanied by a written summary to include a summary of the key data in the Base Case, including revenue, profit, income share, costs and targeted rate of return (including references to specific cells, rows or sheets, as applicable), and the calculations made in order to produce such data.

26.5 Any revisions to the Base Case shall be made in accordance with the provisions of **Schedule 10** (Base Case and Revision of Base Case).

27 REPORTING

27.1 The Contractor shall prepare and submit to the Authorised Officer the reports as set out in **Schedule 6** (Reporting Requirements).

27.2 The Parties acknowledge and accept that changes will take place during the Contract Period in respect of matters such as the precise format of the Monthly Report and other reports required in accordance with **Schedule 6** (Reporting Requirements), the officers to whom specific reports should be submitted, and the supporting documentation required to be provided by the Contractor. These changes will be subject to agreement of the Parties, and such agreement will not be unreasonably withheld or delayed. All agreed changes shall be accommodated expeditiously and the cost shall be borne by the Contractor.

28 MONTHLY REPORT AND INVOICE

28.1 Subject to **clause 27.2**, within ten (10) Business Days of the last day of each Month during the Contract Period the Contractor shall provide to the Authorised Officer a Monthly Report containing all information specified in **Schedule 6** (Reporting Requirements) and setting out (to the extent the Contractor is able to do so) the calculation of the payment claimed by the Contractor in respect of the relevant Month accompanied by the Contractor's invoice. The Contractor shall calculate any payments due in accordance with **Schedule 5** (Payment Mechanism). Where the Contractor has previously submitted an invoice in accordance with **clause 28.2**, the Contractor shall include in any subsequent invoice submitted, any adjustment, amendment or variations agreed or determined in accordance with the Contract in relation to previous invoices.

28.2 If the Monthly Report shows a net amount owing by the Council to the Contractor, it shall be accompanied by a valid VAT invoice from the Contractor to the Council in the amount properly chargeable to VAT.

29 ANNUAL REPORT AND BUSINESS DEVELOPMENT PLAN

29.1 Subject to **clause 27.2**, within twenty (20) Business Days of the last day of each Contract Year (or on such other date as agreed between the Parties), the Contractor shall provide to the Authorised Officer:

- (a) an Annual Report containing all information specified in **Schedule 6** (Reporting Requirements);
- (b) a draft of the updated Business Development Plan and a draft of the updated Sustainability Plan (and such drafts shall be reviewed and agreed by the Parties at the Annual Review);
- (c) drafts of the updated Communications and Engagement Plan (Organised Groups) and Communications and Engagement Plan (Encouraging Participation) (and such drafts shall be reviewed and agreed by the Parties at the Annual Review);
- (d) (if appropriate) its proposed amendments to the Schedule of Rates to facilitate the consideration of the Schedule of Rates pursuant to **clause 40.1(n)** (Annual Review), together with evidence that any amendments to existing unit rates, or proposed new unit rates:
 - (i) are consistent with prices for similar services obtainable in the market at the time; and
 - (ii) offer the Boroughs value for money.

29.2 Within twenty (20) Business Days of the Annual Review at which the draft Business Development Plan referred to in **clause 29.1(b)** above is considered in accordance with **clause 40** (Annual Review) (or on such other date as agreed between the Parties), the Contractor shall deliver the agreed form, updated Business Development Plan, Communications and Engagement Plan (Organised Groups) and Communications and Engagement Plan (Encouraging Participation) to the Authorised Officer.

30 THIRD PARTY INCOME

30.1 The Contractor shall generate Third Party Income, and share such income with the Council in accordance with the provisions of **Schedule 13** (Third Party Income).

30.2 The Contractor shall maintain the Business Development Plan throughout the Contract Period, in accordance with **clause 29** (Annual Report and Business Development Plan) and **clause 40** (Annual Review). As part of the delivery of the Business Development Plan, the Contractor may apply to the relevant planning authority for planning consent for development of attractions on the Sites. In the event that planning consent is not granted at a particular location within a Site, then the Council shall procure that the Boroughs shall, at the Contractor's request, consult with the Contractor in order to identify alternative locations within the Site (or any other Site), insofar as is reasonably practicable, taking into account the resource available to the Boroughs in relation to this Contract at the time.

31 CERTIFICATION AND PAYMENT

31.1 Upon receipt of the Monthly Report and accompanying invoice from the Contractor in accordance with **clause 28** (Monthly Report and Invoice), the Authorised Officer shall determine whether the Services during the relevant period were performed properly.

31.2 The Contractor acknowledges and accepts that, in respect of any service failure or any breach by the Contractor of its obligations under this Contract, a complaint shall be sufficient evidence to establish a breach by the Contractor and/or (where applicable) the right for the Council to apply a relevant Deduction, unless the Contractor can produce evidence to rebut the presumed breach.

31.3 The Contractor shall be entitled to be paid the monies described in the invoice and approved for payment within thirty (30) Days of such approval of the invoice by the Council (an invoice shall be approved by the Council once it is regarded by each Borough as valid and undisputed in respect of the Services that such Borough has received in relation to the monies described in the invoice).

31.4 No payment issued by an Authorised Officer in accordance with the provisions of this Contract shall be conclusive evidence that the Contractor has performed all or any of its obligations strictly in accordance with the Contract. Adjustments may be made by the Authorised Officer in later payments in order to correct errors or omissions contained in earlier payments.

31.5 The Council shall be entitled to vary or adjust any invoice submitted by the Contractor in accordance with **Schedule 5** (Payment Mechanism).

31.6 The Contractor acknowledges and accepts its obligations pursuant to **clause 57.6** (Assignment and Sub-Contractors) regarding the payment of any Sub-Contractors.

32 FINANCIAL RECORDS OF CONTRACTOR

- 32.1 The Contractor shall provide to the Authorised Officer a certified copy of each years' audited accounts within nine (9) Months of the end of the relevant accounting period of the Contractor.
- 32.2 The Contractor shall maintain a full record of particulars of the costs incurred and revenues received in performing the Services.
- 32.3 Upon request by the Council, the Contractor shall provide a written summary of the costs incurred and revenues received as referred to in **clause 31.3** in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Contractor of its obligations under this Contract.
- 32.4 The Contractor shall provide such facilities as the Council may reasonably require for its representative to visit any place where the records are held and examine the records maintained under this **clause 32**.
- 32.5 All information provided by the Contractor pursuant to this **clause 32** is, where appropriate, subject to the provisions of **clause 59**.

33 VALUE ADDED TAX

- 33.1 Sums payable to the Contractor pursuant to the Contract are exclusive of Value Added Tax ("VAT").
- 33.2 The Council shall pay to the Contractor in the manner hereinafter set out any VAT properly chargeable on the supply by the Contractor of the Services at the appropriate rate.
- 33.3 The Monthly Report shall include any necessary tax invoices in respect of the payment of VAT.
- 33.4 If the Council objects to any part of such invoice and such objection cannot be resolved by agreement between the Parties, the Council may require the Contractor to refer to the Commissioners of Customs and Excise ("**the Commissioners**") any dispute, difference or question in relation to any of the matters specified in section 83 of the Value Added Tax Act 1994 ("**the Act**").
- 33.5 If the Contractor refers the matter to the Commissioners (whether or not under **clause 33.4**)

and the Council is dissatisfied with their decision on the matter, the Contractor shall at the Council's request refer the matter to a Value Added Tax Tribunal (the "**Tribunal**") by way of appeal under section 83 of the Act, whether or not the Contractor is so dissatisfied. Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under section 83 of the Act, the Council shall pay an equivalent sum to the Contractor.

33.6 The Council shall further reimburse the Contractor any costs or expenses reasonably and properly incurred in making reference (less any costs awarded to the Contractor by the Tribunal).

33.7 Upon the final adjudication by the Commissioners or, in the event of a reference to the Tribunal, the Council shall pay the amount of VAT adjudged due to the Contractor. Should the amounts already paid by the Council either by way of payment of VAT or by way of reimbursement of any money required to be deposited by the Contractor with the Commissioners under **clause 33.5** exceed the VAT adjudged to be due, the Contractor shall forthwith repay such excess to the Council.

34 PERFORMANCE MONITORING

Service Performance Indicators and PQMS

34.1 The Contractor's performance of its obligations under the Contract are to be measured having regard to the Service Performance Indicators and the PQMS. The Contractor shall provide the Boroughs with access to real-time data in respect of the Contractor's performance of its obligations under the Contract by way of ACORN.

34.2 At the Annual Review, the Parties may review the Service Performance Indicators and/or the PQMS, and may agree to amend the existing Service Performance Indicators or PQMS, or to create additional Service Performance Indicators or extend the scope of the PQMS. Any agreed changes to the Service Performance Indicators or the PQMS (and any related monitoring methods) will be implemented from the start of the next Contract Year.

Contractor Monitoring

34.3 The Contractor shall diligently carry out a Monthly performance monitoring and reporting exercise, by reviewing its performance against the Service Performance Indicators, and then submitting the Monthly Report in accordance with the procedure in this **clause 34** and **Schedule 6** (Reporting Requirements).

Council Monitoring

- 34.4 The Council may elect to undertake its own performance monitoring exercise at any stage during the Contract Period for any purpose including ensuring that the Services are being provided in accordance with the Contract, that all information provided by the Contractor is accurate and that the Contractor's own monitoring processes are adequate. The Contractor shall co-operate with and assist the Council with such performance monitoring. The Council's monitoring may include (without limitation) those methods listed in paragraph 9 of **Schedule 6** (Reporting Requirements).
- 34.5 The Council shall have the right from time to time to audit the Contractor's management systems (for example ISO 14001 or equivalent standard) including examining and inspecting the Contractor's activities to establish the adequacy or accuracy of the quality management system documentation. The Contractor shall use its reasonable endeavours to assist the Council in such an exercise.

Increased Monitoring

- 34.6 If the Contractor has failed to observe or perform any of its obligations under the Contract the Council may (without prejudice to any other right or remedy available to it) give notice to the Contractor:
- (a) requiring the Contractor to carry out additional monitoring in such manner and to such extent as the Council (acting reasonably having regard to the Contractor's failure) shall specify;
 - (b) requiring the Contractor to supply such additional reports, plans and other information in such manner and to such extent as the Council (acting reasonably) shall specify; and/or
 - (c) requiring the Contractor to carry out such inspections as the Council (acting reasonably) shall specify to be carried out by the Council its agents or employees in monitoring the performance and observance of the Contractor's obligations under the Contract,
- as considered necessary by the Council (causing as little disruption and inconvenience to the Contractor as is reasonably practicable).

- 34.7 In the event of failure by the Contractor to observe or perform its obligations under the Contract, the Council may give notice to the Contractor notifying the Contractor that the Council will undertake all or any part of the future monitoring having regard to the Contractor's failure to ensure that the Services are conducted in all respects in accordance with the Service Performance Indicators, whereupon the Contractor shall be relieved of future monitoring in such respect until such time as the Council shall (in its reasonable opinion) decide.
- 34.8 The Contractor shall co-operate and assist the Council with the monitoring by the Council, its agents or employees in accordance with **clauses 34.6 and 34.7** and shall make available all the Contractor's records relating to the provision of the Services forthwith on request by the Council. The Council, its agents and employees shall be permitted access forthwith on request by the Council to any of the Contract Locations or premises where such records are kept or where the Services are provided or to be provided.
- 34.9 The Contractor shall pay to the Council all reasonable costs (including any associated administrative costs and overheads) incurred by the Council in respect of the monitoring referred to in **clause 34.7** or in respect of the inspections referred to in **clause 34.8**.

Cost of Performance Monitoring

- 34.10 Subject to **clauses 34.7 to 34.9**, each Party shall bear the costs of its own performance monitoring.

Legal Requirements

- 34.11 Without prejudice to the generality of **clause 34.1**, no such actions by or on behalf of the Council will in any way lessen the Contractor's responsibility for ensuring that the Services are at all times conducted in a manner which complies with all applicable Legislation, Guidance and Good Industry Practice.

35 MONITORING PERFORMANCE

- 35.1 The Service Performance Indicators and the PQMS will be used to define how performance and Service quality will be measured and the remedies to be applied in the event of Services failures.
- 35.2 Where the Contractor has failed to perform the Services in accordance with the provisions of

the Contract and/or **Schedule 1** (Specification) within the stated rectification period (if any) then the Council shall be entitled to give the Contractor a written Service Improvement Notice setting out the failure to perform and requiring the Contractor to take the necessary steps to either rectify the failure within a reasonable time period or prevent the failure from occurring in the future. If the Contractor fails to comply with such Service Improvement Notice, the Contractor shall attend a meeting with the Partnership to review the Service failure in question.

- 35.3 The Council may, if appropriate, apply such sanctions applicable to such failure as set out in **clause 55** and **Schedule 5** (Payment Mechanism) including but not limited to financial sanctions by withholding monies due to the Contractor related to those elements of the Services it has failed to perform and/or a reduction representing the additional cost incurred by the Council in investigating and rectifying the reduction in value of the Services to the Council.
- 35.4 The Contractor shall maintain records of all such monitoring and actions taken throughout the Contract Period and for six (6) years from the date of expiry or termination of this Contract. Such records shall be made available to the Authorised Officer when reasonably requested (at no cost to the Council). These records will include information regarding all monitoring and actions taken throughout the Contract Period in respect of the Service Performance Indicators.
- 35.5 The number of written Complaints received, the time taken to respond and the action taken to rectify any Service failure shall be recorded by the Contractor.
- 35.6 The Contractor shall attend and participate in meetings with the Authorised Officer and other Council officers as frequently and at such intervals as may be required by the Authorised Officer for the good management and proper performance of the Services as defined in **Schedule 1** (Specification).
- 35.7 The Contractor shall at its own expense conduct surveys of user satisfaction (including the Customer Satisfaction Survey) with the Services as defined in **Schedule 1** (Specification), in terms agreed in advance with the Council and shall disclose the results of such surveys to the Council and respond promptly by ensuring appropriate changes are made to the quality of the Services where appropriate and jointly agreed with the Authorised Officer.

36 BRITISH STANDARDS AND QUALITY ASSURANCE

- 36.1 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current, the Contractor shall ensure that all goods used or supplied and all workmanship shall, as a minimum requirement, be in accordance with that standard, without prejudice to any higher standard required by the Contract.
- 36.2 The Contractor shall operate, or be able to demonstrate that it is working towards implementation by the Services Commencement Date of, a verifiable system that guarantees compliance with a quality system relevant to the Services and based on the principles in ISO 9001:2015 or any other equivalent quality measures. The quality system shall be designed to ensure that the Services are carried out to the standards set out in the Services Delivery Plan.
- 36.3 As an alternative to ISO 9001:2015, the Contractor shall operate, or be able to demonstrate that it is working towards implementation by the Services Commencement Date of, a verifiable system that guarantees compliance with an environmental management system relevant to the Services and based upon the principles in ISO 14000.
- 36.4 The Contractor shall keep the Council informed at all times as to the progress it has made in achieving such measures, and shall supply such documentation as the Authorised Officer may reasonably require as evidence of its performance of the obligations set out in this clause.
- 36.5 The Contractor accepts that it is a condition of the Contract that it will adopt and utilise any quality assurance and environmental management system measures detailed in **Schedule 1** (Specification) and/or the Services Delivery Plan for its performance of the Services, and that such processes shall be fully effective and operational as early into the Contract as possible.

37 COUNCIL INSPECTIONS AND INSTRUCTIONS

- 37.1 The Authorised Officer or his representatives may organise regular and thorough inspections of the Contractor's performance to ensure that it is complying with its obligations under the Contract. The Contractor shall co-operate with the Authorised Officer in any monitoring of the Contractor's performance against the provisions of the Contract.
- 37.2 The Authorised Officer shall appoint as many officers to assist in this task as are deemed necessary. The number of officers engaged on the monitoring of the Contract may be varied from time to time during the Contract Period.

- 37.3 The Authorised Officer or his representatives may undertake the review of performance by way of any method considered appropriate (including those listed in paragraph 8 of **Schedule 6** (Reporting Requirements)).
- 37.4 In particular, the Authorised Officer shall have the right to inspect work at Council Premises, Contractor Premises and Contract Locations and shall be permitted access to any and all relevant documentation in the possession, custody or control of the Contractor. For the avoidance of doubt this right will include the right to interview Staff, take copies of any and all relevant documentation and access any relevant computer databases in connection with the provision of the Services.
- 37.5 The Council may appoint an external assessor to investigate the failure of the systems and to recommend corrective action to the Contractor. Where such an appointment becomes necessary, the Contractor shall co-operate with the assessor and shall take all necessary steps to implement the recommendations made. The costs of such an exercise (together with a sum equal to 10% of those costs towards the Council's administrative costs and overheads) shall be payable by the Contractor to the Council on demand as a debt.

38 AUDITOR'S ACCESS

- 38.1 The Contractor shall maintain records, in accordance with Good Industry Practice, of all work carried out for the Council, all data relevant to the provision and operation of the Services, and of all stock (including equipment and consumables) purchased and utilised in the provision of the Services; such records shall be maintained throughout the Contract Period and for six (6) years from the date of expiry or termination of this Contract. These records shall be made available for inspection on demand during normal office hours by the Authorised Officer and/or the Council's or (if directed by the Council) any other Boroughs' internal and/or external auditors as and when they shall require.
- 38.2 At no cost to the Council the Contractor shall provide the Authorised Officer, the Council's or relevant Borough's internal and/or external auditors with full and free access on demand during normal business hours to all correspondence, documentation and files created in performance of the Services and shall provide such explanations and further information as may be deemed necessary for their purposes. The Contractor shall co-operate fully and assist the Council's or relevant Borough's auditors with any enquiries and investigations relating to such records and shall also co-operate fully in any subsequent action against any employee or third party suspected of fraud or dishonesty directly or indirectly in relation to the performance of the Services.

38.3 The Council shall give reasonable notice to the extent that it is able of any requests for information and access.

38.4 Relevant information shall be provided for the purpose of enabling the Council to carry out periodic assessments of the Contractor's performance under, and compliance with the provisions of, the Contract and to enable the Council and the other Boroughs to meet their statutory and internal accounting obligations.

38.5 The assistance of the Contractor under this clause shall be at no cost to the Council.

39 REGULAR MEETINGS OF CLIENT AND CONTRACTOR

39.1 The Authorised Officer may require the Contractor to attend meetings concerning the Contract at any time following reasonable notice. In addition to the Annual Review meeting, the Contractor shall nominate appropriate members of Staff (as may be reasonably required by the Authorised Officer from time to time) to attend the following routine meetings throughout the Contract Period at venues and on dates to be specified by the Authorised Officer:

- (a) a weekly meeting to discuss routine operational performance of the Services;
- (b) a Monthly liaison meeting with the Boroughs' nominated representatives to discuss Service performance and requirements;
- (c) a quarterly meeting to discuss operational performance of the Services at a strategic level and
- (d) a meeting with the Authorised Officer and/or persons nominated by the Authorised Officer and the Lot 1 Contractor, as required, to discuss interface issues with the Lot 1 Contract (the "**Contractor Liaison Meeting**").

39.2 Either Party may raise any matter concerning the performance of the Contract at any meeting by placing it on a written agenda.

39.3 The proceedings of the meetings (and any actions agreed, and where the responsibility for such actions sit), with the exception of the weekly meeting, will be recorded in writing by the Contractor and submitted to the Authorised Officer for agreement.

39.4 Should the most appropriate member of the Contractor's Staff be unable to attend the

meeting, then a suitable replacement of equivalent status shall be fully briefed by the Contractor and shall attend on its behalf.

39.5 From time to time the Authorised Officer may require other representatives from external bodies to attend these meetings, the detail of which shall be advised to the Contractor at least five (5) Business Days in advance of the meeting. The Contractor shall use reasonable endeavours to facilitate the attendance of such representatives at the meeting.

39.6 In addition to the Monthly liaison meeting to be held in accordance with **clause 39.1(b)**, there shall be Monthly meetings between the Authorised Officer and the Contract Manager to monitor the performance of the Contract.

40 ANNUAL REVIEW

40.1 At a date and time in June 2018 to be agreed between the Parties (and thereafter annually in each Contract Year on or around the anniversary of such date), the Parties shall hold an Annual Review. At each Annual Review the Parties shall meet to:

- (a) identify and programme the implementation of on-going technical, operational and organisational improvements to the Services, and efficiencies in the provision of the Services (to include consideration of the Contractor's proposals to improve the provision and/or performance of the Services, provided in accordance with **clause 40.6**) at all times ensuring that the Council obtains the best value for money reasonably obtainable;
- (b) discuss in good faith and agree the future arrangements for the provision of the Services (to include a review of the Asset Register) as a result of any changes (including, but not limited to, changes in requirements, Changes in Law and changes in Guidance, policy and process) and, in undertaking such discussions, both Parties (acting reasonably at all times) shall in good faith examine, discuss and implement any reasonable actions that together or individually they are able to undertake;
- (c) review any reasonable amendments and/or updates to the Services Delivery Plan for a Service Category, as proposed by either Party, provided that the Council has ultimate discretion to agree such amendments and/or updates;
- (d) review the categories of Sports Pitches and the Sports Pitches Services Payment in light of demand, current trends and the number of Sports Pitches used, and (acting

reasonably) agree any changes required to this aspect of the Monthly Contract Payment (provided that the decision of the Authorised Officer shall be final);

- (e) review the maintenance arrangements for sports facilities on the Sites, considering feedback and suggestions from relevant Organised Groups, and agree any changes to the Base Case as a result of reduced maintenance costs at such facilities in the event that an Organised Group (with agreement of the relevant Borough and the authorisation of the Authorised Officer) undertakes to carry out additional maintenance tasks in relation to the sports facilities (and the Parties may refer to the Change Mechanism as a tool to assist such discussions);
- (f) review the Services for the purpose of increasing efficiency, effectiveness and economy in accordance with the duty of the Council, and the Boroughs, under the Local Government Act 1999 (the "Best Value" duty);
- (g) review the results of the Customer Satisfaction Survey and/or any other customer satisfaction survey, and any asset survey;
- (h) review the Service Performance Indicators and the PQMS in accordance with **clause 34.2** (Performance Monitoring);
- (i) agree the contents of the Annual Conservation Plan for the forthcoming year;
- (j) review the contents of the Annual Report submitted by the Contractor to the Council prior to the Annual Review meeting (in accordance with **clause 29.1** (Annual Report and Business Development Plan)) and agree the contents of the updated Business Development Plan (a draft of which will be submitted by the Contractor to the Council prior to the Annual Review meeting, in accordance with **clause 29.1** (Annual Report and Business Development Plan)) which shall include the Contractor's proposals for future communications campaigns for the forthcoming year;
- (k) review and agree the updated Sustainability Plan (a draft of which will be submitted by the Contractor to the Council prior to the Annual Review meeting, in accordance with **clause 29.1** (Annual Report and Business Development Plan));
- (l) agree any updates required to **Schedule 16** (Communications and Stakeholder Engagement) and, in particular, review and agree the updated Communications and Engagement Plan (Organised Groups) and the Communications and Engagement

Plan (Encouraging Participation (drafts of which will be submitted by the Contractor to the Council prior to the Annual Review meeting, in accordance with **clause 29.1** (Annual Report and Business Development Plan));

(m) review and agree the annual pricing changes for Service Users for hire/use of sports, play and leisure facilities, Sports Pitch hire and the use of any other facilities/amenities on or in the Contract Locations; and

(n) review the Schedule of Rates (and the Contractor's proposed amendments (if any) submitted to the Council in advance of the Annual Review in accordance with **clause 29.1(d)** (Annual Report and Business Development Plan)), with the intention of:

(i) including in the Schedule of Rates unit prices for any element of the Services which may be performed pursuant to an Ad Hoc Works Order where there is, at the date of the Annual Review, no appropriate unit price (provided that this does not affect the risk profile of the Contract) and such unit price should properly be included in the Schedule of Rates; and

(ii) reviewing the unit pricing for each category in the Schedule of Rates to ensure that such unit rates continue to provide the Boroughs with value for money.

40.2 At the Annual Review, the Contractor shall provide the Authorised Officer with copies of all relevant quality assurance certification for the next twelve months and the results of any quality audits in accordance with the provisions of paragraph 2.3 of **Schedule 1** (Specification).

40.3 The Parties shall discuss changes to the Services at the Annual Review on a case-by-case basis. The Council and the Contractor shall act in a spirit of partnership in jointly identifying and implementing changes and improvements to the Services in accordance with this clause.

40.4 When discussing and agreeing changes and improvements to the Services in accordance with this **clause 40**, the Contractor shall provide the Council with a written record of the required resource changes, cost implications and/or savings associated with any change or improvement in the Services in accordance with **clause 40.6**. The Contractor has a duty to:

(a) mitigate, as far as possible, any increases in costs to the Council; and

(b) maximise, as far as possible, savings the for the Council,

in implementing changes.

40.5 Further to **clause 40.1(f)**, the Contractor acknowledges that the Council and the Boroughs have a duty under the Local Government Act 1999 to regularly review the Services for the purpose of securing continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness ("**Best Value**"), and the Contractor hereby agrees to assist the Council and (if directed by the Council) any relevant Borough as each may reasonably require with any such review including:

(a) actively promoting, supporting and assisting the Council or relevant Borough in meeting its Best Value duty in respect of the Services;

(b) assisting the Council or relevant Borough in conducting Best Value reviews and considering the Best Value duty, as it applies to the Services, in the Annual Report and the Business Development Plan; and

(c) adopting changes to the Services identified as achieving such purpose.

40.6 Without limitation to **clauses 40.3 to 40.5** (inclusive), and in addition to the draft Business Development Plan submitted by the Contractor to the Council prior to the Annual Review (in accordance with **clause 29.1** (Annual Report and Business Development Plan)), a minimum of fifteen (15) Business Days in advance of the Annual Review meeting, the Contractor shall provide the Council with written proposals to improve the provision and/or performance of the Services (the proposals to be considered at the Annual Review) having specific regard to:

(a) technical, operational and organisational improvements and efficiencies in the provision of the Services;

(b) cost-saving measures; and

(c) ways in which any increased costs (including those increased costs from improvements to the Services, variations to the Services, or otherwise) can be mitigated or set off against savings and/or gains made elsewhere by the Contractor in the provision of the Services.

41 CUSTOMER RELATIONSHIP MANAGEMENT

- 41.1 The Contractor agrees to deliver the Services to support the Council's strategy of ensuring that its communication and interaction with its customers are carried out in the most effective manner. The Contractor shall comply fully with **Schedule 16** (Communications and Stakeholder Engagement).
- 41.2 The Contractor shall record and maintain details of all enquiries, requests for Services and Complaints about the Services provided under the Contract, and shall deal with all such enquiries, requests for Services and Complaints in a prompt, courteous and efficient manner and in accordance with **Schedule 15** (Service User Procedure). The Contractor shall make every effort to correct any error or make good any failure, promptly, and within the agreed rectification period.
- 41.3 The Contractor shall provide suitable and appropriately trained Staff to receive, record and initiate remedial action in response to enquiries, requests for Services and/or Complaints whether by telephone, electronically or by other methods of correspondence during normal office hours.
- 41.4 The Contractor shall provide to the Council on a monthly basis (in accordance with its monthly reporting obligations as set out in **Schedule 6** (Reporting Requirements) and **Schedule 15** (Service User Procedure)), and at any other time as requested by the Council, a summary report detailing all customer enquiries, requests for Services and Complaints received, categorised by Service Category and showing the status of the enquiry/request/Complaint, time received, action required for rectification and time of rectification.

42 FORCE MAJEURE

- 42.1 In the event of a Force Majeure Event which causes the cessation of or substantial interference with the reasonable performance of the Services, the affected Party shall notify the other Party as soon as practicable.
- 42.2 The duty of the Contractor to perform the affected part of the Services and all obligations of the Council that are affected by the Force Majeure Event shall be suspended until the Force Majeure Event has ceased. The Council shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of any part of the Services not yet performed shall be held to the credit of the Council.

- 42.3 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 42.4 If the period of suspension under **clause 42.2** lasts for longer than three (3) Months, either Party may serve upon the other six (6) Months written notice of termination of the Contract. Unless the Services have been resumed before the expiration of such notice, the Contract shall terminate in accordance with such notice.

SECTION E: INSURANCE AND DIVISION OF LIABILITIES

43 INSURANCE

- 43.1 The Contractor shall maintain the following insurances from the Contract Date and for the duration of this Contract:
- (a) third party (public and products liability) insurance with a limit of indemnity of £10,000,000 (ten million pounds sterling) in respect of any one occurrence in any one (1) year and in the aggregate in respect of products liability;
 - (b) employers' liability insurance with a limit of indemnity of £10,000,000 (ten million pounds sterling) in respect of any one occurrence;
 - (c) professional indemnity insurance with a limit of indemnity of £10,000,000 (ten million pounds sterling) in respect of any one occurrence;
 - (d) material damage insurance for the full reinstatement value of the Contract Locations and any works, on an "all risks" basis; and
 - (e) any other insurances which the Contractor is required by Legislation to maintain.
- 43.2 The Contractor shall ensure that its or their underwriters/insurers endorse the policies referred to in **clause 43.1** to prevent any exercise of rights of subrogation against the Council, its other contractors and its or their staff and to include in respect of any liability insurances referred to in **clause 43.1** an indemnity to principals clause.

- 43.3 The Contractor shall when required by the Council produce evidence satisfactory to the Council of its compliance with the insurance obligations contained in this clause by production of the current policies or such other documents as the Council shall stipulate.
- 43.4 The Council shall be entitled to notify the Contractor in writing that in its opinion any such policy of insurance or self-insurance arrangement does not provide sufficient cover to comply with this clause and to require the Contractor to provide such insurance as will so comply.
- 43.5 The Council is entitled to vary the insurance obligations of the Contractor as set out in this Contract on reasonable notice to the Contractor.

44 RESPONSIBILITY FOR WASTE

- 44.1 The Contractor acknowledges and accepts its duty of care, pursuant to section 34 of the EPA 1990, in respect of all Contract Waste being handled by it.
- 44.2 Further to **clause 44.1**, and subject to **clauses 44.3** and **44.4**, the Contractor shall be responsible for all costs associated with the acceptance, transportation, handling and transfer of all Waste and materials accepted under the Contract to the Delivery Point and shall notify the Authorised Officer of the tonnages of such Waste handled as part of its reporting requirements set out in **Schedule 1** (Specification) and in **Schedule 6** (Reporting Requirements). The Boroughs shall be responsible for all costs associated with the disposal and/or treatment of all such Waste and materials once such Waste and materials have been delivered by the Contractor to the Delivery Point.
- 44.3 The Contractor shall be responsible for all costs associated with the acceptance, transportation, handling, transfer and treatment of all Green Waste and shall notify the Authorised Officer of all relevant details of contracts put in place in respect of the Contract Waste as part of its reporting requirements set out in **Schedule 1** (Specification) and in **Schedule 6** (Reporting Requirements).
- 44.4 The Contractor shall be responsible for all costs associated with the clearance of Fly Tipped Material on/at the Contract Locations and shall notify the Authorised Officer of all relevant details of contracts put in place in respect of the Contract Waste as part of its reporting requirements set out in **Schedule 1** (Specification) and in **Schedule 6** (Reporting Requirements).

45 LIABILITY AND INDEMNITIES

45.1 The Contractor shall, subject to **clause 45.2**, be responsible for, and shall release and indemnify the Council and its respective employees, agents and contractors on demand from and against, all liability suffered or incurred by them or by the Boroughs for:

- (a) death or personal injury;
- (b) loss of or damage to property (including the Contract Locations and Council Premises);
- (c) breach of statutory duty; and
- (d) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Contract or presence at the Contract Locations or on the Council Premises of the Contractor, a Sub-Contractor of the Contractor, their employees or agents.

45.2 The Contractor shall not be responsible or be obliged to indemnify the Council or any other person for:

- (a) any of the matters referred to in **clauses 45.1(a) to 45.1(d)** which arise as a direct result of the Contractor acting on the instruction of the Authorised Officer; or
- (b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Council, the relevant Borough, their employees, agents or contractors or by the breach by the Council or the relevant Boroughs of their obligations under this Contract.

45.3 The Contractor shall indemnify and keep indemnified the Council from and against any and all loss or damage or civil liability suffered (including any loss or damage or civil liability arising as a result of the termination of this Contract) and legal fees and costs (including any costs of re-tendering of the Services) reasonably incurred by the Council or a Borough as a result of a breach of the Contract by the Contractor including any act, negligence or default of the Staff.

- 45.4 An indemnity by either Party under any provision of this Contract shall be without limitations to any indemnity by that Party under any other provision of this Contract.
- 45.5 The Council shall in no circumstances be liable to the Contractor for any indirect, consequential, economic or financial loss of any kind whatsoever which the Contractor sustains in consequence of any failure on the Council's part to commission any volume of work anticipated by the Contractor or in any other way to generate an anticipated level of remuneration under the Contract.
- 45.6 Any information given to the Contractor in any plan, drawing, report, database, file or similar information in **Schedule 1** (Specification) is only given as a guide. The Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which may have reasonably influenced or affected the Contractor's tender. No claim against the Council shall be allowed whether in contract, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

SECTION F: TERMINATION

46 TERMINATION ON CONTRACTOR DEFAULT

Council's Right to Serve a Default Notice

- 46.1 If a Contractor Default has occurred and the Council wishes to terminate the Contract (or any part of it), the Council must serve a Contractor Default Notice on the Contractor identifying:
- (a) the type and nature of the Contractor Default that has occurred, giving reasonable details; and
 - (b) in the case of a Contractor Default in limbs (c), (d), (e), (f) and (g) that the Contract will terminate on the Day falling ten (10) Business Days after the date on which the Council issues the termination notice; and
 - (c) in the case of a Contractor Default other than limbs (c), (d), (e), (f) and (g) that the Contract will terminate on the Day falling sixty (60) Business Days after the date on which the Council issues the termination notice, unless the Contractor rectifies the Contractor Default to the Council's reasonable satisfaction within sixty (60) Business Days; and

- (d) (in the case of partial termination) those parts of the Services that the Council wishes to terminate.

46.2 In the case of a Contractor Default specified in **clause 46.1(c)**, if the Contractor rectifies the Contractor Default to the Council's reasonable satisfaction within the time period specified, the termination notice will be deemed to be revoked and the Contract will continue.

46.3 If the Contractor fails to rectify the Contractor Default specified in **clause 46.1(c)**, to the Council's reasonable satisfaction within the time period specified in the termination notice, the Contract (or such part of it as specified by the Council in the termination notice) may at the Council's discretion terminate on the date falling sixty (60) Business Days after the date of receipt of the termination notice.

Termination for Persistent Breach

46.4 If a particular breach, other than any breach for which Deductions have or could have been made, has occurred more than three (3) times in any twelve (12) Month period then the Council may serve a notice on the Contractor:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of the breach; and
- (c) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of the Contract (or any part of it).

46.5 If, following service of such a warning notice, the breach specified has continued beyond thirty (30) Business Days or recurred three (3) or more times within the six (6) Month period after the date of service, then the Council may serve another notice on the Contractor;

- (a) specifying that it is a final warning notice;
- (b) stating that the breach specified has been the subject of a warning notice served within the six (6) Month period prior to the date of service of the final warning notice; and
- (c) stating that if such breach continues or recurs three (3) or more times within the six (6) Month period after the date of service of the final warning notice, the Contract (or

any part of it) may be terminated.

46.6 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

46.7 If, following service of a final warning notice pursuant to **clause 46.5**, a breach continues or recurs three (3) or more times in the six (6) Month period after the service of such final warning notice, then the Contract (or such part of it as specified by the Council) may at the Council's discretion terminate on the date specified by the Council.

Termination for Persistent Breach (Customer Dissatisfaction)

46.8 If the Contractor fails to achieve the minimum scores for the Customer Satisfaction Survey, as specified in SPI 1 in Appendix A (Service Performance Indicators) of **Schedule 1** (Specification), for three (3) consecutive surveys (but it is agreed that a failure to achieve such minimum score in more than one category in any Customer Satisfaction Survey in a single Contract Year, shall only count as a single failure), then the Contractor shall be deemed to be in breach of the Contract and the Council may serve a notice on the Contractor:

- (a) specifying that it is a formal warning notice;
- (b) stating the nature of the breach; and
- (c) stating that the Contract (or any part of it) may be terminated due to the breach.

46.9 Following service of a formal warning notice pursuant to **clause 46.8**, then the Contract (or such part of it as specified by the Council) may at the Council's discretion terminate on the date specified by the Council.

47 TERMINATION ON COUNCIL DEFAULT

47.1 If a Council Default has occurred and the Contractor wishes to terminate the Contract, it must serve a Council Default Notice on the Council within thirty (30) Business Days of becoming aware of the Council Default.

47.2 The termination notice must specify the type of Council Default which has occurred.

47.3 The Contract will terminate on the day falling sixty (60) Business Days after the date the

Council receives the termination notice, unless the Council rectifies the Council Default within forty (40) Business Days of receipt of the termination notice.

48 TERMINATION ON CORRUPT GIFTS AND FRAUD

Corrupt Gifts and Fraud

48.1 The Contractor warrants that in entering the Contract it has not committed any Prohibited Act.

Termination for Corrupt Gifts and Fraud

48.2 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with **clauses 48.3 to 48.8** (inclusive).

48.3 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Council may terminate the Contract by giving notice to the Contractor.

48.4 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Council may give notice to the Contractor of termination and the Contract will terminate, unless within thirty (30) Business Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

48.5 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Council may give notice to the Contractor of termination and the Contract will terminate, unless within thirty (30) Business Days of receipt of such notice the Contractor terminates the relevant project document and procures the performance of such part of the Services by another person.

48.6 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Council may give notice to the Contractor of termination and the Contract will terminate, unless within thirty (30) Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

48.7 If the Prohibited Act is committed by any other person not specified in **clauses 48.3 to 48.6**,

then the Council may give notice to the Contractor of termination and the Contract will terminate unless within thirty (30) Business Days of receipt of such notice, the Contractor procures the termination of such person's employment and the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Services by another person.

48.8 Any notice of termination under this clause shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which the Contract will terminate, in accordance with the applicable provision of this clause.

49 CONSEQUENCES OF TERMINATION OR EXPIRY

49.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract (including **clause 14** (TUPE), **clause 15** (Pensions), **clause 45** (Liability and Indemnities), this **clause 49** (Consequences of Termination or Expiry) and **clause 51** (Handback)) shall remain in full force and effect.

49.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

50 INFORMATION ON RE-TENDERING

If requested to do so by the Authorised Officer, the Contractor shall forthwith provide to the Council at the Contractor's own cost any and all relevant information other than Confidential Information and assistance, to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services (in whole or in part) and/or transferring the provision of the Services to any Borough or other service provider. The information and assistance required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information

necessary to enable the Council to comply with its duties under TUPE if it is deemed that these regulations shall apply.

51 HANDBACK

51.1 Exit Plan

On or before the Services Commencement Date, the Contractor shall provide an Exit Plan to the Council that sets out in detail how the Contractor will carry out its obligations under this **clause 51** for the purposes of facilitating the transfer of the Service to the Council or any successor to the Contractor on the expiry or termination. Any changes to the Exit Plan shall be subject to the Council's approval. The Exit Plan shall comply with the detailed requirements in **Schedule 1** (Specification). The Contractor shall keep and update the Exit Plan in accordance with the Services Delivery Plan and shall provide updated copies to the Council for its approval.

Expiry or Termination

51.2 On termination or expiry of the Contract, the following provisions shall apply:

- (a) the Contractor shall, without prejudice to on-going obligations expressly set out in the Contract, cease on the Termination Date to perform those parts of the Services that have been terminated;
- (b) the Council shall not be under any obligation to make any further payment to the Contractor and shall be entitled to retain any other payments which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due to the Council under or arising from the Contract; and
- (c) the Parties shall comply with their respective obligations under the Exit Plan.

51.3 Upon termination or expiry of the Contract and as may be necessary before that date, the Contractor shall provide such assistance to the Council or any successor to the Contractor as the Council may reasonably require to ensure that the Council, the relevant Boroughs or any such successor to the Contractor may enter into or enjoy the benefit of contracts equivalent to the contracts to which the Contractor may then be a party in relation to the performance of the those parts of the Services that are to be terminated with the relevant counterparties thereto.

- 51.4 To the extent required by the Council on expiry or termination of the Contract the Contractor shall in relation to any Contract Document or other contract relating to the performance of the Services to which it may be a party, use reasonable endeavours to novate its interest thereunder as the Council may direct (subject to the consent of the relevant counterparty thereto, which the Contractor shall use its reasonable endeavours to procure).
- 51.5 The Contractor shall, to the extent and in the manner requested by the Council and only to the extent so permitted by any Legislation or Guidance or any applicable regulatory body, on the Termination Date assign and/or transfer any relevant consents or approvals to the Council or another Borough, or as the Council may direct.
- 51.6 On termination or expiry of all or part of this Contract, the Contractor shall leave each Contract Location and the plant and equipment used in the performance of the Services in the condition required under the terms of the Contract having regard to:
- (a) the level of maintenance that ought to have been carried out in accordance with the Services Delivery Plan;
 - (b) the age of the plant and equipment; and
 - (c) the life expectancy of the plant and equipment when it was new.

and without prejudice to **clause 51.8** failure to do so will permit the Council to arrange for this work to be done by such persons as it may choose and the Contractor shall be required to reimburse the Council for the reasonable cost of executing the works.

- 51.7 To the extent that the Services (or part thereof) will be provided by a party other than the Contractor after the Termination Date, the Contractor shall give all reasonable co-operation to such other party, the Boroughs and to the Council in this regard and, in the case of expiry, shall in the last twenty-four (24) Months of the Contract Period provide such other party with reasonable access to the Contract Locations and to the Assets.

Expiry

- 51.8 On expiry of the Contract, the following provisions shall apply:
- (a) at least six (6) but no more than thirty-six (36) Months before the Expiry Date the Parties shall meet to discuss the arrangements for implementation of the Exit Plan,

vacation of any Contract Locations by the Contractor and for the provision of the Services following the expiry of the Contract;

- (b) eighteen (18) Months prior to the Expiry Date the Council shall be entitled to carry out a final survey of the assets used in the delivery of the Services to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under the Contract;
- (c) the Council shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out the final survey. The Council shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Services;
- (d) when carrying out the final survey, the Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Council (at no cost to the Council) any reasonable assistance required by the Council during the carrying out of the final survey. The cost of the final survey shall be borne by the Council;
- (e) if the final survey shows that the Contractor has not complied with or is not complying with its obligations under the Contract, the Council shall:
 - (i) notify the Contractor of the rectification and/or work which is required to bring the condition of the assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under the Contract; and
 - (ii) specify a reasonable period within which the Contractor must carry out such work;
- (f) if the Contractor has been notified under **clause 51.8(e)(i)** that rectification and/or maintenance work is required the Council shall notify the Contractor of the sums that it shall deduct from future payment to the Contract and pay into an interest bearing account (the "**Retention Fund Account**") until the Contract has expired or terminated;

- (g) the Contractor shall carry out such rectification and/or maintenance work to the Council's reasonable satisfaction within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense;
- (h) if and to the extent that the Contractor carries out the necessary rectification and/or maintenance work to the Council's reasonable satisfaction within the specified period, the Council shall reimburse the Contractor's costs of so doing by returning the equivalent sums held in the Retention Fund Account to the Contractor. If the amount in the Retention Fund Account is insufficient to cover the Contractor's costs, the Contractor shall bear the balance of its costs itself;
- (i) if and to the extent that the Contractor fails to carry out the necessary rectification and/or maintenance work to the Council's reasonable satisfaction within the specified period, the Council shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account, make deductions from future payment to the Contractor to pay for such work; and
- (j) if:
 - (i) all the rectification and/or maintenance work identified by the Council has been carried out to the Council's reasonable satisfaction; and
 - (ii) all such work has been paid for by the Contractor; and
 - (iii) no other termination notice given in accordance with this Contract is outstanding;

then the Council shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

SECTION G: DISPUTE

52 DISPUTE RESOLUTION

If any major dispute or difference of any kind shall arise between the Parties either Party shall notify the other in writing as soon as is reasonably practical that a formal dispute has

occurred. In the event of such a dispute each Party shall appoint a designated representative to meet to attempt to resolve the dispute. The representatives shall meet as often as is necessary in order to gather and exchange all relevant information with respect to the matter in issue. In the event that the designated representatives cannot reach agreement within ten (10) Business Days they shall escalate their disagreement to the senior levels of management within their respective organisations for resolution within a further ten (10) Business Days.

53 ARBITRATION

- 53.1 Subject to **clause 52** being exhausted, it is hereby expressly agreed that, in the event of any dispute which cannot be resolved amicably between the Parties, then the matter may be referred to arbitration by either Party in accordance with the following provisions of this **clause 53**.
- 53.2 If the Parties fail to agree on the identity of an arbitrator within two (2) weeks of either Party serving on the other a written notice to concur in the appointment of an arbitrator, then the President or Vice President for the time being of the Chartered Institute of Arbitrators shall be requested to appoint an arbitrator.
- 53.3 If an arbitrator declines the appointment, or after appointment is removed by order of a competent court, or is incapable of acting, or dies, and the Parties do not within one (1) Month of the vacancy fill the vacancy, then the President shall appoint an alternative arbitrator to fill the vacancy.
- 53.4 In any case where the President for the time being of the Chartered Institute of Arbitrators is unable to exercise the functions conferred by this clause, the said functions may be exercised by a nominee of the said institute.
- 53.5 In the case of any dispute or question as to the adequacy of the Contractor's occupational pension scheme these shall be determined by reference to an independent arbitrator appointed by the President of the Institute of Actuaries.
- 53.6 Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996.
- 53.7 The arbitrator appointed shall have full power to open up, review and revise any decision, opinion, instruction, direction, certificate or valuation of any Council officer which is not in accordance with the Contract, and neither Party shall be limited in the proceedings before

such arbitrator to the evidence or arguments put before the Authorised Officer for the purpose of obtaining the decision referred to above. Full weight shall be given to the power of the Authorised Officer to exercise any discretion under specified provisions of the Contract.

- 53.8 The award of the arbitrator shall be final and binding on the Parties.
- 53.9 The giving of any decision shall not disqualify the Authorised Officer from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference referred to arbitration.
- 53.10 Unless the Contract shall already have been terminated or abandoned the Contractor shall in every case proceed with the Services with all due diligence and in accordance with the Contract, and shall give effect forthwith to every such decision of the Authorised Officer unless and until the same shall be revised by the arbitrator as provided above.

SECTION H: OTHER INFORMATION

54 NOTICES

- 54.1 Any notice served upon the Council shall be valid or effective if it is sent by recorded delivery post or electronic mail to the Authorised Officer or delivered by hand to the Authorised Officer.
- 54.2 Any notice served upon the Contractor shall be valid and effective if it is sent by recorded delivery post or electronic mail or delivered by hand to the Registered Office, principal place of business, or the Contractor Premises from which the Services is performed or is delivered by hand to a partner, director, or the Contract Manager.
- 54.3 Any such notice shall be deemed to have been duly served:
- (a) if delivered by hand, when left at the proper address for service;
 - (b) if given or made by recorded delivery post, two (2) Business Days after being posted;
or
 - (c) if sent by email on the day of sending unless the sender receives electronic confirmation within twenty-four (24) hours of sending that the delivery was not successful;

provided in each case that if the time of such deemed service is either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10.00am on the following Business Day.

55 RIGHT TO SET-OFF

55.1 The Council will be entitled but not obliged at any time (without notice to the Contractor) to set off any liability of the Contractor to the Council against any liability of the Council to the Contractor (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Council into any other currency or currencies in which the obligations of the Contractor are payable under the Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under the Contract or otherwise.

55.2 For the avoidance of doubt, in the event that the Contractor fails to rectify a failure pursuant to the Service Performance Indicators within the stated rectification period (if any), then the Council may elect to rectify, or procure the rectification, of the failure and, in accordance with **clause 55.1**, shall have the right to set off the costs incurred in undertaking such action against any liability of the Council to the Contractor.

56 WAIVER

56.1 The failure or delay by the Council in exercising any right, power or remedy of the Council under the Contract will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by the Council of any right, power or remedy under the Contract will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

56.2 Any waiver of a breach of, or default under, any of the terms of the Contract:

- (a) shall only be effective if given in writing by the Authorised Officer; and
- (b) will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

57 ASSIGNMENT AND SUB-CONTRACTORS

- 57.1 The Council shall be entitled to assign the benefit of this Contract or any part of it to any other statutory body or member of the Partnership. The Council shall give reasonable notice to the Contractor unless the assignment takes effect by operation of law.
- 57.2 The Contractor shall not be entitled to assign the whole or any part of the Contract to another legal entity without the Council's express written consent from the Authorised Officer to the proposed assignment (such consent only to be given at the Council's absolute discretion). Any such consent must be sought in writing and at least three (3) Months' notice of the proposed assignment must be given to the Authorised Officer.
- 57.3 The Contractor shall not sub-contract any part of the Services, without the prior written consent of the Authorised Officer. Notwithstanding such consent, the Contractor shall not be relieved from any liabilities or obligations under the Contract and shall be responsible for the acts, omissions and breaches of any Sub-Contractor as fully as if they were the Contractor's own.
- 57.4 Where consent to sub-contracting is granted, where the nature of services being provided deems it appropriate, the Council may require the Contractor to have a Sub-Contractor sign a collateral warranty with the relevant Borough.
- 57.5 Any contract or arrangement entered into by the Contractor in relation to the Services shall be on a commercial basis, on then current market terms, on reasonable arms' length terms and approved in writing in advance by the Authorised Officer.
- 57.6 The Contractor agrees that it shall pay each Sub-Contractor the monies described in any invoice submitted to the Contractor by such Sub-Contractor within thirty (30) Days of such invoice being approved by the Contractor.

58 CHANGE IN OWNERSHIP

- 58.1 The Contractor represents and warrants to the Council that at the date of the Contract the legal and beneficial ownership of the Contractor is as set out in **Schedule 3** (Contractor Warranted Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor.

58.2 The Contractor shall inform the Council as soon as reasonably practicable (and in any event, within twenty (20) Business Days) of any Change of Ownership occurring.

58.3 The Council may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Council's request for details of any Change of Ownership.

59 CONFIDENTIALITY

59.1 The Contractor shall not during the Contract Period or at any time thereafter, other than for its own purposes, make use of or disclose to any person (except as may be required by law), any information contained in any material provided to it by the Council or a Borough pursuant to the Contract or prepared by the Contractor pursuant to the Contract, all of which information shall be deemed to be Confidential Information.

59.2 The Contractor shall not dispose nor part with possession of any material provided to it by the Council or a Borough pursuant to the Contract or prepared by the Contractor pursuant to the Contract, other than in accordance with the express written instructions of the Council.

59.3 The Contractor shall ensure the compliance of its Staff and Sub-Contractors with the requirements of this clause.

59.4 The Council shall treat as confidential this Contract and all Confidential Information obtained from the Contractor which is identified by the Contractor as Confidential Information and the Council shall not disclose such Confidential Information to any third party other than in circumstances where the Council is complying with its legal obligations without the express written permission of the Contractor and shall otherwise protect it as it would if it were the Council's Confidential Information.

59.5 These obligations of confidentiality shall not apply to information which:

- (a) can be shown to be in the public domain before release to the receiving party; or
- (b) becomes public knowledge other than by an act of default of the receiving party; or
- (c) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

- (d) is independently developed by the receiving party without access to the Confidential Information; or
- (e) is received by the receiving party from a third party who has lawfully acquired or developed it and who is under no obligation restricting its disclosure; or
- (f) is required to be disclosed pursuant to the FOIA.

59.6 For the avoidance of doubt nothing in the Contract shall prevent either Party from using data processing techniques, ideas and know-how gained during the performance of the Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement of any Intellectual Property Right by that Party.

60 PUBLIC RELATIONS AND PUBLICITY

The Contractor shall not, by itself, its employees or agents and shall procure that its Sub-Contractors and their employees and agents shall not make any press releases or communicate with representatives of the press, television, radio or other communications media on any matter concerning the contract with the prior written approval of the Authorised Officer which it may in its absolute discretion withhold.

61 ADVERTISING

61.1 No advertisement of any description will be allowed on the premises (including the Council Premises and the Contract Locations), vehicles, equipment, materials or consumables utilised in the performance of the Services without the prior written consent of the Authorised Officer, which shall not be unreasonably withheld or delayed. For the avoidance of doubt no political advertising shall be allowed under any circumstances. Any advertisement which is placed on any premises (including the Council Premises and the Contract Locations), vehicles, equipment, materials or consumables utilised in the performance of the Services shall be promptly removed by the Contractor at the end of the Contract Period and the Contractor shall make good any damage caused by such removal (at its own cost).

61.2 If required by the Authorised Officer, the Contractor shall cause Council Premises, Contract Locations, equipment, materials and consumables utilised in the performance of the Services to bear such advertisements, devices or insignia as the Authorised Officer may from time to time notify in writing. In these circumstances, the Authorised Officer shall issue a Council Variation Order to compensate the Contractor for additional costs involved.

61.3 The Contractor shall not advertise the fact that it is providing services to the Council under the Contract other than with the prior written permission of the Authorised Officer.

62 AGENCY

62.1 The Contractor is not and shall in no circumstances hold itself out as being the servant or agent of any of the Boroughs (including the Council), or the Partnership for any purpose.

62.2 The Contractor is not and shall in no circumstances hold itself out as being authorised to enter into any Contract on behalf of the Council or in any other way to bind the Council to the performance, Variation, release or discharge of any obligation.

62.3 The Contractor's Staff are not and shall not hold themselves out as being, nor shall they be held out by the Contractor as being, servants or agents of the Council for any purposes.

63 APPLICABLE LAW

63.1 The Contract and all its provisions shall be considered as a contract made in England and Wales and shall be construed in accordance with English Law. Each Party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the Contract or the performance of the Services.

63.2 The Contract is binding on the Council and its successors and assignees and on the Contractor and its permitted assignees.

64 CHANGE IN LAW

The Contractor shall not be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor shall it be automatically entitled to an increase in the Monthly Contract Payment as a result of a Change in Law. Any changes to the Services and/or the Monthly Contract Payment as a result of a Change in Law shall be dealt with at the Annual Review pursuant to **clause 40** (Annual Review).

65 ASSISTANCE IN LEGAL PROCEEDINGS

65.1 If requested to do so by the Authorised Officer, the Contractor shall provide to the Council any relevant information (including documentation and statements from Staff) in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved,

or any relevant disciplinary hearing internal to the Council, arising out of the provision of the Services or the Contractor's presence on Council Premises, and the Contractor shall give evidence in such inquiries, arbitrations, proceedings or hearings.

65.2 Where the Contractor or any of its Staff become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Authorised Officer immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to investigate the matter fully.

65.3 Such information provided or reasonable assistance rendered pursuant to the obligation in **clauses 65.1 and 65.2**, in whatever form, shall be at no cost to the Council.

66 ENTIRE AGREEMENT

66.1 The Contract constitutes the entire understanding and agreement relating to the subject matter of the Contract and, save as expressly referred to or incorporated by reference, supersedes all prior negotiations, submissions or understandings with respect to this subject matter.

66.2 The Parties acknowledge that the Contract has not been entered into wholly or partly in reliance on any warranty, representation or undertaking by any other party other than those expressly set out in the Contract.

66.3 Nothing in this **clause 66** will exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

67 SEVERANCE

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall not in any way impair or affect any other provision all of which shall remain in full force and effect.

68 BENCHMARKING

68.1 The Council may at any time implement a benchmarking exercise as an objective comparison of the quality, performance, price and/or delivery of the Services with the provision of the

same or similar services by a comparator group (which could include other local authorities and industry).

68.2 Any benchmarking exercise shall be carried out in good faith and each Party to the Contract shall act reasonably in relation to any such benchmarking exercise.

68.3 The Contractor will comply with requests to provide data for any benchmarking exercises including data for costs and performance.

69 WHISTLEBLOWING

69.1 The Contractor will adopt and promote the 'whistleblowing' policy of the Council, the current version of which is available from the Council upon request.

69.2 The Contractor will inform its Staff, including agency workers and Sub-Contractors, who may have a concern about wrongdoing at work i.e. activities that harm clients of the Council, colleagues working for the Council or the Council itself, that those concerns should be reported to the named persons within the Council's whistleblowing policy. Wrongdoing covers issues such as criminal offence, a failure to comply with a legal obligation, a miscarriage of justice endangering the health or safety of an individual, damages to the environment or the deliberate concealment of information tending to show one of these matters.

69.3 The Contractor will comply with the Public Interest Disclosure Act 1998 and shall have a policy in place to encourage its Staff, including agency workers and Sub-Contractors to raise concerns about wrongdoing within the Supplier and to protect them from victimisation or discrimination.

70 CURRENCY

70.1 All payments under this Contract shall be in pounds sterling.

70.2 The Parties agree that any risk (financial or otherwise) arising from:

(a) the Euro ceasing to be used as a currency in any country in the world; and/or

(b) the European Economic and Monetary Union ending (in whole or in part),

shall be borne by the Contractor.

71 ENFORCEMENT BY THIRD PARTIES

71.1 Subject to clause 71.2 and without prejudice to clause 14.11, the Parties do not intend that any of the terms of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

71.2 Any Borough and/or Future Service Provider shall be entitled to enforce the provisions of clause 14 pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999 provided that the Parties may vary the Contract without requiring the consent of any Borough and/or Future Service Provider and need not comply with section 2(1) of the Contracts (Rights of Third Parties) Act 1999.

72 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

**THE COMMON SEAL OF
The MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF CROYDON**

was hereto affixed in the presence of:

Authorised Signatory



Seal Number 243856

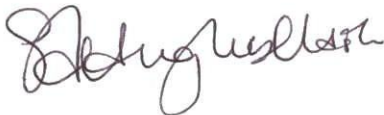
**EXECUTED as a DEED by
IDVERDE LIMITED
acting by:**

Director



DOUGLAS GRAHAM

Director



SARAH HUGHES-CLARKE