

DYNAMIC PURCHASING SYSTEM AGREEMENT

SCHEDULE 5

CALL-OFF TERMS AND CONDITIONS

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1 GENERAL PROVISIONS

1.1 Definitions

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

"Accreditation and Enrolment"	has the meaning given in the Dynamic Purchasing System Agreement
"Approval" and "Approved"	means the written consent of the Council
"Auditor"	has the meaning given in the Dynamic Purchasing System Agreement
"Authorised Officer"	means the individual appointed by the Council pursuant to Clause 2.5.1
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation
"Change in Law"	means any change in Law which impacts on the performance of the Services and comes into force after the Commencement Date.
"Commencement Date"	means the date set out in the Order
"Commercially Sensitive Information"	has the meaning given in the Dynamic Purchasing System Agreement.
"Comparable Supply"	has the meaning given in the Dynamic Purchasing System Agreement
"Confidential Information"	has the meaning given in the Dynamic Purchasing System Agreement
"Contract" or "Service Agreement"	means the legally binding agreement for the provision of services made between the Council and the Provider consisting of the Order and these clauses
"Contracting Authority"	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Council
"Contract Period"	means the period from the Commencement Date to:- (a) the date of expiry set out in Clause 1.3 (Initial Contract Period); (b) following an extension pursuant to Clause 6.8 (Extension of Initial Contract Period), the date of expiry of the extended period; or (c) such earlier date of termination or partial

termination of the Contract in accordance with the Law or the provisions of the Contract

"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Provider under the Contract, as set out in the Order, for the full and proper performance by the Provider of its obligations under the Contract
"Contract Manager"	means the individual appointed by the Provider pursuant to Clause 2.5.1
"Controller"	has the meaning given in the GDPR.
"Council"	means the Mayor and Burgesses of The London Borough of Bexley
"Council Data"	means; (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Provider by or on behalf of the Council; and/or (ii) which the Provider is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Council is the Data Controller
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach
"Data Protection Impact Assessment"	has the meaning given in the Dynamic Purchasing System Agreement
"Data Protection Legislation"	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the

	processing of personal data and privacy.
“Data Protection Officer”	has the meaning given in the GDPR.
“Data Subject”	has the meaning given in the GDPR.
“Data Subject Request”	has the meaning given in the Dynamic Purchasing System Agreement
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
"Deliverables"	means those deliverables listed in the Order
"Disclosure and Barring Service/DBS"	means the service established under the Protection of Freedoms Act 2012 which merged the functions previously carried out by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA)
"DPA 2018"	means the Data Protection Act 2018
“DPS Application Guide”	means the guide produced by the Council detailing the process for joining the DPS in the form included in Schedule 10 (DPS Application Guide) of the Dynamic Purchasing System Agreement as may be updated by the Council from time to time
“DPS Operational Guide”	means the guide produced by the Council detailing the operation of the DPS in the form included in Schedule 11 (DPS Operational Guide) of the Dynamic Purchasing System Agreement as may be updated by the Council from time to time
"Dynamic Purchasing System" or “DPS”	has the meaning given in the Dynamic Purchasing System Agreement
"Dynamic Purchasing System Agreement" or “Supplier Agreement”	means the agreement for the provision of transport services via a Dynamic Purchasing System between the Council and the Provider
"Environmental Information Regulations" or “EIR”	means 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
"Equipment"	means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act

from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

"Force Majeure"	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:- (a) any industrial action occurring within the Provider's or any sub-contractor's organisation; or (b) the failure by any sub-contractor to perform its obligations under any sub-contract
"Fraud"	means any fraudulent act constituting an offence under Laws or any attempt to defraud any public body in relation to this Contract
"GDPR"	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
"General Change in Law"	has the meaning given in the Dynamic Purchasing System Agreement
"Good Industry Practice"	has the meaning given in the Dynamic Purchasing System Agreement
"Index"	means the ONS Index D7EG Passenger Transport by Road as published by the Office of National Statistics or any government department upon which duties in connection with the compilation and maintenance of the Index have devolved
"Information"	has the meaning given under section 84 of the FOIA
"Initial Contract Period"	means the period from the Commencement Date to the date of expiry set out in Clause 1.3 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
"Intellectual Property Rights" and "IPRs"	has the meaning given in the Dynamic Purchasing System Agreement
"Invitation to Tender", "ITT" or "Requirement"	has the meaning given in the Dynamic Purchasing System Agreement.
"Joint Controllers"	has the meaning given in the Dynamic Purchasing System Agreement

"Law"	has the meaning given in the Dynamic Purchasing System Agreement
"LED"	means the Law Enforcement Directive (<i>Directive (EU) 2016/680</i>).
"Low Emission Zone (LEZ)"	means the traffic pollution charge scheme with the aim of reducing the tailpipe emissions of specified vehicles in London.
"Major Non-Conformance"	has the meaning given in Section 20 (Quality Standards) of the Specification
"Management Information"	has the meaning given in the Dynamic Purchasing System Agreement.
"Minor Non-Conformance"	has the meaning given in Section 20 (Quality Standards) of the Specification
"Minor Non-Conformance Default Notice"	means a notice issued by the Council to the Provider pursuant to Clause 6.5 and/or Clause 8.2.
"Month"	means calendar month
"Offer"	has the meaning given for the term "Tender" below
"Order"	means the order for Services served by the Council on the Provider via the Technology incorporating (without limitation) the ITT, these Terms and Conditions and the Tender in accordance with the Ordering Procedures
"Ordering Procedures"	has the meaning given in the Dynamic Purchasing System Agreement
"Parent Company"	has the meaning given in the Dynamic Purchasing System Agreement
"Party"	means the Provider or the Council as the context requires
"Personal Data"	has the meaning given in the GDPR.
"Personal Data Breach"	has the meaning given in the GDPR.
"Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
"Premises"	means the location where the Services are to be supplied, as set out in the Order
"Procurement Documents"	has the meaning given in the Public Contracts Regulations 2015

“Processor”	has the meaning given in the GDPR.
“Prohibited Act”	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Council; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.
"Project Specific IPRs"	<p>means:-</p> <ul style="list-style-type: none"> (a) IPRs in items created by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of the Contract including, any Deliverables and all updates and amendments of these items; and/or (b) IPRs arising as a result of the performance of the Provider's obligations under the Contract
"Property"	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including any outlined in Appendix [1] of Schedule 1

of the Dynamic Purchasing System Agreement

"Provider"	means the economic entity with whom the Council enters into the Contract as identified in the Order
"Quality Standards"	means the quality standards identified in in Section 18 (Quality Standards & Performance Monitoring) and Section 20 (Quality Standards) of the Specification and to the extent that there is no conflict any further quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order)
"Regulated Activity"	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
"Regulated Activity Provider"	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council
"Replacement Provider"	means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract
"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)
"Request to Participate"	has the meaning given in the Dynamic Purchasing System Agreement
"Requirement"	has the meaning given for the term "Invitation to Tender" / "ITT" above.
"Selection Criteria"	has the meaning given in the Dynamic Purchasing System Agreement
"Selection Questionnaire" or	has the meaning given in the Dynamic Purchasing

"SQ"	System Agreement
"Self-Billing Agreement"	means the agreement between the Council and the Provider included as Schedule 9 (Self-Billing Agreement) to the Dynamic Purchasing System Agreement whereby the Provider agrees to receive pre-populated Self-Bill Invoices generated via the Technology for the billing and payment of the Contract Price.
"Self-Bill Invoice"	has the meaning given in the Dynamic Purchasing System Agreement
"Service Agreement"	has the meaning given for the term "Contract" above.
"Service Receipt"	the record agreed by the Parties and stored within the Technology of completed Services
"Services"	means the transport services to be supplied as specified in Schedule 1 of the Dynamic Purchasing System Agreement and in the Order
"Specification"	means the Specification attached as Schedule 1 to the Dynamic Purchasing System Agreement
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Council and which would not affect a Comparable Supply.
"SQ Response"	means the response submitted by the Provider to the selection questionnaire issued by the Council
"Staff"	means all persons employed or engaged by the Provider to perform its obligations under the Contract together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract
Staff Vetting Procedures	means the Council's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive of confidential nature.
"Sub-processor"	means any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.
"Supplier Agreement"	has the meaning given for Dynamic Purchasing System Agreement above
"Technology"	has the meaning given in the Dynamic Purchasing System Agreement
"Technology Provider"	has the meaning given in the Dynamic Purchasing System Agreement
"Tender" or "Offer"	means the document(s) submitted by the Provider to the Council via the Technology in response to the

Council's Invitation to Tender

"Variation"	has the meaning given to it in Clause 6.3 (Variation)
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Vehicle"	means any vehicle (including any equipment fixtures and fittings therein), to be supplied and used by the Provider in the performance of the Services.
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales

1.2 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa; words importing the masculine include the feminine and the neuter
- 1.2.2 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.3 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended, consolidated or re-enacted by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted, and shall also include a reference to any subordinate legislation made under it, relevant guidance or code of practice issued by a competent Council for the time being in force;
- 1.2.4 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.5 references in the Contract to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to the Contract so numbered and reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"

1.3 Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 6.8 (Extension of Initial Contract Period).

1.4 Provider's Status

At all times during the Contract Period the Provider shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

1.5 Council's Obligations

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the 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 the Contract (howsoever arising) on the part of the Council to the Provider.

1.6 Entire Agreement

1.6.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

1.6.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

1.6.3 Nothing in Clauses 1.6.1 or 1.6.2 shall operate to exclude Fraud or fraudulent misrepresentation.

1.6.4 In the event of and only to the extent of any conflict between the Order, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-

- (a) the Order except the clauses of the Contract and the Provider's Tender;
- (b) the clauses of the Contract;
- (c) the Dynamic Purchasing System Agreement and Schedules thereto;
- (d) any other document referred to in the clauses of the Contract; and
- (e) the Provider's Tender.

1.6.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

1.7 Notices

1.7.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

1.7.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail via the Technology or by letter (sent by hand, post, registered post or by the recorded delivery service). Such letters shall be addressed to the other Party in the manner referred to in Clause 1.7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail. It is anticipated that the primary means of communication between the Parties shall be electronic mail via the Technology.

1.7.3 For the purposes of Clause 1.7.2, the address of each Party shall be:-

- (a) for the Council: the address set out in the Dynamic Purchasing System Agreement.
- (b) for the Provider: the address set out in the Dynamic Purchasing System Agreement.

1.7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

1.8 **Mistakes in Information**

The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

1.9 **Conflicts of Interest**

1.9.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of the Contract.

1.9.2 The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause 1.9.1 above arises or is reasonably foreseeable.

1.9.3 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

1.9.4 This clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

1.10 **Prevention of Fraud**

1.10.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its

shareholders, members and directors) in connection with the receipt of monies from the Council.

1.10.2 The Provider shall notify the Council immediately (via the Technology) if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

1.10.3 If the Provider or its Staff commits any Fraud in relation to the Contract or any other contract with a Contracting Authority or the Council, the Council may:-

- (a) terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or
- (b) recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this clause.

1.11 **Role of Technology Provider**

1.11.1 The Provider acknowledges and agrees that the Technology Provider is authorised by the Council on its behalf (without limitation) to:

- (a) conduct initial checks in relation to the Accreditation and Enrolment of Providers who have requested to be admitted to the DPS;
- (b) not used;
- (c) monitor the Provider's ongoing compliance with the Selection Criteria and may validate the information provided by the Provider with third party agencies or professional bodies;
- (d) collect and collate Management Information on behalf of the Council.

1.11.2 Unless otherwise notified in writing by the Council, the Provider agrees to use the Technology for its communications with the Council in accordance with the DPS Operational Guide.

1.12 **No Exclusivity**

The Provider acknowledges that in entering into this Contract no form of exclusivity has been granted by the Council and that the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all Services which are the same as or similar to the Services provided under the terms of this Contract.

2. **SUPPLY OF SERVICES**

2.1 **The Services**

2.1.1 The Provider shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Contract, the Dynamic Purchasing System Agreement and the Specification in consideration for the payment of the Contact Price. The Council may

inspect and examine the manner in which the Provider supplies the Services during normal business hours on reasonable notice.

- 2.1.2 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Council, the Provider may be required at its own expense to re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.
- 2.1.3 The timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 2.1.4 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 2.1.5 Without prejudice to any other rights and remedies the Council may have, the Council may use other providers to carry out the Service in circumstances where the Provider is unable to perform the Service in whole or in part as required on the dates or at the times specified by the Council. The Provider will not be entitled to any compensation from the Council in these circumstances.
- 2.1.6 The Provider shall comply in full with the requirements of Section 9 (Service Standards) of the Specification.

2.2 Provision and Removal of Equipment

- 2.2.1 Unless otherwise stated in the Order, the Provider shall provide any Equipment necessary for the supply of the Services.
- 2.2.2 The Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 2.2.3 All Equipment shall be at the Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Provider.
- 2.2.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 2.2.5 The Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:-
 - (a) remove from the provision of the Services any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.

- 2.2.6 On completion of the Services, the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, which is caused by the Provider or any Staff.

2.3 **Manner of Carrying Out the Services and Quality Standards**

- 2.3.1 The Provider shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract or the Specification, the Provider shall agree the relevant standard of the Services with the Council prior to the supply of the Services and, in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice. On the request of the Council, the Provider shall provide proof to the Council's satisfaction of its compliance with this clause 2.3.1 and the introduction of new working methods or systems that impinge on the provision of the Services shall be subject to the Council's prior written Approval.
- 2.3.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

2.4 **Vehicle and Operational Requirements**

- 2.4.1 The Provider shall comply in full with the requirements of Section 10 (Vehicle Requirements and environment), Section 11 (Operational Requirements of Providers), Section 17 (Accident, Delay, Disruption and Planned Destination Closure) and Section 25 (Vehicle Tracking reports) of the Specification.

2.5 **Provider's Staff**

- 2.5.1 The Provider shall employ sufficient persons to ensure that the Service is provided at all times and in all respects in accordance with the Contract and shall ensure that a sufficient reserve of Staff are available to provide the Service throughout the Contract Period including any extension pursuant to Clause 6.8 (Extension of Initial Contract Period).
- 2.5.2 The Provider shall ensure that all Staff engaged in the provision of the Services shall have the relevant and appropriate skills and qualifications, and be competent, honest and experienced, and exercise care in the exercise of their duties. The Provider shall also ensure that at all times whilst Staff are engaged in the provision of the Services, they shall be in full uniform (if applicable) or such other appropriate clothing which shall include identification signage and must at all times be clean and presentable.
- 2.5.3 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises or require the removal from the provision of the Services:-
- (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

- 2.5.4 The Provider shall maintain up-to-date personnel records on those persons engaged in the provision of the Services and at the Council's written request, the Provider shall provide a list of the names and contact details of all persons who will provide the Services or may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 2.5.5 If the Provider fails to comply with Clause 2.5.4 within 2 weeks of the date of the request and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of service users, then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 2.5.6 The decision of the Council as to whether any person is to be refused access to the Premises or Services and as to whether the Provider has failed to comply with Clause 2.5.4 shall be final and conclusive.
- 2.5.7 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 2.5.8 The Provider confirms that all persons employed or engaged by the Provider in the provision of the Services are lawfully entitled to live and work in the United Kingdom.
- 2.5.9 The Provider must take all reasonable steps to make sure all Staff are suitable to be employed or engaged to perform the Services, which for the avoidance of doubt includes satisfactory DBS checks in accordance with Clause 2.5.11 below. The Provider must not employ or engage in the provision of the Services any person unable to meet these general requirements and the specific further requirements set out below.
- 2.5.10 Given that Staff of the Provider may be exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or any re-enactment or replacement thereof, the Provider shall ensure that all Staff currently engaged in provision of the Services and also prospective Staff are given an appropriate statement of the requirement upon them regarding provision of information under the said Act and disclosure of criminal convictions which would otherwise be spent under the provisions of the said Act or which may arise at any time during the term of this Contract.
- 2.5.11 The Provider shall at his expense register with the Disclosure and Barring Service and undertake enhanced criminal records checks (in accordance with DBS legislation, regulations and guidance) in respect of Staff currently employed or to be employed (in accordance with the required timescales set out by the Disclosure and Barring Service) and carry out rechecks at least every three years during the Contract Period either through seeking a new DBS disclosure or through a status check of the DBS Update Service.

- 2.5.12 The Provider shall comply with all legislation, regulations and guidance in force from time to time in relation to checks made with the Disclosure and Barring Service and the Provider shall provide a copy of their DBS policy to the Council at the commencement of the provision of the Services.
- 2.5.13 The Provider will keep records of all checks undertaken and will provide to the Council at the commencement of the provision of the Services a list of all Staff employed in providing the Services, and whether a DBS check has been undertaken, at what level and upon what date.
- 2.5.14 As part of the policy provided to the Council under Clause 2.5.12 above the Provider shall provide to the Council the procedure in place, which shall be compliant with DBS legislation, regulations and guidance, for DBS checks and the consideration of occasions where it becomes known to the Provider or should reasonably have been known that a member of Staff: (i) has any criminal convictions, bindovers, findings and/or caution(s) or has been subject to any finding by a civil court or tribunal in connection with any matter or are not suitable to be employed or engaged to perform any part of the service or (ii) has failed to provide information about any matter outlined at (i) above or (iii) who is added to the DBS's barred list. The Provider must immediately inform the Authorised Officer where any matter referred to at (i) – (iii) above applies. The Authorised Officer will then determine the member of Staff's suitability for the role and may require a substitution.
- 2.5.15 For the avoidance of doubt, the Council will not be liable to the Provider nor the member of Staff for the outcome of any decisions or liability, loss or damage occasioned by the application of the Provider's DBS policy by the Provider or for any determination or requirement of the Council.
- 2.5.16 If the Provider fails to comply with any legislation, regulations or guidance in relation to DBS checks, or fails to comply with its own policies regarding DBS then the Council may in its discretion and without prejudice to any of its other rights or remedies under the Contract terminate this Contract with immediate effect.
- 2.5.17 Where the Services include any Regulated Activity, the Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 2.5.18 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time and the Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service users.
- 2.5.19 The Provider shall comply in full with the requirements of Section 8 (Safeguarding of passengers), Section 12 (Staffing Requirements), Section 13 (Vetting of Staff, Safer Recruitment & Staffing Standards) and Section 14 (Identification of Staff) of the Specification.
- 2.5.20 The Council shall, as part of its normal monitoring arrangements, and in compliance with its statutory duties and powers, ensure compliance with the above provisions by the Provider.

- 2.5.21 The Parties agree that the provisions of **Section 1 of Appendix 2 - TUPE** shall apply to any TUPE transfer of Staff in connection with the Contract.

2.6 **Named Representatives**

- 2.6.1 The Council shall appoint an Authorised Officer and the Provider shall appoint a Contract Manager to be responsible for liaison with the other Party concerning management, requests, or other issues arising in connection with the Contract. The Authorised Officer and Contract Manager may appoint one or more representatives to act on their behalf by providing the other Party with written notification. Any decision, requests or orders of such representatives shall be deemed to be made by the Authorised Officer and Contract Manager and all references in this Contract to the Authorised Officer and Contract Manager shall be deemed to include such representatives.
- 2.6.2 The Provider will comply with the reasonable instructions given by the Authorised Officer or a deputy and where the instruction would amount to a variation to this Contract, such variation will be dealt with in accordance with Clause 6.3.
- 2.6.3 The Authorised Officer is authorised to issue Orders and is responsible for ensuring that the Services meet or continues to meet the needs of the Council.
- 2.6.4 The Provider shall comply in full with the requirements of Section 16 (Contact between the Council and the Provider) of the Specification.

2.7 **Key Personnel**

- 2.7.1 The Parties have agreed to the appointment of the Key Personnel. The Provider shall, and shall procure that any sub-contractor shall, obtain the prior Approval of the Council before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least two months' written notice must be provided by the Provider of its intention to replace Key Personnel.
- 2.7.2 The Council shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Provider or sub-contractor. The Council may interview the candidates for Key Personnel positions before they are appointed.
- 2.7.3 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 2.7.4 The Council may also require the Provider to remove any Key Personnel that the Council considers in any respect unsatisfactory. The Council shall not be liable for the cost of replacing any Key Personnel.

2.8 **Licence to occupy Premises**

- 2.8.1 Any land or Premises made available from time to time to the Provider by the Council in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 2.8.2 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 2.8.3 Should the Provider require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Provider's expense. The Council shall undertake modification work approved by the Council in writing without undue delay. Ownership of such modifications shall rest with the Council.
- 2.8.4 The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by the Council, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 2.8.5 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 2.8.6 Where the Premises are under the control of the Council, the Provider shall provide (no later than the Commencement Date) the name of its sub-contractors engaged in the performance of the Services, their contact details and the details of their legal representatives. The Provider shall promptly notify the Council where the details provided change and provide this information for any new sub-contractors.

2.9 **Property**

- 2.9.1 Where the Council issues Property free of charge to the Provider such Property shall be and remain the property of the Council and the Provider irrevocably licences the Council and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Provider shall possess the Property as fiduciary agent and bailee of the Council. The Provider shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

- 2.9.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Council otherwise within five (5) Working Days of receipt.
- 2.9.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 2.9.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 2.9.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Provider shall inform the Council within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to, the Property.

2.10 Offers of Employment

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Council nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

3. PAYMENT AND CONTRACT PRICE

3.1 Contract Price

- 3.1.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).
- 3.1.2 Subject to any increase in the Contract Price agreed by the Council to reflect an increase in the National Minimum Wage and/or the National Living Wage which is published and takes effect after the Commencement Date and subject also to clause 6.9 (Price adjustment on extension of Initial Contract Period) the Contract Price shall remain fixed for the duration of the Contract Period.
- 3.1.3 The Council shall, in addition to the Contract Price, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 3.1.4 No claim by the Provider will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Contract or any ambiguity or discrepancy therein on which the Provider could have satisfied itself by reference to the Customer before the Commencement Date.
- 3.1.5 Any disputes regarding invoices shall be dealt with in accordance with clause 9.2 (Disputes).

3.2 Payment and VAT

- 3.2.1 Unless otherwise notified by the Council, the Provider and the Council shall comply with the Self-Billing Agreement in relation to all invoicing and payment transactions under the Contract.

- 3.2.2 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 3.2.6 shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.
- 3.2.3 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.
- 3.2.4 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all undisputed sums due by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice and a provision permitting the Council to publish the Provider's compliance with this obligation.
- 3.2.5 The Provider shall pay any undisputed sums which are due from it to a supplier or contractor within 30 days of receipt of a valid invoice and provide a summary of its compliance with this clause to the Council, such data to be certified each quarter by a director of the Provider as being accurate and not misleading.

3.3 Recovery of Sums Due

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Council.
- 3.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the other Party in receipt of the overpayment.
- 3.3.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 3.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

4. STATUTORY OBLIGATIONS AND REGULATIONS

4.1 Prevention of Bribery

- 4.1.1 The Provider:

- (a) shall not, and shall procure that any of its agents, contractors or sub-contractors and all Staff shall not, in connection with this Contract commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the entering into of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before entering into this Contract
- 4.1.2 The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 4.1.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any agents, contractors or sub-contractors or Staff from committing a Prohibited Act and shall enforce it where appropriate.
- 4.1.4 If any breach of clause 4.1.1 is suspected or known, the Provider must notify the Council immediately.
- 4.1.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 4.1.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 12 years following the expiry or termination of this Contract.
- 4.1.6 If the Provider, its agents, contractors or sub-contractors or Staff (in all cases whether or not acting with the Provider's knowledge) breaches clause 4.1.1 the Council may:
- (a) terminate the Contract by written notice with immediate effect and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or
 - (b) recover in full from the Provider any other loss sustained by the Council in consequence of any breach of that Clause.
- 4.1.7 Any notice of termination under clause 4.1.6 must 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 this Contract will terminate.
- 4.1.8 Any dispute relating to:
- (a) the interpretation of this clause 4.1; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.

4.1.9 Any termination under this clause 4.1 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

4.2 **Discrimination**

4.2.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) including the Equality Act 2010.

4.2.2 The Provider shall take all reasonable steps to secure the observance of Clause 4.2.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Contract.

4.3 **The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions without the prior written agreement of the Parties.

4.4 **Environmental Requirements**

4.4.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

4.4.2 Throughout the Contract Period, the Provider must comply with any Low Emission Zone requirements, road traffic legislation and environmental legislation relating to the Vehicles. Under no circumstances shall the Council be liable for the Provider's failure to comply with Low Emission Zone requirements, road traffic legislation and environmental legislation relating to the Vehicles.

4.5 **Health and Safety**

4.5.1 The Provider shall comply with all health and safety laws and requirements in connection with the performance of the Services and shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise and which may affect the Provider in the performance of its obligations under the Contract.

4.5.2 The Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons.

4.5.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal harm or injury or allegation of the same or damage to property which could give rise to personal injury.

4.5.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons in the performance of its obligations under the Contract.

- 4.5.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.
- 4.5.6 The Council requires the Provider to be registered with the Provider's Health and Safety Assessment Scheme (CHAS), SSIP or equivalent. Subject to Clause 4.5.7, the Provider shall maintain its compliance with CHAS, SSIP or equivalent throughout the Contract Period and must ensure that it continues to meet all the requirements in order to remain accredited.

4.6 **Best Value and Service Improvements**

- 4.6.1 The Provider acknowledges that the Council is required under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness ("Best Value"). The Provider agrees to take reasonable steps to co-operate with and assist the Council in fulfilling this duty. In particular the Provider will participate in any relevant Best Value reviews and benchmarking exercises (including providing information) conducted by the Council and assist with the preparation of any performance plans;
- 4.6.2 In the course of the Contract Period, the Provider shall demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and where possible without increasing the cost to the Council, and show the Council that improvements have taken place, by reference to any measurable criteria notified to the Provider by the Authorised Officer.
- 4.6.3 As part of the Services, the Provider shall where possible and at no extra cost to the Council identify and report to the Authorised Officer throughout the Contract Period on:
- a) the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Provider and the Council which the parties may wish to adopt; and/or
 - b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and/or
 - c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and/or
 - d) changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 4.6.4 If the Council wishes to incorporate any improvement identified by the Provider the Council shall send to the Provider a Variation Notice and the parties shall develop implement and test the improvements within a reasonable period;

- 4.6.5 The Provider will be entitled to claim additional charges only if it can demonstrate that the proposed Variation requires additional resources costs and/or expenses and, in any event, any change to the Charges resulting from a Variation will be strictly proportionate to the increase in the level of resources costs and/or expenses required for the provision of the Services as amended by the Variation.

5. PROTECTION OF INFORMATION

5.1 Data Protection

- 5.1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation the Council is the Controller and that the Provider is the Processor unless otherwise specified in Appendix [1] of Schedule 1. The only processing that the Processor is authorised to do is listed in Appendix [1] of Schedule 1 by the Controller and may not be determined by the Processor.
- 5.1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions in relation to the Enquiry Phase Personal Data infringe the Data Protection Legislation.
- 5.1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing of the Enquiry Phase Personal Data. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 5.1.4 The Processor shall in relation to any Personal Data processed in connection with the Enquiry Phase Personal Data:
- (a) process that Personal Data only in accordance with Appendix [1] of Schedule 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
- (i) Staff do not process Personal Data except in accordance with this Contract (and in particular Appendix [1] of Schedule 1)
 - (ii) It takes reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of any comply with the Processor's duties under this clause:
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) Not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the

Agreement unless the Processor is required by Law to retain the Personal Data.

- 5.1.5 Subject to clause 5.1.6, the Processor shall notify the Controller immediately if in relation to the Enquiry Phase Personal Data it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 5.1.6 The Processor's obligation to notify under clause 5.1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 5.1.7 Taking into account the nature of the processing in relation to the Enquiry Phase Personal Data, the Processor shall provide the Provider with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 5.1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 5.1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 5.1.9 The Processor shall allow for audits of its Data Processing activity in relation to the Enquiry Phase Personal Data by the Controller or the Controller's designated auditor.
- 5.1.10 The Processor shall designate a data protection officer if required by the Data Protection Legislation.
- 5.1.11 Before allowing any Sub-processor to process any Personal Data related to the Enquiry Phase Personal Data, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 5.1 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 5.1.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 5.1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 5.1.15 5.1.14The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office Where the Parties include two or more Joint Controllers as identified in Appendix [1] of Schedule 1 in accordance with GDPR Article 26, the Parties shall enter into a Joint Controller Agreement on the terms provided by the Council in replacement of Clauses E1.1-E1.14 for the Personal Data under Joint Control.

5.1A **Council Data and Security Requirements**

- 5.1A.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Council Data.
- 5.1A.2 The Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.

- 5.1A.3 To the extent that Council Data is held and/or processed by the Provider, the Provider shall supply that Council Data to the Council as requested by the Council in a format reasonably requested by the Council.
- 5.1A.4 The Provider shall preserve the integrity of Council Data and prevent the corruption or loss of Council Data at all times that the relevant Council Data is under its control or the control of any sub-contractor.
- 5.1A.5 The Provider shall perform secure back-ups of all Council Data and shall ensure that up-to-date back-ups are stored off-site. The Provider shall ensure that such back-ups are available to the Council (or to such other person as the Council may direct) at all times upon request and are delivered to the Council at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 5.1A.6 The Provider shall ensure that any system on which the Provider holds any Council Data, including back-up data, is a secure system that complies with the reasonable security requirements of the Council.
- 5.1A.7 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Council may:
- (a) require the Provider (at the Provider's expense) to restore or procure the restoration of the Council Data as soon as practicable but not later than 5 Working Days from the date of receipt of the Council's notice; and/or
 - (b) itself restore or procure the restoration of the Council Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- 5.1A.8 If at any time the Provider suspects or has reason to believe that the Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Council immediately and inform the Council of the remedial action the Provider proposes to take.
- 5.1A.9 The Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of malicious software in the Council's ICT systems which interface with the Provider's ICT systems or which are necessary for the Council to receive the Services.
- 5.1A.10 Notwithstanding Clause 5.1A.9, if malicious software is found, the Parties shall co-operate to reduce the effect of the malicious software and, particularly if malicious software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 5.1A.11 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 5.1A.10 shall be borne by the Parties as follows:
- (a) by the Provider where the malicious software originates directly or indirectly from the Provider or from the Council Data (whilst the Council Data was under the control of the Provider) unless the Provider can demonstrate that such malicious software was present and not quarantined or otherwise identified by the Council when provided to the Provider

(b) otherwise by the Council.

5.2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

5.2.1 The Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-

(a) the Official Secrets Acts 1911 to 1989; and

(b) Section 182 of the Finance Act 1989.

5.2.2 In the event that the Provider or its Staff fail to comply with this Clause, the Council reserves the right to terminate the Contract by giving notice in writing to the Provider.

5.3 Confidential Information

5.3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

- 5.3.2 Clause 5.3.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 5.4 (Freedom of Information);
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information; or
 - (f) such disclosure is reasonably required by the Council
- 5.3.3 The Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 5.3.4 The Provider shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 5.3.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 5.3.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - (b) to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - (c) for the purpose of the examination and certification of the Council's accounts;
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

- 5.3.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 5.3.6 is made aware of the Council's obligations of confidentiality.
- 5.3.8 Nothing in this clause 5.3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

5.4 **Freedom of Information**

- 5.4.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 5.4.2 The Provider shall and shall procure that its Sub-contractors shall:
- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 5.4.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 5.4.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 5.4.5 The Provider acknowledges that (notwithstanding the provisions of Clause 5.4.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- (a) in certain circumstances without consulting the Provider; or
 - (b) following consultation with the Provider and having taken their views into account;
 - (c) provided always that where 5.4.2 applies the Council shall, in accordance with any recommendations of the Code, take

reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 5.4.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 5.4.7 The Provider acknowledges that the Commercially Sensitive Information listed in schedule 7 is of indicative value only and that the Council may be obliged to disclose it in accordance with clause 5.4.5.

5.5 **Publicity, Media and Official Enquiries**

- 5.5.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Council's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this Clause.
- 5.5.2 The Council shall be entitled to publicise the Contract in accordance with any legal obligation upon the Council, including any examination of the Contract by the Auditor.
- 5.5.3 The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.
- 5.5.4 Not used.
- 5.5.5 If reasonably required by the Council, the Provider shall cause any or all offices, Vehicles, Equipment, materials and consumables used in the performance of the Services to bear such advertisements, insignia, logo or devices as the Council may reasonably require from time to time require in writing PROVIDED always that compliance with this Clause shall be at the Council's reasonable cost and expense.

5.6 **Security**

- 5.6.1 The Council shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Council while on the Premises and shall ensure that all Staff comply with such requirements.
- 5.6.2 The Council shall provide the Provider upon request copies of its written security procedures and shall afford the Provider upon request an opportunity to inspect its physical security arrangements.

5.7 **Intellectual Property Rights**

- 5.7.1 Save as granted elsewhere under the Contract, neither the Council nor the Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 5.7.2 The Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Council Pre-Existing IPR or the Project Specific IPRs to any third party.

- 5.7.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Council. The Provider hereby assigns to the Council, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 5.7.4 The assignment under Clause 5.7.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 5.7.5 The Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Council under the Contract.
- 5.7.6 If requested to do so by the Council, the Provider shall without charge to the Council execute all documents and do all such further acts as the Council may require to perfect the assignment under Clause 5.7.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 5.7.7 The Council hereby grants to the Provider a non-exclusive, revocable, non-assignable licence to use the Council Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Provider to provide the Services.
- 5.7.8 Prior to using any third party Intellectual Property Rights, the Provider shall obtain the Approval of the Council. The Provider shall provide the Council with details of any third party licence required by the Provider and/or the Council in order for the Provider to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Council reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 5.7.9 Where the Provider is granted Approval by the Council to use the third party rights, the Provider shall procure that the owner of third party rights grants to the Council a licence upon the terms informed to the Council when seeking the Approval.
- 5.7.10 The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or the possession or use by the Council of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- (a) items or materials based upon designs supplied by the Council; or
 - (b) the use of data supplied by the Council which is not required to be verified by the Provider under any provision of the Contract.
- 5.7.11 The Council shall notify the Provider in writing of the Claim and the Council shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:-

- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Council; and
- (c) shall not settle or compromise the Claim without the Council's prior Approval (not to be unreasonably withheld or delayed).

5.7.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:-

- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Council;

and in the event that the Provider is unable to comply with Clauses 5.7.12(a) or 5.7.12(b) within 20 Working Days of receipt of the Provider's notification the Council may terminate the Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Council with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

5.7.13 In the event that a modification or substitution in accordance with Clause 5.7.12(a) is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with Clause 5.7.12(b) the Council shall be entitled to delete the relevant Service from the Contract.

5.7.14 This Clause 5.7 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Right as a result of the provision of the Services or the provision of the Deliverables hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.

5.8 **Records and Audit Access**

5.8.1 The Provider shall keep and maintain until twelve (12) years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Council and the amounts paid by the Council.

5.8.2 The Provider shall keep the records and accounts referred to in Clause 5.8.1 above in accordance with good accountancy practice. In addition, the Provider shall comply in full with the requirements of Section 21 (Record-keeping) of the Specification.

- 5.8.3 The Provider shall comply in full with the requirements of Section 22 (Compliance Visits, Spot Checks and Inspections) of the Specification and in addition, on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required by the Council from time to time.
- 5.8.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of twelve years after the expiry of the Contract Period to the Council and the Auditor.
- 5.8.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.
- 5.8.6 Subject to the Council's rights of Confidential Information, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-
- (a) all information requested by the Council within the scope of the audit;
 - (b) reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 5.8.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.8, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

5.9 **Management Information**

- 5.9.1 The Provider shall submit Management Information to the Council in accordance with Section 23 (Contract Management) of the Specification and Schedule 6 of the Dynamic Purchasing System Agreement throughout the Contract Period.
- 5.9.2 The Council may share the Management Information supplied by the Provider with any Contracting Authority
- 5.9.3 The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider one (1) month's written notice of any changes
- 5.9.4 The Authorised Officer and the Contract Manager shall meet in accordance with Section 24 (Meetings) of the Specification and **Error! Reference source not found.** of the Dynamic Purchasing System Agreement and the Provider shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.

6. **CONTROL OF THE CONTRACT**

6.1 **Transfer and Sub-Contracting**

- 6.1.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. In addition, the Provider shall not without prior Approval change or replace any sub-contractor that it has appointed to provide the Services or any part thereof.
- 6.1.2 Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract. The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 6.1.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.
- 6.1.4 Subject to Clause 6.1.6, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - (c) any private sector body which substantially performs any of the functions of the Council,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- 6.1.5 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 6.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- 6.1.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 6.1.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**");-
- (a) the rights of termination of the Council in Clauses 8.1 (Termination on insolvency and change of control) and 8.2 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.
- 6.1.7 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purposes and shall take all reasonable

steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

- 6.1.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

6.2 Waiver

- 6.2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 6.2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.7 (Notices).
- 6.2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

6.3 Variation

- 6.3.1 Subject to the provisions of this Clause 6.3 and without prejudice to clause 6.10 (Change in Law) the Council may request a variation to the Services ordered provided that such variation falls within the scope of either the Specification or DPS Operational Guide or otherwise does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 6.3.2 The Provider shall respond to a request for a Variation within the time limits specified in the request. Such time limits shall be reasonable having regard to the nature of the Order.
- 6.3.3 In the event that the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:-
- (a) agree to continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 9.2.
- 6.3.4 If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

6.4 Severability

- 6.4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 6.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

6.5 **KPIs and Remedies in the event of inadequate performance**

- 6.5.1 The Provider shall comply with the provisions relating to KPIs and discounted rates in Section 19 (KPIs and Discounted Rates) of the Specification.
- 6.5.2 The Provider shall comply with Section 20 (Quality Standards) of the Specification.
- 6.5.3 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract including the occurrence of a Minor Non-Conformance, then the Council shall notify the Provider, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and issue a Minor Non-Conformance Default Notice to the Provider and take further action in accordance with this Clause 6.5 and/or Clause 8.2 (Termination on Default) of the Contract.
- 6.5.4 In addition to the Council's rights in Clause 6.5.3, where the Authorised Officer reasonably determines that the Services or any part thereof have either not been performed or have been performed inadequately or not in accordance with the Contract or a Minor Non-Conformance has occurred, the Authorised Officer may issue a Minor Non-Conformance Default Notice to the Provider and take further action in accordance with this Clause 6.5 and/or Clause 8.2 (Termination on Default) of the Contract.
- 6.5.5 Any Minor Non-Conformance Default Notice issued pursuant to Clauses 6.5.3 or 6.5.4 above may specify the non-compliance, the appropriate action to be taken to rectify the non-compliance (if applicable) and the relevant timescale for taking such action and the Provider shall provide or provide again the relevant part of the Services at no additional cost to the Council in accordance with the Minor Non-Conformance Default Notice and the Contract.
- 6.5.6 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, or where the Council has issued 5 or more Minor Non-Conformance Default Notices in any rolling 12 month period then the Council may, without prejudice to its rights under Clause 8.2 (Termination on Default), do any of the following:-
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;

- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Contract.

6.5.7 Without prejudice to its right under Clause 3.3 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

6.5.8 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Council's instructions or such other period of time as the Council may direct.

6.5.9 In the event that the Provider:-

- (a) fails to comply with Clause 6.5.5 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 6.5.5 above;

the Council may terminate the Contract with immediate effect by giving the Provider notice in writing.

6.6 **Cumulative Remedies**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

6.7 **Monitoring of Contract Performance**

The Provider shall comply with the monitoring arrangements set out in the Specification and/or the Order including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

6.8 **Extension of Initial Contract Period**

Subject to satisfactory performance of its obligations under the Contract by the Provider during the Initial Contract Period, the Council may, by giving written notice to the Provider extend the Contract for such period or periods specified in the Order or otherwise notified by the Council. The provisions of the Contract will apply throughout any such extended period.

6.9 **Price Adjustment on Extension of Initial Contract Period**

- 6.9.1 In the event that the Council exercises its right to extend the Contract pursuant to Clause 6.8 (Extension of Initial Contract Period) the Council shall, in the 3 month period prior to the expiry of the Initial Contract Period, enter into negotiations with the Provider to agree a variation in the Contract Price.
- 6.9.2 If the Parties are unable to agree a variation in the Contract Price in accordance with Clause 6.9.1, the Contract shall terminate at the end of the Initial Contract Period.
- 6.9.3 If a variation in the Contract Price is agreed between the Council and the Provider, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- 6.9.4 Any increase or reduction to the Contract Price shall be made by reference to the increase in the National Minimum Wage/the National Living Wage and/or to the percentage increase or reduction (if any) shown by the Consumer Price Index published by the Office for National Statistics or any government department upon which duties in connection with the compilation and maintenance of such index shall be devolved (or such other index as may be agreed by the Council), for the 12 month period immediately preceding the review date.

6.10 **Change in Law**

- 6.10.1 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as a result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.
- 6.10.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 6.10.1(b)), the Provider shall:
- (a) notify the Council as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any variation is required to the Services, the Contract Price or this Contract; and
 - (ii) whether any relief from compliance with the Provider's obligations is required; and
 - (b) provide the council with evidence:
 - (i) that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 4.6 (Best Value and

Service Improvements), has been taken into account in amending the Contract Price.

- 6.10.3 Following notification and the receipt of evidence in accordance with Clause 6.10.2 the Council may in its absolute discretion request a variation to the Services, the Contract Price and/or the Contract and the provisions of Clause 6.10.4 and Clause 6.10.5 shall apply.
- 6.10.4 Where the Council requests a variation under Clause 6.10.3, it shall specify a time limit within which the Provider shall respond. The time limit shall be reasonable having regard to the nature of the variation. If the Provider accepts the variation it shall confirm the same in writing. Any work carried out by the Provider pursuant to any variation shall be carried out to the standards set out in this Contract.
- 6.10.5 In the event that the Parties are unable to agree the variation to the Specification, the Contract Price and/or the Contract, the Council may:
- (a) allow the Provider to fulfil its obligations under the Contract without implementing the variation; or
 - (b) terminate the contract with immediate effect.

7. LIABILITIES

7.1 Liability, Indemnity and Insurance

- 7.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - (d) any claim under Clause 3.2.6 or Clause 7.2;
 - (e) any claim under the indemnity in Clause 5.7.10; or
 - (f) any claim under Clause 5.1 or Clause 5.1A.
- 7.1.2 The Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, losses, costs (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises (if relevant), including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or the enforcement of the Contract, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

7.1.3 Subject to Clause 7.1.1, in no event shall either Party be liable to the other for any:-

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect or consequential loss or damage.

7.1.4 The Council may, amongst other things, recover as a direct loss:-

- (a) any additional operational and/or administrative expenses arising from the Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and
- (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider.

7.1.5 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.

7.1.6 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 12 (twelve) years following the expiration or earlier termination of the Contract.

7.1.7 The Provider shall during the Contract Period have in force the following policies of insurance from an insurer of good repute

- (a) employer's liability insurance for a sum not less than £10 million in respect of any one incident;
- (b) public liability insurance for a sum not less than £10 million in respect of any one incident; and
- (c) (if required by the nature of the Services) professional indemnity insurance for a sum not less than £2 million in respect of any one incident; and
- (d) Appropriate and adequate Vehicle and passenger cover

- 7.1.8 Any excess or deductibles under such insurance (referred to in clause 7.1.7) shall be the sole and exclusive responsibility of the Provider.
- 7.1.9 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 7.1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 7.1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 7.1.2.
- 7.1.12 The Provider shall give immediate notice to the Council in the event of any accident or damage likely to form the subject of a claim against it and shall provide all information and assistance that the Council may require. The Provider shall not negotiate, pay, settle, admit or repudiate any claim without the Council's written consent, and shall permit the Council's insurers to take proceedings in the name of the Provider to recover compensation or secure any indemnity from any third party in respect of any of the matters covered by the Council's insurance.

7.2 Professional Indemnity

Where appropriate, the Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall where appropriate ensure professional indemnity insurance held by the Provider and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £2 million for each individual claim. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

7.3 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

7.4 Warranties and Representations

- 7.4.1 The Provider warrants and represents that:-
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its

Parent Company) to enter into and perform its obligations under the Contract;

- (b) the Contract is executed by a duly authorised representative of the Provider;
- (c) it has not committed any Fraud or a Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Accreditation and Enrolment, Request to Participate, SQ Response and the Tender for the Services are true, accurate and not misleading and will continue to be so for the Term and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and the Provider acknowledges that the Council reserves the right, at its sole discretion, to terminate this Contract, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract;
- (e) it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Contract;
- (f) it has not caused or induced any person to enter such agreement referred to in Clause 7.4.1(e) above;
- (g) it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Contract;
- (h) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (i) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (j) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- (k) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (l) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

- (m) in the three (3) years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (n) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

7.4.2 The Provider shall repeat the warranties and representations throughout the Term.

8. DEFAULT, DISRUPTION AND TERMINATION

8.1 Termination on insolvency and change of control

8.1.1 The Council may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause 8.1.1(a) – 8.1.1(g) occurs under the law of any other jurisdiction.

8.1.2 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:-

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Provider 's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Provider 's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider 's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

8.2 Termination on Default

8.2.1 The Council may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a Default and if:-

- (a) the Provider has not remedied the Default to the satisfaction of the Council within ten (10) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Council, capable of remedy;
- (c) the Default is a material breach of the Contract or is a Major Non-Conformance;

- (d) as a result of the Default, the Provider has brought the Council into disrepute; or
 - (e) the issuing of a Minor Non-Conformance Default Notice for the Default has the consequence that the Council has issued 5 or more Minor Non-Conformance Default Notices within any rolling 12 month period.
- 8.2.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 8.2.3 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause 3.3 (Recovery of Sums Due).

Further Grounds for Termination

- 8.2.4 The Council may terminate the Contract with immediate effect at any time by written notice to the Provider where any of the grounds listed below apply:
- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - (b) the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to the Provider in view of a serious infringement under the Treaty on European Union and the Public Contracts Directive (Directive 2014/24/EU) that has been declared by the CJEU in a procedure under Article 258 of the Treaty on the Functioning of the European Union (TFEU).

Termination for failure to comply with the minimum requirements of the DPS

- 8.2.5 The Council may terminate the Contract at any time by serving written notice on the Provider if the Provider has failed to maintain the minimum standards of the Dynamic Purchasing System as set out (without limitation) in the Accreditation and Enrolment process, the Request to Participate, the Selection Questionnaire, the DPS Application Guide or the DPS Operational Guide.

Termination where passenger numbers reduce to zero

- 8.2.6 The Council may terminate the Contract with immediate effect at any time where passenger numbers have reduced to zero.

8.3 **Break**

The Council shall have the right to terminate the Contract at any time by giving fourteen 14 day's written notice to the Provider.

8.4 **Dynamic Purchasing System Agreement**

The Council may terminate the Contract by giving written notice to the Provider with immediate effect if the Dynamic Purchasing System Agreement is terminated for any reason whatsoever.

8.5 **Consequences of Expiry or Termination**

8.5.1 Where the Council terminates the Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 8.2 (Termination on Default), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

8.5.2 Not used.

8.5.3 Not used.

8.5.4 Save as otherwise expressly provided in the Contract:-

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 5.3 (Confidential Information), 5.4 (Freedom of Information), 5.7 (Intellectual Property Rights), 5.8 (Records and Audit Access), 6.6 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 7.2 (Professional Indemnity), 8.5 (Consequences of Expiry or Termination), 8.7 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction).

8.6 **Disruption**

8.6.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

8.6.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

- 8.6.3 In the event of industrial action by the Staff, the Provider shall seek the Council's prior Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 8.6.4 If the Provider's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 8.6.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

8.7 **Recovery upon Termination**

8.7.1 On the termination of the Contract for any reason, the Provider shall:

- (a) immediately return to the Council all Confidential Information, Personal Data and Council's Pre-Existing IPR's and the Project Specific IPR's in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider under clause 2.2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress.
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.

8.7.2 If the Provider fails to comply with clause 8.7.1 (a) and (b), the Client may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.

8.7.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 8.7.1 (c) and (d) free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

8.7.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.7.7 shall automatically terminate without the need to serve notice.

8.8 **Force Majeure**

- 8.8.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 8.8.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 8.8.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 8.8.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

9. **DISPUTES AND LAW**

9.1 **Governing Law and Jurisdiction**

- 9.1.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.1.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

9.2 **Dispute Resolution**

- 9.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to a director (or equivalent) of each Party.
- 9.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 9.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 9.2.5 unless:
- (a) the Council considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Provider does not agree to mediation.

- 9.2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 9.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- (a) a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - (f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

APPENDIX 1 – NOT USED

APPENDIX 2 – MISCELLANEOUS PROVISIONS

1. TUPE and Pensions

- 1.1 It is the responsibility of the Provider to evaluate the risk of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE Regulations”) being applicable and to assess the potential costs if they are.
- 1.2 The Council makes no assurances as to the effect of the TUPE Regulations on the Contract or as to the accuracy of information regarding persons employed in the undertaking prior to award of Contract. The Provider acknowledges that it has formed its own view about whether the TUPE Regulations apply before the commencement of the Contract and carried out its own investigations regarding transferring employees.
- 1.3 It is agreed by the parties that the Contract Price shall not be varied after the Contract comes into force on the grounds that the TUPE Regulations do or do not apply to the Contract (irrespective of the belief of either Party before the execution of the Contract as to the legal effect of the Regulations).
- 1.4 The Provider shall indemnify the Council against all costs, claims, damages, legal proceedings, expenses and any other liability incurred by the Council as a result of a claim made by any members of staff of the former provider resulting from the applicability or otherwise of the TUPE Regulations and/or in connection with the employment, terms of employment, non-employment or treatment of staff. The Council shall not be liable to the Provider for any claim or liability connected with the applicability or otherwise of the TUPE Regulations, the transfer or employment or any members of staff.
- 1.5 The Provider shall indemnify and keep indemnified the Council against all liabilities, damages, costs, compensation, losses, claims, demands and proceedings and legal costs on a solicitor and client basis in respect of any dispute arising in connection with the TUPE Regulations.
- 1.6 If the Council has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Business Days following written request (unless otherwise agreed in writing) provide the Council with anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the Council and at the Council’s request, any new Provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect of any inaccuracy in or omission from the information provided under this clause.
- 1.7 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its sub-contractors do not, without the prior written consent of the Council, in relation to any persons engaged in the provision of the Services or the relevant Service:
 - (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);

- (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor (except in the ordinary course of business);
 - (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
 - (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.
- 1.8 The Provider must indemnify and keep indemnified the Council and, at the Council's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:
- (a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor;
 - (b) claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Council or new provider under TUPE; and/or
 - (c) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Council or new provider.
- 1.9 The Council must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:
- (d) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
 - (e) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
 - (f) any claim by any person in relation to any breach of contract arising from any proposed measures of the new Provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.
- 1.10 If the Provider wishes to offer the Eligible Employees membership of the LGPS, the Provider shall enter into an Admission Agreement and a Funding Agreement in the form set out in the Annex hereto (or such other form or forms as the Council may provide) to have effect from and including the date of the transfer.
- 1.11 For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the administering authority under the Admission Agreement, the Council shall ensure that the Eligible Employees' past service benefits accrued prior to the date of the transfer are fully funded as at the date of the transfer, as determined by the Fund's actuary.
- 1.12 The Provider shall indemnify and keep indemnified the Council and/or any replacement Provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider of the terms

of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

1.13 The Provider shall obtain any indemnity or Bond required in accordance with the terms of the Admission Agreement.

1.14 The Provider shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

1.15 Where the Sub-Contractor does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, the Provider shall offer the Eligible Employees membership of an occupational pension scheme with effect from the date of the transfer. Such an occupational pension scheme must be:

- (a) established no later than three months prior to the date of the transfer; and
- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the scheme to which the Eligible Employees are members of or eligible for membership of prior to the date of the transfer,

and the Provider shall produce evidence of compliance with this paragraph to the Council prior to the date of the date of the transfer.

1.16 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Provider's scheme following the date of the transfer and any subsequent bulk transfers on termination or expiry of this Contract and the Provider shall meet the fees of the Council's actuary in making this determination.

1.17 The Provider shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in paragraph 1.1(a) which the Council may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully cooperate (and procure that the trustees of the Provider's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider in the provision of the Services on expiry or termination of the Contract

1.18 The provisions of this Special Condition shall be directly enforceable by an Eligible Employee against the Provider or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to such employee by the Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

"Eligible Employees" means transferring employees who are active members of (or are eligible to join) the LGPS on the date of the transfer.

"LGPS" means the Local Government Pension Scheme applicable to employees and to former employees of the Council.

Forms of Admission Agreement and Funding Agreement

DATED

- (1) **The Mayor and Burgesses of the London Borough of Bexley**
- (2) **(ADMISSION BODY)**

**ADMISSION AGREEMENT
FOR AN
ADMISSION BODY**

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OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

Save as defined below unless the context requires otherwise words and expressions used in this Agreement shall have the same meanings as in the Regulations.

"AVC"	Additional Voluntary Contribution as referred to in regulation 17 of the Regulations;
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England;
"Contract"	the contract [dated/commencing on] [] made between the Admission Body and the Scheme Employer, for the provision of services under which the Eligible Employees are employed.
"Eligible Employee"	<p>an employee employed by the Admission Body in connection with the services/assets referred to in the Contract to the extent listed in Schedule 2 provided that such employee:</p> <ul style="list-style-type: none">(a) remains employed by the Admission Body in connection with the provision of the services under the Contract; and(b) otherwise satisfies the requirements of the Regulations relating to eligibility for membership of the Scheme;
"FOIA"	Means the Freedom of Information Act 2000 and any amending legislation;
"Fund"	Bexley Pension Fund
"Payment Period"	Has the same meaning as in Schedule 1 to the Regulations;
"Regulations"	The Local Government Pension Scheme Regulations 2013 (SI 2013/2356);
"SCAVC"	Shared Cost Additional Voluntary Contribution as referred to in regulation 17 of the Regulations;
"Scheme"	The occupational pension scheme which is constituted by the Regulations;
"Transfer Date"	The date upon which the Eligible Employees transfer to the Admission Body under the Contract. That date for the purposes of this agreement being []
"Transitional Regulations"	Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations

- 1.2 For the purposes of this Agreement the words “employed in connection with” shall mean that an Eligible Employee is employed by the Admission Body on the basis that in any six (6) month period an Eligible Employee spends not less than seventy-five per cent (75%) of his time whilst working on matters directly relevant to the Contract. For the avoidance of doubt, when assessing the time spent working on matters directly relevant to the Contract the Admission Body should take into account a range of factors including (but not limited to) the time spent on different parts of the business, the value given to each part of the business, the contract of employment and how the costs of that employee are dealt with.
- 1.3 In this Agreement where the context so admits, words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa.
- 1.4 Reference to any statute or statutory instrument shall be deemed to include reference to any such statute or statutory instrument as from time to time amended varied replaced extended or re-enacted and any orders or regulations under such provisions unless the context otherwise requires.
- 1.5 Reference to clauses or schedules shall be deemed to be references to a clause or schedule to this Agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears.
- 1.6 Headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

2. EFFECTIVE DATE

- 2.1 This Agreement shall have effect from the Transfer Date and shall continue subject to termination in accordance with **Clause 8**.

3. ADMISSION

- 3.1 The Administering Authority shall as from the Transfer Date permit the Eligible Employees who were active members of the Scheme on the day immediately before the Transfer Date to be active members of the Scheme and participate in the Fund.
- 3.2 An Eligible Employee who was not an active member of the Scheme on the day immediately before the Transfer Date shall not become an active member of the Scheme on the Transfer Date but may apply in writing to the Admission Body to become an active member of the Scheme and shall become an active member of the Scheme on the first day of the Payment Period following the application.

4. PARTICIPATION

- 4.1 The provisions of the Regulations and the Transitional Regulations shall apply for determining the rights and obligations of and the action which is to be taken by each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly and where such information is not in the possession of or under the control of one of the parties to use their respective best endeavours to ensure such information is provided promptly.
- 4.2 The Regulations and the Transitional Regulations shall apply to employment with the Admission Body in which an Eligible Employee is an active member (as defined in Schedule 1 to the Regulations).
- 4.3 The Admission Body warrants and represents to the Administering Authority and to the Scheme Employer that every Eligible Employee is employed in connection with the provision of the

services or assets referred to in the Contract and in Schedule 2 Part 3 paragraph 1(d) of the Regulations.

- 4.4 The Admission Body shall promptly notify the Administering Authority and the Scheme Employer in writing if any Eligible Employee ceases to be employed in connection with the provision of the services or assets referred to in the Contract. The Administering Authority, the Scheme Employer and the Admission Body acknowledge that any Eligible Employee who ceases to be employed in connection with the provision of the services or assets referred to in the Contract or who otherwise ceases to be eligible to be an active member, (as defined in section Schedule 1 to the Regulations) of the Scheme in accordance with clauses 1.1 and 1.2 of this Agreement or the Regulations, shall cease to be an active member (as defined in section Schedule 1 to the Regulations) of the Scheme.

5. PAYMENTS

- 5.1 The Admission Body shall pay to the Administering Authority for credit to the Fund such employee and employer contributions and all other contributions and payments as are due under the Regulations in respect of the Eligible Employees.
- 5.2 The Admission Body shall pay to the Administering Authority for credit to the Fund the employee and employer pension contributions on a monthly basis in arrears. The payment must be paid to the Administering Authority within nineteen (19) calendar days of the end of each month in which the pension contributions have been deducted.
- 5.3 The contribution rate required to be paid by the Admission Body will be assessed by an actuary appointed by the Administering Authority assuming a past service funding level in respect of those Eligible Employees who were previously members of the Scheme and participated in the Fund of [one hundred per cent (100%)] as at the Transfer Date.
- 5.4 The Admission Body shall pay to the Administering Authority for credit to the Fund any additional or revised contributions due under either sub-clauses 6.1.7, 7.1 or 7.2.2 within thirty (30) calendar days of receipt of a written request from the Administering Authority.
- 5.5 Any employees' AVCs or SCAVCs shall be paid direct by the Admission Body to such AVC body and/or AVC insurance company selected by the Administering Authority and notified to the Admission Body. Any such contributions shall be paid within nineteen (19) calendar days of the end of each month in which the contributions have been deducted.
- 5.6 Where the Admission Body certifies that:
- 5.6.1 an Eligible Employee aged fifty-five (55) or more who is an active member of the Scheme is being dismissed by reason of redundancy or in the interests of efficiency;
 - 5.6.2 an Eligible Employee is voluntarily retiring on or after age fifty-five (55) and the Admission Body exercises a discretion to waive actuarial reductions;
 - 5.6.3 an Eligible Employee who is a deferred member of the Scheme requests that their benefits are brought into payment early on or after age fifty-five (55) and the Admission Body exercises a discretion to waive actuarial reductions;
 - 5.6.4 an Eligible Employee has entered into arrangements to pay additional pension contributions under Regulation 16 and the Admission Body has exercised a discretion to fund these in whole or in part
 - 5.6.5 an Eligible Employee aged fifty-five (55) or more has reduced the hours or grade of employment and the Admission Body has granted consent to flexible retirement under Regulation 30(6)

- 5.6.6 the Admission Body has granted ill health early retirement permission in respect of a tier 2 or tier 3 case under Regulation 35
- 5.6.7 the Admission Body has agreed to apply the 85 year rule to an Eligible Employee retiring before age 60 under paragraph 2 of Schedule 2 to the Transitional Regulations
- 5.6.8 the Admission Body has granted early retirement of a deferred pensioner on health grounds under Regulation 38

the Admission Body shall pay to the Administering Authority for credit to the Fund the sum notified to it in writing by the Administering Authority as representing the actuarial strain on the Fund resulting from the immediate payment of benefits as certified by an actuary appointed by the Administering Authority, such sum to be paid (unless other terms are agreed between the Administering Authority and the Admission Body) within thirty (30) calendar days of receipt by the Admission Body of the written notification.

- 5.7 The Admission Body shall indemnify the Administering Authority against any financial penalty and associated costs and expenses incurred by the Administering Authority or by the Fund arising from any failure by the Admission Body to comply with the terms of this Agreement the Regulations or any overriding legislation. Such payment is to be paid within thirty (30) calendar days of receipt of a written request from the Administering Authority.
- 5.8 If any sum payable under this Agreement or the Regulations by the Admission Body to the Administering Authority or to the Fund has not been paid (in whole or in part) within the payment period specified in this Agreement (or otherwise in accordance with the Regulations) the Administering Authority may require the Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid.
- 5.9 If any sum payable under this Agreement or the Regulations by the Admission Body to the Administering Authority or to the Fund has not been paid (in whole or in part) within the payment period specified in this Agreement (or otherwise in accordance with the Regulations) the Administering Authority may require the Scheme Employer to set off against any payments due from the Scheme Employer to the Admission Body under the Contract or any other contract between the parties an amount equal to the sum due from the Admission Body under this Agreement or the Regulations (including any interest due in accordance with the Regulations) and pay that amount to the Administering Authority for credit to the Fund.
- 5.10 The Admission Body and the Scheme Employer agree that the right of set-off in clause 5.9 shall be valid and enforceable notwithstanding any provision to the contrary in the Contract.

6. ADMISSION BODY'S UNDERTAKINGS

6.1 The Admission Body undertakes:

- 6.1.1 to provide or procure to be provided such information as is reasonably required by the Administering Authority relating to the Admission Body's participation in the Fund and the Eligible Employee's participation in the Scheme including (but not limited to) details of the pay and final pay of each Eligible Employee;
- 6.1.2 to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734);
- 6.1.3 to adopt the practices and procedures relating to the operation of the Scheme as set out in the Regulations and in any employer's guide published by the Administering Authority and provided by the Administering Authority to the Admission Body;

- 6.1.4 to formulate and publish within three (3) calendar months of the Transfer Date a statement concerning the Admission Body's policy on the exercise of its functions or discretions in accordance with the requirements of the Regulations and to keep such policy under review;
- 6.1.5 to notify the Administering Authority and the Scheme Employer of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;
- 6.1.6 to notify promptly the Administering Authority and the Scheme Employer in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affects entitlement to benefits under the Scheme and of any termination of employment by virtue of redundancy or in the interests of efficiency or for any other reason;
- 6.1.7 that it shall not grant additional pension to an Eligible Employee or former Eligible Employee under regulation 31 of the Regulations save to the extent that the appropriate sum is paid by the Admission Body to the Administering Authority for credit to the Fund. Such payment is to be paid within thirty (30) calendar days of receipt of a written request from the Administering Authority.
- 6.1.8 not to do any act or omission or thing which would prejudice the status of the Scheme as a registered pension scheme within the meaning of the Finance Act 2004; and
- 6.1.9 to immediately notify the Administering Authority and the Scheme Employer in writing of any matter which may affect or is likely to affect its participation in the Scheme and of any actual or proposed change in its status which may give rise to a termination of the Contract or this Agreement including but not limited to take-over reconstruction amalgamation insolvency winding up receivership or liquidation or a change in the nature of its business or constitution.

7. ACTUARIAL VALUATIONS

- 7.1 The Administering Authority may periodically and shall at least on a triennial basis obtain from an actuary a certificate specifying in the case of the Admission Body the percentage or amount by which in the actuary's opinion the contribution rate at the primary rate or secondary rate within the meaning regulation 62 of the Regulations should be increased or reduced. This is with a view of ensuring that as far as is reasonably possible the value of assets of the Fund in respect of current and former Eligible Employees is neither materially more or materially less than the anticipated liabilities of the Fund in respect of the said Eligible Employees at the date the Contract is due to end. For the avoidance of doubt the decision as to whether the said assets are materially more or materially less than the said liabilities shall be left to the discretion of the actuary appointed by the Administering Authority.
- 7.2 Upon termination of this Agreement the Administering Authority must obtain:
 - 7.2.1 an actuarial valuation of the liabilities of the Fund in respect of current and former Eligible Employees as at the date of termination; and
 - 7.2.2 a revision of any rates and adjustment certificate within the meaning of the Regulations showing the revised contributions due from the Admission Body.
- 7.3 The costs of obtaining the certificates (or revisions to them) and the actuarial valuations referred to in clause 7.1 (other than a triennial valuation) and clause 7.2 shall be paid by the Admission Body within thirty (30) calendar days of receipt of written notification of such costs from the Administering Authority.

8. TERMINATION

- 8.1 Subject to clauses 8.2 and 8.3 this Agreement shall terminate at the end of the notice period upon the Administering Authority or the Admission Body giving a minimum of three (3) calendar months' notice in writing to terminate this Agreement to the other party or parties to this Agreement but such notice shall not have effect unless as at the date of termination of this Agreement either
- 8.1.1 other arrangements are made for continued membership in the Scheme for the Eligible Employees who are active members of the Scheme; or
 - 8.1.2 a broadly comparable occupational pension scheme is made available to the Eligible Employees who are active members of the Scheme.
- 8.2 This Agreement shall terminate automatically on the earlier of:
- 8.2.1 the date of the expiry or earlier termination of the Contract; or
 - 8.2.2 the date the Admission Body ceases to be an Admission Body for the purposes of the Regulations.
 - 8.2.3 the date the Admission Body ceases to employ any Eligible Employee
- 8.3 This Agreement may be terminated by the Administering Authority by notice in writing to the Admission Body taking immediate effect in the event of:
- 8.3.1 the insolvency winding up or liquidation of the Admission Body;
 - 8.3.2 any breach by the Admission Body of any of its obligations under this Agreement or the Regulations (other than a failure by the Admission Body to pay any sums due to the Administering Authority or to the Fund) provided that the Administering Authority shall if the breach is capable of remedy first afford to the Admission Body the opportunity of remedying that breach within such reasonable period (being not less than twenty (20) Business Days) as the Administering Authority may specify;
 - 8.3.3 the failure by the Admission Body to pay any sums due to the Administering Authority or to the Fund within the periods specified in this Agreement or in the Regulations or in any other case within thirty (30) calendar days of receipt of a written notice from the Administering Authority requiring the Admission Body to do so, provided that the Administering Authority shall first issue a notice to the Admission Body requiring it to pay such outstanding sums within such reasonable period (being not less than ten (10) Business Days) as the Administering Authority may specify, and may only proceed to terminate the Agreement if the Admission Body fails to pay the requested sums within such specified period;
 - 8.3.4 the failure by the Admission Body to procure, renew or adjust the level of the bond, indemnity, or guarantee in accordance with clause 9.3 or 9.5.
- 8.4 The termination of this Agreement howsoever arising is without prejudice to the rights duties and liabilities of the Administering Authority accrued prior to termination. The clauses of this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination including (but not limited to) clause 5.

9. BOND/GUARANTEE/INDEMNITY

- 9.1 The Admission Body has carried out, to the satisfaction of the Administering Authority [and Scheme Employer], an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets under the Contract by reason of the insolvency, winding up or liquidation of the Admission Body.

- 9.2 The Administering Authority [and Scheme Employer] [has/have] decided that (subject to clause 9.3 below) the level of risk exposure identified by the assessment referred to in clause 9.1 above does not require the Admission Body to enter into an indemnity or bond under the Regulations at this time.
- 9.3 The Admission Body and Scheme Employer shall keep under assessment the level of risk arising as a result of the matters mentioned in Schedule 2 Part 3 paragraph 6 of the Regulations at no more than annual intervals, the first review to be undertaken by no later than the first anniversary of the Transfer Date.
- 9.3.1 Where upon a review the Scheme Employer considers that a bond/indemnity is required to cover the revised level of risk exposure the Admission Body shall procure that a bond/indemnity in the form set out in Schedule 1 (or such other form as is approved by the Administering Authority and the Scheme Employer) is entered into within a period of thirty (30) days.
- 9.3.2 Where upon a review the Scheme Employer considers that a bond/indemnity does not cover the revised level of risk exposure the Admission Body shall procure that the bond/indemnity is renewed or varied (where necessary) to cover the revised level of risk exposure. The Admission Body shall provide a copy of each bond/indemnity entered into in relation to this Admission Agreement to the Administering Authority as soon as is reasonably practicable.
- 9.4 The costs of reviewing the level of risk pursuant to clause 9.3 shall be paid by the Admission Body within thirty (30) calendar days of receipt of written notification of such costs from the Administering Authority.
- 9.5 In the event that the Administering Authority is satisfied, notwithstanding that the review undertaken by the Admission Body in accordance with clause 9.3 identifies a level of risk which would normally require the Admission Body to enter into an indemnity or bond, that an indemnity or bond would not in the circumstances be desirable, the Admission Body shall provide to the Administering Authority within thirty (30) calendar days of receiving notice to do so a guarantee from an authorised person as set out in Schedule 2 Part 3 paragraph 8 of the Regulations in the form annexed at Schedule 1A or such other form as is approved by the Administering Authority in respect of the revised level of risk exposure.

10. NOTICES

- 10.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid post to the addresses of the parties stated at the beginning of this Agreement (unless a party notifies the others in writing of a different address for service) and shall be deemed to have been given or made:
- 10.1.1 if delivered by hand upon delivery at the address unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day in which case it will be deemed to have been given at 10am on the next Business Day; or
- 10.1.2 if sent by prepaid post at the time at which it would have been delivered in the normal course of the post.
- 10.2 For the avoidance of doubt, no notices under this Agreement will be accepted by either fax or email.

11. SEVERANCE

- 11.1 If any provision of this Agreement or period of Scheme membership completed following purported admission to the Scheme under this Agreement shall be found by any court or

administrative body of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect the other provisions of or any other periods of Scheme membership under this Agreement which shall remain in full force and effect.

- 11.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 11.3 In the event of such an occurrence the parties shall, in so far as it is legally permitted, agree on the replacement of the invalid provision(s) with a valid one achieving the same or similar purpose.

12. FREEDOM OF INFORMATION ACT

- 12.1 The Admission Body understands that the Administering Authority is a public authority to which the FOIA applies and shall co-operate with and provide assistance to the Administering Authority at its own cost in enabling the Administering Authority to comply with its obligations under the FOIA and any request for disclosure of information arising from this Agreement.
- 12.2 All requests made to the Administering Authority under the FOIA for information relating to the operation of this Agreement or the relationship between the Administering Authority and Admission Body arising out of the operation of this agreement must be referred to the Admission Body for the Admission Body to provide an opinion on disclosure to assist the Administering Authority in reaching a decision as to whether disclosure of such information should be made.
- 12.3 At the request of the Administering Authority, the Admission Body will also supply to the Administering Authority any information held by the Admission Body on behalf of the Administering Authority, which is the subject of a request made under the FOIA.
- 12.4 The Administering Authority will decide whether information should be disclosed pursuant to the FOIA and will make a disclosure when it is considered such disclosure is proper and in accordance with the requirements of the FOIA.
- 12.5 The Admission Body will ensure that any opinion or information requested by the Administering Authority is supplied to the Administering Authority within five (5) Business Days of receipt of the request from the Administering Authority so as to permit the Administering Authority sufficient time to comply with the timescales set out in the FOIA.

13. DISPUTE RESOLUTION

- 13.1 The parties to this Agreement shall attempt in good faith to resolve any question which may arise between them relating to its construction or to the rights and obligations under it.
- 13.2 If the parties are unable to resolve the dispute in informal discussion then any of the parties may at its option give notice to the other party or parties in writing of its intention to invoke the dispute procedure set out in clauses 13.3 to 13.5.
- 13.3 Within ten (10) Business Days of receipt of the said notice or any other period agreed between the parties the nominated representatives of the parties shall meet together to attempt to resolve the said dispute.
- 13.4 In the event that the individuals referred to in clause 13.3 above fail to resolve the said dispute the nominated representatives of the parties shall meet within ten (10) Business Days of the meeting referred to in clause 13.3 in a further attempt to resolve the dispute.
- 13.5 In the event that the individuals referred to in clause 13.4 above fail to resolve the dispute,
- (a) if the dispute relates to the construction or the rights and obligations under this Agreement it shall be referred in writing to the Secretary of State for Housing, Communities and Local

Government or an officer duly authorised by him for determination. If the Secretary of State is unwilling or unable to assist it shall be referred in writing to an independent legal adviser for determination.

- (b) if the dispute relates to any other matter it shall be referred to mediation
- 13.6 To initiate mediation, a party must give notice in writing (the "Mediation Notice") to the other party or parties to the dispute in accordance with clause 10. Where mediation is initiated, the parties will attempt to settle the dispute by mediation in accordance with the Model Mediation Procedures (the "Procedures") published by the Centre for Effective Dispute Resolution, CEDR Solve ("CEDR").
- 13.7 The parties shall seek to agree the appointment of a mediator, but failing agreement within twenty eight (28) days of the service of the Mediation Notice, either party may ask CEDR to nominate a mediator.
- 13.8 In the event that there are no such Procedures available and/or CEDR is unable or unwilling to nominate a mediator, a party may ask the President of the Law Society of England and Wales (or its successor body) to nominate a mediator and/or to recommend a mediation procedure. The parties will accept such nomination under either this or the preceding sub-clause and also the recommended mediation procedure.
- 13.9 If a party refuses at any time to participate in the mediation procedure and in any event if the dispute is not resolved within sixty (60) days of the service of the Mediation Notice, then any of the parties may commence proceedings in accordance with English Law.
- 13.10 The parties agree to continue in good faith with the performance of the Agreement during any dispute process.

14. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

15. RIGHTS OF THIRD PARTIES

- 15.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

16. AMENDMENTS

- 16.1 The Administering Authority, the Scheme Employer and the Admission Body may, with the agreement of all of them, amend this Agreement by deed provided that:
- i) the amendment is not such that it would or might breach the Regulations or any requirement of law as it applies to the Scheme; and
 - ii) the amendment would not prejudice the status of the Scheme as regards HM Revenue and Customs.

17. COUNTERPARTS

- 17.1 This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

18. COSTS

- 18.1 Each party shall pay any costs and expenses incurred by it in connection with the preparation and completion of this Agreement.

19. PUBLIC INSPECTION

19.1 This Agreement shall be made available by the Administering Authority and Scheme Employer for public inspection at an appropriate office.

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 BEXLEY was affixed to this deed
in the presence of:

)
)
)
)

Deputy Director

Deputy Director

SIGNED as a deed by
(ADMISSION BODY)
acting by a director and its secretary,
two directors or a director and an
independent witness

)
)
)
)
)

Director

Director/Secretary

Independent Witness

Name

Address

Occupation

SCHEDULE 1

Specimen Form of Bond

THIS AGREEMENT is made []

BETWEEN:

- (1) London Borough of Bexley of Bexleyheath Kent DA6 7AT (the “**Administering Authority**” and “**Scheme Employer**”); and
- (2) (**ADMISSION BODY**) (Company number [number]) whose registered office is at [address] (the “**Admission Body**”); and
- (3) [**COMPANY**] (Company number [number]) whose registered office is at [address] (the “**Guarantor**”).

BACKGROUND:

- (A) The Administering Authority is an administering authority within the meaning of the Regulations and administers the Scheme and maintains the Fund.
- (B) The Admission Body is an admission body within the meaning of the Regulations.
- (C) The Admission Body provides the [services/assets] referred to in the Contract and will employ the Eligible Employees.
- (D) The Guarantor is authorised to give an indemnity or bond within the meaning of Schedule 2 Part 3 paragraph 7 of the Regulations.
- (E) The Administering Authority the [Scheme Employer] and the Admission Body intend to enter into the Admission Agreement subject to the provision of a bond/indemnity in the form of this Agreement.
- (F) The Guarantor has agreed at the request of the Admission Body to enter into this Agreement as a bond in an approved form.

OPERATIVE PROVISIONS

1. INTERPRETATION

Save as defined below unless the context requires otherwise words and expressions used in this Agreement shall have the same meanings as in the Regulations.

2. DEFINITIONS

"**Admission Agreement**" the admission agreement between the Administering Authority [Scheme Employer] and the Admission Body, which allows the Eligible Employees to be members of the Scheme and participate in the Fund;

“Bond Amount”	[[] pounds sterling (£)] or such other amount as may from time to time be amended by an Extension Notice;
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England;
“Contract”	the contract [dated/commencing on] [] made between the Admission Body and the Scheme Employer, for the provision of services under which the Eligible Employees are employed;
“Eligible Employees”	the employees of the Admission Body specified in the Admission Agreement as being eligible to be members of the Scheme;
“Expiry Date”	[date] or such other date as may be extended by an Extension Notice;
“Extension Notice”	a notice substantially in the form of the notice at Schedule 1B;
“Fund”	means Bexley Pension Fund;
“Payment Notice”	a notice substantially in the form of the notice at Schedule 1C;
“Regulations”	The Local Government Pension Scheme Regulations 2013;
“Relevant Event”	either of: <ul style="list-style-type: none"> (a) the termination of the Admission Agreement; (b) the failure by the Admission Body to procure not less than thirty (30) days before the Expiry Date the delivery to the Administering Authority of a Replacement Bond; (c) the failure by the Admission Body to procure not less than thirty (30) days after the results of an actuarial re-assessment of the Bond Amount have been notified to the Admission Body in writing by the Administering Authority the delivery to the Administering Authority of either an Extension Notice or a Replacement Bond covering the revised Bond Amount;
“Replacement Bond”	a bond substantially in the form of this Agreement with an authorised person or firm as defined in Schedule 2 Part 3 paragraph 7 of the Regulations;
“Scheme”	the occupational pension scheme constituted by the Regulations; ;

“Scheme Liabilities”

all employer and employee contributions, payments and other sums due from the Admission Body to the Administering Authority under the Admission Agreement or the Regulations in respect of the current or former Eligible Employees or otherwise;

- 2.1 In this Agreement where the context so admits words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa.
- 2.2 Reference to any statute or statutory instrument shall be deemed to include reference to any such statute or statutory instrument as from time to time amended varied replaced extended or re-enacted and any orders or regulations under such provisions unless the context otherwise requires.
- 2.3 Reference to clauses or schedules shall be deemed to be references to a clause or schedule to this Agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears.
- 2.4 Headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

3. CLAIMS AND PAYMENT

- 3.1 Where following the occurrence of a Relevant Event the Admission Body has failed to pay all Scheme Liabilities (in whole or in part) to the Administering Authority within thirty (30) days of receiving a written demand from the Administering Authority the Guarantor shall pay to the Administering Authority such sum or sums (not exceeding in the aggregate the Bond Amount) as the Administering Authority claims in respect of the unpaid Scheme Liabilities.
- 3.2 Any claim by the Administering Authority pursuant to the terms of this Agreement shall be made by the service of a Payment Notice and shall be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is due to the Administering Authority. The Guarantor shall pay the sum so demanded within seven (7) days of receipt of the Payment Notice.
- 3.3 All sums paid by the Guarantor pursuant to clause 3.1 shall be held and applied by the Administering Authority for the purpose of paying and discharging the Scheme Liabilities.
- 3.4 Following any payment by the Guarantor pursuant to clause 3.1, the Administering Authority shall provide to the Guarantor within six (6) months of receipt of payment a written account in respect of the application of the payment. If any payment made by the Guarantor exceeds the amount required to discharge the Scheme Liabilities the Administering Authority shall refund any overpayment to the Guarantor.
- 3.5 The obligations and liabilities of the Guarantor under this Agreement shall not be reduced discharged impaired or affected by the giving of time or any other indulgence, forgiveness or forbearance by the Administering Authority.
- 3.6 The service of a Payment Notice by the Administering Authority under the terms of this Agreement shall not (subject only to the provisions of clause 4) preclude the service of any further Payment Notice.

4. BOND AMOUNT

The maximum aggregate liability of the Guarantor under this Agreement shall not exceed the Bond Amount being the sum actuarially assessed to the satisfaction of the Administering Authority [and the Scheme Employer].

5. EXPIRY DATE

5.1 This Agreement shall expire and the obligations and liabilities of the Guarantor shall cease and determine absolutely on the Expiry Date save in respect of any obligation and liability arising as a result of a Relevant Event occurring on or before the Expiry Date in respect of which a Payment Notice has been received by the Guarantor within twelve (12) months of the Expiry Date or if later the date of receiving all the information from the Admission Body necessary to calculate the Scheme Liabilities.

5.2 If the Admission Body procures the service of an Extension Notice by the Guarantor the provisions of this Agreement shall remain and continue in full force and effect subject only to the amendment of the Expiry Date to the date set out in such Extension Notice and/or to the amendment of the level of the Bond Amount to the level set out in such Extension Notice.

5.3 This Agreement shall remain in operation notwithstanding any variation made in the terms of the Admission Agreement the Regulations or the Contract and notwithstanding the insolvency winding-up or liquidation of the Admission Body (compulsorily or otherwise) or it otherwise ceasing to exist or function. This Agreement shall not be affected by any disclaimer of the Admission Body's contracts or liabilities by a liquidator.

6. NOTICES

6.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid post to the addresses of the parties stated at the beginning of this Agreement (unless a party notifies the others in writing of a different address for service) and shall be deemed to have been given or made:

6.1.1 if delivered by hand upon delivery at the address unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day in which case it will be deemed to have been given at 10am on the next Business Day; or

6.1.2 if sent by prepaid post at the time at which it would have been delivered in the normal course of the post.

7. EXECUTION

7.1 This Agreement may be executed on a separate counterpart by each party which documents when taken together shall constitute one original.

8. APPLICABLE LAW

8.1 This Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

9. RIGHTS OF THIRD PARTIES

9.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

SCHEDULE 1A

Specimen Form of Guarantee

THIS DEED OF GUARANTEE is dated

201[]

BETWEEN

(1) [GUARANTOR] (registered number[] whose registered office is at [] (the "Guarantor");

AND

(b) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY of Civic Offices, 2 Watling Street, Bexleyheath Kent DA6 7AT (the "Administering Authority") which expression includes its permitted successors and assigns

is executed and delivered pursuant to the provisions of the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as amended or supplemented from time to time (the "Regulations").

BACKGROUND

(A) The Administering Authority is an administering authority within the meaning of the Regulations and administers the Scheme and maintains the Fund.

(B) **(ADMISSION BODY)** (the "Admission Body") is an admission body within the meaning of Schedule 2 Part 3 paragraph 1[] of the Regulations.

(C) The Guarantor is a person described in and to which Schedule 2 Part 3 paragraph 8 of the Regulations applies.

(D) The Administering Authority and the Admission Body intend to enter into an Admission Agreement permitting the Eligible Employees to become members of the Scheme and regulating their participation in the Scheme subject to the provision of a guarantee and indemnity in the form of this Guarantee Agreement.

OR

(D) Following a review of the level of risk arising as a result of the matters mentioned in Schedule 2 Part 3 paragraph 6 of the Regulations the Administering Authority requires the Admission Body to secure a guarantee and indemnity in the form of this Guarantee Agreement.

[(E) The Guarantor has agreed at the request of the Admission Body to [jointly and severally] guarantee to the Administering Authority the performance by the Admission Body of each and every one of the Admission Body's obligations under the Admission Agreement in respect of the Scheme Liabilities.

OR

- (E) The Guarantor has agreed at the request of the Admission Body to enter into this Guarantee Agreement with the Administering Authority as a guarantee in an approved form in the sum of £[] [] pounds sterling.]
- (F) In this Guarantee Agreement words and expressions bear the meanings set out in the Regulations unless defined in this Guarantee Agreement, in the Admission Agreement or the contrary is stated.

1 COMMENCEMENT DATE

- 1.1 This Guarantee Agreement shall have effect on and from the [Effective Date] and shall continue, subject to earlier termination in accordance with clause 9, until the date at which the Admission Body ceases to participate in the Fund having discharged all accrued Scheme Liabilities.

2 GUARANTEE AND INDEMNITY

- 2.1 The Guarantor accepts the obligations and liabilities set out in this Guarantee Agreement.
- 2.2 The Guarantor's obligations under this Guarantee Agreement are those of primary obligor and exist irrespective of any total or partial invalidity or unenforceability of any purported obligation or liability of the Admission Body to the Administering Authority.
- 2.3 The Guarantor irrevocably and unconditionally guarantees to the Administering Authority the due and punctual payment by the Admission Body to the Administering Authority of all debts and liabilities due, owing or incurred to the Administering Authority under the Admission Agreement or the Regulations whether actual or contingent, present or future including employer and employee contributions, payments and other sums due including any interest payable under the Regulations (the "Scheme Liabilities").
- 2.4 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.3 agrees to indemnify and keep indemnified the Administering Authority in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Administering Authority arising out of, or in connection with, any failure of the Admission Body to perform or discharge any of its obligations or liabilities in respect of the Scheme Liabilities or otherwise arising in consequence of the Admission Body's participation in the Fund.
- 2.5 The termination of the Admission Agreement, for any reason, shall not affect the liability of the Guarantor for any Scheme Liabilities, which are due, owing or incurred on or prior to the date of termination.
- 2.6 This Guarantee is and shall at all times be a continuing security covering any and all sums owing from time to time to the Administering Authority by the Admission Body.
- 2.7 The liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise affected by:
- 2.7.1 any intermediate payment in whole or in part of the Scheme Liabilities;
- 2.7.2 any variation, extension, release, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Administering Authority may now or at any time have against the Admission Body or any other person in connection with the Scheme Liabilities;
- 2.7.3 any act or omission by the Administering Authority or any other person in taking up, perfecting or enforcing any security, indemnity or guarantee from or against the Admission Body or any other person or any such security or other right or remedy held by the Administering Authority becoming void, voidable or unenforceable on any

ground whatsoever (including due to the negligence of the Administering Authority) and whether in whole or in part;

- 2.7.4 any grant of time, indulgence, waiver or concession (whether express or by conduct) to the Admission Body or any other person;
 - 2.7.5 any termination, amendment, variation, novation, replacement or supplement of or to the Admission Agreement or the Regulations and the obligations of the Admission Body thereunder including without limitation any increase in or extension of the Scheme Liabilities;
 - 2.7.6 any invalidity, unenforceability, illegality of the Admission Agreement in whole or in part;
 - 2.7.7 any claim or enforcement from the Admission Body or any other person; or
 - 2.7.8 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or indemnifier or by anything done or omitted by any person which but for this provision might operate to discharge the Guarantor or otherwise reduced or extinguish its liability under this Guarantee.
- 2.8 The Administering Authority may enforce this Guarantee Agreement whether or not it has first:
- 2.8.1 notified the Guarantor or any other person of the default of the Admission Body;
 - 2.8.2 made demand upon, or enforced any claim, right or remedy against the Admission Body or any other person;
 - 2.8.3 taken action or obtained judgement in any Court against the Admission Body or any other person;
 - 2.8.4 made or filed any claim in bankruptcy, liquidation, administration, or insolvency of the Admission Body or any other person; or
 - 2.8.5 enforced or sought to enforce any security taken in respect of any of the obligations of the Admission Body in respect of the Scheme Liabilities.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 The Guarantor represents and warrants that:
- 3.1.1 it has the power and authority to enter into and perform the obligations under this Guarantee Agreement and has taken all necessary corporate action required to authorise its execution, delivery and performance;
 - 3.1.2 the execution delivery and performance of the obligations contemplated under this Guarantee Agreement do not and will not contravene any of the Guarantor's constitutional documents or any law or regulation to which the Guarantor is subject;
 - 3.1.3 this Guarantee Agreement when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - 3.1.4 the execution, delivery and performance of this Guarantee Agreement will not cause the Guarantor to be in breach of any agreement or obligation binding on it;
 - 3.1.5 to the best of its knowledge no material litigation or administrative proceedings before, by or of any court or governmental authority is pending which may affect its ability to perform its obligations under this Guarantee Agreement.

4. PAYMENT

- 4.1 Any claim made under this Guarantee Agreement shall be in writing and shall be conclusive evidence (and admissible as such) that any sum stated in it is properly due and payable to the Administering Authority in connection with it.
- 4.2 All sums payable by the Guarantor under this Guarantee Agreement shall be made in pounds sterling within seven (7) days of receipt of the Administering Authority's claim and shall be made without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Administering Authority receives a net amount equal to the amount that it would have received had no deduction or withholding been required to be made.
- 4.3 The Administering Authority may apply any sums received from the Guarantor as it in its absolute discretion from time to time decides and the Guarantor shall not and may not direct the application by the Administering Authority of any sums received by the Administering Authority from the Guarantor under any of the terms of this Guarantee Agreement.

5. SEVERANCE

- 5.1 The invalidity, unenforceability or illegality of any provision or part of a provision of this Guarantee Agreement shall not affect the validity, enforceability or legality of the other provisions.
- 5.2 In the event that any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, supplemented or otherwise amended, the provision shall apply with whatever modification is necessary to give effect to the intention of the parties.

6. VARIATIONS

- 6.1 Save as is provided for herein no purported variation of this Guarantee Agreement shall be effective unless agreed by the Administering Authority and the same is evidenced in writing and signed by each party.

7. WAIVER

- 7.1 Save where expressly otherwise provided, the failure or delay by any party to this Guarantee Agreement in exercising any right, power or remedy of that party under this Guarantee Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by any party to this Guarantee Agreement of any right, power or remedy under this Guarantee Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 7.2 Any waiver of a breach of, or default under, any of the terms of this Guarantee Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Guarantee Agreement.

8. ASSIGNMENT/TRANSFER

- 8.1 The Administering Authority may assign the benefit of this Guarantee Agreement, by notice to the Guarantor, to any third party (the assignee). If the Administering Authority wishes to transfer all of its rights and liabilities under this Guarantee Agreement to an assignee then the Guarantor will, on receipt of notice to this effect from the Administering Authority, enter into a deed of novation with such assignee as the Administering Authority may require in order fully to transfer all of the Administering Authority's benefits and liabilities remaining under this Guarantee Agreement to such assignee. The Administering Authority shall give reasonable notice to the Guarantor of its wish to exercise its rights pursuant to this clause 8.1.

8.2 The Guarantor is prohibited from assigning any of its rights or transferring any of its obligations under this Guarantee Agreement and may not enter into any transaction which may result in any of those rights or obligations passing to another person [without the prior written consent of the Administering Authority].

9. TERMINATION

9.1 The Guarantor may terminate this Guarantee Agreement at any time with effect from the date specified in that notice (the "Termination Date") by giving a minimum of three calendar months' notice in writing to the Administering Authority.

9.2 Notwithstanding any notice issued by the Guarantor under clause 9.1, the Guarantor shall remain liable for any Scheme Liabilities the payment of which;

9.2.1 has become due from the Admission Body to the Administering Authority on or before the Termination Date; or

9.2.2 may become due, owing or incurred by the Admission Body to the Administering Authority in relation to any transaction or event occurring:

(a) on or before the Termination Date; or

(b) on or after the Termination Date in relation to any obligation arising or commitment assumed by the Admission Body under the Admission Agreement or the Regulations on or before the Termination Date.

10. NOTICES

10.1 Any demand, notice or other communication given in connection with or required by this Guarantee Agreement shall be made in writing and shall be delivered by hand, or sent by recorded delivery to, the recipient at the address stated in this Guarantee Agreement or such other address as may be notified in writing from time to time.

10.2 Any such demand, notice or communication shall be deemed to have been duly served:

10.2.1 if delivered by hand, when left at the proper address for service PROVIDED that where such delivery occurs wither after 4:00 p.m. on a Business Day or on a day other than a Business Day service shall be deemed to occur at 10:00 a.m. on the next following Business Day; or

10.2.2 if sent by recorded delivery, two Business Days after being posted.

11. COUNTERPARTS

11.1 This Guarantee Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Guarantee Agreement.

12. THIRD PARTY RIGHTS

12.1 Except where expressly provide to the contrary, the parties to this Guarantee Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

13. GOVERNING LAW

13.1 This Guarantee shall be governed and construed in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

IN WITNESS WHEREOF the Administering Authority and the Guarantor have executed and delivered this Guarantee Agreement as a deed the day and year first before written.

SCHEDULE 1B

Specimen Extension Notice

To: Bexley Pension Fund

From: [Guarantor]

[DATE]

BOND NUMBER: [NUMBER]

We refer to the Agreement which is due to expire on [date].

We have been instructed by the [Admission Body] to [renew/amend] the Agreement. We now accordingly give notice that the Agreement shall be treated as renewed for a further period of [number] years and so that [date] shall become the Expiry Date.

[We [also] confirm that the Bond Amount shall be amended and from the date of this Extension Notice the new level shall be [[amount] pounds sterling (£)].

Save as amended by this Extension Notice, the Agreement shall remain in full force and effect.

Duly authorised for and on behalf of

[Guarantor]

SCHEDULE 1C

Specimen Payment Notice

To: [Guarantor]

From: Bexley Pension Fund

[DATE]

BOND NUMBER: [NUMBER]

We refer to the above Agreement and certify that a Relevant Event has occurred in relation to the Admission Body.

The sum of [amount] pounds sterling (£) is properly due in respect of the Scheme Liabilities. We attach a copy of a certificate signed by [fund actuary] stating that such sum is now due.

We demand payment of the above amount within seven days of receipt of this notice.

The above amount should be paid to us by transfer to the following account:

Account Number

Sort Code

Account Name

Bank

Bank Address

SCHEDULE 2

List of Eligible Employees

Forename	Surname	NI Number	Active Member

DRAFT

DATED

201

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

- and -

[] LIMITED

PENSIONS FUNDING AGREEMENT

Legal Services
London Borough of Bexley
Bexley Civic Offices
2 Watling Street
Bexleyheath
Kent DA6 7AT

THIS DEED is made the _____ day of _____ 2018

BETWEEN:

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY of Civic Offices 2 Watling Street Bexleyheath Kent DA6 7AT (“**the Scheme Employer**”); and

[_____] **LIMITED** (Company number [_____]) whose registered office is at [_____] (“**the Admission Body**”)

WHEREAS:

- A. This deed is supplemental to the Admission Agreement made between the Admission Body and the Scheme Employer and sets out the obligations of the Scheme Employer and the Admission Body with respect to the payment of pension contributions for the Eligible Employees under the Contract.

NOW IT IS HEREBY AGREED as follows:-

1. For the purpose of this Deed the following terms have the following definitions:

"Admission Agreement" means an admission agreement for an admission body of even date made between the Admission Body and the Mayor and Burgesses of the London Borough of Bexley

"Contract", **"Eligible Employees"**, **"Admission Body"** and **"Fund"** have the same meaning as defined in the Admission Agreement.

2. The Scheme Employer will pay to the Admission Body during each valuation period in respect of the Eligible Employees admitted to the Pension Fund a sum equal to

- (a) the employer pension contributions set down in clause 5.1 of the Admission Agreement less
- (b) 6% of the pensionable pay of the Eligible Employees.

For the avoidance of doubt, a negative payment by the Scheme Employer means a payment by the Admission Body to the Scheme Employer.

3. For the avoidance of doubt, the Scheme Employer shall not be required to pay to the Admission Body any amount representing any increase in employer contributions or additional contributions to the extent that the increase is a result of any amounts paid by the Admission Body under Clause 5.6 of the Admission Agreement.
4. The Scheme Employer acknowledges and accepts that the actuarial valuations and the calculations to be undertaken in accordance with this clause will be done so on the basis that the Admission Body's part of the Fund is fully funded as at the Transfer Date.
5. The cost of any FRS17 statements required will be recharged to the Admission Body.

6. The Scheme Employer will pay to the Admission Body the cost of any bond required under the Admission Agreement (including the cost of any associated actuarial risk assessment).
7. In the event that there is a surplus in the Fund upon termination of the Admission Agreement then this surplus shall be repaid to and shall be retained by the Scheme Employer

IN WITNESS whereof the parties have executed this Deed the day and year first before written

THE COMMON SEAL of **the MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY** was hereunto affixed as a deed in the presence of:-)
)
)
)
)

Deputy Director

Deputy Director

THE COMMON SEAL of [])
LIMITED was hereunto affixed in the presence of:)
)

Director

Authorised Signatory

[OR]

SIGNED AND DELIVERED AS A DEED by)
[] **LIMITED** acting by a director and the)
company secretary or two directors)
)

Director

Director/Company Secretary