

Articles of Agreement

THIS CONTRACT is dated

2007

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING**, Town Hall, Main Road, Romford RM1 3BB ("**the Council**")
and
- (2) **COMENSURA LIMITED**, whose registered office is situated at 800 the Boulevard, Capability Green, Luton, LU1 3BA with company registration number 04085767 ("**the Service Provider**").

BACKGROUND:-

1. The Council seeks provision of a vendor-neutral managed service for the supply and management of Agency/Temporary Workers, as more particularly defined in Condition 1.14 and as set out in this Contract ("**the Service**"); and
2. The Service Provider has agreed to provide the Service on the terms of this Contract.

IT IS AGREED as follows:-

1. This Contract constitutes the sole agreement between the Council and the Service Provider for the provision by the Service Provider of the Service.
2. The Service Provider shall provide the Service in accordance with the provisions of the Contract and to the reasonable satisfaction of the Council.
3. So long as the Service Provider shall continue to provide the Service in accordance with the provisions of the Contract and to the reasonable satisfaction of the Council the Council shall make to the Service Provider the payments provided by the Contract.
4. The Contract Documents shall comprise:-
 - these Articles of Agreement
 - the Contract Conditions
 - the Pricing Document

- the Service Provider's Method Statement, and
- the attachments to the Service Provider's Method Statement

IN WITNESS whereof the parties have executed this Contract as a deed on the day and year first written above

Executed by and on behalf of the Mayor and Burgesses of the London Borough of Havering by affixing its common seal in the presence of

Mayor

Authorised Officer

Executed by and on behalf Comensura Limited by

Director

Director/Secretary

Conditions of Contract

1. Definitions and Interpretation

1.1 'Agency/Temporary Worker' means a worker within the following categories:

- temporary workers (of all grades, including senior and interim managers) engaged by Vendors who pay the individual worker after deduction of income tax and National Insurance contributions, and who act as on-going intermediary between the worker and the Council;
- temporary workers (of all grades, including senior and interim managers) engaged by Vendors who pay the individual's personal service limited company;
- temporary workers (of all grades including senior and interim managers) engaged directly by the Council, and
- individuals hired on a temporary basis direct by the Council or via the individual's personal service limited company.

For the avoidance of doubt, the following categories of workers are **excluded** from the definition of Agency/Temporary Workers

- the Council's permanent employees;
- individual workers engaged directly by the Council on fixed term contracts, and
- individual workers employed by organisations contracted by the Council to provide consultancy or other specialist services from that organisation's pool of staff.

1.2. 'Appendix' means an appendix to this Contract.

- 1.3 'Commencement Date' means 20 August 2007
- 1.4 'Conditions' means these Conditions of Contract including the Appendices.
- 1.5 'Contract' means this agreement between the Council and the Service Provider as set out in the Contract Documents.
- 1.6 'Contract Documents' means the documents comprising the Contract, as set out in the Articles of Agreement.
- 1.7 'Contract Standard' means such standard as complies in each and every respect with all relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract the standard is to be to the reasonable satisfaction of the Council's Representative.
- 1.8 'Contract Period' means the duration of the Contract as set out in Condition 3.
- 1.9 'Council's Representative' means the person nominated pursuant to Condition 4.
- 1.10 'Force Majeure' means any circumstances beyond the reasonable control of a party which renders the continued providing or receiving of all or part of the Service in accordance with the Contract illegal or impossible, including, but not limited to fire, flood, Act of God, riot, civil disturbance, industrial dispute (not directly involving either party), war or sabotage.
- 1.11 'Method Statement' means the Method Statement submitted by the Service Provider as part of its tender setting out how it will provide the Service
- 1.12 'Neutral Advisor' means the mediation appointed pursuant to Condition 32.
- 1.13 'Pricing Document' means the document which incorporates the pricing mechanism upon which the Service Provider's tender is based.
- 1.14 'Service' means the provision of a vendor-neutral managed service for the supply and management of Agency/Temporary workers to the Council to be supplied by the Service Provider in accordance with the Method Statement, the rest of the Contract and including any modifications made pursuant to Condition 8.
- 1.15 'Service Provider's Representative' means the person who is to represent the Service Provider appointed pursuant to Condition 7.
- 1.16 'TUPE' means the Transfer of Undertakings (Protection of Employment)

Regulations 1981, as amended from time to time.

- 1.17 'Vendor' means a third-party employment business which supplies Agency / Temporary Workers. For the avoidance of doubt, the term 'Vendor' shall not include any sub-contractors engaged by the Service Provider to provide the Service, unless the context expressly provides otherwise.
- 1.18 Reference to the Service Provider's personnel shall be deemed to include the Service Provider's partners, directors and employees and the Service Provider's agents, sub-contractors and essential visitors unless the context otherwise requires.
- 1.19 A reference to any Act of Parliament or to any Order Regulation Statutory Instrument or similar instrument shall be deemed to include a reference to any subsequent amendment or re-enactment of them.
- 1.20 Unless the context requires otherwise words importing the singular number shall include the plural and vice versa.
- 1.21 Words importing any particular gender shall include all other genders.
- 1.22 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.

2. Form of Contract

2.1 Sufficiency of Information

- 2.1.1 The Service Provider shall be deemed to have satisfied itself before submitting its tender as to the accuracy and sufficiency of the rates and prices stated by the Service Provider in its tender which shall (except in so far as is otherwise provided in the Contract) cover all the Service Provider's obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider's tender.

2.2 Documents Mutually Explanatory

2.2.1 Except as otherwise expressly provided the Contract Documents are to be taken as mutually explanatory of one another. Should the Service Provider become aware of any ambiguities or discrepancies in or between the Contract Documents the Service Provider shall immediately give to the Council's Representative full written details. The Council's Representative shall resolve the discrepancy and issue appropriate instructions to the Service Provider. If any such instruction changes the pricing basis upon which the Service Provider tendered so as to render any price or rate inappropriate, the instruction shall be treated as a modification and valued under Condition 8.2.

2.2.2 In the event of any inconsistency between the Conditions and any provision in any of the other Contract Documents the Conditions shall prevail.

2.3 Variation

2.3.1 Following the formation of a binding agreement no deletion from, addition to, or variation of the Conditions shall be valid or of any effect unless agreed in writing and signed by the parties.

3. Appointment and Contract Duration

3.1 The Council appoints the Service Provider throughout the Contract Period in consideration of payment by the Council of the prices set out in the Pricing Document in accordance with the provisions of the Contract.

3.2 The Contract shall commence with effect from the Commencement Date and subject to the Contract provisions for earlier termination of all or part of the Contract it shall continue in force for a period of three years, unless extended by the Council in writing not less than three months before expiry for a further two-year period.

4. Council's Representative

4.1 The Council's Representative shall be the Director of Finance and Commercial or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Contract.

4.2 The Council's Representative shall have power to issue instructions to the Service Provider on any matter relating to the provision of the Service which the Service Provider shall comply with. If any instruction is a modification within Condition 8 it shall be valued as such.

- 4.3 From time to time the Council's Representative may appoint one or more representatives to act for the Council's Representative generally or for specified purposes or periods. Immediately any such appointment is made the Council's Representative shall give written notice to the Service Provider.

5. The Service Provider's Obligations

- 5.1 The Service Provider shall provide the Service in compliance with the Contract.
- 5.2 At all times the Service Provider shall provide the Service as described in the Method Statement with reasonable skill, care and diligence and due propriety and with the utmost good faith, to the Contract Standard, in accordance with legislative requirements and the requirements of the Council's Representative, provided always that a written instruction to provide the Service to the Contract Standard shall not be a modification within Condition 8 or otherwise. Whether all these requirements are met shall be determined by the Council's Representative acting reasonably.
- 5.3 The Service Provider shall promptly inform the Council's Representative, and confirm in writing, if the Service, or any part of it is not being, or may not be, performed, and whether or not this is the result of any act or omission by the Council, giving details, reasons and likely duration. The provision of this information shall not relieve the Service Provider from its contractual obligations.
- 5.4 If the Service Provider requires any further instruction or information in connection with the provision of the Service, the Service Provider shall make a sufficiently detailed and sufficiently timely, written application to the Council's Representative specifying any critical date by which a response is needed, but otherwise giving the Council's Representative a reasonable time to respond.
- 5.5 The Service Provider shall at all times comply with all the relevant provisions of the Council's Constitution including, as appropriate Contracts Procedure Rules, Financial Procedure Rules, Standing Orders, Financial Regulations, Policies, Procedures and Codes of Practice, as notified by the Council to the Service Provider.
- 5.6 Except as otherwise provided in the Contract, the Service Provider shall provide all staff, resources, equipment, materials, information, data and other things whatsoever required for the provision of the Service, including to give effect to any modifications pursuant to Condition 8. Except as agreed, the Service Provider shall not in any circumstances use any premises or equipment of the Council.
- 5.7 If the Service Provider is unable or fails to provide the Service or any part thereof in accordance with the requirements of Condition 5.2 the Council

may itself provide or may employ and pay other persons to provide the Service or any part thereof for a period of up to three months. All costs reasonably and demonstrably incurred thereby may be deducted from any sums due or to become due to the Service Provider under the Contract or shall be recoverable from the Service Provider by the Council as a debt. The Council's powers under this Condition 5.7 shall not be exercised unreasonably or vexatiously. The Council's rights under this Condition 5.7 shall be without prejudice to any other rights or remedies which it may possess.

- 5.8 The Service Provider shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other service providers or any contractor or sub-contractor employed directly or indirectly by the Council and shall provide the Service in harmony with and at no detriment to any other service provided by or on behalf of or to the Council. Nothing in this Condition 5.8 shall however place the Service Provider under an obligation to do (or refrain from doing) something which would harm the Service Provider's legitimate business interests. If the Service Provider or its personnel default in complying or fail to comply with this Condition 5.8 then any costs expenses liabilities or damages incurred by the Council as a consequence, including the reasonable cost to the Council of the time spent by its officers, as a result of the default or failure, may be deducted from any sums due or to become due to the Service Provider under this Contract or shall be recoverable from the Service Provider by the Council as a debt.
- 5.9 The Service Provider shall provide each year to the Council's Representative a copy of its audited accounts within six months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements. In the event that the Service Provider fails to provide accounts in accordance with this Condition 5.9 then without prejudice to any other rights or remedies available to the Council the Council's Representative or such persons as may from time to time be nominated by the Council's Representative shall be given access to all and any accounting documents and information in the possession, custody or control of the Service Provider.

6. The Service Provider's Personnel

- 6.1 The Service Provider shall employ sufficient persons to ensure that the Service is provided at all times and in all respects in accordance with the Contract.
- 6.2 The Service Provider's personnel employed in connection with the Contract shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and the Service Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Service and in particular:-
- 6.2.1 the task or tasks such person has to perform

- 6.2.2 all relevant provisions of the Contract
 - 6.2.3 all relevant policies rules procedures and standards of the Council and the Service Provider;
 - 6.2.4 all relevant legislative requirements;
 - 6.2.5 all relevant rules procedures and statutory requirements concerning health and safety including the Council's health and safety policy.
- 6.3 The Council's Representative shall have the power upon written notice to require the Service Provider, but not unreasonably or vexatiously, to remove from the provision of the Service any personnel of the Service Provider specified in such notice including the Service Provider's Representative. The Service Provider shall forthwith remove such personnel from the provision of the Service and as soon as reasonably practical shall provide a replacement.
- 6.4 The Council shall in no circumstances be liable either to the Service Provider or to any personnel in respect of any award cost expenses liability loss or damage occasioned by such removal and the Service Provider shall fully indemnify the Council in respect of any claims made.
- 6.5 The Service Provider shall take all reasonable steps to avoid changes to key personnel involved in provision of the Service.
- 6.6 If the circumstances under which the Service is provided are such that personnel of the Service Provider are 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 then the Service Provider shall ensure that all personnel engaged in the provision of the Service shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act. The Service Provider shall disclose to the Council's Representative the names and addresses and sufficient information and as appropriate all convictions of its personnel engaged in and about the provision of the Service to enable proper checks to be made. The Council may require such personnel to be removed from the provision of the Service.

7. Service Provider's Contract Management

- 7.1 The Service Provider shall at all times properly manage and monitor the Service.
- 7.2 The Service Provider shall appoint a senior person as Representative

empowered to act on its behalf for all purposes connected with the Contract. Such appointment or any replacements shall be subject to the prior written approval of the Council not to be unreasonably withheld. Notices, information, instructions or other communications given to the Service Provider's Representative shall be deemed to have been given to the Service Provider.

- 7.3 The Service Provider shall ensure that at all times the Council's Representative has up-to-date contact details for the Service Provider's Representative or any temporary or permanent replacement including name, address, work and mobile telephone numbers.
- 7.4 The Service Provider shall ensure that the Service Provider's Representative or a competent deputy duly authorised by the Service Provider to act on its behalf is present at all work places of the Service Provider where work in connection with the Service is being carried out and available to meet the Council's Representative or his/her representative at all reasonable times. The Service Provider's Representative shall provide written reports on issues relating to the Service as reasonably required by the Council's Representative.
- 7.5 The Service Provider shall provide and shall ensure that its personnel wear at all times when engaged in the provision of the Service when on the property or premises of the Council such identification (including photographic identification) as may be specified by the Council and shall ensure that when requested to do so any personnel of the Service Provider shall disclose his/her identity and status as personnel of the Service Provider and shall not attempt to avoid so doing.
- 7.6 The Service Provider shall provide and shall require its personnel to wear appropriate clothing, footwear or equipment, for the nature or the place of any duties upon which they shall be engaged in the provision of the Service. Where the Council's policies, rules, procedures or standards require any special or protective clothing, footwear or equipment to be worn the Service Provider shall ensure that such clothing, footwear or equipment is provided for and worn by its personnel. Such special or protective clothing, footwear or equipment shall be maintained and replaced as necessary by the Service Provider.
- 7.7 The Service Provider shall, upon reasonable notice by the Council to the Service Provider, permit the Council's Auditor and/or the Audit Commission's representative access to the Service Providers financial and managerial records in relation to the contract.

8. Modifications

- 8.1 The Council's Representative (acting reasonably) shall have the power to issue to the Service Provider instructions in writing upon reasonable notice:-

- 8.1.1 requiring the Service Provider to omit or postpone any part of the Service;
 - 8.1.2 requiring the Service Provider to provide services additional to the Service provided that such additional services shall be similar to the Service;
 - 8.1.3 requiring the Service Provider to vary the scope of the Service or any part of it;
 - 8.1.4 re-designating the office and ancillary accommodation which the Service Provider is entitled to use pursuant to Condition 17.3 or varying the services facilities equipment or furniture set out in Conditions 17.3.2, 17.3.3, 17.3.4 and 17.3.5.
- 8.2 For the purpose of Condition 21 - Invoices and Payments, the valuation of modifications made pursuant to Condition 8.1 shall be ascertained by the Council's Representative in accordance with the following provisions:-
- 8.2.1 Wherever it is appropriate and reasonable to so do the valuation shall be ascertained in accordance with the principles used and the rates and prices contained in the Pricing Document;
 - 8.2.2 Otherwise the ascertainment of the valuation shall be on a fair and reasonable basis taking reasonable account of any compensating reduction, increase or re-organisation of some other part of the Service and the extent to which it is reasonable for the Service Provider to re-deploy existing staff and either party may seek appropriate written evidence of market rates;
 - 8.2.3 Where the modification relates to an omission or postponement under Condition 8.1.1 the valuation shall not include and the Council shall not be liable to the Service Provider in respect of, any loss or reduced contribution to overheads or profit, whether in respect of this Contract or any other contract;
 - 8.2. Any designation of office or ancillary accommodation or variation of services facilities equipment or furniture made pursuant to Condition 8.1.4 shall be valued where applicable in accordance with the charges if any contained in **Appendix 1** failing which a fair valuation shall be made by the Council's Representative.
- 8.3 If the Service Provider reasonably disagrees with the valuation of any modifications, it shall provide written notice to the Council Representative within 14 days of the date of the written instructions referred to at 8.1 setting out the reasons why it opposes the valuation and, if appropriate, providing documentary evidence such as its own costs and relevant market rates.

- 8.4 The parties shall meet and negotiate in good faith within 14 days of the date of the Service Provider's notice referred to in 8.3 with a view to reaching agreement on the valuation of the modifications. If agreement is not reached within 40 days of the date of the Service Provider's notice, then either party may refer the matter to the dispute resolution procedure set out at Condition 32.
- 8.5 Pending resolution of any valuation dispute, the Service Provider shall implement the modification and upon resolution the valuation shall be backdated to the date of implementation.

9. Guarantee and Bond

[NOT USED]

10. Confidentiality

- 10.1 The Council reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.
- 10.2 The Service Provider shall not make any public statement or press release in connection with its provision of the Service, without the prior written approval of the Council.
- 10.3 The Service Provider shall not advertise the fact that it is providing services to the Council under this Contract other than with the written permission of the Council, except where it is contained in any submission to any other local authority in response to an invitation to tender from that local authority.
- 10.4 The provisions of Condition 10 shall not apply to disclosure of matters required to be made:-
- 10.4.1 by any court or governmental or administrative authority competent to require the same; or
- 10.4.2 by any applicable law or regulation

- 10.5 The Service Provider shall not without the written consent of the Council's Representative during the Contract Period or for two years afterwards, make use of for its own purposes, or disclose to any person, (except as may be required by law), the Contract Documents, or any information contained in them, or in any material provided to the Service Provider by the Council pursuant to the Contract or prepared by the Service Provider pursuant to the Contract, all of which information shall be deemed to be confidential.
- 10.6 Neither the Service Provider nor its personnel shall divulge or dispose of or part with possession custody or control of any confidential material or information provided to the Service Provider by the Council pursuant to the Contract or prepared or obtained by the Service Provider pursuant to the Contract other than in accordance with the express written instructions of the Council's Representative.
- 10.7 The Service Provider shall take reasonable security precautions to protect all confidential information relating to the Contract or the Service and shall only disclose it to its employees or sub-contractors on a need-to-know basis and then only where it has written and executed agreements in place with those employees or sub-contractors to enable it to comply with this Condition 10.
- 10.8 Confidential information may be disclosed, reproduced, summarised or distributed only in relation to performance of the Service.
- 10.9 The Service Provider shall immediately upon discovery notify the Council of any unauthorised use or disclosure of confidential information and will co-operate in every reasonable way to help regain possession of the confidential information or to prevent its further unauthorised use.
- 10.10 The Service Provider shall return or destroy all originals, copies, reproductions and summaries of confidential information as requested by the Council.
- 10.11 The Service Provider acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure of confidential information and that the Council, without waiving any other rights or remedies, may be entitled to injunctive or equitable relief in the courts.
- 10.12 The Council may visit the Service Provider's premises with reasonable prior notice and during normal business hours to review compliance with this Condition 10.
- 10.13 The Service Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Service Provider of this Condition 10.

11. Data Protection

- 11.1 The parties shall comply with the provisions of the Data Protection Act 1998 so far as applicable to this Contract and the Service and shall indemnify each other against all actions, costs, expenses claims, proceedings and demands which may be brought against the other party for breach of statutory duty under this Act which arises from the use disclosure or transfer of personal data by the other party or its servants or agents.
- 11.2 In particular but without prejudice to the generality of the foregoing the Service Provider shall not read and shall prohibit its personnel and all its visitors from reading any documents however produced or the information displayed on any screen or listening to the contents of any tape or electronically produced recording unless necessary in connection with the provision of the Service.

12. Copyright

- 12.1 Copyright in the Contract Documents shall vest so far as it lawfully can in the Council but the Service Provider may obtain or make at its own expense any further copies required for use by the Service Provider in the provision of the Service.
- 12.2 Copyright in all documents and data provided by the Service Provider in connection with this Contract shall remain vested in the Service Provider unless and to the extent provided otherwise in the Specification.
- 12.3 Where under Condition 12.2 copyright remains vested in the Service Provider the Council shall have unrestricted licence to use such documents and data for all purposes envisaged by or arising under this Contract.
- 12.4 Copyright in all documents provided by the Council under this Contract shall remain vested in the Council.

13. Health, Safety and Fire Requirements

- 13.1 The Service Provider shall at all times comply with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision by the Service Provider of a copy of its risk assessment under these regulations when requested by the Council) and of other Acts Regulations Orders or rules of law or official codes of practice and guidance pertaining to health and safety, including fire risks.
- 13.2 The Service Provider shall at all times comply with the Council's and its own health and safety and fire procedures and policies except in the event that there is a conflict with any legislative requirements in which case the Service Provider shall comply with the latter.

- 13.3 The Service Provider shall within 2 working days, unless otherwise agreed, provide the Council with any information relevant to health, safety and fire issues requested by the Council in writing, including a copy of its policies in relation to these issues, and shall upon reasonable notice provide the Council with relevant access to the Service Provider's premises and/or place of work for the purpose of carrying out enquiries relevant to health, safety and fire matters to enable the Council to satisfy itself that any health, safety and fire risks arising from the services being provided are being properly controlled.
- 13.4 The Council acknowledges that neither the Service Provider nor any Vendor has the opportunity or the obligation to supervise, direct or control the manner, time or place of any Agency/Temporary Worker's work. The Council shall provide on behalf of the Service Provider and any Vendor sufficient supervision, direction and control over any such Agency/Temporary Worker throughout that Agency/Temporary Worker's assignment to ensure a reasonable standard of performance by that Agency/Temporary Worker.
- 13.5 The Council undertakes to the Service Provider that it will discharge responsibility for the health and safety of each Agency/Temporary Worker from the start of any assignment as if that Agency/Temporary Worker was an employee of the Council, and shall be responsible for all acts, errors and omissions of each Agency/Temporary Worker while on assignment. This Condition shall apply except to the extent any claim arises as a direct result of the negligent acts or omission of the Service Provider or any employment business supplying the Agency/Temporary Worker, including but not limited to that employment business failing to undertake the required checks prior to supplying an Agency/Temporary Worker, or by failing to pass relevant information on to any Agency/Temporary Worker.
- 13.6 The Council shall at all times discharge on behalf of the Service Provider all health and safety-related statutory and common law duties which the Council may from time to time owe the Agency/Temporary Worker or which the Council may from time to time be subject to in respect of the Agency/Temporary Worker. Such duties include but are not limited to those required under the Working Time Regulations and the Health and Safety at Work Act 1974. Without limiting the generality of the foregoing, the Council shall ensure on behalf of the Service Provider that the Agency/Temporary Worker is provided with the necessary rest breaks and, where applicable, weekly rest periods prescribed by legislation.

14. Equal Opportunities

- 14.1 As a manager, employer and provider for services and /or supplies, the Service Provider shall do all it reasonably can to seek the elimination of all forms of discrimination in its employment practices, management and provision of its services in relation to sex, religion, race, disability and sexual orientation in accordance with an established equal opportunities policy (as

amended from time to time). The Service Provider shall provide a copy of its equal opportunities policy to the Council upon request.

- 14.2 In any event the Service Provider shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and the Disability Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Service Provider and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate.
- 14.3 In the event of any judicial or other official finding of unlawful discrimination by the Service Provider, the Service Provider shall take all reasonable steps to prevent a repetition of the unlawful discrimination and shall provide details of those steps to the Council upon request.
- 14.4 In its provision of the Service the Service Provider shall ensure that its staff behave with courtesy and respect to everyone regardless of sex, religion, race, disability and sexual orientation.
- 14.5 The Service Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's compliance with this Condition 14.
- 14.6 The Service Provider shall observe any and all Codes of Practice relating to equal opportunities, and shall comply at all times with the Council's own Equal Opportunities policy.
- 14.7 Pursuant to its obligations under Condition 14.1 and in general the Service Provider will not treat one group of people less favourably than others on grounds including their colour, race, nationality, ethnic origin, sex, sexual orientation, age, religion, beliefs or disability in relation to decisions to recruit, train, promote, discipline or dismiss its personnel.
- 14.8 The Service Provider shall set out its policy on equal opportunities:-
 - 14.8.1 In instructions to those concerned with recruitment, training, promotion, disciplinary procedure and dismissal;
 - 14.8.2 In documents available to its personnel recognised trade unions or other representative groups of its personnel;
 - 14.8.3 In recruitment advertisements and other literature.
- 14.9 The Service Provider shall on request provide the Council with examples of any and all documents included in Condition 14.8.

15. Gratuities

- 15.1 The Service Provider shall not, whether itself, or by any partner, director, employee or sub-contractor, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Service other than charges properly approved by the Council in accordance with the provisions of the Contract.

16. Indemnity and Insurance

16.1 Exclusions and Limitations of Liability

- 16.1.1 Notwithstanding anything to the contrary in this Contract, nothing in this Contract shall exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence.
- 16.1.2 Except as set out in Condition 16.1.1, the parties' liability to each other under or in connection with this Contract or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £1,000,000 (one million pounds).
- 16.1.3 All warranties, representations guarantees, conditions and terms, other than those expressly set out in this Contract whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.
- 16.1.4 Neither party shall, other than by reason of fraud or wilful default by that party, be liable for any claim by the other party for loss of profit or revenue, consequential, economic, special or indirect loss.

- 16.2. Subject to the provisions of Condition 16.1 above, the Service Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents against all actions, claims, demands, liabilities, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of, or in any way arising out of,

16.2.1 the defective provision of the Service, or

16.2.2 breach by the Service Provider of any requirement of the Contract or

16.3.3 failure to provide the Service or any part of it

except and to the extent that it may arise out of the act default or negligence of the Council its employees or agents.

- 16.3 The liability set out in Condition 16.2 shall, for the avoidance of doubt, include not include liability for Vendors, but will include liability for any of the Service Provider's other sub-contractors.

- 16.4 If any third party makes a claim against, or notifies an intention to make a claim against the Council which may reasonably be considered likely to give rise to a liability under this indemnity ("the relevant claim") the Council shall:-
- 16.4.1 as soon as reasonably practicable give written notice of that matter to the Service Provider specifying in reasonable detail the nature of the relevant claim;
 - 16.4.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Service Provider such consent not to be unreasonably withheld or delayed;
 - 16.4.3 subject to the Service Provider indemnifying the Council to the Council's reasonable satisfaction against any liability, costs, damages or expenses which may be incurred, take such action as the Service Provider may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim.
- 16.5 Without in any way limiting its responsibilities under this Condition 16 the Service Provider shall insure with a reputable insurance company approved by the Council against its liabilities under Condition 16.1.
- 16.6 For all claims against which this Condition 16 requires the Service Provider to insure the insurance cover shall be the minimum sum specified below, or such greater sum as the Service Provider may choose, in respect of any one incident and the Service Provider's insurance policy effecting such cover shall have "Indemnity to Principle" wording incorporated.
- 16.7 The Service Provider shall supply to the Council immediately upon request a letter from the Service Provider's brokers evidencing details of the insurance policies together with documentary evidence necessary to demonstrate compliance with the requirements of this Condition 16.
- 16.8 If the Service Provider fails to take out and maintain the insurance required under this Condition 16 or if the Council reasonably considers that the policies of insurance do not effect sufficient cover, then the Council shall require the Service Provider to forthwith procure and effect such insurance as the Council may reasonably require and in the meantime or in default, the Council may itself cause such insurance to be effected. The amount paid or payable by the Council may be deducted from any monies due or to become due to the Service Provider under the Contract or such amount may be recoverable by the Council from the Service Provider as a debt.
- 16.9 Professional Indemnity Insurance:-
- 16.9.1 The Service Provider shall maintain, with a reputable insurance company approved by the Council, professional indemnity insurance in respect of the Service Provider's obligations to provide the Service in an amount of not less than **one million**

pounds (£1,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of 12 years from the date of the completion by the Service Provider of its obligations pursuant to the Contract provided always that such insurance is available to service providers of the same profession or discipline at commercially reasonable rates. The Service Provider shall immediately inform the Council if such insurance ceases to be available at commercially reasonable rates.

- 16.9.2 Should the Service Provider cease to be insured due to such insurance ceasing to be available to Service Providers of the same profession or discipline at commercially reasonable rates the Council may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the Contract terminate the Contract by notice in writing having immediate effect. If the contract is so terminated and is not reinstated, the provisions of Condition 30 shall apply.

16.10 Employer's Liability Insurance

- 16.10.1 The Service Provider shall have employer's liability insurance of not less than £10,000,000 in respect of any one incident.

16.11 Public liability Insurance

- 16.11.1 The Service Provider shall, throughout the Contract Period, maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure against all sums which either party may become legally liable to pay by reason of all losses, claims, demands, proceedings, arising from the occurrence of risks usually insured under a public liability insurance policy and suffered by:-

- (i) The Council or its employees;
- (ii) The Service Provider or its employees (to the extent not already covered by the Service Provider's existing employer's liability insurance); or

- (iii) Any other person;

To the extent not covered by the insurance required under Condition 16.10

- 16.11.2 The Service Provider shall ensure that any such insurance expressly covers loss or damage to goods or property (including computer hardware and software) loaned, leased or hired to it and to which remains in the legal ownership of the Council.

16.11.3 The limit of such public liability insurance shall not be less than **five million pounds sterling (£5,000,000)**. Such insurance cover shall be in the sum of at **least five hundred thousand pounds sterling (£500,000)** for any one occurrence or series of occurrences arising out of any one event.

16.12 Vendors and sub-contractors

16.12.1 The Service Provider shall require that each Vendor takes out and maintains professional indemnity insurance with minimum coverage of £2,000,000, employer liability insurance with minimum coverage of £5,000,000 and public liability insurance with minimum coverage of £2,000,000. The Service Provider shall further require that each Vendor produce evidence of the same at the request of the Council.

16.12.2 The Service Provider shall ensure that all other sub-contractors maintain appropriate insurance and shall obtain documentary evidence and produce it to the Council immediately on request.

16.13 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Contract.

16.14 Council Indemnity

Subject to the provisions of Condition 16.1 and 16.2 above, the Council shall indemnify and keep indemnified the Service Provider against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in relation to the injury to, or death of, any person, or damage to property to the extent that it may arise out of the negligence of the Council its employees or agents, other than the Service Provider and its personnel.

17. Use of Council's Resources

17.1 In connection with the performance of the services the Service Provider shall be entitled to access the Council's premises at times agreed between the Council and the Service Provider. In respect of access outside the Council's normal working hours the Council shall be entitled to make a charge to the Service Provider.

17.2 Subject to Condition 17.1 the Service Provider shall ensure that neither the Service Provider nor its personnel shall do any act or thing at any premises owned or occupied by the Council other than for the proper performance of the Service and as may be permitted by this Contract. No signs or advertisements shall be exhibited without prior Council written approval.

17.3 Subject to Condition 17.1 the Council shall license or permit the Service Provider to use solely in connection with the provision of the Service at the charge if any specified in **Appendix 1** or valued in accordance with Condition 8 the following resources:-

- 17.3.1 Such office and ancillary accommodation if any as stated in **Appendix 1** or as the Council's Representative may from time to time designate in accordance with Condition 8;
- 17.3.2 Such heating lighting general power and water services if any as stated in **Appendix 1** on condition that the Service Provider and its personnel strictly observe the Council's conservation of energy policy which shall be provided to the Service Provider;
- 17.3.3 Such telephone facsimile and other like facilities as stated in **Appendix 1**;
- 17.3.4 Such office equipment including computer equipment (which term should include computer hardware and software) as stated in **Appendix 1**;
- 17.3.5 Such furniture as stated in **Appendix 1** or as instructed pursuant to Condition 8.
- 17.4 The licensing or permitting of the use of any resources is personal to the Service Provider and the Service Provider's personnel and shall cease at the end of the Contract or upon the termination of the Contract or at such earlier time as may be specified by the Council by notice in writing to the Service Provider. Provided however that no such notice in writing shall be given except in circumstances where the Council can demonstrate a genuine need to terminate the use of the resources by the Service Provider or unless such notice is given at or before the time at which the Contract is entered into. Where a notice has been served after the Contract has been entered into the Council shall use all reasonable endeavours to assist the Service Provider in the provision of alternative resources.
- 17.5 The parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Service Provider or its personnel and that no tenancy has or shall come into being and the Council retains the right at any time to use the office and ancillary accommodation stated in **Appendix 1**.
- 17.6 Immediately following the acceptance of the Service Provider's tender the Service Provider's Representative and the Council's Representative shall draw up, agree and sign an inventory of all resources as appropriate and their condition, which are to be made available for use by the Service Provider as stated in **Appendix 1**.
- 17.7 The Service Provider and its personnel shall use the resources only in connection with the provision of the Service.
- 17.8 The Service Provider shall keep the resources clean, tidy and properly secured as appropriate.

- 17.9 The Service Provider shall use and care for the resources in an appropriate manner and shall supervise, manage and control their proper use (including any routine maintenance) in the manner that the Council specifies.
- 17.10 The Service Provider and its personnel shall ensure that only licensed computer software is used on the computer equipment referred to in Condition 17.3.4. The Service Provider shall indemnify the Council against any loss damage or costs arising from any breach by the Service Provider whether intentional or otherwise of licences on computer software and the use by the Service Provider of unlicensed software on Council computer equipment.
- 17.11 The Service Provider shall promptly notify the Council's Representative of any defects in or damage to Council resources. The Council upon receiving such notification shall unless the Council and the Service Provider otherwise agree take reasonable measures to secure that such appropriate maintenance repairs and replacements considered necessary by the Council's Representative are carried out within a reasonable time. In the event that the defect or damage is in the opinion of the Council due to any neglect or default on the part of the Service Provider or its personnel the Service Provider shall be responsible for fully reimbursing the Council in respect of any costs incurred. The Council shall be entitled to deduct all such costs incurred from any sums due or to become due to the Service Provider under the Contract or to recover the same from the Service Provider as a debt. If any such defect or damage from whatever cause arising results in the Service Provider or its personnel not being able to use part or all of the resources the Council shall not be liable for any losses thereby incurred by the Service Provider which shall use its best endeavours to continue the provision of the Service subject to any instruction to the contrary from the Council's Representative.
- 17.12 On the completion of the Contract or upon earlier termination or rescission of the Contract the Service Provider shall:-
- 17.12.1 leave the resources in a secure, safe, serviceable and clean condition;
 - 17.12.2 ensure that all resources listed in Appendix 1 are present and comply with 17.12.1;
 - 17.12.3 take all steps necessary forthwith to hand over to the Council's Representative and transfer to the Council all information, data, software and the like which is or may be necessary or desirable in the opinion of the Council for the continued provision by it or anyone on its behalf of any services for which it has a responsibility or in connection with which it has a power to provide.

18. Security

- 18.1 The Council shall by prior arrangement provide such access to Council premises as the Service Provider may reasonably require to fulfil its obligations under the Contract.
- 18.2 The Service Provider shall maintain and shall ensure that its personnel and all its visitors maintain the security of Council's premises which it is licensed or permitted to use under Condition 17 both when in use and when not in use.
- 18.3 The Service Provider shall comply with all Council security regulations and other requirements of the Council while at any Council premises, including:-
 - 18.3.1 providing identity details;
 - 18.3.2 submitting to security checks on request;
 - 18.3.3 complying with Council requirements relating to security passes, including returning them on exiting Council premises.
- 18.4 The Service Provider shall use its best endeavours to ensure that access to the Council's premises which it is licensed or permitted to use under Condition 17, is restricted to its personnel and essential visitors engaged upon or in connection with the provision of the Service.
- 18.5 The Service Provider shall issue to any of its personnel who shall at any time have access to any relevant premises security passes in such form as the Council may from time to time determine and issue to the Service Provider and shall ensure that such personnel carry such passes at all times.
- 18.6 The Service Provider shall be responsible for the safekeeping of any keys passes and other means of access provided to the Service Provider by the Council and shall only permit such keys passes and other means of access to be given to those of the Service Provider's personnel whose names and addresses have been supplied to the Council and then only to the extent required for the purposes of providing the Service. In addition the Service Provider shall ensure that the Council's Representative is informed immediately of the loss of any keys, passes and other means of access and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a result of such loss.
- 18.7 The Council reserves the right to refuse admission to or require removal of any person from Council premises who is considered unacceptable for any reason.
- 18.8 The Service Provider shall be responsible for theft, loss or damage to:-

- 18.8.1 its own property, plant, equipment, data or personal possessions brought onto Council premises;
- 18.8.2 Council property, plant, equipment, or data used or within the care and control of the Service Provider.
- 18.9 The Service Provider shall indemnify the Council in respect of the matters referred to in this Condition 18.

19. Service Provider's Resources

- 19.1 Except as otherwise agreed, the Service Provider shall provide all resources and everything necessary for the provision of the Service.
- 19.2 The Service Provider shall be responsible for the security of its resources together with anything used in connection with the provision of the Service and the Council shall have no liability for those resources.

20. Royalties and Patent Rights

- 20.1 The Service Provider shall not in connection with the Contract infringe or breach any patent rights or any other intellectual property rights.
- 20.2 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract, have been paid and are included within the Service Provider's tendered price.
- 20.3 The Service Provider shall indemnify the Council against all actions claims demands, proceedings, damages, costs, charges and expenses which the Council may incur including payment of any royalties or other monies, in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent).

21. Invoices and Payments

- 21.1 Except where otherwise provided in the Contract, the amount payable to the Service Provider for the performance of the Service shall be inclusive of all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Service Provider.
- 21.2 The Service Provider shall submit invoices weekly in arrears in whatever format the Council may require, setting out full details of the services provided and including any supporting documents as required by the Council. Any adjustments for deductions or additions in accordance with the provisions of the Contract shall be clearly set out and justified.

- 21.3 The Service Provider shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format the Council may require.
- 21.4 Subject to sub-Condition 21.5 and unless otherwise agreed, the Council shall, using BACS make payments to the Service Provider in respect of work forming part of the Service which has been satisfactorily carried out by the Service Provider in accordance with the Contract.
- 21.4 Payment shall be made within three working days of receipt of a valid undisputed invoice.
- 21.5 The payments to be made by the Council to the Service Provider pursuant to sub-Condition 21.4 shall be computed in accordance with the Pricing Document having regard to any adjustments including:-
- deductions ascertained in accordance with Condition 5.7;
 - deductions ascertained in accordance with Condition 5.8;
 - additions or deductions ascertained in accordance with Condition 8;
 - deductions ascertained in accordance with Condition 16.7;
 - any other additions required by or deductions authorised by these Conditions.
- 21.6 In the event that the computation referred to in sub-Condition 21.5 results in sums being owed by the Service Provider to the Council the Council shall submit an invoice in the relevant amount to the Service Provider who shall make payment of that amount to the Council within fourteen days of receipt of invoice.

22. Value Added Tax

- 22.1 The Council shall pay the Service Provider such Value Added Tax as may be properly chargeable on the Service Provider in respect of the supply of the Service to the Council except to the extent that any such Value Added Tax or related penalties are chargeable because of a breach by the Service Provider of the relevant statutory provisions.

23. Performance Monitoring

- 23.1 Generally, in order to assess whether or not the Service Provider is providing the Service to the required standard, the Council shall have regard to:-
- 23.1.1 the Service Provider's compliance with Condition 37 Quality Assurance;
 - 23.1.2 oral and written complaints from recipients or users of the Service;
 - 23.1.3 the reliability of the Service provided;

- 23.1.4 the Service Provider's measurement of achievement against performance;
- 23.1.5 indicators, if any, set out in the Specification;
- 23.1.6 the Service Provider's measurement of achievement against its own performance indicators (if any) as specified in its tender submission;
- 23.1.7 random spot-checks in accordance with the Specification; and
- 23.1.8 regular formal contract review meetings in accordance with the Specification and, in any event, not less than three times per annum where the Council Representative and the Service Provider's Representative shall discuss the Service Provider's performance in accordance with the Contract.

24. Retention of Documents, Access and Inspection

- 24.1 The Service Provider shall retain all accounts, documents and records in connection with the Contract for at least three years after the expiry or termination of the Contract or any longer period agreed by the parties in writing.
- 24.2 The Service Provider shall at all times during the Contract Period, upon reasonable notice wherever appropriate in the circumstances, allow the Council's Representative, the Council's Auditors and such persons as may from time to time be nominated by the Council's Representative access to:-
 - 24.2.1 all work places of the Service Provider for the purpose of inspecting work being performed pursuant to the provision of the Service;
 - 24.2.2 all workplaces of the Service Provider for the purpose of inspecting records and documents in the possession custody or control of the Service Provider in connection with the provision of the Service;
 - 24.2.3 any personnel or agent of the Service Provider for the purpose of interviewing such persons in connection with the provision of the Service;
 - 24.2.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.
- 24.3 During access and inspection visits, the Contractor shall provide all reasonable access and facilities free of charge.

25. Unsatisfactory Performance

- 25.1 Where, in the reasonable opinion of the Council Representative, the Service Provider has failed to perform the whole or any part of the Service, with the standard of skill, care and diligence which a competent and suitably qualified person performing the same services could reasonably be expected to exercise, or in accordance with the Contract, the Council Representative may give the Service Provider a notice specifying details of the unsatisfactory performance. The Service Provider shall then follow its complaints procedure as set out in the Method Statement.
- 25.2 Where the Service Provider has been notified of a failure in accordance with Condition 25.1 and the Council is not satisfied with the outcome following the implementation of the Service Provider's complaints procedure, the Council may:
- a) require the Service Provider to perform the Service to the Council Representative's reasonable satisfaction within such period as may be specified, including where necessary, the correction or re-execution of any Service already carried out; or
 - b) withhold or reduce payments to the Service Provider, in such amount as the Council Representative reasonably deems appropriate, although nothing in this Condition 25.2.(b) shall prevent recourse to the judicial process where the Service Provider disputes the amount withheld or reduced.

26. Assignment and Sub-Contracting

- 26.1 The Council shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Service Provider.
- 26.2 The Service Provider shall not:-
- 26.2.1 assign the Contract or any part of it or the benefit or advantage of the Contract or any part of it;
 - 26.2.2 sub-contract the provision of the Service or any part of it without the previous written consent of the Council's Representative, which consent shall be at the discretion of the Council, and if given, shall not relieve the Service Provider from any liability or obligation under the Contract.
- 26.3 The Service Provider shall ensure that any sub-contractor complies with all applicable provisions of the Contract. The Service Provider shall be responsible for the acts, defaults, negligence or neglect of all sub-contractors (except Vendors), its employees or agents in all respects as if they were the acts, defaults, negligence or neglect of the Service Provider.

- 26.4 The Service Provider shall include a term in the contract with the sub-contractor that payment shall be made within thirty (30) days of receipt of a valid invoice.

27. Assistance in Legal Proceedings

- 27.1 The Service Provider shall notify the Council's Representative of;
- 27.1.1 any accident, damage or breach of any statutory provision relating in any way to the Service; or
 - 27.1.2 any legal inquiry, arbitration or Court proceedings relating in any way to the Service
- immediately upon becoming aware of it.
- 27.2 If requested to do so by the Council's Representative the Service Provider shall provide the Council's Representative with any relevant information and assistance in connection with any legal inquiry, hearing, arbitration or Court proceedings in which the Council may become involved in relation to the Service or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings.
- 27.3 Should any part of the Service involve the Service Provider in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other contract forthwith notify the Council's Representative of the existence of any such matter together with such particulars as are available.
- 27.4 Assistance shall be provided by the Service Provider pursuant to this Condition 27 free of charge where it is required in relation to a matter which was caused or arose during the Contract Period. Any other assistance required by the Council shall be the subject of a modification pursuant to Condition 8.

28. Bribery and Corruption

- 28.1 The Council shall be immediately entitled to terminate the Contract or any part of it and to recover from the Service Provider the amount of any loss resulting, plus the value of any gift or consideration, if in relation to the Contract or any other contract with the Council:
- 28.1.1. the Service Provider, or any of its employees (whether with or without the Service Provider's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing, or not doing any action, (except in accordance with a permitted and lawful subcontract),or;

- 28.1.2 the Service Provider or any of its employees shall have:-
- (i) committed any offence under the Prevention of Corruption Acts 1889 to 1916 or;
 - (ii) given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act, 1972.
- 28.2 The decision of the Council in relation to this Condition shall be final and conclusive.
- 29. Termination**
- 29.1 Without prejudice to any other right or remedy it may have, either party may terminate this Contract by giving the other party six months' prior notice in writing unless a shorter period of notice has been agreed between the parties.
- 29.2 The Council has relied on the information provided by the Service Provider contained in the Service Provider's Pre-qualification Questionnaire (if any), the Service Provider's Tender Submission and supporting documents (if any) submitted to the Council prior to its acceptance and prior to the Council entering into this Contract and any material misrepresentation made shall entitle the Council, but not unreasonably or vexatiously, to rescind or terminate this Contract at its option.
- 29.3 The Council shall be entitled to terminate the Service Provider's employment under the Contract immediately and without notice to the Service Provider if the Service Provider or any of its directors or any partners:-
- 29.3.1 has any director of it or partner in it convicted of an offence of dishonesty;
 - 29.3.2 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
 - 29.3.3 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
 - 29.3.4 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
 - 29.3.5 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

- 29.3.6 has an administrator, or an administrative receiver, as defined in the Insolvency Act 1986 appointed;
 - 29.3.7 has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge; or
 - 29.3.8 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager an administrator or an administrative receiver or which entitle the Court to make a winding-up order.
- 29.4 In the circumstances set out below the Council shall be entitled to terminate the Service Provider's employment under the Contract, but not unreasonably or vexatiously, by written notice having immediate effect, or upon such notice period as the Council shall determine at its sole discretion. Termination shall be without prejudice to any accrued rights or remedies pursuant to the Contract. If the Service Provider
- 29.4.1 commits a breach of any of its obligations under the Contract;
 - 29.4.2 persistently fails to provide the Service in accordance with the terms of the Contract;
 - 29.4.3 is subject to a merger, change of control, or takeover or changes its composition or staffing in a way which in the reasonable opinion of the Council significantly affects the ability of the Service Provider to discharge its obligations under the Contract to the Contract Standard except that maternity or paternity leave taken by its employees under statutory or contractual entitlements shall be disregarded for the purposes of this Condition; or
 - 29.4.4 experiences, in the opinion of the Council's Representative, whose opinion shall be final and binding, an irreconcilable conflict of interest of the Council and any other client of the Service Provider;

30. Consequences of Termination

- 30.1 If the Service Provider's employment is terminated as provided in Condition 28, or Condition 29.2 to 29.4 inclusive, the Council shall:-
 - 30.1.1 cease to be under any obligation to make further payment until the cost loss and/or damage arising out of the termination of the Contract shall have been calculated and provided such calculation show an amount due to the Service Provider;

- 30.1.2 be entitled to reoccupy any premises and repossess any other physical resources licensed, loaned or hired to the Service Provider and to exercise a lien over any of the physical resources or any other thing belonging to the Service Provider for any sum due from the Service Provider to the Council and shall have full and unlimited licence over all drawings details, descriptive schedules and other documents or data for use in connection with the Service;
 - 30.1.3 be entitled to employ and pay other persons to provide and complete the provision of the Service or any part thereof and to use all such of the Service Provider's physical resources or other things as are necessary and all such drawings details, descriptive schedules or other documents for the purpose thereof;
 - 30.1.4 be entitled in respect of any costs, loss or damage to the Council arising out of the termination of the Service Provider's employment to deduct the same from any amount which would, but for Condition 30.1.1 have been due from the Council to the Service Provider under the Contract or any other contract or be entitled to recover the same from the Service Provider as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the contract and in making alternative arrangements for the provision of the Service or any part of it;
 - 30.1.5 When the total costs loss and/or damage resulting from or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Condition 30.1.1 have been due to the Service Provider be entitled to any balance shown as due to the Council which shall be recoverable as a debt or alternatively the Council subject to Condition 31 shall pay to the Service Provider any balance as due to the Service Provider.
- 30.2 The rights of the Council under this Condition 30 are in addition to and without prejudice to any other rights or remedies the Council may have whether against the Service Provider directly or pursuant to any guarantee indemnity or bond.

- 30.3 If the Council shall omit or require the Service Provider to cease to provide a substantial part of the Service the Council may notwithstanding Condition 8 at its sole discretion terminate the Contract by not less than 14 days notice in writing reoccupy its premises and repossess its physical resources licensed, loaned or hired to the Service Provider. If the Contract is terminated under this Condition 30.3 neither the Council nor the Service Provider shall have claims against the other in respect of any loss or damage resulting from or arising out of the termination of the Contract. The Service Provider shall be entitled to receive from the Council any sum or sums due in respect of work performed up to the time of termination of the Contract.
- 30.4 The Service Provider may give three months written notice to the Council to terminate the Contract if the Council has failed to make payment due in accordance with the Contract. The Contract shall not be terminated if payment is made within 14 days of receipt by the Council of such a notice.
- 30.5 Unless expressly provided to the contrary either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Contract and the determination of this Contract shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under the Contract notwithstanding that the other may have exercised one or more of the rights and remedies against it.
- 30.6 Any right or remedy to which either party is or may become entitled under the Contract or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this Contract or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

31. Recovery of Sums Due to the Council

- 31.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Service Provider to the Council it may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under this Contract or any other contract with the Council.

32. Dispute Resolution

- 32.1 If any dispute or problem arises in relation to the Contract it shall first be discussed at one of the regular management meetings. If no satisfactory resolution is reached within a month the dispute or difference shall be referred to sufficiently senior directors, partners or other officers of both organisations with authority to resolve the dispute, for determination.

- 32.2 If the dispute or difference is not resolved as a result of the meetings referred to in Condition 32.1, either party may propose to the other party that structured negotiations be entered into with the assistance of the Neutral Adviser.
- 32.3 If the parties are unable to agree on a Neutral Adviser or the Neutral Adviser agreed on is unable or unwilling to act, either party may give to the other party fourteen days notice of that party's intention to apply to the Centre for Dispute Resolution ("CEDR") to appoint a Neutral Adviser.
- 32.4 Within fourteen days of the appointment of a Neutral Adviser the parties shall meet with him in order to agree in good faith a programme for the exchange of information and the structure to be adopted for the negotiations. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 32.5 All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 32.6 If the parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be put into writing and, once their duly authorised representatives sign it, shall be binding on the parties.
- 32.7 Failing agreement, either party may invite the Neutral Adviser to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced without the prior written agreement of both parties.
- 32.8 Failing agreement in the structured negotiations within 40 days of the Neutral Adviser's appointment or such later time as agreed by both parties in writing, then the dispute or difference between the parties shall be referred to an arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President of the Institute of Arbitrators.
- 32.9 The arbitrator shall act as expert and shall be entitled to make such decision or award as he thinks just and equitable having regard to the relevant circumstances of the case. The cost of such arbitration shall follow the event or if neither party succeeds shall be apportioned between the parties in such proportion as the arbitrator, in his absolute discretion, thinks fit.
- 32.10 Any award or decision of the arbitrator shall be final and binding on the parties.

33. Complaints

- 33.1 The Service Provider shall adopt and implement to the satisfaction of the Council a Complaints Procedure in order to deal with complaints about the provision of the Service.
- 33.2 The Service Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.
- 33.3 The Service Provider shall at the request of the Council's Representative in the places and in a form approved by the Council's Representative arrange for notices to be permanently displayed giving information as to how complaints may be made. The Service Provider shall deal with any complaints received from whatever source in a prompt courteous and efficient manner.
- 33.4 The Service Provider shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Council's Representative at all reasonable times. The Service Provider shall immediately notify the Council's Representative in writing of all complaints received and of all steps taken in response.

34. Warranty Agreements Enabling Condition

[Not used]

35. Recovery of Sums on behalf of the Council

- 35.1 Where it is provided in the Specification that the Service Provider may or shall seek any sum or sums from any third party on the Council's behalf the Service Provider shall proceed with all due expedition and diligence in accordance with all reasonable requirements of the Council.
- 35.2 Any sums obtained shall be remitted immediately to the Council in such manner as the Specification provides and shall until receipt by the Council be held by the Service Provider as trustee of the Council.
- 35.3 If any such monies are paid by the Service Provider into any bank, building society or other similar account, such account shall be an interest bearing account - payable to the Council and shall be designated as a trust account with the Council's name appearing in its title. On no account shall any such monies be mixed with any other money.
- 35.4 The Service Provider shall keep full and proper records as to the receipt and transfer of such monies in such form as the Council or the Council's Representative may require and shall provide whenever requested access and copies of those records.

36. Conflicts of Interest

- 36.1 Conflicts of interest shall not be permitted in relation to the performance of the Service.
- 36.2 The Service Provider shall notify the Council's Representative immediately upon becoming aware of any potential conflict of interest (whether direct or indirect), which may arise between the interests of the Council and any interests of the Service Provider or its other clients.
- 36.3 If there is a direct conflict of interest (as determined by the Council in its absolute discretion), the Service Provider shall comply with the Council's directions to remove or avoid such a conflict.
- 36.4 If there is an indirect conflict of interest, the Service Provider shall satisfy the Council that satisfactory arrangements have been made to ensure that the conflict cannot prejudice the performance of the Service.
- 36.5 The Council shall be entitled to terminate the Contract in accordance with Conditions 29 and 30 if the Service Provider breaches this Condition 36.

37. Quality Assurance

- 37.1 The Service Provider shall operate a self-regulatory system of quality assurance and quality measures relevant to the Contract in addition to any quality requirements set out in the Method Statement which ensures that the Service is provided in accordance with the requirements of the Contract, including the following measures as a minimum to:
 - 37.1.1. make available back-up, replacement and support staff whenever necessary;
 - 37.1.2 give senior management time and staff for the performance and organisation of the Service;
 - 37.1.3 ensure that there are properly organised and efficient systems and processes in place between the Service Provider and any permitted sub-contractors to enable full understanding and agreement concerning the Service which is to be provided and the necessary liaison with the Council;
 - 37.1.4 enable a quick response to the Council's requests or requirements for the Service and matters associated with the Service, including but not limited to attendance at meetings and requests for information;

- 37.1.5 ensure compliance with all contractual timescales and all other reasonable response times;
- 37.1.6 maintain and monitor all contractual or relevant performance indicators;
- 37.1.7 check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Council intends to use it;
- 37.1.8 deal properly with any potential conflicts of interest in accordance with the Contract; and
- 37.1.9 keep the Council informed about progress in the provision of the Service.

38. Best Value

- 38.1 The Service Provider acknowledges that the Council is subject to a statutory duty pursuant to the Local Government Act 1999 to make arrangements to secure continuous improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness ("the Best Value duty").
- 38.2 The Service Provider shall co-operate fully and assist the Council, so far as reasonably required, in relation to all requests for assistance by the Council in connection with the performance of the Council's Best Value duty as it relates to the Contract at no extra charge including, but not limited to:-
 - 38.2.1 complying with all requests for information, including providing access to premises, staff, documents, data and processes;
 - 38.2.2 providing assistance to enable the Council to undertake best value consultation exercises including undertaking customer or user satisfaction surveys, if required and providing a written report to the Council setting out the results;
 - 38.2.3 providing all assistance and information necessary to include an objective comparison of the quality and standard, performance and delivery of the Service, with other organisations;
 - 38.2.4 maintaining and monitoring performance of all contractual performance measurements and targets and providing a detailed performance management report in writing at contract review meetings;
 - 38.2.5 on each anniversary of the Commencement Date providing proposals for service improvements, including an annual review of performance indicators and targets and implementing such proposals as agreed by the Council;

- 38.2.6 throughout the Contract Period, and not less than annually proactively suggest efficiency savings;
- 38.3 The Service Provider shall be subject to a duty to demonstrate continuous improvement in its performance of the Service throughout the Contract Period;
- 38.4 The requirements of this Condition 38 shall be at no additional cost to the Council.
- 39. Transfer of Responsibility**
- 39.1 In the event that a different organisation is required to take over the Service at the expiry or termination of the Contract, the Service Provider shall fully co-operate in the transfer, at no extra cost, as set out in section 85 of the Method Statement.
- 39.2 The transfer shall be arranged between the Council and the Service Provider so as to reduce to a minimum any interruption in the Service.
- 40. Service Provider's TUPE Obligations**
- 40.1 [If applicable] it is acknowledged by the Service Provider and the Council that TUPE applies to the Contract. In accordance with the provisions of TUPE, employees identified in Part 1 of the TUPE Schedule (the "Transferring Employees") shall become employees of the Service Provider with effect from the Commencement Date on the same terms and conditions of employment as those employees employed with the Council immediately prior to the Commencement Date. A list of the applicable and transferring terms and conditions is set out in Part 2 of the TUPE Schedule.
- 40.2 The Service Provider shall offer the Transferring Employees, with effect from the Commencement Date and to the satisfaction of the Council, the choice of either:
- 40.2.1 Pension benefits comparable (as determined by the actuaries) with the pension benefits provided to the Transferring Employees by the Council prior to the Commencement Date or;
- 40.2.2 Adequate compensation (as determined by independent actuaries, if under the Service Provider's scheme any individual who joins the scheme is not in a comparable position as determined by those actuaries), for the pension benefits forgone by the Transferring Employees as a result of ceasing to be employees of the Council; or

- 40.2.3 Seeking admission for the Service Provider's organisation, as an Admitted Body, to the Local Government Superannuation Scheme the "LGSS".

The Service Provider shall make available to the Council and its actuaries full details of the comparable pension benefits and methods of calculation of the compensation or details of the applications for admission to the LGSS, immediately upon Contract Award and shall promptly respond to all enquiries by the Council or its actuaries in relation to pension issues.

- 40.3 [If applicable] the Service Provider shall on the Commencement Date discharge all car loans and season ticket loans of the Transferring Employees with the Council and continue the arrangements with those Transferring Employees who enjoyed the benefit of those loans on at least the same terms as provided by the Council.
- 40.4 The Service Provider shall continue to recognise any trade unions which represent staff transferring as well as any relevant collective agreements.
- 40.5 The Council will indemnify the Service Provider against all damages, compensation, fines, other liabilities and reasonable costs and expenses incurred or suffered by the Service Provider in connection with any claim, by any of the Transferring Employees other than those arising solely because of the operation of TUPE to the extent that such claim is attributable to any act or omission of the Council prior to the Commencement Date.
- 40.6 The Council warrants to the Service Provider that, at the Commencement Date, there are no other employees of the Council whose rights and obligations transfer to the Service Provider under TUPE other than the Transferring Employees and that the details set out in the TUPE Schedule are accurate and correct in all material respects and that the terms and conditions set out in Part 2 of the TUPE Schedule contain the entire terms and conditions of the Transferring Employees.
- 40.7 [If applicable] the Service Provider shall take over the Council's obligations with effect from the Commencement Date under any car leasing arrangements between the Council and third parties relating to the Transferring Employees and shall promptly execute such documents as the Council may reasonably require to transfer such obligations.
- 40.8 On, or within, fifteen working days after the Commencement Date the Council shall deliver to the Service Provider PAYE certificates relating to each of the Transferring Employees duly completed up to the Commencement Date.
- 40.9 The Service Provider shall indemnify the Council against all damages, compensations, fines, other liabilities and reasonable costs and expenses incurred or suffered in connection with any claim arising from:

- 40.9.1 A cause of action occurring on or after the Commencement Date by all or any of the Transferring Employees as a result of their employment with the Service Provider on or after the Commencement Date;
- 40.9.2 Any failure by the Service Provider to comply with its obligations under this Condition 40.
- 40.10 Where requested to do so the Service Provider shall provide such information in connection with TUPE, as the Council may require, to the Council and/or to any other person authorised by the Council within 10 days of the request.
- 40.11 During the 8-month period preceding the expiry of the Contract or within any period of notice of termination, the Service Provider shall not without the prior written agreement of the Council which shall not be unreasonably withheld or delayed:
- a. Materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
 - b. Materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.
- 40.12 The Service Provider shall not knowingly do or omit to do anything, which may adversely affect an orderly transfer of responsibility for provision of the Service. The Service Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of incorrect or insufficient TUPE-related information.
- 40.13 If the Service Provider fails to comply with the requirements of this Condition 40, in addition to its other contractual remedies, the Council may exclude the Service Provider from the re-tender process.
- 40.14 The indemnifying party shall be given prompt notice of and kept fully informed of the progress of all claims by the other party under any indemnity in this Condition 40.
- 40.15 The Service Provider shall co-operate with any subsequent contractor including
- 40.15.1 Provision of information
- 40.15.2 Allowing any incoming contractor to speak to the Service Provider's employees or employee representatives who will transfer to the incoming contractor under TUPE.

- 40.16 The London Borough of Havering has adopted the Workforce Issues-Procurement and Best Value Policy. ODPM Circular 03/2003 – Best Value and Improvement – which was published on 13 March 2003 had attached as Annex D, the Code of Practice on Workforce Matters in Local Authority Service Contracts. The London Borough of Havering has decided that the principles set out in this Code will form part of the Contract Documents. Where the successful Tenderer recruits new staff to work on the Contract alongside staff transferred under TUPE from the incumbent contractor it will be required to offer employment on fair and reasonable conditions which are, overall, no less favourable than those of the transferred employees.

41. Force Majeure

- 41.1 Either party shall give written notice to the other as soon as it becomes aware of any Force Majeure event, setting out details of the Force Majeure event, its likely duration and the steps being taken and to be taken by both parties to minimise the effect of the Force Majeure on provision of the Service.
- 41.2 Both parties shall use all reasonable endeavours to secure the resumption of the Service at the earliest possible opportunity following a Force Majeure event.
- 41.3 For the avoidance of doubt, a Force Majeure event shall not relieve the Service Provider of its duty to provide the Service in accordance with the requirements of the Contract unless otherwise expressly agreed in writing by the Council Representative.

42. Communications

- 42.1 Except where otherwise agreed all communications between the parties or with any third parties, in relation to the Service, shall be conducted in the English language.

43. Information to be Supplied by the Service Provider

- 43.1 The Service Provider shall provide all relevant information which may be required by the Council in order that the Council can act fairly, properly and in accordance with its legal obligations in connection with any tendering exercise it undertakes at any time, relating to the provision of the Service, or the future provision of the same or any similar service. The Council may make a request for any such information at any reasonable time and the Service Provider shall comply with that request as soon as practically possible and in any event within any period specified by the Council.
- 43.2 If the Service Provider fails to provide information requested within the required timescale, the Council may at its discretion refuse to accept a tender from the Service Provider in relation to the tendering exercise and/or may terminate the Service Provider's employment pursuant to this Contract.

44. Observance of Statutory Requirements

- 44.1 The parties shall each comply with all statutory and other provisions to be observed and performed in connection with the Service and each party shall indemnify the other against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach of their respective statutory obligations.

45. Agency

- 45.1 Neither the Service Provider nor its personnel shall in any circumstances hold itself or themselves out as being the employee or agent of the Council otherwise than in circumstances expressly or implicitly permitted by the Contract.

- 45.2 Neither the Service Provider nor its personnel shall in any circumstances hold itself or themselves out as being authorised to:-

45.2.1 Enter into any contract on behalf of the Council or in any other way to bind the Council to the performance variation release or discharge of any obligation;

45.2.2 Perform or discharge duties or functions which by statute must be performed or discharged by the Council;

Otherwise than in circumstances expressly or implicitly permitted by the Contract.

- 45.3 Neither the Service Provider nor its personnel shall in any circumstances hold itself or themselves out as having the power to make vary discharge or waive any bylaw or regulation of any kind.

46. Notices

- 46.1 Any demand, notice, or other communication required to be given, or served, pursuant to this Contract, shall be in writing, and shall be sufficiently served if served personally on the Council's Representative, or the Service Provider's Representative as appropriate, or if sent by first class recorded delivery post, by electronic mail or facsimile transmission to the registered office or last known address of the party to be served, when it shall be deemed to be served on the second business day after the date of posting or at the time of successful transmission, subject to proof to the contrary.

47. Waiver

- 47.1 Failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

- 47.2 No waiver shall be effective unless it is communicated in writing to the other party.

48. Environmental Requirements

- 48.1 The Service Provider shall, so far as reasonably practical and relevant to the provision of the Service, conserve energy, water and other resources, reduce water and noise pollution 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, minimise waste and maximise use of recycled resources.
- 48.2 The Service Provider shall at all times comply with the Council's Green Purchasing Standard.

49. Law

- 49.1 The Contract shall be governed by interpreted in accordance with English Law and shall be subject to the jurisdiction of the English Courts.

50. Severability

- 50.1 If any provision in this Contract shall become or be declared by a court to be invalid or unenforceable in any way, such validity or unenforceability shall in no way impair or affect any other provisions of this Contract all of which shall remain in full force and effect.

51. Review of Contract Price

- 51.1 The contract price may be reviewed at any time as a result of a variation in accordance with Condition 8.

52. Freedom of Information Act 2000

- 52.1 The Service Provider acknowledges that the Council is (and the Service Provider may be) subject to the provisions of the Freedom of Information Act 2000 ('FOIA')
- 52.2 In this Condition 52 'Information' has the meaning given to it in s.84 of FOIA.
- 52.3 If the Service Provider receives any request for Information pursuant to FOIA (regardless of whether such request complies or does not comply with the strict requirements of FOIA) it shall:
- 52.3.1 make no response to such request other than a bare acknowledgement of receipt stating that the request has been passed to the Council

- 52.3.2 pass such request (and a copy of the letter referred to in Condition 52.3.1) to the Council within 24 hours of receipt of the request by the Contractor.
 - 52.3.3 take no further action in regard to such request save at the direction of the Council.
- 52.4 The Service Provider shall upon request by the Council (and within such period as the Council may specify) provide the Council with all assistance and Information under its control to enable the Council to respond to a request for Information within the time for compliance prescribed by FOIA
- 52.5 The Council shall be responsible (in its sole discretion) for deciding:
 - 52.5.1 what Information is to be disclosed pursuant to a request for Information regardless of whether such Information originates from the Council or the Service Provider)
 - 52.5.2 what Information (if any) is exempt from disclosure pursuant to FOIA
 - 52.5.3 whether or not to include any category of Information in its Publication Scheme.
- 52.6 The Service Provider acknowledges that the provisions of this Condition 52 and of FOIA may override any obligation of confidentiality as between the Council and the Service Provider and that the Council may be obliged to disclose Information without consulting the Service Provider or having consulted the Service Provider but in opposition to the views of the Service Provider.
- 52.7 Each party shall bear its own cost of compliance with this Condition 52.

53 Booking Agency/Temporary Workers

When making a booking for an Agency/Temporary Worker the Council shall give the Service Provider full details of

- 53.1 the intended duties of the Agency/Temporary Worker;
- 53.2 any special skills which it requires the Agency/Temporary Worker to have including any experience, training, qualification or any authorisations from a professional body which are required by law;
- 53.3 any risks to health and safety known to the Council and any steps that have been taken to prevent or control such risks; and
- 54.4 health and safety information which the Council wishes the Service Provider to pass on to the Agency/Temporary Worker.

Appendix 1

Office and Ancillary Accommodation

Condition		Accommodation and facilities to be used by Service Provider	Charge
17.3.1	Office and ancillary accommodation licensed or permitted for use by the Service Provider	NONE	
17.3.2	Facilities available and to be used	NONE	
17.3.4	Office equipment including computer equipment	NONE	...
17.3.5	Furniture	NONE	

Appendix Two
TUPE SCHEDULE

There are no Transferring Employees