

THIS AGREEMENT is made this day of 2015

BETWEEN:

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Civic Centre, Wood Green, London, N22 8LE (“**the Council**”) of the one part; and
2. **WING PARKING LIMITED** (Company no. 07469549.) whose registered office is at Queens Chambers, Eleanors Cross, Dunstable, Bedfordshire, England, LU1 1SU (“**the Service Provider**”) of the other part.

WHEREAS

- (1) The Council wishes to have provided the services set out in the Contract.
- (2) The Service Provider is willing to provide such services in accordance with the provisions of this Contract.

NOW IT IS HEREBY AGREED AS FOLLOWS:

I. INTERPRETATION

In this Contract, save where the context otherwise requires the following expressions shall have the meanings hereby assigned to them:

- I.1 “Abandoned Vehicle Notice” means the notice issued to any vehicle that is deemed abandoned on the Designated Estates
- I.2 “Act” means the Value Added Tax Act 1994
- I.3 “Acquired Rights Directive” means the Directive of the Council of the European Union (2001/23/EC) of 12 March 2001.

- 1.4 “Authorised Officer” means the person appointed by the Director under this Contract, whose details are set out in Schedule I of this Contract and such other person as may be nominated by the Authorised Officer to act on his or her behalf and whose details are notified in writing,;
- 1.5 “CCA” mean the Civil Contingencies Act 2004;
- 1.6 “Charges” means the amounts paid by persons in connection with any Parking Charge Notice;
- 1.7 “Commencement Date” means 15 September 2014;
- 1.8 “Completion Date” means 14 September 2018;
- 1.9 “Conditions” means these conditions and any modification thereof duly made in accordance their provisions;
- 1.10 “Contract” means these terms and conditions and the Schedules attached hereto;
- 1.11 “Contract Documents” means the Contract and any other document forming part of the Contract.
- 1.12 “Contract Manager” means the representative appointed by the Service Provider under Clause 19.1 of the Contract and whose details are set out in Schedule I of the Contract;
- 1.13 “Contract Period” means the period set out in Condition 3.1 commencing on the Commencement Date and terminating on the Completion Date; 1.14 “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 entire satisfaction of the Director.

- I.15 “Designated Areas” means the areas within Designated Estates to which the said Services apply as contained within Schedule 3.
- I.16 “Designated Estates” means the Estates named in Schedule 3 of this Contract in respect of which the Service Provider has agreed to provide the Services.
- I.17 “Director” means the Homes for Haringey’s Director of Operations or any person who may subsequently be appointed by the Council to carry out all or any of the functions carried out by the said Director at the Commencement Date and save for any person duly appointed by the Council to be appointed manager or Deputy of the said Director.
- I.18 “Exempt Information” means information that potentially falls within an exemption under the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA);
- I.19 “Fees” means the fees collected by the Services Provider on behalf of the Council;
- I.20 “FOIA” means the Freedom of Information Act 2000;
- I.21 “HSWA” means the Health and Safety at Work, etc Act 1974 and shall include any Codes of Guidance issued by the Council and supplied to the Service Provider either before or during this Contract and any Codes of Guidance prepared by the Service Provider.
- I.22 “Income” means the aggregate of the Fees collected by the Service Provider on behalf of the Council.
- I.23 “Initial Period” means the period commencing on the Commencement Date and terminating 48 months after the Commencement Date

- 1.24 "Intellectual Property Rights" or " IPR" means intellectual property rights whether vested or contingent and whether currently in existence or otherwise including (without limitation) patents, inventions, trade marks, service marks, logos, design rights, registered designs, copyright, database rights, domain names, trade or business names, moral rights, trade secrets, the right to sue for passing off and all similar rights whether registered or not (in any country) and all extensions revivals reversions and renewals of any of the above. The above shall include in relation to registrable rights any applications made in respect of such rights;
- 1.25 "ITT" means the Invitation to Tender documents issued by the Council on the 11 April 2014;
- 1.26 "Method Statement" means the description and proposals put forward by the Service Provider as part of its tender in accordance with the Instructions for Tendering and which forms part of the Contract and is set out in Schedule 4;
- 1.27 "Other Information Law" means any applicable legislation or codes governing access to information other than FOIA;
- 1.28 "Parking Charge Notice" means the notice issued to any vehicle that is parked Without Lawful Authority;
- 1.29 "Patrol" means to inspect the Designated Areas on the Designated Estates to observe vehicles in breach of the parking regulations for those areas.

- I.30 "Plant" applies to all fixed and movable items of plant, vehicles, equipment, machinery, tools and containers which the Service Provider employs to deliver the Services under the Contract.
- I.31 "Relevant Employees" mean employees who are the subject of a Relevant Transfer;
- I.32 "Relevant Transfer" means a relevant transfer for the purposes of the TUPE;
- I.33 "Residents" means the lawful occupants of the identified and agreed residential properties on the Designated Estates;
- I.34 "Services" means the Services that the Service Provider has agreed to provide in this Contract as more particularly described in the Service Specification and, where the context requires it, shall include any materials articles and goods to be supplied thereunder;
- I.35 "Service Specification" means the specification issued by the Council in respect of the provision of the Services as set out in Schedule 2;
- I.36 "Schedule of Rates" means the rates set out in Schedule 5;
- I.37 "Schedules" means the schedules to this Contract.
- I.38 "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any regulations replacing those regulations, as from time to time amended
- I.39 "Without Lawful Authority" means the vehicles parked on Designated Estates not displaying valid parking permits or in 'No parking Areas' or vehicles causing an obstruction. For the avoidance of doubt a parking permit shall not be valid if it is displayed on an untaxed vehicle.

- I.40 “Working Day” means any day during a Working Week or part thereof and shall exclude all bank and public holidays.
- I.41 “Working Week” means the period from the commencement of work by the Service Provider on any Monday morning during the Contract to the completion of work on the subsequent Sunday evening.
- I.42 The headings of these clauses shall not affect the interpretation thereof.
- I.43 The masculine includes the feminine and vice versa.
- I.44 The singular includes the plural and vice versa.
- I.44 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- I.45 If there is any inconsistency or conflict between what is set out in any of the Conditions of this Contract and what is set out in any of the Schedules, the Conditions shall prevail.
- I.46 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date of the Contract, except that this Condition shall not exclude liability in respect of any fundamental misrepresentation.
- I.47 None of the provisions of this Contract is intended to relate to any non-commercial matter within the meaning of Section 17(5) of the Local Government Act 1988, except to the extent that its inclusion is permitted by Section 18(2) of that Act.

I.48 For the purposes of this contract, if there is any inconsistency between the terms and conditions the Schedules, or the Contractor's responses to the questions within the ITT such provisions shall have the following order of precedence:

I.48.1 the terms and conditions;

I.48.2 Schedule 2-the Service Specification;

I.48.3 Schedule 4-the Method Statements;

I.48.4 Schedule 6-the Service Provider responses to the ITT Questions;

I.48.5 any other Schedule of the Contract and the order of precedence shall be decided by the Director.

2. SCOPE OF CONTRACT

2.1 The Service Provider shall provide the Services to the Council and other necessary and ancillary services for the Contract Period in accordance with this Contract and the Contractor's responses to the questions within the ITT.

2.2 The Service Provider shall provide the Services in a professional and prompt manner using reasonable skill, care and diligence and suitably qualified employees in sufficient numbers.

2.3 The Council authorises the Service Provider to issue Parking Charge Notices to vehicles parked Without Lawful Authority and to issue Abandoned Vehicle Notices to vehicles deemed abandoned on the Designated Estates. The Service Provider shall take all reasonable and necessary action, including legal action, to collect

payments or charges in respect of Parking Charge Notices and Abandoned Vehicle Notices. The Council authorises the Service Provider to issue any necessary legal proceedings including where applicable as joint claimants with the Council.

- 2.4 On expiry or termination of this Contract the Service Provider shall cease to issue Parking Charge Notices and Abandoned Vehicle Notices on behalf of the Council. For the avoidance of doubt after the expiry or termination of this Contract the Service Provider shall continue indefinitely to carry out all reasonable and necessary action, including legal action, to collect payments and charges in respect of Parking Charge Notices and Abandoned Vehicle Notices issued prior to the expiry or termination of this Contract and shall pay to the Council any sums due to the Council on recovery of any outstanding Parking Charge Notice charges and any sums due to the Council on recovery of any outstanding Abandoned Vehicle Notice charges.

3 CONTRACT PERIOD

- 3.1 The Contract is for a period of four years commencing from the Commencement Date and expiring on the Completion Date ('Contract Period'), subject to early termination under this Contract or at law or to extension in accordance with Condition 3.2.

- 3.2 This Contract may be extended for a further period of up to one year by the mutual agreement of the parties in writing. The same terms and conditions as those contained within this Contract shall apply to any extension of the Contract Period.

4 THE DIRECTOR

- 4.1 Save as is provided in Condition 45, the functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Director. From time to time the Director may appoint one or more representatives to act for the Director generally or for specific purposes or periods. Immediately any such appointment is made, the Director shall give notice thereof to the Service Provider.
- 4.2 The Service Provider shall in no circumstances question the existence or extent of the authority of any person notified to the Service Provider (whether orally or in writing) as a deputy, assistant, representative or agent of the Director.

5. PERFORMANCE OF SERVICES

- 5.1 During the Contract Period the Service Provider shall provide the Services as set out in the Service Specification in a proper, skilful, workmanlike manner to the Contract Standard and in accordance with the Contract, to the entire satisfaction of the Director.

- 5.2 The Service Provider shall provide the Services and such services additional to the Services at any time and at any place and in such manner required by the Director to enable the Council to carry out any of its functions in a situation, which, in the reasonable opinion of the Director amounts to a situation of urgency or a potential, or actual emergency or disaster, provided that any such additional services shall be similar to the Services. Any such additional services shall be treated as a variation under Condition 45.
- 5.3 The Service Provider shall comply with all statutory and other provisions to be observed and performed in connection with the Services and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Service Provider of this Condition 5.
- 5.4 Should the requirements of the above Condition 5.1 not be met to the reasonable satisfaction of the Director then the Council shall hold the Service Provider to be in fundamental breach of contract pursuant to Condition 41.3.1. Subsequently any failure to conform to any part of the Service Specification shall be treated as an omission or deficiency in the Services pursuant to Condition 40.
- 5.5 Should the Service Provider require any further instruction or information for or in connection with the performance of the Services, the Service Provider shall make a written application to the Director in which the requirement is stated in adequate detail. Such application shall be made on a date which, having regard to the date upon which

the Service Provider reasonably needs the instruction or information for or in connection with the performance of the Services, is neither too far away from nor too close to that date having regard to all the circumstances including the time likely to be required by the Director to respond to the application.

5.6 The Service Provider shall at all times during the Contract Period allow the Director and such persons as may from time to time be nominated by the Director access to:

- (a) all sites or locations for the purpose of inspecting work being performed pursuant to the provisions of the Services.
- (b) all sites or locations for the purpose of inspecting records or documents in the possession of the Service Provider in connection with the provision of the Services.
- (c) all Plant, materials, stores and spare parts in order to ensure that such items comply with manufacturers' specifications.
- (d) all Plant, materials, stores and spare parts (whether such items are provided by the Council, the Service Provider or otherwise) used or proposed to be used in connection with the performance of the Services for the purpose of ensuring that such Plant, machinery, tools, equipment, materials, stores and spare parts meet the requirements of the Service Specification and all relevant statutory requirements.
- (e) any employee or agent of the Service Provider for the purpose of interviewing him/her/them in connection with the carrying out of all or any part of the Services.

- 5.7 Throughout the Contract Period the Service Provider shall maintain a communication system acceptable to the Director and shall provide the Director with the name(s) and telephone number(s) of a representative of the Service Provider duly authorised for the purposes of the contract with whom contact may be made 24 hours per day. In the event of emergencies, for whatever reason and regardless of the time of day or year, the Service Provider shall attend any site where work pursuant to the provision of the Services is being carried out within one hour of receiving a request to attend such site from the Director.
- 5.8 Except as otherwise provided in the Contract, the Service Provider shall not in any circumstances use any premises of the Council being part of the resources applied by the Service Provider in the provision of the Services, to perform, either on his own behalf, or on behalf of any person other than the Council, any work other than provided for in the Contract.
- 5.9 In the event of the Service Provider being unable to perform the Services or any part thereof, the Service Provider shall immediately inform the Director giving details of the circumstances, reasons and likely duration. Nothing in this Condition 5.9 shall in any way alter, modify, relieve or in any other way vary the Service Provider's obligation to provide the Services or the Council's powers under other Conditions.
- 5.10 If the Service Provider fails to provide the Services or any part thereof with due diligence or in a proper, skilful and workmanlike manner, or to the Contract Standard and to the entire satisfaction of the Director, the

Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs 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 rights of the Council under this Condition shall be without prejudice to any of its other rights under the Contract.

- 5.11 The times specified in the Contract and any variation in those times or any other times reasonably laid down by the Director in respect of the Service Provider's obligations shall be of the essence of the Contract and any failure by the Service Provider to adhere to such times shall (notwithstanding anything elsewhere contained in the Contract) be a breach of this Contract.

6 MODIFICATIONS

- 6.1 The Director shall be entitled to issue to the Service Provider instructions in writing in relation to all or any of the following:
- (a) To omit any part of the Services or to cease to provide any part of the Services in such sites or locations during such times and for such period or periods as the Director may determine which period or periods may be either of a permanent or temporary nature;
 - (b) To provide the Services or any part thereof in such manner as the Director may reasonably require, provided that a requirement to

provide the Services to the Contract Standard shall not be a modification;

- (c) To provide such services additional to the Services including performance at additional or substituted sites or locations as the Director may reasonably require, provided that such additional services shall be the same or similar to the Services;
- (d) To perform any such additional works as shall be in the opinion of the Director be reasonably conducive or otherwise facilitate the performance of the Services. No such additional work shall be undertaken by the Service Provider without prior written approval of the Director.
- (e) To comply with any obligations imposed on the Council by future legislation, regulations, directives or orders of similar effect;
- (f) To vary permanently the Services or any part thereof to be provided at any site or location as required by the Director.

6.2 If during the Contract Period the Director and/or the Service Provider (subject to the prior written consent of the Director) modifies the methods employed by the Service Provider to carry out the Services such that in the opinion of the Director savings are made by the Service Provider in the cost of providing the Services then the amount of such savings as shall be notified by the Director to the Service Provider shall be divided equally between the Council and the Service Provider.

6.3 For the purpose of Condition 7 (Payments) the valuation of modifications made pursuant to this Condition 6 shall be ascertained by the Director in accordance with the following provisions:

- (a) Where part of the service is omitted from, or ceases to be provided or is varied under the Contract the rates and prices contained in the Schedule of Rates shall (where reasonable) determine the valuation of the part of the Services omitted varied or no longer provided.
- (b) Where the modification is of a similar character to and is executed under similar conditions to the Services the rates and prices for the work contained in the Schedule of Rates (where reasonable) shall determine the valuation.
- (c) Where the modification is not of similar character to or is not executed under similar conditions to the Services or where it would not be reasonable to determine the valuation in accordance with the Conditions 6.3(a) or 6.3(b) the valuation shall be made at fair rates and prices having due regard where application to the rates and prices contained in the Schedule of Rates.
- (d) Where the modification relates to an omission under Condition 6.1(a) 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 lost opportunity to earn overhead contribution or profit elsewhere.

6.4 This Condition 6 is subject to and without prejudice to any provisions for variations in the Services and the valuation and pricing of such variations set out in the Service Specification. Where such provisions apply, they shall prevail over this Condition 6 insofar as they are inconsistent with it.

7.0 PAYMENTS

- 7.1 The Council shall pay to the Service Provider the sums stated in the Schedule of Rates.
- 7.2 The sums payable to the Service Provider in respect of the Services are calculated in accordance with the Schedule of Rates in respect of Charges collected by the Service Provider in the relevant period (“the Service Provider’s Fees”).
- 7.3 The Service Provider’s Fees are exclusive of VAT.
- 7.4 The Service Provider shall account to the Council in accordance with these Conditions for the balance of the Income after deduction of the Service Provider’s Fees (including VAT thereon) and any other deduction or addition permitted hereunder.
- 7.5 At end of the calendar month intervals from the Commencement Date during the Contract Period, the Service Provider shall submit to the Director an account and a supporting statement in such form as approved from time to time by the Director in respect of the sum which the Service Provider considers is due to be paid to the Service Provider for that period, the Income held by the Service Provider on behalf of the Council, the Charges in that period and the balance of Income payable to the Council for that period pursuant to Condition 7.4 which have not been covered by any previous such account. The accounts and supporting statements shall be submitted to the Director within seven Working Days following the last day of the relevant calendar period. At the same time the Service Provider shall deliver to

the Council the amount stated in the account as being payable to the Council.

- 7.6 Within five Working Days of receipt of the account and supporting statement the Director shall issue a certificate certifying the amount properly payable to the Service Provider by the Council and payable to the Council by the Service Provider in accordance with these Conditions but having regard to the account and any adjustments including:
- (i) the valuation of modifications made pursuant to Conditions 6;
 - (ii) any other additions required by or deductions authorised by this Contract;
 - and
 - (iii) any additions or deductions assessed on the basis of the performance criteria set out within the Contract Documents.
 - and
 - (iv) on receipt of such certificate the Service Provider shall be entitled to such amount of the Income held by the Service Provider in satisfaction of its fees for the relevant period as certified by the Council.

- 7.7 Within ten Working Days of the issue of such a certificate the Service Provider, or the Council as the case may be, shall pay the balance of the

amount so certified taking account the amount already paid to the Council under Condition 7.6.

7.8 Upon receipt by the Service Provider of the certificate referred to in Condition 7.6 the Service Provider shall submit to the Director a tax certificate invoice for the Service Provider's Fees including the sum to be added for the Value Added Tax.

7.9 For the avoidance of doubt and save as provided in this Condition 7, the Service Provider shall hold all Income on trust for the benefit of the Council, and shall account to the Council for such monies forthwith on demand.

8. CERTIFICATION

8.1 Where an instruction is given by the Director under Condition 6.1, or notification is given by the Director under Condition 6.2 which in the opinion of the Director involves a diminution of the services to be performed by the Service Provider, or written notice has been served on the Service Provider pursuant to the Condition 6.3 which involves a diminution of the Services to be performed by the Service Provider or a Default Notice, has been served on the Service Provider pursuant to Condition 40, the Director shall certify the amount to be deducted from the relevant calendar month payment referred to in Condition 7 which certification shall be final.

8.2 Where an instruction is given by the Director under 6.1, or notification is given by the Director under Condition 6.2 which in the opinion of the Director involves an increase in the services to be performed by the Service Provider, or written notice has been served on the Service

Provider pursuant to Condition 6.2 which involves an increase in the Services to be performed by the Service Provider, the Director shall certify the amount to be added to the relevant calendar month payment referred to in Condition 7 which certification shall be final.

9. VALUE ADDED TAX

9.1 The Service Provider shall be entitled to VAT properly chargeable on the supply by the Service Provider of the Services.

9.2 The Service Provider shall no later than the date for the issue of the calendar monthly certificate under Condition 7.5 inform the Director in writing in respect of the Services performed during that period.

(a) Which part or parts of such Services are exempt from VAT.

(b) Which part or parts of such Services bear a zero rate of VAT.

(c) Which part or parts of such Services bear a rate of VAT greater than zero, in each case specifying the exact rate chargeable.

9.3 Upon receipt of the Service Provider's written notice under Condition 9.2, unless the Council objects to any part of such notice, the Director shall calculate the amount of VAT due in accordance with the contents of such notice and shall so certify pursuant to Condition 7.5.

9.4 If the Council objects to the VAT shown on the tax invoice and such objection cannot be resolved by the parties by agreement, the Council may require the Service Provider to refer to the Commissioners of Customs and Excise ("the Commissioners") any dispute difference or

question in relation to any of the matters specified in Section 40(1) of the Act.

- 9.5 If the Service Provider refers the matter to the Commissioners (whether or not under Condition 9.4 hereof) and the Council is dissatisfied with their decision on the matter the Service Provider shall at the Council's request refer the matter to a Value Added Tax Tribunal ("the Tribunal") by way of appeal under Section 40 of the Act whether the Service Provider is so dissatisfied or not. Should the Service Provider be required to deposit a sum of money equal to all or part of the tax claimed under Section 40(3)(a) of the Act, the Council shall pay an equivalent sum to the Service Provider. The Council shall further reimburse the Service Provider any costs or expense reasonably and properly incurred in making the reference (less than any costs awarded to the Service Provider by the Tribunal).
- 9.6 Upon the final adjudication by the Commissioners or, in the event of a reference to the Tribunal, by the Tribunal, the Council shall pay the amount of the VAT adjudged due to the Service Provider. Should the amounts already paid by the Council by way of monies required to be deposited by the Service Provider with the Commissioners under Condition 9.5 exceed the VAT adjudged to be due, the Service Provider shall forthwith repay such excess to the Council.
- 9.7 Notwithstanding any provision to the contrary in these Conditions, the Council shall not be obliged to make any further payment to the Service Provider if the Service Provider is in default in providing the tax invoice referred to in Condition 7.8.

10. RECOVERY OF SUMS DUE

10.1 Without prejudice to any other Condition herein whenever under the Contract any sum or money shall be recoverable from or payable by the Service Provider to the Council the same may be deducted under this or any other Contract with the Council and notwithstanding anything herein contained where the Service Provider is obliged to carry out any work act or thing or to pay money for obtaining any thing document or advantage (for example, but not exclusively, insurance or a bond) then in the event of the Service Provider not carrying out any such work act or thing or obtaining such thing document or advantage the Council shall be entitled to carry out such work act thing and/or obtain reasonable reimbursement of the actual expenses thereof by deduction from the next or subsequent payments due to the Service Provider or shall be entitled to recover such reasonable expense (with interest payable from 28 days next after a demand has been made therefore by the Council at four per cent over current Bank of England base rate and such interest shall run from day to day and shall accrue before and after any judgement and shall be compounded monthly on the amount overdue until payment of the original expense) by action against the Service Provider as a debt and in reasonably carrying out any such work act or thing or obtaining such thing document or advantage the Council shall be under no obligation to employ the least expensive method of carrying out such work act thing or obtaining such thing document or advantage.

10.2 **“Expense(s)”**, **“costs”** or any similar word or expression where recoverable by the Council shall include the Council’s reasonable establishment charges (including the making up of the account and the recovery of the expense(s), cost(s), or the like).

11. EURO PAYMENTS

11.1 Any legislative requirement to account for the goods or services in Euros instead of and/or in addition to Sterling, shall be implemented by

the Service Provider at nil charge to the Council.

11.2 The Council shall provide all reasonable assistance to facilitate such changes.

12. SUFFICIENCY OF INFORMATION

12.1 The Service Provider will be deemed to have satisfied itself as regards the nature and extent of the Services and as to the accuracy and sufficiency of the rates stated in the Schedules forming part of this Contract prior to agreeing to undertake the Services. The Service Provider will be deemed to have obtained for itself all necessary information as to the risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider undertaking the Services.

12.2 No information provided by the Council to the Service Provider shall form the basis for any warranty, representation or terms of any contract by the Council with any third party.

13. CONTRACTUAL RELATIONSHIP

13.1 The Service Provider is not an employee or an agent of the Council. Neither the Service Provider nor its employees or agents shall in any circumstances hold themselves out as being the employee or agent of the Council and they are not authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

13.2 The Service Provider is responsible for all acts and omissions of its

employees and agents and the Council is not responsible, and cannot be held liable, for any act or omission of any person engaged by the Service Provider in relation to the Services.

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

14. ADVERTISING

- 14.1 No advertisement of any description indicating that the Service Provider is acting for the Council is permitted on premises, equipment, materials or consumables utilised in the performance of the Services save to the extent that this Contract indicates otherwise without the prior written consent of the Director which shall not be unreasonably withheld. Any advertisement which is placed on the Council's premises with consent shall be promptly removed at the end of the Contract Period or any extension to it.

15. BEST VALUE

- 15.1 The Council has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in standards of the Services and quality within financial restrictions. The Service Provider shall work with the Council to identify develop and deliver Best Value Services under the terms and conditions of the Contract within available resources.
- 15.2 Types of requirements of the Service Provider by the Council shall include but not necessarily be restricted to provision of Services that are cost effective, efficient, timely, reliable, responsive, consistent,

courteous and give effect to the Council's priorities.

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

16. STATUTORY AND OTHER REGULATIONS

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

17. ASSIGNMENT SUB-CONTRACTING AND ADDITIONAL WORK

17.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Service Provider.

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

17.3 In the event that the Council agrees to any part of the Services being sub-contracted, the Service Provider shall ensure that the Service Provider enters into a legally binding contract with the sub-contractor in a form approved in writing by the Director prior to the commencement of that sub-contract.

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

17.5 Nothing in this Condition 17 shall alleviate the Service Provider of its obligations under this Contract generally. In particular, notwithstanding the grant of consent or imposition of conditions by the Council under Condition 17.1, the Service Provider shall remain ultimately responsible for any choice of sub-contractors and for the provision of the Services in all respects.

17.6 During the Contract Period, the Service Provider shall provide the Council with a quarterly report in a form agreed by the Director that gives accurate and complete information on the Service Provider's compliance with this clause 17.

18. PERSONNEL

18.1 The Service Provider shall, prior to the Commencement Date and throughout the Contract Period, engage in and about the provision of the Services only such persons as are careful, skilled, honest,

experienced and trained to the satisfaction of the Council in the work which they are to perform. The Service Provider shall prior to the Commencement Date supply to the Council the names of all such personnel and shall throughout out the Contract Period keep the Council informed of any changes in such personnel from time to time.

- 18.2 The Service Provider shall (as far as it is lawfully able to do so) require all personnel who are to be engaged in or about the provision of the Services (and in whatever role) to disclose any previous criminal convictions and it shall inform the Council of the identity of any person who does so disclose any previous criminal convictions and the Service Provider shall not engage any such person in the performance of the Services without the consent of the Council.
- 18.3 The Service Provider shall ensure at all times that a sufficient number of personnel and managers are available to provide the Services to the Contract Standard (including during holidays or absences).
- 18.4 The Service Provider shall be entirely responsible for the engagement and conditions of employment of it personnel and managers including, without limitation, the payment of remuneration.
- 18.5 The Director shall be entitled to require the Service Provider by not less than 7 days notice in writing to remove from the performance of the Services any employee of the Service Provider specified in such notice. At any time prior to the expiry of such notice the Service Provider shall have the right to make representations to the Director concerning such person and the Director shall take all such representations into account (while being under no obligation in any

way to accept them as valid). After taking such representations into account, the Director shall be entitled to withdraw such notice and require the relevant person to return to the provision of the Services or to confirm the notice and require that the relevant person is permanently suspended from the Services or suspend the notice subject to any conditions as the Director may reasonably require. If the Director confirms the removal of the employee from the performance of the Services, the Council shall in no circumstances be liable either to the Service Provider or to the employee in question in respect of any liability, loss or damage occasioned by such removal and the Service Provider shall fully and promptly indemnify the Council against any claim made by such employees.

18.6 The Service Provider must ensure that it complies with its statutory obligations under the Immigration, Asylum and Nationality Act 2006.

18.7 The Service Provider must operate and Equal Opportunities Policy with regard to all aspects of staff employment.

19. SUPERVISION OF PERSONNEL

19.1 The Service Provider shall provide sufficient managers to ensure that the Service Provider's personnel engaged in the provision of the Services are at all times adequately supervised and properly perform their duties. Such managers must be sufficiently skilled, trained and instructed with regard to all matters relevant to the Services. The Service Provider shall prior to the Commencement Date and thereafter keep the Council informed of any changes in such managers from time to time.

19.2 All the Service Provider's personnel engaged in and about the provision of the Services shall be under the control and direction of the Service Provider's own managers. The Service Provider will be responsible for ensuring:-

- (i) Adherence to the standards and procedures required by the appropriate professional bodies and the Service Provider's Method Statement;
- (ii) Completeness of coverage; and
- (iii) Consistency of quality.
- (iv) Compliance with all relevant policies, rules procedures and standards of the Council.

20. CONTRACT MANAGER

20.1 The Service Provider shall ensure at all times during the Contract Period that there is a person appointed as the Contract Manager and a Deputy Contract Manager. The Service Provider shall forthwith give notice of any subsequent proposed appointments with details of such person's qualifications, experience and training.

20.2 The Service Provider shall inform the Council of the identity of any person proposed to act for any period as Deputy Contract Manager before the start of that period.

20.3 The Contract Manager and Deputy Contract Manager shall be the authorised representative of the Service Provider and as such are empowered on behalf of the Service Provider for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager or the

Deputy Contract Manager shall be deemed to have been given to the Service Provider.

20.4 The Service Provider shall ensure that at all times during the Contract Period that:

- (i) The Contract Manager or Deputy Contract Manager is available to be contacted 24 hours a day every day of the year including bank holidays and public holidays;
- (ii) There is a telephone number notified to the Director in writing at which the Contract Manager or Deputy Contract Manager may in emergencies be contacted at all times; and
- (iii) The Service Provider shall liaise and co-operate and ensure that its employees and supervisors shall liaise and co-operate with the Director and comply with the Director's reasonable requests.

20.5 The Contract Manager shall inform the Council promptly and in writing of any instances of acts or omissions on the part of the Council or its employees which may prevent or hinder the Service Provider from meeting its contractual obligations and the Council shall advise the Service Provider of any action required to be taken by the Service Provider in connection with such acts or omissions.

21. PERFORMANCE REVIEW

21.1 The Service Provider shall ensure that the Contract Manager is available to meet the Director or his/her appointed representative at least once every 6 months during the Contract Period for a sufficient amount of time as is reasonably decided by the Director at no additional cost, to enable the Council to monitor and review the

Service Provider's performance under this Contract. The Contract Manager shall bring to this meeting such files as may be requested by the Director together with such management information as the Service Provider is obliged to retain for the information of the Council under this Contract.

21.2 The Service Provider shall comply with any reasonable requests made by the Director for improvements in method of delivery.

21.3 The Director may each year submit to the Service Provider completed questionnaires relating to the Service Provider's performance under this Contract and the responses contained in the completed questionnaire shall be retained by the Service Provider for management information purposes so as to enable improvements to be made in service delivery and for use in performance review meetings as referred to in this Condition 21.

22. HEALTH AND SAFETY AT WORK

22.1 The Service Provider shall ensure that the Service Provider and its employees, shall in the course of this Contract comply with Health and Safety at Work Act 1974 (HSWA) and that all persons who are at work (as defined in HSWA) in connection with this Contract shall comply at all times with HSWA. The Service Provider shall at regular intervals carry out hazard inspections, which shall be recorded and with remedial actions or such other measures that are necessary or appropriate, recorded and time-scales thereof. A copy of every hazard inspection shall be forwarded to the Director.

22.2 If at any time the Director reasonably considers that HSWA is not being complied with, the Director shall be entitled to do either or both of the following:

- (a) To instruct the Service Provider to cease to carry out the Services (or a specified part thereof) either immediately or within a specified period or not later than specified date or time, or
- (b) To instruct the Service Provider to take specified steps to ensure compliance with HSWA or to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof.

22.3 The Service Provider shall inform the Director forthwith upon complying with any such instruction and if the Director subsequently confirms in writing his satisfaction that the Service Provider has so complied, the Service Provider shall recommence the Services.

22.4 For the avoidance of doubt it is hereby declared and agreed that the Service Provider having undertaken to comply with HSWA, all instructions given and works undertaken in order to secure compliance with HSWA in accordance with this Condition 22 shall be deemed not to require or involve a modification under any other provision of the Contract and the Service Provider shall not be entitled to any payment either for Services not carried out whilst complying with an instruction under Condition 22.2 or any additional work or accumulation of tasks or variation of the performance or operation of the Services arising out of or in connection with any such instruction.

22.5 The Service Provider shall maintain a record (the “Accident Book”) and investigate the circumstances of all accidents, injuries, fatalities and dangerous/potentially dangerous incidents to his employees and to the public as a result of his performance of the Services as specifically required by HSWA and notify the Health and Safety Executive accordingly. In addition the Service Provider shall report any defined accident to the Director as soon as possible and in any case within two days of such accident. In the case of fatalities or life threatening accidents the Service Provider will notify the Director of the circumstances immediately.

22.6 The Service Provider should note that the Council’s powers under Conditions 40 and 41 shall apply to any omission or deficiency under this Condition 22.

22.7 It is the sole responsibility of the Service Provider to ensure the Health & Safety of their employees whilst carrying out this Service on the Council’s Estates.

23 UNIFORMS AND IDENTIFICATION

23.1 The Service Provider shall ensure that employees employed on the Contract shall wear such uniform as may be approved by the Director in advance of it being issued, and to meet the requirements of HSWA and all other applicable legislation.

23.2 Where the nature or the place or any duties upon which the Service Provider’s employees shall be engaged in the provision of the Services make the wearing of any special or protective clothing and footwear necessary or appropriate, the Service Provider shall provide and shall

require his employees to wear such clothing or footwear. Where the Council's policies, rules, procedures, or standards require any special or protective clothing or footwear to be worn, the Service Provider shall ensure that such clothing or footwear is provided for and worn by the Service Provider's employees. Such special or protective clothing or footwear shall be maintained and replaced as necessary by the Service Provider.

23.3 Representatives of the Service Provider shall display a form of identification approved by the Director bearing a recently taken full faced photograph of the wearer and make such form of identification visible for inspection on request by any officer of the Council who shall similarly disclose his identity or if requested by a member of the public.

23.4 When requested to do so or when communicating with other persons as a representative of the Service Provider, all persons employed by the Service Provider in the performance of the Services shall disclose their identity and shall not attempt to avoid so doing.

24 PLANT, VEHICLES AND MACHINERY

24.1 The Service Provider shall at all times during the Contract Period provide and maintain all such Plant, including vehicles and machinery, as is necessary for the proper performance of the Services to the Contract Standard.

24.2 The Service Provider shall at all times be fully responsible for the payment of all licensing fees, taxes and assurances required in

connection with or arising out of the possession or use of all Plant employed in the performance of the Services.

24.3 The Service Provider shall put and keep all Plant employed in the performance of the Services at all times in good and serviceable repair and in such condition as is commensurate with the proper performance by the Service Provider of its obligations under this Contract. All Plant employed on the Contract shall be of types suitable for the intended purpose and shall be fitted with all guards and any other safety devices as originally fitted by the particular manufacturer and/or required by HSWA.

24.4 The Service Provider shall at all time permit the Director access to all Plant employed for the purposes of this Contract. The Director shall be entitled to serve upon the Service Provider notice in writing requiring the Service Provider to put any item of Plant into such condition as is required by Condition 24.3 above and the Service Provider shall forthwith upon receipt of such notice cause all necessary works to be carried out to comply with such notice. In the event of the Service Provider failing to carry out such works, the Council shall be at liberty to have such works carried out by such persons as it may choose and the Service Provider shall pay to the Council such sum as the Director shall certify to have been the cost of executing the works.

24.5 The Service Provider shall throughout the term of the Contract cause all Plant to bear the corporate colours, words, devices or insignia of the Council and the Service Provider's logo in such a manner as shall be agreed with the Director. The Director will provide details of this

requirement to the Service Provider. On termination of the Contract the Service Provider shall forthwith remove any words devices, insignia or reference to the Council from the Plant.

24.6 The Service Provider shall maintain for three years all service, maintenance, repair, inspection and safety records of all Plant employed on the Contract and such records shall include all formal certificates etc. required under Road Traffic and other applicable legislation. The Service Provider shall at all times permit the Director access to all such records and shall provide copies on a monthly basis, or as reasonably required by the Director, of such records as the Director shall specify.

24.7 Whilst on request and at his sole discretion the Director may allow a derogation of the requirement for hired vehicles to be in the Council's corporate colours, no item of Plant shall bear any advertising matter of any sort without written consent of the Director.

25 DATA PROTECTION

25.1 The Service Provider shall throughout the term of this Contract comply with the provisions of the Data Protection Act 1998 ('DPA 1998') or any subsequent amendment thereto and shall ensure that its agents and employees are trained in and comply with the data protection principles set out in the DPA 1998 in their performance of the Services.

25.2 Any personal data as defined by the DPA 1998 or any subsequent amendment thereto given to or required to be collected and kept by

the Service Provider in the provision of the Services (“the Personal Data”):-

- (a) shall be given to or collected and kept by the Service Provider solely for the purposes of enabling the Service Provider to perform the Services and for no other purposes;
- (b) shall not be altered or amended by the Service Provider other than as required by this Contract;
- (c) shall only be copied by the Service Provider as required by this Contract and shall be returned to the Council upon expiration or earlier termination of the Contract.

25.3 Where the Service Provider processes Personal Data and sensitive data (as defined in the DPA 1998), the Service Provider shall where required by the Council provide proof of consent to that processing by the data subject and the form of consent shall specifically include consent for processing by the Council to use the same to improve the Services.

25.4 The parties agree that where they act as data controller (as defined by the DPA 1998) as regards Personal Data they shall have in place at all times and maintain appropriate technical and organisational measures to ensure the security of the Personal Data as required under the Seventh Data Protection Principle in Schedule 1 to the DPA 1998.

25.5 The Service Provider will provide such information as is reasonably necessary to enable the Council to satisfy itself of the Service Provider’s compliance with clause 25.4. The Service Provider will also allow the Council or its employees upon reasonable prior written notice to the

Service Provider, reasonable access to any relevant premises, during normal business hours, to inspect the measures referred to in clause 25.4.

25.6 The Service Provider will not process Personal Data outside of the European Economic Area (or any country deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC) without the Council's prior written consent.

25.7 On termination of this Contract for any reason, the Service Provider shall immediately cease all processing of the Personal Data on behalf of the Council and shall return to the Council in a format specified by the Director, or destroy, as the Council may request at its discretion, all the Personal Data.

25.8 The Service Provider will co-operate so far as is reasonable with the Council in complying with any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Personal Data.

25.9 The Service Provider shall fully indemnify the Council, its employees or agents against the cost of dealing with any claims made in respect of any information subject to the Act, which claims would not have arisen but for some act, omission or negligence on the part of the Service Provider, his employees or agents in the provision of the Services.

24.10 The data shall at all time remain the property of the Council, and the Service Provider shall carry out all work in a secure environment.

26. FREEDOM OF INFORMATION

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

26.2 Notwithstanding anything in this Contract to the contrary, in the event that the Council receives a request for information under the FOIA or any Other Information Law, the Council shall be entitled to disclose all information and documentation (in whatever form) as is necessary to respond to that request in accordance with the FOIA or Other Information Law, save that in relation to any such information that the Council believes is Exempt Information, the Council shall use reasonable endeavours to consult the Service Provider as soon as practicable after receipt of such a request and shall not:

- (a) confirm or deny that the information in question is held by the Council; or
- (b) disclose the information requested,
to the extent that in the Council's opinion (having taken into account the views of the Service Provider) that exemption is or may be applicable in accordance with the relevant section of FOIA in the circumstances to all or any of the information requested.

26.3 Where the Council consults with the Service Provider in accordance with Clause 26.2 above, the Service Provider shall make its written representations as to whether it believes the information falls within an exemption under the FOIA to the Council within 14 days of receiving the Council's request for consultation.

- 26.4 The Service Provider shall indemnify the Council for any costs that the Council incurs, including but not limited to external legal costs, in seeking to maintain the withholding of information arising out of or under the Contract in any way that the Service Provider wishes it to withhold, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure.
- 26.5 In any event the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempt Information or other information relating to this Contract under FOIA or Other Information Law.
- 26.6 The Service Provider will at all times assist the Council to enable the Council to comply fully with its obligation under FOIA governing access to information or Other Information Law or related guidelines or codes of practice. In particular it acknowledges that the Council is entitled to any and all information relating to or arising in the course of the performance of this Contract. In the event that the Council receives a request for information under the FOIA or Other Information Law, and requires the Service Provider's assistance in obtaining all or any such information, the Service Provider will respond to any such request for assistance at its own cost and promptly and in any event within 10 days of receiving the Council's request (or other reasonable time period specified by the Council when making the request).
- 26.7 Other than as set out above the Council shall have no obligation to consult the Service Provider where any request for information, whether under the FOIA or otherwise, touches or concerns the Contract.
- 26.8 In no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.

27. CORRUPTION

27.1 The Service Provider shall not offer or give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or having refrained from doing any act in relation to the obtaining or execution of this or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to this or any other contract with the Council. The Service Provider warrants that it has not otherwise done anything contrary to the Bribery Act 2010 or incited any breach of section 117(2) of the Local Government Act 1972.

27.2 Where the Service Provider or the Service Provider's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Service Provider's behalf, engages in conduct prohibited by clause 27.1 in relation to this or any other contract with the Council, the Council has the right to:

- (a) terminate the Contract and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination; or
- (b) recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Contract has been terminated.

28. ILLEGALITY

28.1 If any provision or term of the Contract or any part of it shall become unenforceable for any reason whatsoever, including but without limitation by reason of the provisions of any legislation, Regulation,

Order, Direction of the Secretary of State or other provision having the force of law or by reason of any decision of any Court of competent jurisdiction, the validity and enforceability of the remainder of this Contract shall not be affected thereby and shall remain in full force and effect. Where any such provision or decision substantially affects or alters the ability of either of the parties to comply fully with its contractual obligations the parties shall negotiate in good faith to amend and modify the provisions and terms of the Contract as may be necessary or desirable in the circumstances.

29. FORCE MAJEURE

29.1 Neither party to this Contract shall be liable to the other nor held in breach of the Contract if either party is prevented, hindered or delayed in the performance of its obligations under the Contract by any act of God, war, riot, civil commotion, explosion, fire, radiation, accident, government action, interruption in the supply of power, labour dispute (other than a dispute concerning the Service Provider's employees or the employees of its sub-contractors), epidemic or other circumstances beyond the control of the parties which prevents a party from, or hinders or delays a party in, performing its obligations under this Contract (and which the application of due diligence and foresight could not have prevented).

29.2 If due to any of the circumstances listed in Condition 29.1 either party is prevented, hindered or delayed in the performance of their obligations in accordance with the Contract that party shall as soon as reasonably practicable notify the other in writing of such prevention, hindrance or delay and the reasons therefor whereupon the operation of the Contract shall be suspended. The Council shall not be liable to make payment to the Service Provider during such suspension.

29.3 The suspension of the operation of the Contract shall continue during the period (and only during the period) that such prevention, hindrance

or delay due to the circumstances listed in Clause 29.1 continues. Upon those circumstances ceasing to prevent, hinder or delay the performance of the obligations of the party relying upon it that party shall give written notice to the other party of this fact.

29.4 If either party is prevented from performing their obligations due to any of the circumstances listed in Clause 29.1 for longer than one month either party may immediately terminate the Contract upon service of one month's written notice to the other party.

30. BUSINESS CONTINUITY

30.1 The Service Provider acknowledges and accepts that the Council has obligations under the CCA.

30.2 The Service Provider undertakes during and after the Contract Period to provide any information, documentation and assistance the Council may reasonably require in order to enable the Council to comply with its obligations under section 2 of the CCA (Duty to assess, plan and advise).

30.3 In the event of an Emergency (as defined in Part 1 or Part 2 of the CCA), the Service Provider shall use its best endeavours to comply with any instructions whatsoever of the Council in relation to such Emergency, notwithstanding that such instructions may be given by an officer of the Council other than the officer(s) the Service Provider would usually deal with in respect of this Contract.

30.4 The Council shall remunerate and indemnify the Service Provider for any claims, costs and losses that the Service Provider may suffer as a direct consequence of compliance with the Council's instructions during and in respect of an Emergency.

30.5 The Council shall use all reasonable endeavours to ensure that any instruction given to the Service Provider pursuant to sub-clause 30.3 shall be:

- (i) reasonably necessary for the prevention or mitigation of the Emergency;
- (ii) reasonably within the power and ability of the Service Provider to comply with, having regard to the nature of the Service Provider's business and its obligations to the Council under this Contract.

30.6 Notwithstanding Condition 29, during the term of this Contract the Service Provider shall have in place such measures as may be reasonably practicable and sufficient so that as far as reasonably possible it is able to continue to perform its obligations under this Contract in the event of an Emergency or a Disruptive Event ("Business Continuity Measures").

30.7 A Disruptive Event means any event falling outside the definition of an Emergency that may result in:

- (i) Inability by the Service Provider to access the premises from which it provides the Services;
- (ii) General failure of the Service Provider's employees to attend work or perform their functions;
- (iii) Failure of or disruption to the IT and communications systems, or the loss of data and/or records of, the Service Provider;
- (iv) Loss of or damage to equipment, resources or materials of the Service Provider;
- (v) A disruption in provision of goods or services provided to the Service Provider by any third party.

30.8 Within one month of the Commencement Date the Service Provider shall ensure that its Business Continuity Measures are recorded in a

document entitled a Business Continuity Plan and shall submit a copy of the Business Continuity Plan for the Council's approval.

30.9 If at any time during the term of this Contract after receipt of the Business Continuity Plan, the Council reasonably considers that changes to the Business Continuity Plan are required, the Service Provider shall upon notification by the Council of these changes record the changes in the Business Continuity Plan and implement them.

30.10 The Service Provider shall use its best endeavours to ensure that its contracts with its sub-contractors engaged in or about the execution of this Contract contain provisions similar to those in this clause 30 as far as necessary to allow the Service Provider to perform its obligations under this clause 30.

30.11 The Service Provider shall indemnify and keep indemnified the Council for any claims, loss or damage incurred by the Council as a result of the Service Provider's breach of this clause 30.

31 INTELLECTUAL PROPERTY RIGHTS

31.1 The Service Provider hereby acknowledges that any IPR in material created by the Service Provider in the performance of this Contract (including but not limited to data, working papers and the contents of any report) shall be the property of the Council and the Council shall own all IPR in respect of this material. The Service Provider agrees that the Council may without let or hindrance publish, alter, release, licence or otherwise exploit and deal with the IPR in such material as it thinks fit, via any medium.

31.2 The Service Provider undertakes to do all such acts or things and execute and /or procure the execution of all such documents the Council may request from time to time in order to perfect or confirm the Council's title or use of the IPR in the material referred to in sub-

clause 31.1.

31.3 The Service Provider agrees to waive all moral rights in respect of the material referred to in sub-clause 31.1.

31.4 Where the IPR in material used in the performance of this Contract or forming a material part of any report or data prepared for use by the Council are owned by a third party the Service Provider shall obtain the necessary licence for use of such material by the Council.

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

32. CONFIDENTIALITY AND CONFLICT OF INTEREST

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

32.2 Subject to sub-clause 32.7, neither party shall, without the prior written consent of the other, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the Services or the party's business generally.

32.3 Each party:

- (a) shall treat all Confidential Information as secret and confidential and safeguard it accordingly;
- (b) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party, except to such extent as may be necessary for the performance of the Contract; and,
- (c) shall not use any Confidential Information otherwise than for the purposes of the Contract.

32.4 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:-

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

32.5 Where it is considered necessary in the opinion of the Council, the Service Provider shall ensure that its employees or such professional advisors or consultants sign a confidentiality undertaking before

commencing work in connection with the Contract.

32.6 The provisions of Clause 32.2 and 32.3 above shall not apply to any information:-

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

32.7 Nothing in this Condition shall prevent the Council:-

- (a) disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- (b) disclosing any Confidential Information in accordance with Clause 26.1 and 26.2 (FOIA provisions);
- (c) disclosing any information for the purpose of:-
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency

and effectiveness with the Council have used their resources;

(d) disclosing any information obtained from the Service Provider:

- (i) to any other department, office or agency of the Crown; or
- (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract;

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

32.8 The Service Provider shall notify the Director immediately of any actual or potential conflict of interest between the Council and any authorised representative of the Service Provider that may arise in connection with the Services. The Director will as soon as possible either withdraw the instruction giving rise to the difficulty or agree with the Service Provider either that no conflict exists or an acceptable method of averting it.

32.9 Where work has commenced but the Service Provider has (or ought to have) at the outset detected and notified the Director of an actual or potential conflict of interest and the Director subsequently withdraws

the instructions, no fee shall be payable. In addition if it is decided by the Director or the Service Provider that it is inappropriate by reason of any actual or potential conflict of interest for the Service Provider to act in respect of any part of the Services the Director may deduct from any sum due to the Service Provider all costs reasonably incurred by the Council in respect of the provision of that part of the Services by the Director or by a third party to the extent that the total of all such costs exceeds the payment which would otherwise have been payable to the Service Provider for providing that part of the Services. The amount of any such deduction shall be certified by the Director and a copy of such certificate shall be sent to the Service Provider. Any dispute over the amount or the reasonableness of the deduction shall be referred for determination in accordance with Condition 46 (Dispute Resolution).

32.10 The Service Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Service Provider of this Condition 32.

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

33. INFORMATION ON RE-TENDERING

33.1 If requested to do so by the Director, the Service Provider shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, and set out in detail in Condition 47 (TUPE Compliance General).

33.2 Such information provided pursuant to Condition 33.1 above shall be at no cost to the Council.

34. ARRANGEMENTS FOR HANDOVER ON TERMINATION

34.1 If the Service Provider does not secure a further contract for the provision of the Services or similar successor services, following termination of the Contract for any reason:

- (a) the transition to a successor shall be arranged between the Director and the Service Provider so as to avoid any interruption of the Service or of the provision of the same or similar services by the successor(s) and the Service

Provider shall not redeploy within its organisation any person involved in the provision of the Service without the consent of the Director; and

- (b) the Service Provider shall co-operate fully with the Director during transition (such co-operation to include provision of full access to all data, documents, manuals, working instruments, reports, and any information whether held in electronic or written form, which the Director considers necessary to achieve effective transition and subsequent provision of the Service or similar services); and
- (c) the Service Provider may request the Director to reimburse any reasonable additional costs necessarily and properly incurred by the Service Provider in providing assistance and co-operation during the transmission. Any such request shall be accompanied by such evidence of expenditure and the reasons for it as the Director may require. No such requests shall be unreasonably refused.

35. SERVICE PROVIDER'S INDEMNITIES AND INSURANCES

35.1 The Service Provider shall indemnify the Council against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to the Council or financial loss arising from any advice given or omitted to be given by the Service

Provider or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This does not apply to the extent that such injury, death, loss or damage arises out of the act, default, or negligence of the Council, its employees, or agents not being the Service Provider or persons engaged by the Service Provider.

35.2 The Service Provider's liability under Condition 35.1 for losses relating to death or personal injury or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 shall be unlimited.

35.3 NOT USED

35.4 The Service Provider shall effect and maintain as a minimum a policy or policies of insurance of the type set out in Condition 35.5. The Service Provider shall also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf maintain equivalent insurances as a minimum.

35.5 The insurances referred to in Condition 35.4 are as follows:

35.5.1 Public liability insurance that covers the Service Provider's liabilities under Condition 35.1 in a sum of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event;

35.5.2 employer's liability insurance in a sum of not less than £10,000,000.00 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event and which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1972;

35.5.3 Not Used

- 35.6 The Service Provider shall supply to the Council upon request a copy of the insurance policies or a certificate from its insurers or brokers confirming the policies which it is required to maintain under this Condition.
- 35.7 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

36. EQUAL OPPORTUNITIES

- 36.1 In providing the Services, the Service Provider shall to the same extent as if it were a public authority within the meaning of the Equality Act 2010 (the “2010 Act”) (or any European equivalent) comply with the 2010 Act together with all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (“the Equalities Provisions”) and shall in particular comply with the public sector duty under Section 149 and shall have due regard to the need to:
- (a) Eliminate discrimination (whether direct or indirect), harassment, victimisation, and any other conduct prohibited by or under the 2010 Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant characteristics and persons who do not share it.
- 36.2 The Service Provider shall take all reasonable steps to ensure that its employees, agents and sub-contractors (the “Service Provider’s Personnel”) employed in the provision of the Services shall carry out

the Services in accordance with the obligations imposed on the Service Provider by Condition 36.1.

- 36.3 The Service Provider shall take all reasonable steps to ensure that all the Service Provider's Personnel engaged in or about the execution of the Contract shall take all reasonable steps to supply the Council with all necessary information required to enable the Council to meet the general and specific duties in accordance with the Equalities Provisions.
- 36.4 Conditions 36.1, 36.2 and 36.3 shall not in any way relieve the Service Provider of its general obligations to comply with any legislative requirements as provided under Clause 16.
- 36.5 Where in connection with the Contract, the Service Provider, its servants, employees or agents and all sub-contractors engaged in or about the execution of the Contract are required to provide the Services on the Council's premises where the Council's employees are required to carry out work, the Service Provider shall, to the extent required to comply with Condition 36.2 above, comply with the Council's own employment policy and codes of practice relating to racial discrimination and equal opportunities, copies of which may be obtained from the Council.
- 36.6 The Service Provider shall notify the Director immediately in writing upon becoming aware of any investigation or proceedings brought against the Service Provider under the Equalities Provisions.
- 36.7 If a complaint is made about the acts or omissions of the Service Provider and/or its agents, servants, employees or sub-contractors employed in the execution of the Contract the Service Provider may be the subject of an investigation by the Council. During the course of such investigation the Service Provider shall make all documents the

Council considers to be relevant to the investigation available and co-operate with the investigation and if a breach and/or breaches of the Council's duty or duties under the Equalities Provisions or the Provisions is found to have occurred due to the acts or omissions of the Service Provider and/or its servants, employees, agents or sub-contractors employed in the execution of the Contract the Service Provider shall indemnify the Council in respect of any loss, damages and/or compensation, fines and costs (including but not limited to legal costs and expenses) which may be suffered by or imposed on the Council by any Court, tribunal or ombudsman.

- 36.8 If requested to do so by the Council the Service Provider shall co-operate with the Council at the Service Provider's expense in connection with any legal proceedings, ombudsman enquiries, arbitration or Court proceedings in which the Council may become involved arising from a breach and/or breaches of the Council's duty or duties under the Equalities Provisions and/or the Provisions due to the alleged acts or omissions of the Service Provider and/or its servants, employees, agents and sub-contractors employed in the execution of the Contract.
- 36.9 The Service Provider shall ensure that disabled access is available whenever the Services shall be carried out on its premises.
- 36.10 In the event that the Service Provider enters into any sub-contract in connection with this Contract, it shall ensure that the sub-contract documentation contains conditions imposing obligations on its sub-contractors in terms substantially similar to those imposed on the Service Provider pursuant to this Condition 36.

37 HUMAN RIGHTS

- 37.1 The Service Provider shall ensure that it provides the Services in

compliance with the provisions of the Human Rights Act 1998 (“HRA”).

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

38. PARENT COMPANY GUARANTEE

38.1 If the Service Provider is a subsidiary company within the meaning of section 1159 of the Companies Act 2006 the Council may require that within 28 days of the Commencement Date shall at his own expense provide a deed of guarantee (in the form of the Parent Company Guarantee set out in Appendix B of the Invitation to Tender) from its ultimate holding company or companies (as defined by the said Section 1159) to secure the due performance by the Service Provider of his obligations to the Council.

38.3 The Council shall be entitled to terminate the Contract pursuant to Conditions 41.1 should the Service Provider be in breach of this Condition 38.

39. LIABILITY OF THE COUNCIL

39.1 To the extent permitted by the Unfair Contract Terms 1977, the Council shall not be liable for any loss or damage whether caused by the negligence of the Council, its servants or agents or in any way whatsoever and the Council shall in no circumstances be liable to the

Service Provider for any loss of profit, business or production or any similar loss or damage whether direct, indirect or consequential however caused.

40. PERFORMANCE OF SERVICES – DEFAULT IN PERFORMANCE

40.1 Without prejudice to the Council's right to terminate the Contract and without prejudice to any other claim or remedy the Council may have against the Service Provider, the Council may in the event that the Service Provider: -

- (a) fails in the reasonable opinion of the Council's Authorised Officer to provide the Services or any part of the Services;
- (b) fails to provide any part of the Services to a reasonable standard acceptable to the Council's Authorised Officer;

issue the Service Provider with a written notice (a "Default Notice") detailing the breach, the remedy (if any) and a period within which to comply.

40.2 If the Service Provider fails to comply with a Default Notice or if the breach is incapable of remedy, the Council shall be entitled to recover from the Service Provider the actual loss to the Council arising from the breach including administration costs.

40.3 If the Service Provider complies with a Default Notice to the satisfaction of the Council the Service Provider may be charged the Council's reasonable costs (if any) arising from the breach.

40.4 If the Service Provider is issued with three default notices this shall be deemed a persistence breach of Contract giving the Council the right to terminate the Contract in accordance with this Contract.

41. TERMINATION

- 41.1 The Council may terminate this Contract at any time by giving the Service Provider 28 days notice in writing.
- 41.2 If one of the parties commits a fundamental breach of its obligations under this Contract then the other party may, without prejudice to any accrued rights or remedies, terminate this Contract by notice in writing having immediate effect.
- 41.3 The Council may terminate this Contract by notice in writing having immediate effect, without prejudice to any accrued rights or remedies, if any one or more of the following occurs:
- 41.3.1 the Service Provider commits a persistent or fundamental breach of any of its obligations under the Contract under Condition 40.4;
 - 41.3.2 any information provided by the Service Provider during the process of selection of the Service Provider for the award of this Contract proves materially untrue or incorrect;
 - 41.3.3 the Service Provider has obtained or received by whatever means any information which has given or was intended or likely to give the Service Provider any unfair advantage over any other tenderer in relation to the tendering for the award of this Contract;
 - 41.3.4 an event described in Clause 27 (Corruption);
 - 41.3.5 the Service Provider's directors become bankrupt or the Service Provider makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme of arrangement approved in accordance with the Insolvency Act 1986;

- 41.3.6 the Service Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed;
- 41.3.7 the Service Provider has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 41.3.8 the Service Provider has possession taken, by or on behalf of the holder of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 41.3.9 the Service Provider is in circumstances that entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver or which entitle the Court to make a winding-up order;
- 41.3.10 if there is a change of control in the share holding of the Service Provider;
- 41.3.11 where the Council has, on grounds of breach of contract, terminated a contract between itself and the Service Provider other than this Contract;
- 41.3.12 where the Service Provider or any of its employees or sub-contractors becomes embroiled in matters attracting significant negative publicity liable to reflect adversely on the Council, including but not limited to any occasion on which any of these persons is convicted of an arrestable offence;
- 41.3.13 where the Service Provider has failed to provide the performance bond and/or parent company deed of guarantee within 28 days of the Commencement Date;
- 41.3.14 The Service Provider having failed to perform a substantial part of the Services for period of seven consecutive days.

41.4 Upon such termination, in addition to such consequences as are set out in the other provisions of this Contract:

- 41.4.1 The Service Provider shall be deemed to be in breach of this Contract.
- 41.4.2 The Service Provider shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Service Provider.
- 41.4.3 The Council shall cease to be under any obligation to make further payment to the Service Provider until all costs and damage resulting from or arising out of termination of the Contract have been calculated; and
- 41.4.4 The Council shall be entitled to deduct such costs from any sum or sums which would have been due to the Service Provider and/or be entitled to recover the costs from the Service Provider as a debt; and
- 41.4.5 The Council shall be entitled to perform the contract itself in whole or in part or engage any other person to provide the Services.
- 41.4.6 The Service Provider shall forthwith vacate any Council premises and release and handover to the Council any and all Council property, including but not limited to equipment, supplies, records and work-in-progress, computer data or other material in any medium.

41.5 Where the Contract shall terminate for whatsoever reason the Service Provider shall within 21 days from termination (or such reasonable period specified by the Council) provide the Council with sufficient information, material and documentation necessary to enable the Council or a third party to continue or to retender the Service. Without prejudice to the Council's other remedies, failure to comply with this Condition may result in the Council withholding any payment due until reasonable compliance by the Service Provider.

41.6 In addition and without prejudice to this clause 41.6 if the Council terminates the Contract in accordance with 41.2 or 41.3 the Service Provider shall fully indemnify the Council in respect of any loss or

damage suffered as a consequence of termination including the cost of providing the Services for the remainder of the Contract Period to the extent that such cost exceeds the payment that otherwise would have been payable to the Service Provider.

41.7 The rights of the Council under this clause are in addition to, and without prejudice to, any other rights that the Council may have at law or under this Contract.

41.8 Any provision (which shall include Clauses 2.3, 2.4, 32 (Confidentiality), 31 (IPR), 25 (Data Protection) and 26 (FOIA)) of this Contract which is expressly or by implication intended to continue in force and effect after expiry or termination of this of this Contract shall continue in force and effect notwithstanding such termination.

42. NOTICES

42.1 All notices shall be in writing and shall be delivered by hand or sent by pre-paid first class recorded delivery post or by facsimile, in the case of the Council, to the Director's address stated in Schedule 3 or, in the case of the Service Provider, to its address as stated above (which addresses may themselves be amended by notice in accordance with this Condition). Notices sent by post shall be deemed to have been received by the addressee 2 days after the day on which they were posted (excluding weekends and public holidays). Notices sent by facsimile during normal business hours shall be deemed to have been received on the date of despatch (or on the next working day if sent after normal business hours). All facsimile notices shall be confirmed by post.

43. WAIVER

43.1 Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Service Provider of any of

the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

44. SEVERANCE

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

45. VARIATION

45.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Director who shall thereupon issue to the Service Provider appropriate instructions in writing and the Service Provider shall carry out and be bound by such instruction.

45.2 Without prejudice to the rights of the Council and the Director, under the Contract no omission from, addition to, or variation of, the Conditions shall be valid, or of any effect, unless in writing and signed by the Director personally or other such officer as the Director may in writing appoint and by a duly Authorised Representative of the Service Provider.

45.3 The Service Provider acknowledges that any information given to the Service Provider by way of guide quantities and/or any plan, drawing, report, database, file or similar information in the Specification, is given only as a guide, and neither the Council nor any of its employees makes any representation or warranty as to the accuracy of such. The Service Provider agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and other circumstances which might reasonably influence or affect the Service Provider's tender, and to have made full allowance for any changes which may occur between the date of the tender and the Commencement Date. No claim against the Council shall be allowed, whether in contract, tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

45.4 Except as provided in Condition 6 no additional payment shall be made to the Service Provider by reason of any inaccuracy or change in the information provided whether occurring before or after the date of the Tender.

46. DISPUTE RESOLUTION

46.1 In the event of any dispute or difference arising between the parties in connection with this Contract, senior representative(s) of the parties shall, within 10 days of a written request from either party to the other meet in a good faith effort to resolve the dispute without recourse to legal proceedings.

- 46.2 If the dispute or difference is not resolved as a result of such meeting, either party may (at such meeting or within 14 days from its conclusion) propose to the other in writing that structured negotiation to be entered into with the assistance of a mediator or neutral advisor ("Mediator").
- 46.3 If the parties are unable to agree a Mediator or of the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he or she is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.
- 46.4 The parties shall within 14 days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of any relevant 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.
- 46.5 Unless concluded with a written legally binding agreement all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

46.6 If the parties accept the Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the parties. Unless otherwise agreed between the parties, such agreement shall be implemented in full within 30 days of signature failing which it shall be rendered null and void (and may not be referred to in any subsequent legal proceedings) unless legal proceedings have been initiated to enforce it within a further 30 days.

46.7 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing, who need only comply with their request if he considers it would be helpful. Any such opinion shall not be an attempt to anticipate what a court might order but rather the Mediator's suggestions as to the settlement terms which are considered appropriate in all circumstances. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings arising in connection with this Contract without the prior written consent of both parties.

46.8 If the parties fail to reach agreement within 60 days of the Mediator being appointed then any dispute or difference between them may be referred to the Courts unless within a further 30 days the parties agree in writing to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

46.9 The cost of mediation, conciliation and/or the appointment of the arbitrator shall be shared equally between the parties and the arbitrator shall determine which party shall pay any costs subsequently incurred.

47. TUPE COMPLIANCE (GENERAL) - EMPLOYEES AND EMPLOYMENT MATTERS

47.1 Application of TUPE

47.1.1 The Council and the Service Provider agree that where the identity of a provider (including the Council) of any service which constitutes or which will constitute one of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.

47.1.2 (a) On the occasion of each Relevant Transfer, the Service Provider shall, comply with all of its obligations under TUPE and the Acquired Rights Directive in respect of the Relevant Employees.

(b) On the occasion of each Relevant Transfer constituted by the Service Provider sub-contracting the Services or any part of them, the Service Provider shall procure that each and every sub-contractor providing the Services or any part of them shall comply with all of its obligations under TUPE and the Acquired Rights Directive in respect of the Relevant Employees.

47.2 Emoluments and outgoings

47.2.1 The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees employed by it, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance

contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.

47.2.2 The Service Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees transferring to its employment, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Relevant Transfer.

47.3 Not Used

47.4 Service Provider to inform Council of any measures

The Service Provider shall within 10 working days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of TUPE and the Acquired Rights Directive) that the Service Provider intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

47.5 Indemnities

47.5.1 The Council shall indemnify the Service Provider from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Service Provider shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee by the Council provided that this arises from any act, fault or omission of the Council in relation to any Relevant Employee prior to the date of the Relevant Transfer and any such claim is not in connection with the Relevant Transfer.

47.5.2 The Service Provider shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee by the Service Provider provided that this arises from any act, fault or omission of the Service Provider in relation to any Relevant Employee, on or after the date of the Relevant Transfer.

47.5.3 The Service Provider shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

47.5.4 The Service Provider shall indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Service Provider or Sub-Contractor is to that Relevant Employee's detriment or that the working conditions to be provided by the Service Provider or any

Sub-Contractor or any proposed measures of the Service Provider or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

48. TUPE COMPLIANCE ON TERMINATION

48.1 Handover on termination

48.1.1 During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council, and within 15 working days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all personnel wholly or partly engaged in connection with the Services including all employees who may transfer as a consequence of a Relevant Transfer as the Council may request, in particular but not necessarily restricted to any of the following:

- (a) a list of employees employed by the Service Provider who are spending all or part of their working time in connection with the Services;
- (b) a list of agency workers, agents and independent contractors engaged by the Service Provider who are spending all or part of their working time in connection with the Services;
- (c) such information as the Council may request in respect of all or any of the personnel mentioned in the list at (b) above to enable the Council to come to a view as to whether that individual or individuals are employees for the purposes of TUPE;
- (d) such information as the Council may request in respect of all or any of the personnel mentioned in the lists at (a) and (b) above to enable it to come to a view as to whether that individual or

individuals are likely to transfer as a consequence of a Relevant Transfer

- (e) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- (f) in respect of those personnel mentioned in the lists at (a) and (b) as are specified by the Council, their terms and conditions of employment/engagement, their age, salary, date continuous employment/engagement commenced and (if different) the commencement date, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment and such other information concerning those personnel as the Council considers is required to allow it to assess its liability, or the liability of prospective providers of any services which are which are substantially the same as the Services (or any part thereof), in relation to such personnel in the event they transfer as a result of a Relevant Transfer;
- (g) in respect of those personnel mentioned in the lists at (a) and (b) as are specified by the Council employee liability information as defined by Regulation 11(2) of TUPE

48.1.2 The Service Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 48.1.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

48.1.3 Where the Service Provider provides information to the Council in accordance with Clause 48.1.1 above then:

- (a) the Service Provider shall at the same time notify the Council of any respect in which the facts and matters set out in the

information supplied is expected to change between the date on which the information is provided and the date on which the Contract is due to terminate;

- (b) thereafter, the Service Provider shall notify the Council if there are any changes to the information provided other than the expected changes of which the Council was notified in accordance with Clause 48.1.3(a) above.

48.1.4 During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Service Provider shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet any personnel wholly or partly engaged in connection with the Services and their trade union or employee representatives as the Council may reasonably request.

48.1.5 During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed wholly or partly in connection with the Services;
- (b) materially increase or decrease the number of employees employed wholly or partly in connection with the Services; or
- (c) assign or redeploy any employee employed wholly or partly in connection with the Services to other duties unconnected with the Services.
- (d) Assign or redeploy any employee not employed in connection with the Services to duties connected with the Services.

48.2 Indemnities

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

48.3 Sub-contractors

In the event that the Service Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Clause 48 and shall procure that the Sub-Contractor complies with such terms. The Service Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

49. PRESS AND PUBLICITY

49.1 The Council's aim is for the highest standard of presentation of the image of its activities to the public, and to ensure a fair and favourable reputation for its services via effective communication to the media and the public. The Service Provider will be required to comply with the Council's Standards for Public Service, a copy of which can be provided on request.

49.2 All information and publicity concerning the Council's activities, and those of the Service Provider in connection with this Contract, shall be approved by the Director.

49.3 All enquiries received by the Service Provider from press, radio, television or other media which may concern the Council shall be referred to the Director for attention by the Council's Press Office.

49.4 The Service Provider shall not advertise the fact that he is providing professional services to the Council other than with the prior written consent of the Director.

49.5 The Service Provider shall notify the Director well in advance of any activity under this Contract which is likely to achieve publicity, to enable the Council's Press Office to take a positive approach to such activities and deal with them appropriately.

49.6 On no account should the Service Provider use or adapt the Council's corporate logo or image without prior written approval of the Director.

50. ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS

50.1 If requested to do so by the Director, the Service Provider shall provide to the Director all relevant information in connection with any

legal enquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Services or the Service Provider's presence on any Council premises and the Service Provider shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings or hearings.

50.2 Where the Service Provider or any of his employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services or in any way connected with the Services, then the Service Provider shall notify the Director thereof immediately in writing. Such notification shall include all relevant information to enable the Director to fully investigate the matter.

50.3 The Service Provider shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England ("the Ombudsman") in any enquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Services under this Contract.

50.4 If, as a result of such enquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to

the actions or omissions of the Service Provider then (without prejudice to any other rights or remedies available to the Council under this or any other Contract with the Service Provider) the Council shall be entitled to recover from the Service Provider (whether by deduction from any monies due to the Service Provider or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions of the Service Provider.

50.5 In the event of a dispute as to the proportion of the award and costs payable by the Council and the Service Provider pursuant to any finding of the Ombudsman as aforesaid then the parties shall seek to resolve such dispute pursuant to the provisions of Condition 46 hereof.

50.6 Any information provided or assistance rendered by the Service Provider pursuant to the obligations in this Condition 50, in whatever form, shall be provided at no cost to the Council.

51 CUSTOMER CARE

51.1 The Service Provider in the provision of the Service must demonstrate a high standard of customer care including being polite, helpful and courteous at all times.

51.2 The Service Provider shall ensure that its employees, adopt a professional telephone manner and that the telephone is answered promptly and courteously.

51.3 The Service Provider will ensure that all correspondence received from members of the public in connection with the Contract is followed by a written reply within 5 days even if only to confirm that the matter has been resolved.

52. PERFORMANCE AND QUALITY STANDARD

52.1 Performance and quality standards will be set by the Director at the commencement of the Contract based on the provisions of the Conditions, the Service Specification and relevant Council policies or initiatives.

52.2 The Service Provider will maintain records in an approved form to enable his performance to be monitored and annual reviews will be carried out by the Director and the Service Provider. Reviews will not only cover the Service Provider's performance but will be aimed at continually developing and improving the level and range of performance targets and standards. The Service Provider shall attend meetings and provide information as necessary in connection with the reviews.

53. COMPLAINTS

53.1 At the commencement of the Contract the Service Provider shall set up a clearly defined complaints procedure (to be approved by the Director) and agreed performance measures and monitoring systems to enable the number and types of complaints to be checked. Complaints procedures should clearly record the type of work involved, the nature of the complaint, the action taken in response and relevant dates. Such records shall be kept available for inspection by the client at all reasonable times.

53.2 The Service Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner and they should be promptly be replied to within a maximum of 5 working days. The Service Provider shall notify the Director forthwith in writing of all complaints received and the steps taken in response thereto.

54. EMPLOYEES

54.1 Subject to Condition 54.2 reference to employees of the Service Provider shall be deemed to include the Service Provider's agents and authorised sub-contractors unless the context otherwise requires;

54.2 for the purposes of Conditions 47 and 48 "employee" means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services.

55. CONTRACTS (RIGHTS OF THIRD PARTIES)

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

56. CONTRACT EXECUTION COSTS

56.1 Each party shall bear its own costs of and incidental to the preparation and execution of this Contract.

57. TIME

57.1 Reference to time shall be construed, during the period of summer time, to be British Summer Time and otherwise to be Greenwich Mean Time or as may be required or stipulated by statute.

58. LAW

58.1 The Contract shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

59. LEGISLATION

59.1 Reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, or the like shall be deemed to include a reference to any amendment or re-enactment of the same and shall include all Codes of Guidance and any other supplemental circulars or guidance made or issued pursuant thereto.

60. INTERPRETATION ACT

60.1 Section 6 of the Interpretation Act 1978 shall apply to the Contract and words importing individuals shall be treated as importing Corporations and vice versa. Masculine includes the feminine and the singular includes the plural and vice versa.

61. HEADINGS

61.1 Headings in the document are for ease of reference only and shall not affect the construction of the Contract.

IN WITNESS whereof the parties have executed this Contract as a **DEED** the day and year first before written

THE COMMON SEAL of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY
was hereunto affixed by order

Authorised Officer

**EXECUTED AS A DEED by
WING PARKING LIMITED
Acting by a Director and its Company Secretary/two Directors**

.....
Director

.....
Director/Company Secretary

(delete as applicable)

LIST OF SCHEDULES

SCHEDULE 1 – Details of Authorised Officer and Contract Manager

SCHEDULE 2 – Service Specification

SCHEDULE 3 – The Designated Estates

SCHEDULE 4 – The Service Provider’s Method Statement

SCHEDULE 5 – Schedule of Rates

SCHEDULE 6 –Service Provider’s Responses to ITT Questions

SCHEDULE I

AUTHORISED OFFICER & CONTRACT MANAGER'S DETAILS

SCHEDULE 2
SERVICE SPECIFICATION

SCHEDULE 3
THE DESIGNATED ESTATES

SCHEDULE 4
SERVICE PROVIDERS METHOD STATEMENT

SCHEDULE 5
SCHEDULE OF RATES

SCHEDULE 6

SERVICE PROVIDER'S RESPONSES TO ITT QUESTIONS

