

FORM OF CONTRACT

**FOR THE PROVISION OF INDEPENDENT PROFESSIONAL
ADVOCACY SERVICES FOR OLDER PEOPLE, FOR ADULTS WITH
LEARNING DISABILITIES, MENTAL HEALTH PROBLEMS (NOT IN
CARE OF MENTAL HEALTH SERVICE), PHYSICAL AND SENSORY
NEEDS AND SUBSTANCE MISUSE PROBLEMS AND FOR THE
PROVISION OF INDEPENDENT MENTAL CAPACITY ADVOCACY
SERVICES, SELF ADVOCACY SERVICES FOR ADULTS WITH
LEARNING DISABILITIES AND RELEVANT PERSON'S
REPRESENTATIVES
(CONTRACTS 1 TO 8)**

THIS CONTRACT is made the 2nd day of July 2010

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH of
The Town Hall, Wandsworth High Street, London SW18 2PU ("the Council") of the one
part and

SPEAKING UP trading as Advocacy Partners Speaking Up a company registered in
England and Wales (company no. 03798884) and a registered charity (charity no. 1076630)
with its registered office situated at Mount Pleasant House, Huntington Road, Cambridge,
Cambridgeshire CB3 0RN ("the Contractor") of the other part.

WHEREAS:

- (1) the Council wishes to have performed the Services set out in the Conditions and the Schedules of this Contract; and
- (2) the Contractor is willing to perform such Services in accordance with the provisions of and subject to the terms of the Conditions and the Schedules.

NOW IT IS AGREED between the Council and the Contractor as follows:

- A. This Contract (consisting of the Tender and the Conditions and the Schedules inclusive) constitutes the sole contract or agreement between the Council and the Contractor for the performance by the Contractor of the Services set out in the Conditions and the Schedules.
- B. The Contractor shall perform the Services set out in the Conditions and the Schedules in accordance with the Conditions and to the satisfaction of the Council for the Contract Period commencing on the Commencement Date and terminating on the Termination Date.
- C. So long as the Contractor shall continue to perform the Services set out in the Conditions and the Schedules in accordance with the Conditions and to the satisfaction of the Council, the Council shall make to the Contractor the payments provided for by this 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 WANDSWORTH** was affixed to this **DEED**
BY ORDER:

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)
)

Authorised Officer:

FOR DIRECTOR OF ADMINISTRATION

Seal Register No: 104046

EXECUTED as a DEED
by **SPEAKING UP** trading as Advocacy
Partners Speaking Up acting by:

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)
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Director:

Director/Secretary:

**CONTRACT FOR THE PROVISION OF INDEPENDENT PROFESSIONAL ADVOCACY
SERVICE FOR OLDER PEOPLE, FOR ADULTS WITH LEARNING DISABILITIES,
MENTAL HEALTH PROBLEMS (NOT IN CARE OF MENTAL HEALTH SERVICE),
PHYSICAL AND SENSORY NEEDS AND SUBSTANCE MISUSE PROBLEMS AND FOR
THE PROVISION OF INDEPENDENT MENTAL CAPACITY ADVOCACY SERVICES,
SELF ADVOCACY SERVICES FOR ADULTS WITH LEARNING DISABILITIES AND
RELEVANT PERSON'S REPRESENTATIVES (CONTRACTS 1 - 8)**

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CONTRACT FOR THE PROVISION OF INDEPENDENT PROFESSIONAL ADVOCACY SERVICE FOR OLDER PEOPLE, FOR ADULTS WITH LEARNING DISABILITIES, MENTAL HEALTH PROBLEMS (NOT IN CARE OF MENTAL HEALTH SERVICE), PHYSICAL AND SENSORY NEEDS AND SUBSTANCE MISUSE PROBLEMS AND FOR THE PROVISION OF INDEPENDENT MENTAL CAPACITY ADVOCACY SERVICES, SELF ADVOCACY SERVICES FOR ADULTS WITH LEARNING DISABILITIES AND RELEVANT PERSON'S REPRESENTATIVES (CONTRACTS 1 - 8)

THE CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Annual Sum"** means the annual sum for each Year of the Contract Period (subject to the Services having been provided) payable by the Council to the Contractor as set out in Schedule 2 and as calculated in accordance with the provisions of the Contract.
- 1.2 **"Authorised Officer"** means the Council's Director of Adult Social Services or such other officer as the Council may appoint hereafter and such representatives as he/she may nominate in writing for general or specific purposes from time to time.
- 1.3 **"Best Value Duty"** means the duty imposed on the Council by Section 3 of the Local Government Act 1999.
- 1.4 **"Business Continuity Plan"** means a business continuity plan maintained in accordance with the Civil Contingencies Act 2004.
- 1.5 **"Commencement Date"** means the 1st day of April 2010, which is to be the commencement date for the Contractor's performance of the Services.
- 1.6 **"Conditions"** means these Conditions and any modification thereof duly made in accordance with their provisions.
- 1.7 **"Contract"** means this contract concluded between the Council and the Contractor including the Conditions, the Schedules and all other documents that are incorporated or referred to herein.
- 1.8 **"Contract 1"** means that part of this Contract for the provision of independent professional advocacy services for older people including the Conditions, part 1 of Schedule 1, Schedule 2, part 1 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.9 **"Contract 2"** means that part of this Contract for the provision of independent professional advocacy services for adults with learning disabilities including the Conditions, part 1 of Schedule 1, Schedule 2, part 1 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.10 **"Contract 3"** means that part of this Contract for the provision of independent professional advocacy services for adults with mental health problems (not in the care of mental health service) including the Conditions, part 1 of Schedule 1, Schedule 2, part 1 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.

- 1.11 **"Contract 4"** means that part of this Contract for the provision of independent professional advocacy services for adults with physical and sensory needs including the Conditions, part 1 of Schedule 1, Schedule 2, part 1 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.12 **"Contract 5"** means that part of this Contract for the provision of independent professional advocacy services for adults with substance misuse problems including the Conditions, part 1 of Schedule 1, Schedule 2, part 1 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.13 **"Contract 6"** means that part of this Contract for the provision of independent mental capacity advocacy services including the Conditions, part 2 of Schedule 1, Schedule 2, part 2 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.14 **"Contract 7"** means that part of this Contract for the provision of self advocacy services for adults with learning disabilities including the Conditions, part 3 of Schedule 1, Schedule 2, part 3 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.15 **"Contract 8"** means that part of this Contract for the provision of relevant person's representatives including the Conditions, part 4 of Schedule 1, Schedule 2, part 4 of Schedule 3, Schedules 4 to 10 inclusive and all other documents that are incorporate or referred to herein.
- 1.16 **"Contract Documents"** means the Contract and any other documents forming part of this Contract.
- 1.17 **"Contract Manager"** means a person appointed by the Contractor in accordance with Condition 14.
- 1.18 **"Contract Period"** means the period commencing on the Commencement Date and terminating on the Termination Date.
- 1.19 **"Contract Standard"** means in relation to the performance of any part of the Services, a standard of performance:
- (a) in accordance with good professional practice and in a manner free from dishonesty and corruption;
 - (b) in accordance with all relevant provisions of the Conditions and the Schedules including the Method Statement;
 - (c) in compliance with all relevant Acts of Parliament, statutory regulations or orders and Codes of Practice in operation from time to time including but without prejudice to the generality the general duty to secure continuous improvement having regard to a combination of economy, efficiency and effectiveness pursuant to Section 3 of the Local Government Act 1999;
 - (d) in accordance with the Standing Orders and Scheme of Delegations to Chief Officers of the Council;
 - (e) in co-operation with the Council and its other relevant contractors; and
 - (f) to the reasonable satisfaction of the Council.

- 1.20 **"Contractor"** means the person, persons or company described in the Form of Contract as the Contractor.
- 1.21 **"Council"** means the Council of the London Borough of Wandsworth, any successor authority and any body to which all or part of the functions of the Council of the London Borough of Wandsworth may lawfully be transferred.
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- 1.22 **"Council Data"** means:
- (a) the information, data, text, diagrams, images or sounds (together with any database made up of any of these) or any other materials (in any medium) which are embodied in any electronic, magnetic, optical, tangible or portable media, and which are:
 - (i) supplied or in respect of which access is granted to the Contractor by or on behalf of the Council; or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract;
 - (b) any Personal Data for which the Council is the Data Controller, as defined in the Data Protection Act 1998; and
 - (c) any other data, information or materials (in any medium) which come into the possession of the Contractor in connection with or as a result of the provision of the Services including without limitation any data, information or materials held or stored in the Contractor's computer systems.
- 1.23 **"Detailed Rates"** means the detailed rates (subject to the Services having been provided) payable by the Council to the Contractor as set out in Schedule 2 and as calculated in accordance with the provisions of the Contract.
- 1.24 **"Expert"** means an expert appointed pursuant to Condition 38.
- 1.25 **"Employees"** means all persons engaged by the Contractor in the provision of the Services including personnel, staff and the employees of the Contractor and shall include the Contractor's agents and authorised sub-contractors and **"Employee"** means any one of the Employees.
- 1.26 **"Equipment"** applies to all fixed and movable items of equipment which the Contractor employs to deliver the Services.
- 1.27 **"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 Contractor either before or during this Contract and any Codes of Guidance prepared by the Contractor.
- 1.28 **"IMCA"** means independent mental capacity advocacy as detailed in the Specification.
- 1.29 **"Index"** means the Index of Retail Prices for "All Items (excluding mortgage interest)" (however such index might be termed) issued by the Department of Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such Index such other Index as the Authorised Officer may reasonably specify.
- 1.30 **"Method Statement"** means the statement annexed to this Contract at Schedule 3 detailing the Contractor's proposals for the performance of the Services. In the event of any inconsistency between the Method Statement and the Conditions and other Schedules, then the Conditions and other Schedules shall prevail.

- 1.31 **"Payment Dates"** means 1st April, 1st July, 1st October and 1st January in each year during the Contract Period.
- 1.32 **"Performance Returns"** means the performance returns specified at Schedule 1 or as specified by the Council from time to time.
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- 1.33 **"Quarterly Payments"** means one quarter of the Annual Sum in each Year of the Contract Period.
- 1.34 **"Schedule"** refers to the Schedules to this Contract and "Schedule" means any one or other of the Schedules.
- 1.35 **"Services"** means the Services set out in the Specification and any modifications thereof under Condition 10.
- 1.36 **"Specification"** means all the documents forming Schedule 1 and any modifications to those documents under Condition 10.
- 1.37 **"Tender"** means the Contractor's tender to perform the Services accepted by the Council.
- 1.38 **"Termination Date"** means the 31st day of March 2013.
- 1.39 **"Time"** shall be construed during the period of summer time to be British Summer Time or otherwise to be Greenwich Mean Time or as may be required or stipulated by statute.
- 1.40 **"VAT"** means Value Added Tax.
- 1.41 **"Working Day"** means any day of the week from Monday to Friday inclusive but excluding all Public Holidays and such other days if any as the Authorised Officer may notify to the Contractor in writing as days during which Council offices are closed to the public.
- 1.42 **"Year"** means a period of twelve consecutive calendar months or part thereof commencing on the Commencement Date falling within the Contract Period.
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- 1.43 Reference to personnel and Employees shall be deemed to include the Contractor's partners, directors and employees and also the Contractor's agents and sub-contractors and their personnel and employees, unless the context otherwise requires.

2. SUFFICIENCY OF INFORMATION

- 2.1 The Council shall exercise reasonable care and skill with respect to its preparation of information supplied to the Contractor. The Contractor shall take all reasonable steps necessary to satisfy itself by its own investigations at its own expense with regard to the accuracy of such information and shall be deemed to have done so. Notwithstanding the foregoing, neither the Council nor any of its Employees makes any representations or warranties as to the accuracy of all information supplied by the Council and any information provided by a third party and no claim against the Council will be allowed, whether in contract or tort, under the Misrepresentation Act 1967, or otherwise on the grounds of any inaccuracy with respect to such information supplied to the Contractor.
- 2.2 The Contractor shall obtain for itself all information necessary to enable it to ascertain and assess all risks, contingencies and other circumstances that might reasonably

influence or affect the Tender, and to have made full allowance for any changes that may occur between the date of the Tender and the Commencement Date.

- 2.3 Except as provided in Condition 10 no additional payment will be made to the Contractor by reason of any inaccuracy or change in the information provided whether occurring before or after the date of the Tender.

3. DOCUMENTS MUTUALLY EXPLANATORY

- 3.1 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 Authorised Officer who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions.
- 3.2 In the event of any inconsistency between the Conditions and any provision in any of the Schedules, the Conditions shall prevail.

4. VARIATION OF CONDITIONS

- 4.1 Without prejudice to the rights and powers of the Authorised Officer under this Contract and notwithstanding any other of these Conditions, no deletion from, addition to or variation of the Conditions shall be valid or of any effect unless agreed in writing and signed on behalf of the Council by the Authorised Officer (or by such other officer as the Authorised Officer may in writing appoint) and on behalf of the Contractor by a duly authorised representative of the Contractor.

5. COPYRIGHT

- 5.1 Copyright in this Contract shall vest in the Council but the Contractor may obtain or make at its own expense any further copies required for use by the Contractor in the performance of the Services.
- 5.2 Copyright in any documentation, articles or any written works produced by the Contractor in, or in connection with, the performance of the Services shall vest in the Council.
- 5.3 Except as permitted under current legislation, no part of this work may be photocopied, stored in a retrieval system, published, performed in public, adapted, broadcast, transmitted, recorded or reproduced in any form or by any means, without the prior permission of the Council, save as permitted under Condition 5.1.

6. THE AUTHORISED OFFICER

- 6.1 Prior to the Commencement Date the Council shall give notice to the Contractor of the name and designation of the Authorised Officer and shall forthwith give notice to the Contractor of any replacement of the Authorised Officer from time to time during the Contract Period or if any person ceases to be the Authorised Officer.
- 6.2 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. Immediately any such appointment is made, the Authorised Officer shall give written notice thereof to the Contractor.
- 6.3 The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Authorised Officer. The Contractor shall in no circumstances question

the existence or extent of the authority of any person notified to the Contractor (whether orally or in writing) to be a replacement Authorised Officer, a deputy, assistant, representative or agent of the Authorised Officer.

7. CONTRACT PERIOD

- 7.1 This Contract shall subsist for the Contract Period, subject to Condition 7.2 and subject to earlier termination in whole or in part in accordance with the terms of the Contract.
- 7.2 Subject to the mutual agreement of both parties prior to the Termination Date, the Contract Period shall be extended for a further two years.
- 7.3 The Contractor shall have executed the Contract as a Deed prior to the Commencement Date and should the Contractor fail to do so within 14 days of the Commencement Date then the Council shall be entitled to terminate the Contract in accordance with the provisions of Condition 33.

8. PERFORMANCE OF SERVICES

- 8.1 During the Contract Period the Contractor shall perform the Services (and any modifications thereof authorised under Condition 10 in a proper skilful and professional manner to the Contract Standard in accordance with the Method Statement and shall at all times carry out the written instructions issued by the Authorised Officer in connection with this Contract. The Contractor shall have a policy of continuous improvement in relation to the performance of the Services and shall be able to show at any time during the Contract Period evidence of the practices designed to achieve such improvement.
- 8.2 Should the Contractor require any further instruction or information for, or in connection with, the performance of the Services, the Contractor shall make a written application to the Authorised Officer 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 Contractor 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 Authorised Officer to respond to the application.
- 8.3 The Contractor shall, before commencing performance of the Services, submit to the Authorised Officer for approval, written details of clear procedures for providing the Services including, without limitation, a Business Continuity Plan detailing procedures for providing the Services in the event of an emergency. The Contractor shall throughout the Contract Period:
- (a) maintain a Business Continuity Plan which has been approved by the Authorised Officer from time to time; the Contractor shall test its Business Continuity Plan on a regular basis (and in any event not less than once every 12 months) and shall send to the Council a written report summarising the results of each test and shall promptly implement any actions or remedial measures which the Council reasonably considers to be necessary as a result of those tests. The Council may require the Contractor to conduct additional tests of its Business Continuity Plan where the Council considers it necessary, including without limitation where there has been any change to the Services or any underlying business processes, or on the occurrence of any event that may increase the likelihood of the need to implement the Business Continuity Plan. If the Council requires the Contractor to perform an additional test, it shall give the Contractor written notice and the Contractor

shall conduct the test in accordance with the Council's requirements. The Council shall bear the Contractor's costs of any such additional test unless the Business Continuity Plan fails the additional test in which case the Contractor shall bear the costs of the failed test;

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- (b) at the Council's request, participate in test(s) of the Council's Business Continuity Plan having first been given at least one month's written notice;
 - (c) maintain all documentation and files in a professional manner;
 - (d) submit to the Authorised Officer regular written progress and monitoring reports and such statistical information as the Authorised Officer may require from time to time; and
 - (e) comply fully with all procedures approved by the Authorised Officer for the performance of the Services, which procedures may be varied only with the prior written approval of the Authorised Officer, such approval not to be unreasonably withheld.
- 8.4 Without prejudice to each and every remedy of the Council in the event of a failure of the Contractor to perform any of its obligations in accordance with the terms of this Contract, the Contractor shall at the Commencement Date initiate, and throughout the Contract Period maintain systems designed to ensure that the Services are carried out to the Contract Standard. Such systems shall be operated by the Contract Manager for and on behalf of the Contractor and shall not be unreasonably withheld, before the Contractor commences to provide the Services.
- 8.5 The Contractor shall ensure that, on the occasions when this may be required, appropriate staff members attend, inform and advise meetings, as required by the Authorised Officer. Such meetings will usually take place between 9.00 am and 5.00 pm on Working Days and, unless otherwise agreed by the Authorised Officer, all such meetings shall take place on Council premises. The estimated frequency of such meetings is set out in the Specification or shall be as specified by the Authorised Officer from time to time. The Council shall be under no obligation to provide parking facilities for the Contractor's vehicles at the Town Hall or any other venue at which meetings may be held.
- 8.6 The Contractor shall, as soon as reasonably practicable, provide the Authorised Officer with any information relating to the performance of the Services which the Authorised Officer may reasonably request.
- 8.7 The Contractor shall throughout the Contract Period comply with all relevant professional requirements including in particular statute and common law, statutory instruments, judicial decisions and European Community directives. The Contractor shall forthwith inform the Authorised Officer if these are likely to give rise to any substantial opportunities or benefit to the Council or any substantial difficulties.
- 8.8 The Contractor shall throughout the Contract Period maintain a communications system acceptable to the Authorised Officer.
- 8.9 The Contractor shall throughout the Contract Period perform the Services in a manner consistent with the principles of the Advocacy Charter set out at Schedule 8 and the Code of Practice for Advocates set out at Schedule 9. In accordance with the terms of this Contract including without limitation paragraphs 12.1, 15.1 and 17.3 of Schedule 1, the Contractor shall ensure client confidentiality and its independence.

- 8.10 Unless otherwise instructed by the Authorised Officer the Contractor shall ensure the delivery of all correspondence and documents to the Authorised Officer either by hand, facsimile transmission, electronic mail, the Document Exchange system or by First Class Post.
- 8.11 The operation of the system maintained by the Contractor in accordance with the Method Statement shall not prejudice any rights or remedies the Council may have in respect of any failure by the Contractor to perform its obligations in accordance with the terms and conditions of the Contract.
- 8.12 In the event of the Contractor being unable to perform the Services or any part thereof, the Contractor shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration. Nothing in this Condition 8.12 shall in any way alter, modify, relieve or in any other way vary the Contractor's obligation to provide the Services or the Council's powers under other Conditions.
- 8.13 Instructions from the Authorised Officer which are posted to the Contractor shall be sent by First Class Post or by means of the Document Exchange system and shall be deemed to have been received by the Contractor on the following Working Day.
- 8.14 Subject to the Contractor's duty of confidentiality to its clients, the Contractor shall at all times during the provision of the Services allow the Authorised Officer (and such persons as may from time to time be nominated by the Authorised Officer) access upon reasonable notice (except where it is deemed reasonably appropriate by the Authorised Officer to gain immediate access) to:
- (a) all work places of the Contractor for the purpose of inspecting work being performed pursuant to the provision of the Services;
 - (b) all work places of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Services;
 - (c) any personnel of the Contractor for the purposes of interviewing such persons in connection with the provision of the Services; and
 - (d) technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services; and
 - (e) attend any Business Continuity Plan test undertaken by the Contractor.
- 8.15 If during the Contract Period the Authorised Officer and/or the Contractor (subject to the prior written consent of the Authorised Officer) modifies the methods employed by the Contractor to carry out the Services such that in the opinion of the Authorised Officer savings are made by the Contractor in the cost of providing the Services then the amount of such savings as shall be notified by the Contractor to the Authorised Officer and approved by the Authorised Officer shall be divided equally between the Council and the Contractor. In the event of a dispute, this matter shall be determined by the Expert in accordance with Condition 38.

9. PERFORMANCE REVIEW AND BEST VALUE

- 9.1 The Contractor shall ensure that the Contract Manager is available to meet the Authorised Officer, if so required, at least once every three months during the Contract Period, for a sufficient amount of time as is reasonably decided by the Authorised Officer (at no additional cost) to enable the Council to monitor and review

the Contractor's performance under this Contract. Additional meetings (also at no additional cost) may reasonably be required by the Authorised Officer including without limitation if, in the Authorised Officer's opinion, the Contract is not running satisfactorily. The Contract Manager shall bring to these meetings such files and reports as may be requested by the Authorised Officer together with such management information as the Contractor is obliged to retain for the information of the Council under this Contract.

- 9.2 The Authorised Officer may introduce random sampling to determine the performance of the Services. The Authorised Officer reserves the right to employ his own representatives or agents to undertake such random sampling, and the Contractor shall afford all reasonable access and co-operation for the Authorised Officer, his representatives or agents in this respect.
- 9.3 The Contractor acknowledges that the Council shall prepare a Business Continuity Plan and agrees that in so doing the Council may take into account and utilise any reports, information, files, data minutes, electronic or other forms of records compiled, supplied or obtained in connection with the performance of the Services.
- 9.4 The Authorised Officer may each year submit to the Contractor completed questionnaires relating to the Contractor's performance under this Contract and the responses contained in the completed questionnaires shall be retained by the Contractor 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 Condition 9.1.
- 9.5 In the event of the Authorised Officer requesting information from the Contractor in connection with any Council report including without limitation the Corporate Performance Plans and Business Continuity Plans, the Authorised Officer shall notify the Contractor of the dates by which it is required. Provided such notice is reasonable the Contractor shall provide the information requested by the dates stipulated.
- 9.6 The Contractor acknowledges that (a) the Council is subject to the Best Value Duty; and (b) the relevant provisions of this Condition 9, Condition 18 (Premises) and 23 (Records) shall assist the Council in discharging its Best Value Duty in relation to the Contractor's performance of the Services.
- 9.7 To the full extent of its obligations under this Contract, the Contractor shall undertake or refrain from undertaking such actions as the Council may reasonably request to enable the Council to comply with Part I of the Local Government Act 1999, including but not limited to the making of arrangements to secure continuous improvements in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

10. MODIFICATIONS

- 10.1 The Authorised Officer shall be entitled to issue to the Contractor 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 Authorised Officer 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 Authorised Officer 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 Authorised Officer may reasonably require, provided that such additional services shall be the same as or similar to the Services;
- (d) to perform any such additional works as shall in the opinion of the Authorised Officer be reasonably conducive or otherwise facilitate the performance of the Services. No such additional work shall be undertaken by the Contractor without the prior written approval of the Authorised Officer;
- (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 reasonably required by the Authorised Officer.

10.2 The Council shall use the above powers set out at Condition 10.1 in a manner that is consistent with the Contractor's discharge of its responsibilities under Condition 8.9.

10.3 For the purpose of Condition 11 the valuation of modifications made pursuant to this Condition 10 shall be ascertained by the Authorised Officer in accordance with the following provisions:

- (a) Where part of the Services is omitted from, or ceases to be provided or is varied under the Contract the rates and prices contained in the Detailed Rates at Schedule 2 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 Detailed Rates at Schedule 2 shall (where reasonable) determine the valuation;
- (c) where the modification is not of a 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 Conditions 10.3(a) or 10.3(b) the valuation shall be made at fair rates and prices having due regard where applicable to the rates and prices contained in the Detailed Rates at Schedule 2; and
- (d) where the modification relates to an omission under Condition 10.1(a), the valuation shall not include, and the Council shall not be liable to the Contractor 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.

10.4 This Condition 10 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 Specification. Where such provisions apply, they shall prevail over this Condition 10 insofar as they are inconsistent with it.

11. PAYMENTS

- 11.1 Provided that the Contractor has performed its responsibilities under this Contract and subject to receipt by the Council of satisfactory Performance Returns, the Council shall pay in advance to the Contractor the Quarterly Payment within 30 days of the Payment Dates and upon receipt of a valid tax invoice for the same. ~~All invoices shall detail separately the amount due and payable under each of the Contracts 1 to 8. If the Contract terminates on a day which is not the last day of any quarterly period the Council shall only be obliged to pay for Services actually provided by the Contractor in accordance with the terms of this Contract.~~
- 11.2 The amount payable by the Council to the Contractor under this Contract will not exceed per annum the Annual Sum exclusive of any Value Added Tax (VAT) but inclusive of all fees, expenses, charges and costs incurred in performing the Services. The Council shall pay to the Contractor any VAT properly chargeable on the supply by the Contractor of the Services on receipt of a valid tax invoice.
- 11.3 The Council may deduct from any Quarterly Payment a sum certified by the Council as being deductible (i) by reason of any omission by the Contractor or defective performance by the Contractor for defaults issued under Condition 32 or any other deductions under this Contract; or (ii) where the profile of completed works warrants an adjustment to the equal payment profile show at Condition 11.1 above.
- 11.4 For the second and any subsequent Years of the Contract Period the Detailed Rates and the default deductions for the purposes of this Condition 11 shall be adjusted by a proportion equivalent to the proportionate rise or fall between the Index prevailing for the month prior to the Commencement Date and the month prior to the first and any subsequent anniversaries thereof as the case may be.
- 11.5 Payments due to the Contractor after the Termination Date shall be paid by the Council but such payments shall be dependent on the satisfactory completion of the arrangements for handover required under Condition 34.

12. VALUE ADDED TAX

- 12.1 Sums payable to the Contractor pursuant to this Contract are exclusive of any VAT.
- 12.2 The Council shall pay to the Contractor in the manner hereinafter set out any VAT properly chargeable on the supply by the Contractor of the Services.
- 12.3 The Contractor shall issue to the Council a tax invoice in accordance with Condition 11.1 in such form as may be required by the Value Added Tax Act 1994 ("the Act") or any amendment or re-enactment thereof or by any regulations made thereunder identifying therein:
- (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; and
 - (c) which part or parts of such Services bear a rate of VAT greater than zero, in each case specifying the exact rate chargeable.
- 12.4 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 Contractor to refer to the Commissioners of Customs and Excise ("the Commissioners") any dispute, difference or question in relation to any of the matters specified in Section 83 of the Act.

12.5 If the Contractor refers the matter to the Commissioners (whether or not under Condition 12.4 hereof) and the Council is dissatisfied with their decision on the matter the Contractor shall at the Council's request refer the matter to a Value Added Tax Tribunal ("the Tribunal") by way of appeal under Section 83 of the Act whether the Contractor is so dissatisfied or not. ~~Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under Section 84(3) of the Act, the Council shall pay an equivalent sum to the Contractor. The Council shall further reimburse the Contractor any costs or expenses reasonably and properly incurred in making the reference (less any costs awarded to the Contractor by the Tribunal).~~

12.6 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 Contractor. Should the amounts already paid by the Council by way of monies required to be deposited by the Contractor with the Commissioners under Condition 12.5 exceed the VAT adjudged to be due, the Contractor shall forthwith repay such excess to the Council.

12.7 Notwithstanding any provision to the contrary in these Conditions the Council shall not be obliged to make any further payment to the Contractor if the Contractor is in default in providing the tax invoice referred to in Condition 12.3.

13. ASSIGNMENT AND SUB-CONTRACTING

13.1 Unless any Acts of Parliament, statutory regulations, orders or Codes of Practice state to the contrary, the Council shall not be entitled to assign the benefit of the Contract or any part thereof without the prior written consent of the Contractor which shall not be unreasonably refused withheld or delayed.

13.2 The Contractor shall not:

- (a) assign, transfer or novate the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof; or
- (b) sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Council, which consent shall be in the discretion of the Council and if given, shall not relieve the Contractor of any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, or its employees in all respects as if they were the acts, defaults or neglect of the Contractor and provided always that the Council shall be entitled to require as a condition of giving a consent to sub-contract, a direct deed of warranty and undertaking at the expense of the Contractor from the authorised sub-contractor to provide and carry out the part of the Services comprised in the authorised sub-contract.

13.3 No authorised sub-contractor shall assign, transfer or novate or sub-contract the whole or any part of its sub-contract or the benefit or the advantage of the whole or any part of its sub-contract. The Contractor shall ensure that the terms of any authorised sub-contracting arrangement strictly prohibit any such activity by the sub-contractor.

13.4 Notwithstanding the generality of the aforesaid in this Condition 13, in the event of the Contractor approaching the Council with a request to sub-contract the provision of a part of the Contract and/or the Services the Council shall be entitled to require the Contractor to seek such numbers of tenders as the Council stipulates including from a tenderer or tenderers named by the Council and the Contractor shall accept the

responding tenderer which the Council reasonably considers will give the best value for money.

14. CONTRACT MANAGER

- 14.1 The Contractor shall at all times during the Contract Period ensure that a suitably senior and competent person is appointed as the Contract Manager and is thereby empowered to act on behalf of the Contractor for all purposes connected with this Contract. The Contract Manager shall initially be the person proposed by the Contractor at the time of submission of its Tender. The Contractor shall immediately give notice of any subsequent proposed appointments with details of such person's qualifications, experience and training. Any person proposed to be appointed as Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 14.2 The Contractor shall inform the Council of the identity of any person proposed to act for any period as deputy for the Contract Manager before the start of that period. Any person proposed to be authorised to act as deputy for the Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 14.3 The Contract Manager or his appointed deputy shall be the authorised representative of the Contractor and as such is empowered on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager or his deputy shall be deemed to have been given to the Contractor.
- 14.4 The Contractor shall ensure that at all times during the Contract Period that:
- (a) the Contract Manager or his appointed deputy is available to be contacted at all times between 9:00 am and 5:00 pm on each Working Day;
 - (b) there is a telephone number notified to the Authorised Officer in writing at which the Contract Manager or his authorised deputy may in emergencies be contacted at all times; and
 - (c) the Contractor shall liaise and co-operate and ensure that its employees and supervisors shall liaise and co-operate with the Authorised Officer and comply with the Authorised Officer's reasonable requests.
- 14.5 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 Contractor from meeting its contractual obligations and the Council shall advise the Contractor of any action required to be taken by the Contractor in connection with such acts or omissions.

15. PERSONNEL

- 15.1 The Contractor shall at all times ensure that sufficient numbers of personnel are available to provide the Services in accordance with the Specification (including during Employees' holiday or absence through sickness or otherwise).
- 15.2 The Contractor 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 reasonable satisfaction of the Council in the work which they are to perform.

- 15.3 The Contractor shall, prior to the Commencement Date, as part of the Method Statement, provide to the Authorised Officer a list of personnel to be engaged upon the Services, together with details of their qualifications, experience and employment history. The Contractor shall keep this list and details up-to-date during the Contract Period and, when any changes occur, shall immediately send to the Authorised Officer a copy of the updated list and details.
- 15.4 The Contractor 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 convictions. The Contractor shall provide to the Council its policy on employment of people who have criminal convictions and respond to any issues raised by the Council about this policy.
- 15.5 When the Contractor's personnel are working with or alongside children or vulnerable persons,
- 15.5.1 the Contractor shall subject all such personnel (including volunteers) to the Enhanced Disclosure check through the Criminal Records Bureau (CRB). The Contractor shall renew these checks at least every three years and the Authorised officer may verify the same on an annual basis. The Contractor must become a Registered Body with the CRB for the purpose of obtaining these checks and will be responsible for all costs arising out of the process. No personnel will be supplied to carry out the Services prior to a satisfactory check being obtained. The Contractor shall maintain and implement a policy on the employment of people with criminal convictions, which meets the requirements of the Criminal Records Bureau and that has been approved by the Council;
- 15.5.2 such personnel are excepted from the Rehabilitation of Offenders Act 1974 and the Contractor shall ensure that all such personnel have signed a proper declaration disclosing all relevant convictions. The Contractor shall require such personnel to notify them within two weeks of being convicted of any offence at any time. The Contractor shall be required to implement its Council approved policy on employment of people with criminal convictions in relation to any employee who has reported a conviction during employment;
- 15.5.3 the Contractor shall ensure that all such personnel act in accordance with the Council's Inter-Agency Guidelines for their protection detailed at Schedule 6;
- 15.5.4 the Contractor shall ensure that, in the provision of the Services, all such personnel have regard to the need to safeguard and promote the welfare of children; and
- 15.5.5 the Contractor shall, in discharging its obligation in Condition 15.5.4, have regard to the Secretary of State's *Statutory Guidance on Making Arrangements to Safeguard and Promote the Welfare of Children under Section 11 of the Children Act 2004* and any further guidance issued by the Secretary of State pursuant to Section 11 of the Children Act 2004.
- 15.6 The Contractor shall ensure that it, and all personnel involved in providing the Services, act in accordance with the Council's Aggressive Persons Information Sharing Protocol attached at Schedule 7.
- 15.7 The Contractor shall require all personnel that are to be involved in providing the Services to disclose any unspent convictions.

15.8 The Contractor shall be entirely responsible for the engagement and conditions of its Employees including, without limitation, the payment of remuneration.

15.9 With respect to the Contractor's performance of the Services:

15.9.1 the Authorised Officer may, when, following consultation with the Contractor, it has reasonable belief that a disciplinary offence has been committed by a person employed in or about the provision of the Services by the Contractor, to the extent necessary to ensure the safe and acceptable provision of the Services, serve a notice on the Contractor instructing the Contractor to take disciplinary action or other action in relation to or alternatively remove from the provision of the Services any person employed in or about the provision of the Services by the Contractor (which for the avoidance of doubt shall include the Contract Manager or his deputy);

15.9.2 if the Contractor has not objected in writing within five Working Days of the date of the notice referred to in Condition 15.9.1, the Contractor shall take such disciplinary action required by the Contractor's policy or other action or remove such person from the provision of the Services within any time limit agreed by the Authorised Officer;

15.9.3 in the event that the person is removed from the provision of the Services in accordance with Condition 15.9.2, unless the Authorised Officer deems otherwise, the Contractor shall provide a replacement within the time limit agreed by the Authorised Officer;

15.9.4 if the Contractor objects to the Council's notice in accordance with Condition 15.9.2, the parties shall meet in a good faith effort to resolve the difference. Any failure in resolving the difference shall be determined by the Expert in accordance with Condition 38; and

15.9.5 the Council shall in no circumstances be liable either to the Contractor or to such personnel in respect of any cost, expense, claim, proceeding, liability, loss or damage occasioned by such removal.

15.9.6 The Council recognises the Contractor's responsibilities as an employer and the Contractor's employment law duties and will act to the extent reasonably possible except in the event of an emergency in a manner that is consistent with these duties.

15.10 The Contractor and the Employees shall at all times conduct themselves in an appropriate professional manner in accordance with good practice and the rules of professional conduct of their professional bodies. The Contractor shall ensure that, when attending any Council premises or meeting others (including members of the public) in connection with the Services, the Employees shall be well presented and dressed commensurate with the Services being provided and shall carry out their duties and shall conduct themselves in an orderly manner.

15.11 The Contractor shall provide and ensure that all and any of the Employees, who are at any premises of the Council or meeting other persons in the course of the provision of the Services, shall wear such identification (including photographic identification) as may be specified by the Authorised Officer and shall disclose their identity and status as an Employee of the Contractor and shall not attempt to avoid so doing.

15.12 The Contractor and the Employees shall, if so required, sign in and out when visiting any of the Council's land or buildings.

15.13 All monies or other items of value found by the Contractor's Employees at any Council premises, shall be handed to the officer in charge of the premises, or the Authorised Officer, as soon as reasonably practicable, and a written receipt shall be provided by the Council.

16. SUPERVISION OF PERSONNEL

16.1 The Contractor shall provide sufficient qualified managers and senior staff to ensure that the Employees engaged in the provision of the Services are at all times adequately supervised and properly perform their duties to the Contract Standard. Such managers and senior staff must be sufficiently skilled, trained and instructed with regard to all matters relevant to the Services. The Contractor shall prior to the Commencement Date and throughout the Contract Period keep the Council informed of any changes in such managers and senior staff from time to time.

16.2 All the Employees engaged in and about the provision of the Services shall be under the control and direction of the Contractor's own managers. The Contractor shall ensure that the Services are provided to the Contract Standard, including completeness of coverage and consistency of quality.

17. HEALTH AND SAFETY AT WORK

17.1 The Contractor shall at all times comply with the following health and safety requirements ("the H&S Requirements"), and all subsequent amendments thereof, and all such new requirements as may come into force or being:

- (a) The HSWA;
- (b) The Management of Health and Safety at Work Regulations 1999;
- (c) The Construction (Design and Management) Regulations 2007;
- (d) The Food and Environment Protection Act 1985;
- (e) The Electricity at Work Regulations 1989;
- (f) The Workplace (Health, Safety and Welfare) Regulations 1992;
- (g) All other Acts, Regulations, Orders or rules of law pertaining to health and safety;
- (h) Approved Codes of Practice and Guidance Notes Issued by the Health and Safety Executive; and
- (i) The Council's own Health and Safety policy.

17.2 The Contractor shall have in place throughout the Contract Period adequate and appropriate organisational arrangements in accordance with its written policy to safeguard the health, safety and welfare of its Employees and, to the extent applicable to its activity, that of Council's employees and any other person affected, including members of the public.

- 17.3 The Contractor shall provide the Council with satisfactory evidence of the policy and arrangements, copies of risk assessments relating to this or similar work stating the risk control measures employed and any other health and safety documentation or information deemed reasonably necessary by the Council prior to and/or during the Contract Period.
- 17.4 For the avoidance of doubt, failure to comply with Conditions 17.1 to 17.3 to the Council's reasonable satisfaction will be considered to be a breach of the Contract and the Council reserves the right to take whatever action is appropriate in the circumstances.
- 17.5 The Contractor shall ensure that all persons who are at work (as defined in the HSWA) in connection with this Contract shall comply with the H&S Requirements. The Contractor shall, at regular intervals, carry out risk assessments, which shall be properly recorded with details of remedial actions and timescales.
- 17.6 If at any time the Authorised Officer reasonably considers that the Contractor has failed to comply in any material respect with the H&S Requirements he/she shall be entitled to do either or both of the following:
- (a) to instruct the Contractor to cease to carry out the Services (or a specified part thereof) either immediately or within a specified period of time; and/or
 - (b) to instruct the Contractor to take specified steps to secure compliance with the H&S Requirements, or to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof.
- 17.7 The Contractor shall inform the Authorised Officer forthwith upon complying with any such instruction given under Condition 17.6 and if the Authorised Officer subsequently confirms in writing that he/she is reasonably satisfied that the Contractor has so complied the Contractor shall recommence to provide the Services.
- 17.8 For the avoidance of doubt, all instructions given and works undertaken in order to secure compliance with this Condition 17 shall be deemed not to require or involve a modification under Condition 10, or under any other provision of this Contract. The Contractor shall not be entitled to any payment either for Services not carried out whilst complying with such an instruction, or for any additional work or accumulation of tasks or variation of the Services arising out of, or in connection with, any such instruction.
- 17.9 The Contractor will indemnify the Council against any breach of the H&S Requirements.
- 17.10 In the event that the Contractor fails or defaults in complying with this Condition 17, then the provisions of Condition 32 (Default in Performance) and Condition 33 (Termination) may be applied without prejudice to any other rights the Council may have against the Contractor. Any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable time spent by the Council's officers as a result of the default or failure, may be deducted from any sums due (or to become due) to the Contractor under this Contract, or shall be recoverable from the Contractor by the Council as a debt.
- 18. PREMISES**
- 18.1 The Contractor shall at all times during the Contract Period provide and maintain such premises as are necessary for the proper performance of the Services to the Contract Standard. The Services may be provided from locations of the Contractor's choice, provided that the Contractor can, at all times, deliver the Services and satisfy

the Authorised Officer that the Services can be provided to the Contract Standard. The premises shall be both safe and secure for users of the Services, the Contractor's staff, Council employees and other persons and the Contractor shall provide adequate security arrangements at such premises to safeguard the Council's assets and interests.

- 18.2 The Contractor shall at all times keep the Authorised Officer informed as to the location from where the Services are being provided.
- 18.3 The Contractor shall at all times permit the Authorised Officer, the Council's internal and external auditors and the Audit Commission for Local Authorities and the National Health Service in England access to all premises occupied for the purposes of this Contract (whether the subject of a lease or licence from the Council or not) and shall ensure that adequate accommodation and facilities are available, as and when required, to facilitate such visits. The Authorised Officer will give reasonable notice of such access requirements except where it is deemed appropriate by the Authorised Officer to gain immediate access, but this will be subject to normal protocol being observed.
- 18.4 The Contractor shall at its own expense put and keep all premises occupied for the purposes of this Contract (whether the subject of a lease or licence from the Council or not) in good and serviceable repair and in such condition as is commensurate with the proper performance by the Contractor of its obligations under this Contract.
- 18.5 The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor, within a stated period, such period to be reasonable in the circumstances, to put any such premises into such condition as is reasonably required by Condition 18.4 above and the Contractor shall immediately upon receipt of such notice cause all necessary action to be carried out to comply with such notice. In the event of the Contractor failing to carry out such action, the Council, having given notice to the Contractor shall be at liberty to have such action carried out by such persons as it may choose and the Contractor shall pay to the Council such sum as the Authorised Officer shall certify to have been the cost of executing such action.
- 19. FURNITURE, EQUIPMENT, SERVICES AND MATERIALS**
- 19.1 The Contractor shall provide, at all times during the Contract Period and at its own expense, all furniture, equipment, services and materials as are necessary for the provision of the Services to the Contract Standard.
- 19.2 The Contractor, at its own expense, shall maintain in a safe, serviceable, and clean condition and replace as necessary all equipment used by the Employees in the provision of the Services at any location.
- 19.3 The Contractor shall be responsible for the security of all equipment and materials used by the Contractor in connection with the provision of the Services and the Council shall be under no liability in respect thereof.
- 19.4 The Contractor shall provide throughout the Contract Period, at its own expense, telephone lines and equipment dedicated to staff employed in the provision of the Services and shall provide and operate facsimile facilities capable of communicating with the Council's offices for the transmission and receipt of document copies.

20. INSTRUCTIONS AND COMMUNICATION

20.1 All instructions from the Authorised Officer with regard to this Contract shall be issued to the Contractor in writing or, if given verbally, shall be confirmed in writing within ten Working Days.

20.2 Instructions from the Authorised Officer will normally be sent by first class post, facsimile, electronic mail or by hand. Unless other means are agreed with the Authorised Officer, the Contractor shall use similar means for his written communication with the Authorised Officer.

20.3 All communications whether oral or written between the Contractor and the Authorised Officer, or between the Contractor and any third party on behalf of the Authorised Officer, shall be conducted in the English language.

21. DATA PROTECTION AND FREEDOM OF INFORMATION ACTS

21.1 The Contractor shall comply with all obligations under the Data Protection Act 1998 and any subsequent statute, orders or regulations insofar as performance of the Services gives rise to obligations there under.

21.2 The Contractor shall provide the Authorised Officer with such information as the Authorised Officer may need to satisfy him/herself that the Contractor is complying with its obligations under the said Data Protection Act 1998 including (but not limited to) a copy of the Contractor's registration under the Data Protection Act 1998.

21.3 The Contractor acknowledges that the Council is subject to obligations under the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR") and any subordinate legislation made under this Act or Regulations from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with its obligations under such legislation.

21.4 The Contractor shall and shall procure that its sub-contractors shall provide the Council with a copy of any requested information under Condition 21.3 within 5 Working Days from the Council's request and to provide all necessary assistance as reasonably requested by the Council to enable it to comply with its obligations under the FOIA or the EIR.

21.5 The Contractor acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, the FOIA, or the EIR disclose information:-

- a) without consulting with the Contractor; or
- b) following consultation with the Contractor and having taken its views into account.

21.6 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time, subject to the Contractor's duties set out in Condition 8.9.

- 21.7 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Condition 21.5.

22. INFORMATION TECHNOLOGY

- 22.1 For the purposes of providing the Services the Contractor may make use of computer systems and equipment of its own choice at its own expense and operate these from locations of its own choice.
- 22.2 The Authorised Officer shall be notified and consulted regarding any and all significant systems and equipment changes which materially affect the functional performance of any systems and the Contractor shall have due regard to any comments that the Authorised Officer may have in respect of such changes. In the event that the Authorised Officer shall have reasonable grounds to disapprove of any suggested change to the systems and equipment, the Contractor shall be instructed not to implement such change.
- 22.3 In relation to any computer systems and equipment used for the purposes of the Services, the Contractor shall ensure that:
- (a) all costs and obligations (including all licence fees, maintenance charges, the development of conversion programs, the production of test files, testing and parallel running) are met; and
 - (b) the systems and equipment are capable of meeting all the relevant requirements of this Contract.
 - (c) it applies a security policy to ensure that Council Data is maintained and accurate and stored safely and confidentially, full written details of this security policy to be made available on demand to the Authorised Officer upon reasonable request at any time throughout the Contract Period;
 - (d) effective communication links are established and operated at the Contractor's expense including all data transfer costs;
- 22.4 The Contractor shall ensure that adequate and secure back-up routines, anti-virus software, re-start procedures, checks for accuracy and security etc. are provided, and that up-to-date back-up copies of all Council Data relating to this Contract are available on a daily basis. The Authorised Officer reserves the right to inspect these at any time, subject to the Contractor's duties set out in Condition 8.9.
- 22.5 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Council may:
- 22.5.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Council Data and the Contractor shall do so as soon as practicable but not later than 2 Working Days; and/or
 - 22.5.2 itself restore or procure the restoration of the Council Data, and the Contractor shall pay to the Council any reasonable expenses incurred in doing so.
- 22.6 Upon receipt or creation by the Contractor of any Council Data and during the collection, processing, storage and transmission by the Contractor of any Council

Data, the Contractor shall take all precautions necessary to preserve the integrity of the Council Data and to prevent any loss or corruption of the Council Data.

- 22.7 At a suitable time during every Working Day, the Contractor shall lodge in a secure place, approved in writing by the Authorised Officer, a copy of all Council Data that is in computer readable forms and formats approved by the Authorised Officer. The Authorised Officer shall have rights of access to, and rights to remove and use in any manner, any such copy at any time having given such reasonable notice as required by the circumstances of each particular case and provided always that there should remain with the Contractor at least one back-up copy at all times. Provided that the latest two copies are at all times lodged in such place, the Contractor may remove earlier copies at any time.
- 22.8 The Contractor shall ensure the protection of all Council Data from unauthorised access, tampering and system failures.
- 22.9 The Contractor shall ensure that Council Data is:
- (a) maintained and accurate; and
 - (b) is held securely by the Contractor in accordance with Condition 23.1 and Condition 26.
- 22.10 All Council Data shall at all times remain the property of the Council, and the Contractor shall carry out all work in a secure environment.

23. RECORDS

- 23.1 Subject to the Contractor's duties under Condition 8.9, the Council shall retain title to all Council Data supplied to or compiled or obtained by the Contractor. The Contractor shall carefully safeguard all Council Data in relation to their security, authenticity, confidentiality and accuracy throughout the Contract Period and either pass all Council Data to the Council or, if so directed by the Authorised Officer, ensure their confidential destruction at the end of the Contract Period or earlier if the Authorised Officer reasonably considers that their lodging with the Contractor is no longer necessary for the fulfilment of the Contract. The return or destruction of such records shall be at the Contractor's expense.
- 23.2 The Contractor shall maintain adequate records, in accordance with best professional practice, of all work carried out in respect of the Services. These records shall be kept in a secure and confidential manner and shall be made available for inspection on demand during normal business hours by the Authorised Officer and/or the Council's internal and/or external auditors as and when they shall require, subject to the Contractor's duties set out in Condition 8.9.
- 23.3 The Contractor shall maintain adequate procedures to reconstruct Council Data that is in computer readable forms swiftly in the event of site disaster or systems failure. The Contractor shall co-operate with the Council and its consultants in any enquiries they may make to be satisfied that such arrangements are adequate and shall comply with any reasonable requirements by the Council in connection with this.
- 23.4 The Contractor shall provide the Authorised Officer, the Council's internal and/or external auditors and the Local Government Ombudsman with full access on demand during normal business hours to all correspondence, records, documentation and files created in the performance of the Services, whether stored on paper, microfiche, computer software or other medium, subject to legal requirements and Condition 8.9.

23.5 The Contractor shall comply with all requests for assistance from the Council in respect of audits and other inspections relating to the Best Value Duty and the performance of the Services.

23.6 The Contractor shall provide whatever assistance the Authorised Officer may reasonably require in exercising any right under this Condition 23 including, but not limited to, giving the Authorised Officer access to the Contractor's premises.

24. CHARGES

24.1 Except where expressly authorised by this Contract or where the Authorised Officer has given his/her express prior written authority or instructions to the contrary, the Contractor shall not make any charges to the other party to any transaction forming part of the Services in respect of any work carried out by the Contractor pursuant to this Contract.

25. ROYALTIES, PATENT RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

25.1 The Contractor shall not in connection with the Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent or patent rights or any other intellectual property rights and the Contractor shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Council may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to patent rights or any other intellectual property rights in respect of any process, article, matter, or thing used, manufactured, supplied or delivered by the Contractor in connection with the Contract.

25.2 All intellectual property rights (this expression used in this Condition 25 includes any patent, patent application, know-how, trademark or name, service mark, design right, registered design, copyright or other similar industrial or commercial right) in all documents and drawings prepared and provided by the Council to the Contractor in connection with the performance of the Services shall remain vested in the Council.

25.3 All intellectual property rights in all documents and drawings prepared by the Contractor in performance of the Contract shall vest in the Council whether or not derived from the documents under Condition 25.2.

25.4 In the event that the documents and materials produced, as referred to in Condition 25.3 shall contain and/or make use of any software not originating from the Contractor, then the Contractor hereby grants the Council an unlimited licence to use and reproduce that part of the documents or material without payment or fee. The Contractor warrants to the Council that it has the authority to grant such a licence to the Council.

26. CONFIDENTIALITY

26.1 The Contractor shall not without the prior written consent of the Authorised Officer during the Contract Period or at any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law), this Contract or any information contained therein or any Council Data, all of which information shall be deemed to be confidential.

26.2 The Contractor shall not and shall ensure that its Employees do not divulge to any third party any information, including but not limited to Council Data, which comes into its or their possession in the course of providing the Services without the prior express written consent of the Authorised Officer.

26.3 ~~If the Contractor shall appoint a sub-contractor with the consent of the Authorised Officer, the Contractor may disclose relevant confidential information to the sub-contractor provided that the sub-contractor gives the Council an undertaking to comply with the confidentiality requirements of the Contract.~~

26.4 The Contractor's obligations as to confidentiality shall survive any termination of this Contract.

26.5 The Contractor 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 Contractor of this Condition 26.

27. PROBITY AND INDUCEMENTS

27.1 The Contractor shall not offer, or give or agree to give, to any person, any gift or consideration of any kind as an Inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Contract, or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person, in relation to this Contract or any other contract with the Council. Nor shall any like act be done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); nor in relation to this Contract or any other contract with the Council shall the Contractor or any other person employed by it or acting on its behalf commit any offence under the Prevention of Corruption Acts 1889 to 1916 or give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

27.2 The Contractor shall not, whether itself or by any partner or director engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money, taking or reward, collection, or charge for any part of the Services other than charges properly approved by the Authorised Officer in accordance with the provision of this Contract.

27.3 The Contractor shall immediately report to the Council's Head of Audit any attempt at bribery, corruption or improper conduct which comes to the Contractor's attention in connection with the Services. Such report shall be made verbally or by facsimile transmission in the first instance, followed by written confirmation. The Contractor shall co-operate with, and provide statements or other evidence required by, the Council, its internal auditors and external auditors, the police or any other competent authority responsible for investigating any possible irregularities connected with this Contract.

27.4 If the Contractor shall become aware of, or suspect (or ought reasonably to have become aware of, or suspected) any irregularity with regard to any transaction involving the Council, the Contractor shall immediately notify details of that irregularity to the Authorised Officer, whether or not the Contractor is currently instructed in the matter concerned.

27.5 The Contractor shall maintain a policy and procedure for "whistle blowing" in accordance with its Method Statement and shall take all reasonable steps to ensure that all of its personnel engaged in the provision of the Services are aware of and encouraged to apply and follow in relevant circumstances such policy and procedure.

28. LIABILITY OF CONTRACTOR

- 28.1 The Contractor shall fully and promptly indemnify the Council against any liability to any person whatsoever, arising out of or connected with any negligent or malicious action or omission of the Contractor in the performance of the Services or this Contract generally, including any default, or any act or omission of any Employees. The Contractor shall be entitled should it so wish to do so to control the defence of any claims made to which it may be liable, including to decide on their settlement.
- 28.2 The Contractor shall fully and promptly indemnify the Council in respect of any damage caused to any land, building or chattel in the ownership, occupation or possession of the Council by any Employee or agent of the Contractor (whether such damage be caused by negligence or in any other way whatsoever).
- 28.3 The Contractor shall fully and promptly indemnify the Council and all persons concerned in respect of any personal injury caused to any employee of the Council or any other person by any Employee or agent of the Contractor (whether such injury be caused by negligence or in any other way whatsoever).
- 28.4 The Contractor shall comply with all legal and statutory requirements applicable to the provision of the Services and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs and expenses whatsoever in respect of any breach by the Contractor of the Contract.
- 28.5 Provided always that Conditions 28.1 to 28.4 inclusive shall not apply in respect of any liability to any person, damage to any land, building or chattel or any personal injury caused solely by the Council's act or omission or breach of this Contract.

29. INSURANCE

- 29.1 The Contractor shall at all times maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure and indemnify the Contractor against liability:
- (a) to the Council and to any employee of the Council;
 - (b) to the employees of the Contractor (Employers Liability Compulsory Insurance Act 1969); and
 - (c) to any other person (Public Liability Insurance).

In respect of Condition 29.1 (a) and (c) the insurance cover shall not be less than £5,000,000 (five million pounds) in respect of any one incident or such greater sum as the Authorised Officer may from time to time reasonably specify or as may be required by law. In respect of Condition 29.1 (b) the insurance cover shall not be less than £10,000,000 (ten million pounds) or such greater sum as may be required by law.

- 29.2 Such insurance shall have the interest of the Council endorsed (or an Indemnity to Principal clause) on the policy and the Contractor shall duly pay all premiums therefor and produce to the Council on request receipts therefor and shall not do or suffer or permit anything to be done which might prejudice the policy.
- 29.3 The Contractor shall upon request by the Authorised Officer disclose to the Authorised Officer all such policies of insurance, cover notes, premium receipts or other documents

as the Authorised Officer may require from time to time and shall, if so requested furnish the Authorised Officer with copies of any such documents.

- 29.4 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Contractor to effect such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may him/herself cause such insurance to be effected whereupon the Contractor shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance.
- 29.5 The Contractor shall at the request of the Authorised Officer, in the places and in a form approved by the Authorised Officer, arrange for notices to be permanently displayed giving information as to how insurance claims in respect thereof may be made.
- 29.6 The Contractor shall deal with any complaints and/or claims received from whatever source in a prompt, courteous and efficient manner. The Contractor shall acknowledge receipt of any claim within seven days of receipt and shall pass full details of any claim to its insurers within 21 days of receipt or within such shorter time as may be required under the terms of the relevant insurance. The Contractor shall keep a written record of all claims received and of the action taken in relation to such claims. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Contractor shall notify the Authorised Officer in writing within seven days of all claims received and of all steps taken in response thereto.
- 29.7 The provisions of Conditions 29.5 and 29.6 are without prejudice to any provisions concerning claims set out in these Conditions or the Schedules.
- 29.8 The Contractor shall ensure that any sub-contractors of the Contractor maintain like insurance cover to that required to be maintained by the Contractor under this Contract and such other insurance cover as may from time to time be reasonably required by the Council.

30. PROFESSIONAL INDEMNITY INSURANCE

- 30.1 Without prejudice to its liability to indemnify the Council under any provision of this Contract, the Contractor shall throughout the Contract Period maintain, with a reputable insurance company as approved by the Council prior to the Commencement Date, such professional indemnity insurances as are necessary to cover any liability which may arise under the Contract or are required by the law and/or the Contractor's professional body. Such insurance cover shall not be less than £2,000,000 (two million pounds) in respect of any one incident and the Contractor shall ensure that full details of the policy are given to the Council with evidence of all premiums having been paid in respect of such policy. The Contractor shall not do or permit to be done anything which would make the insurance cover taken out under this Condition 30.1 void or voidable.
- 30.2 The Contractor shall at least ten Working Days prior to the Commencement Date and thereafter upon request, produce to the Council a copy of the policy effecting the insurances referred to in Condition 30.1 together with documentary evidence that such insurances are properly maintained. Such production shall not serve to limit the liability of the Contractor under this Condition 30 in any way.
- 30.3 The Contractor shall ensure that any sub-contractors of the Contractor maintain like insurance cover to that required to be maintained by the Contractor under this Contract

and such other insurance cover as may from time to time be reasonably required by the Council.

31. LIABILITY OF THE COUNCIL

31.1. Nothing in this Contract excludes or limits the liability of the Council for death or personal injury caused by the Council's negligence or fraudulent misrepresentation.

31.2 The Council shall not be liable to the Contractor for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.

32. DEFAULT IN PERFORMANCE

32.1 If, at any time in the opinion of the Authorised Officer, the Contractor on any occasion shall have committed a breach of this Contract or omitted or failed to perform any part of the Services in the manner and to the standard required by this Contract, the Authorised Officer shall be entitled to serve on the Contractor a notice setting out the breach or the omission or deficiency in the Services ("the Default Notice") and requiring the Contractor to take steps (which may be specified) to remedy the breach or the omission or deficiency and to take steps (which may be specified) to prevent any recurrence of the breach or the omission or deficiency, or similar breaches, omissions or deficiencies. The Contractor shall take all such steps forthwith.

32.2 Where a Default Notice has been served pursuant to Condition 32.1, the Council may also make such deduction from the payment to be made to the Contractor pursuant to Condition 11 as the Council shall reasonably determine by way of compensation in respect of the breach or such of the Services as the Contractor shall have either failed to provide or have provided inadequately. The amount of any such deduction shall be stated within the Default Notice or notified separately to the Contractor. Any dispute over the amount or reasonableness of the deduction shall be referred for determination by the Expert in accordance with Condition 38.

32.3 In the event that the Council serves on the Contractor more than two (2) Default Notices in any four (4) week period during the Contract Period or in the event that the Contractor commits a fundamental breach of Contract 1, 2, 3, 4, 5, 6, 7 or 8, the Council may give notice to the Contractor to be received not later than 28 days after the end of the said period that the Council is exercising one of the following options: -

- (a) Without determining this Contract in whole or in part, provide or cause to be provided other than by the Contractor, such part of the Services as the Authorised Officer may nominate until such time as the Contractor shall have proved to the reasonable satisfaction of the Authorised Officer that such part of the Services will be carried out by the Contractor to the standard required by this Contract; or at the Authorised Officer's option, until such later date as the Authorised Officer may specify as being in his opinion a reasonable date upon which the Contractor will be able to provide such part of the Services; or
- (b) without determining the whole of this Contract, determine part of this Contract in respect of such part of the Services as the Authorised Officer may nominate and thereafter the Authorised Officer may provide, or cause to be provided other than by the Contractor, such part of the Services; or
- (c) terminate this Contract by serving written notice of such termination upon the Contractor.

- 32.4 The Council may charge to the Contractor any costs reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or by a third party in the circumstances set out in Condition 32.3 to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and all or any of the costs thereby incurred may be deducted from any sums due or to become due to the Contractor under this Contract, or may be recoverable from the Contractor 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.

33. TERMINATION

- 33.1 Without prejudice to any other rights and remedies it may possess including its right of termination under Condition 32 above, the Council shall be entitled to give notice to terminate the Contract upon the occurrence of any of the following events or at any time within 28 days of the date when the Council first became aware of such an occurrence. Such notice may take effect immediately, or at such date (not later than 35 days after receipt of the notice) as the notice may specify:
- (a) The Contractor having failed to execute the Contract as a Deed within 14 days of the Commencement Date;
 - (b) The Contractor being in material breach, which is not remedied within a reasonable time or repeatedly failing to meet the Contract Standard as determined by the Council in its reasonable discretion resulting in the Council being deprived of substantially the whole benefit of substantially any aspect of the Contract;
 - (c) The Contractor having been served with written notice under Condition 32.3.
 - (d) The Contractor having failed to perform a substantial part of the Services for a period of seven consecutive days;
 - (e) The Contractor or where applicable any director or partner thereof (i) suffering any distress or process of execution to be levied on its goods; (ii) committing any act of bankruptcy or having a bankruptcy order made against him/her; (iii) entering into (whether an individual or body corporate) any arrangement, agreement of composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986); (iv) having a winding-up order made or (except for the purpose of amalgamations or reconstruction) a resolution passed for voluntary winding-up, or having an application made for the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed, over the whole or any part of his business and/or assets; (v) having a provisional liquidator, receiver or manager of the whole or any part of his business appointed; or (vi) having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.
 - (f) The discovery of a material misrepresentation by the Contractor during the tendering process.
 - (g) If there shall be any change in control (as defined by Section 736 of the Companies Act 1985) of the Contractor or (where the Contractor is a subsidiary company) in its ultimate holding company.

- (h) Any other breach by the Contractor of any of its obligations under this Contract which, in the reasonable opinion of the Council: (1) constitutes a fundamental breach of contract by the Contractor; or (2) is a serious breach that has been repeated or persisted in by the Contractor after receipt by the Contractor of a written warning that the Council may invoke this Condition in respect of the said breach, and after the Contractor has had a reasonable opportunity to prevent such repetition or persistence.

33.2 Upon such termination or upon termination in accordance with Condition 32, in addition to such consequences as are set out in the other provisions of this Contract:

- (a) the Contractor shall be deemed to be in breach of this Contract (apart from termination under Conditions 33.1(e) and 33.1(g));
- (b) the Contractor shall, unless requested otherwise by the Authorised Officer, immediately cease to perform any of the Services;
- (c) apart from termination under Conditions 33.1(e) and 33.1(g), the Contractor shall be liable immediately to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of this Contract by the Contractor;
- (d) apart from termination under Conditions 33.1(e) and 33.1(g), the Contractor shall fully and promptly indemnify and compensate the Council against all loss and damage suffered by the Council by reason of such termination and without prejudice to the generality of this Condition shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract Period to the extent that such cost exceeds sums as would have been lawfully payable to the Contractor for performing such Services (such costs to include but not be limited to all costs of closing out this Contract and entering into new contracts with replacement contractors). The Council shall be at liberty to have such Services performed by any persons (whether or not servants of the Council) as the Council in its entire discretion thinks fit and shall act reasonably but shall be under no obligation to employ the least expensive method of having such Services performed;
- (e) the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under this or any other Contract or to deduct therefrom any sum due from the Contractor to the Council under this or any other Contract;
- (f) The Contractor shall forthwith vacate any Council premises and release and hand over to the Council any and all Council property, including but not limited to equipment, supplies, records and work-in-progress, whether in the form of documents, plans, calculations, drawings, computer data or other material in any medium.
- (g) It is hereby agreed that Conditions 24 (Charges); 26 (Confidentiality); 28 (Liability of Contractor); 29 (Insurance); 30 (Professional Indemnity Insurance); 31 (Liability of the Council); 32 (Default in Performance); 33 (Termination); 34 (Arrangements for Handover on Termination) 38 (Dispute Resolution); 41 (Work In Progress at the End of the Contract Period); 49 (Information on Re-

Tendering) of this Contract shall continue in full force and effect and be enforceable by the Council.

- 33.3 The rights of the Council under this Condition 33 are in addition to and without prejudice to any other rights the Council may have whether against the Contractor directly or pursuant to any guarantee, indemnity, bond or otherwise.

34. ARRANGEMENTS FOR HANDOVER ON TERMINATION

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

- (a) the transition to a successor(s) shall be arranged between the Authorised Officer and the Contractor and the Contractor shall not redeploy within its organisation any person who is employed for over 50% of their time in the provision of the Services without the consent of the Authorised Officer;
- (b) the Contractor shall co-operate fully with the Authorised Officer during the transition (such co-operation to include provision of full access to all Council Data, documents, manuals, working instructions, reports, and any information whether held in electronic or written form, which the Authorised Officer considers necessary to achieve effective transition and subsequent provision of the Services or similar services);
- (c) the Contractor at its own expense shall deliver all records relating to the Services to the Council or to the successor(s) or ensure their confidential destruction in accordance with legal requirements, its duties under Condition 8.9 and in accordance with paragraph 12.1 of Schedule 1 and the Authorised Officer's written instructions;
- (d) the Council shall have the following options:
 - (i) to purchase from the Contractor at a fair market price to be agreed between the parties any equipment and other tangible property which is owned by the Contractor and is used exclusively, or for the greater part, in connection with the provision of the Services being provided under this Contract;
 - (ii) to purchase from the Contractor at a price to be agreed between the parties any other equipment and other tangible property which is owned by the Contractor which is used non-exclusively and for the lesser part in the provision of the Services under this Contract and which the parties may agree;
 - (iii) subject to the term of any such third party agreement, to require the Contractor at no charge (save for the payment by the Council of third party charges with respect to such assignments) to assign to the Council any equipment leases, maintenance or support agreements or other arrangements including without limitation licences for the use of third party software between the Contractor and third parties which relate to equipment or software used exclusively in connection with the provisions of the Services being provided under this Contract; or
 - (iv) to the extent that the Services being supplied by the Contractor to the Council include any Contractor owned proprietary software then such software shall be and remain the property of the Contractor but the