

Dated

4th November

2010

(1) THE COUNCIL OF THE CITY OF STOKE-ON-TRENT

and

(2) VANGUARD CONSULTING LIMITED

DEED OF AGREEMENT

**for the provision of
Training and Service Interventions**

P.A. Hackney
MBA (open), LLB (Hons) LARTPI
Head of Legal Services
PO Box 631
Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1RG

THIS AGREEMENT is made as a Deed on the 4th day of November 2010

BETWEEN

- (1) **THE COUNCIL OF THE CITY OF STOKE-ON-TRENT** of PO Box 631 Civic Centre Glebe Street Stoke-on-Trent ST4 1RG (hereinafter referred to as "the Council"); and
- (2) **VANGUARD CONSULTING LIMITED** whose registered place of business is situated at Villiers House 1 Nelson Street Buckingham MK18 1BU Company No: 02207133 (hereinafter referred to as "Vanguard")

each a "Party" and together the "Parties"

WHEREAS

- (A) The Council wishes to enter into this Agreement with Vanguard for the provision of Systems Thinking Fundamentals Training and two phase one Exemplar Service Interventions (as defined below) in accordance with the terms and conditions set out in this Agreement and as more particularly described in the Specifications which are annexed to and incorporated into this Agreement at Schedules 1 and 2
- (B) The purpose of the service is to assist the Council in improving its performance in respect of the design and management of the Council through the application of different systems and approaches

NOW IT IS HEREBY AGREED as follows:-

1 Definitions and Interpretation

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the meaning given to them below:

"Agreement" means this agreement between the Council and Vanguard consisting of these clauses and any attached Schedules and Appendices

"Approval" means the written consent of the Council

<p>"Confidential Information"</p>	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs properties assets trading practices services developments trade secrets Intellectual Property Rights know-how personnel customers and suppliers of either Party all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and commercially sensitive information</p>
<p>"Default"</p>	<p>means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default act omission negligence or statement of either Party its employees agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other</p>
<p>"Default Notice"</p>	<p>means a notice which sets out the nature of the Default committed whether or not it is a Serious Default what remedial action is required and the timescale within which the remedial action must take place</p>
<p>"Employee"</p>	<p>means all persons employed by Vanguard together with Vanguards servants agents and sub-contractors</p>
<p>"Exemplar Service Interventions"</p>	<p>means the exemplar service interventions as more particularly described in Schedule 2. This Agreement</p>

	relates to two interventions of Phase 1 only, as referred to at page 8 of Schedule 2
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioners Office in relation to such legislation
"Information"	has the same meaning as provided under section 84 of the Freedom of Information Act 2000
"Intellectual Property Rights"	means patents inventions trade marks service marks logos design rights (whether registerable or otherwise) and applications for any of the foregoing; copyright database rights domain names trade or business names moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Persistent Default"	means a Default which Vanguard commits on two or more occasions and which the Council reasonably considers as similar in nature
"Replacement Provider"	means any prospective tenderer or third party provider appointed by the Council from time to time to provide any services which are substantially similar to the Service and which the Council receives in substitution for any part of the Service following the expiry termination or partial termination of the Agreement whether those services are provided by the Council internally and/or by any third party
"Request for Information"	shall have the meaning set out in the FOIA

"Serious Default"	means a default on Vanguard's part which in the Council's reasonable opinion has a material effect on the delivery of the Service
"Service"	means the provision of Systems Thinking Fundamentals Training and Exemplar Service Interventions more particularly described in the Specifications attached hereto
"Specifications"	means the requirements specifications for the provision of the Service attached to this Agreement at Schedules 1 and 2
"Systems Thinking Fundamentals Training"	means the training requirements as more particularly described in Schedule 1
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for domestic business

- 1.2 References to numbered clauses or appendices are to the relevant numbered clauses or appendices in this Agreement;
- 1.3 The headings are included for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- 1.4 References to the singular shall include the plural and references to the masculine shall include the feminine and the neuter and vice versa in each case;
- 1.5 References to a statute statutory instrument regulation order or quality standard shall be construed as a reference to such statute statutory instrument regulation order or quality standard as amended or re-enacted or updated or superseded from time to time;
- 1.6 References to any person shall include natural persons and partnerships firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

- 1.7 In the event of any contradiction or inconsistency between the Specification and any clause hereunder then such clause hereunder shall at all times prevail;
- 1.8 The words "include" "includes" and "including" shall be construed without limitation

2 Contract Period

- 2.1 The period of this Agreement shall be for the indicative timeframes as referred to on page 12 of Schedule 2 and headed "Phase 1 Timeframes and Costs" unless otherwise terminated in accordance with this Agreement ("the Contract Period")
- 2.2 The Contract Period may be extended for any additional period(s) as agreed between the Parties and may cover any such additional services that the Parties agree to, but only in so far as the Agreement relates in Clause 5.2. Any fees or charges in respect of such additional services (if any) shall be agreed between the Parties accordingly.

3 Council's Obligations

Save as otherwise expressly provided the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting party and nothing in the Agreement shall operate as an obligation upon or in any other way fetter or constrain the Council in any other capacity nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to Vanguard

4 Obligations of the Service Provider

- 4.1 Vanguard warrants it is capable of performing the Service in all respects in accordance with the Specifications and this Agreement and has all necessary Employees equipment and experience for this purpose
- 4.2 Vanguard warrants and represents that any Employees assigned to the performance of the Service shall possess and exercise such qualifications skill and experience as are necessary for the proper performance of the Service and shall not remove or replace such persons without prior Approval

- 4.3 Vanguard warrants to the Council that in the performance of the Service and in regard to all documents prepared by Vanguard and all information provided by Vanguard in connection with the Service it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a professional body experienced in carrying out services of the kind envisaged by the Specifications. No enquiry inspection approval sanction comment consent decision or instruction at any time made or given by or on behalf of the Council or any other party in relation to any such document data or information and no failure of the Council or any other party to discern any defect in or omission from any such document data or information shall operate to exclude or limit the obligation of Vanguard to exercise all the reasonable skill care and diligence required by this Clause 4.3
- 4.4 Vanguard shall not without the prior written consent of the Council accept any trade commission discount allowance direct or indirect payment or other consideration from any third party in connection with the performance of the Service
- 4.5 The Council shall have the right after consultation with Vanguard to request the removal of any person engaged in the performance of the Service if in its reasonable opinion the performance or conduct of such person is or has been unsatisfactory
- 4.6 Vanguard shall comply with all reasonable instructions given to it by the Council in relation to the performance of the Service
- 4.7 In the event that Vanguard receives any complaint whether written or oral in respect of the provision of the Service Vanguard shall immediately inform the Council of the particulars of the complaint and shall promptly provide the Council with a copy of the complaint if such complaint is received in writing

5 The Service

- 5.1 Vanguard shall provide the Service during the Contract Period in accordance with the Council's requirements as set out in the Specifications and the terms of this Agreement and in accordance with the law

- 5.2 For the avoidance of doubt, this Agreement is for the provision of the Service contained in Schedule 1 and two of three interventions of Phase 1 Schedule 2 only. This Agreement does NOT include one of the interventions of Phase 1 Schedule 2 which is to be contracted separately with the appropriate company or Phases 2 and 3 of Schedule 2
- 5.3 The Council shall have the power to inspect and examine the performance of the Service at any reasonable time provided that the Council gives reasonable notice to Vanguard at any premises where any part of the Service is being performed
- 5.4 In the event that the Council notifies Vanguard of the Council's reasonably held opinion that any part of the Service does not meet the requirements of the Agreement or differs in any way from those requirements and this is other than as a result of Default or negligence on the part of the Council Vanguard shall at its own expense re-schedule and carry out the Service in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council
- 5.5 Timely provision of the Service shall be of the essence including commencing the provision of the Service within the time agreed or on a specified date
- 5.6 Without prejudice to any other rights and remedies the Council may have pursuant to this Agreement Vanguard shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of Vanguard's delay in the performance of its obligations under the Agreement and which delay Vanguard has failed to remedy following reasonable notice from the Council

6. Contract Sum

- 6.1 The contract sum payable to Vanguard in respect of the proper performance of the Service shall be calculated and paid by the Council in accordance with the provisions of the terms hereunder
- 6.2 Save as otherwise provided hereunder the contract sum is an aggregate total of £139,833.33 for the provision of the Service ("the Contract Sum") and shall include the following:
- (a) Training as per Schedule 1 £6000;

- (b) Scoping as per section 5 of Schedule 2 £18,500; and
- (c) Two Exemplar Service Interventions as per Schedule 2 at £57,666.66 each (total for both being £115,333.33).

- 6.3 The Contract Sum shall be inclusive of all costs expenses and disbursements including but not limited to the leasing or licensing of premises and travel expenses incurred by Vanguard arising out of or in connection with the full and proper performance and completion of the Service, save for accommodation expenses referred to in clause 6.4 below, and the Contract Sum shall not be amended to reflect any increase in such costs expenses and disbursements
- 6.4 In addition to the Contract Sum, the Council shall pay Vanguard its reasonable accommodation expenses incurred in the performance of the Service. Vanguard shall provide an invoice and a report on a monthly basis in respect of such accommodation expenses which shall require the Approval of the Council prior to being paid in accordance with clause 6.7
- 6.5 Payment of the Contract Sum and any additional accommodation expenses referred to in clause 6.4 are subject to the production by Vanguard of an invoice and a report on a monthly basis in a form suitable to the Council. It shall be Vanguard's responsibility to ensure invoices are sent to the Council as the Council will not make payment to Vanguard without receipt of an invoice. All details on every invoice shall be certified by a director of Vanguard as correct and in accordance with records maintained by Vanguard and shall be accompanied by such supporting evidence as the Council may request
- 6.6 If the Council disputes the amount being claimed by Vanguard in accordance with clause 6.5 it shall notify Vanguard of the amount it reasonably believes to be properly due and payable ("the undisputed sum") within 14 days of receiving the invoice. Unless Vanguard notifies the Council within 5 days of receipt of the Council's notice that it disagrees with the undisputed sum the Council shall pay Vanguard and Vanguard shall accept the undisputed sum in full and final settlement of the invoice.
- 6.7 The Council shall remit the sums due to Vanguard monthly in arrears subject to receiving a valid invoice from Vanguard in full compliance with the provisions of clause 6.5 hereto

provided. The Council may (without prejudice to any right or remedy which the Council may have under this Agreement at common law or otherwise) deduct or withhold from payment the amount of any loss damage cost expense liability or claim which the Council has incurred or suffered or will incur or suffer as a consequence of or in connection with any Default by Vanguard in the performance of its obligations under this Agreement

6.8 The Contract Sum and any additional accommodation expenses are exclusive of Value Added Tax which shall be paid by the Council (where chargeable) at the standard rate

6.9 In the event that the Council elects to terminate this Agreement in accordance with the provisions of clauses 21 or 22 hereunder then the Councils liability to remunerate Vanguard shall be limited to such apportioned payment in respect of the work carried out prior to such termination. For the avoidance of doubt Vanguard shall not be entitled to any remuneration in respect of any period subsequent to the date of cessation of this Agreement should the cessation date be earlier than the Completion Date

7 Recovery of Sums Due

7.1 Wherever under the Agreement any sum of money is recoverable from or payable by Vanguard (including any sum which Vanguard is liable to pay to the Council in respect of any breach of the Agreement) the Council may unilaterally deduct that sum from any sum then due or which at any later time may become due to Vanguard under the Agreement or under any other agreement or contract with the Council. Prior to any deduction in payment the Council is required to notify Vanguard and explain the reasons for any deduction

7.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment

8 Mistakes in Information

Vanguard shall be responsible for the accuracy of all documentation and information supplied to the Council by Vanguard in connection with the provision of the Service and

shall pay the Council any extra costs occasioned by any discrepancies errors or omissions therein

9 Conflicts of Interest

- 9.1 Vanguard shall take appropriate steps to ensure that neither it nor any Employee servant agent supplier or sub-contractor is placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of Vanguard or such persons and the duties owed to the Council under the provisions of the Agreement. Vanguard will disclose to the Council full particulars of any such conflict of interest which may arise
- 9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination

10. Fraud

Vanguard shall take all reasonable steps in accordance with good industry practice to prevent any fraudulent activity by Vanguard its Employees (including its shareholders members and directors) and/or any of Vanguard's suppliers in connection with the receipt of monies from the Council. Vanguard shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur

11 Prevention of Corruption

- 11.1 Vanguard shall not offer or give or agree to give to any employee agent servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing refraining from doing or for having done any act in relation to the obtaining or execution of this Agreement or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such contract. The attention of Vanguard is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916

- 11.2 Vanguard warrants that it has not paid commission or agreed to pay any commission to any employee or representative of the Council and that such commission has not been paid on Vanguard's behalf
- 11.3 Where Vanguard or Vanguard's Employees servants sub-contractors suppliers or agents or anyone acting on Vanguard's behalf engages in conduct prohibited by clauses 11.1 or 11.2 in relation to this or any other contract with the Council the Council has the right to:
- (a) terminate this Agreement and recover from Vanguard the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the provision of the Service and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
 - (b) recover in full from Vanguard any other loss sustained by the Council in consequence of any breach of this clause whether or not the Agreement has been terminated

12 Health and Safety

- 12.1 Vanguard shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts orders regulations and codes of practice relating to health and safety which may apply to Vanguard its Employees and other persons working on the premises in the performance of the Agreement
- 12.2 Vanguard shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request

13 Data Protection Act

- 13.1 Vanguard shall ensure that all processing of personal data performed by Vanguard its Employees or agents shall be in accordance with the Data Protection Act 1998 ("DPA") and any order thereunder or amendment thereto
- 13.2 Notwithstanding the general obligation in clause 13.1 where Vanguard is processing personal data as a data processor for the Council (as defined by the DPA) Vanguard shall ensure that it has in place appropriate technical and contractual measures to ensure the

security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of or damage to the personal data) as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

(a) provide the Council with such information as the Council may reasonably require to satisfy itself that Vanguard is complying with its obligations under the DPA;

(b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 13.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA

13.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination

14 Freedom of Information

Vanguard acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with the Council to enable the Council to comply with these Information disclosure requirements at no cost to the Council

15 Confidentiality

15.1 Each Party:-

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement

15.2 The provisions of clause 15.1 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party without restriction as to its disclosure before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory legal or parliamentary obligation placed upon the Party making the disclosure including any requirements for disclosure under the FOIA or the EIR pursuant to clause 14

15.3 Nothing in this clause shall prevent either Party from using any techniques ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights

15.4 The Council shall be entitled to disclose to any Replacement Provider any Confidential Information of Vanguard which relates to the performance of the Agreement by Vanguard. In such circumstances the Council shall authorise the Replacement Provider to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Replacement Provider accepts an obligation of confidence

16 Publicity, Media and Official Enquiries

16.1 Vanguard shall not make reference to the Council on its correspondence letterhead or otherwise published materials other than in the course of the performance of their obligations hereunder and this Agreement shall not operate as a licence to permit the display or otherwise use of the Council's names or of any mark that vests with the Council other than in the course of the performance of Vanguard's obligations hereunder without the prior consent of the Council

- 16.2 Vanguard shall not at any time (either before or after the expiry or termination of this Agreement) issue or publish nor cause to be issued or published any comment or statement in connection with the activities of the Council or the content of the Service without first obtaining prior Approval
- 16.3 The provisions of this clause shall apply during the continuance of the Agreement and for a reasonable time after its expiry or termination

17 Intellectual Property Rights

- 17.1 All Intellectual Property Rights in any reports specifications instructions plans data drawings databases patents patterns models designs or other material generated in connection with the Service shall vest in the Council
- 17.2 For the avoidance of doubt, Vanguard shall retain any pre-existing rights in its own materials and documentation used and provides the Council with a non-exclusive licence to use such materials, books, slides and so forth belonging to Vanguard, subject to the Council adhering to Vanguard's Intellectual Property Rights. Any items as referred to in clause 17.1 above and developed specifically for the Council shall vest in the Council
- 17.3 Vanguard shall obtain Approval before using any material in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. Vanguard shall procure that the owner of the rights grants to the Council a non-exclusive licence or if itself a licensee of those rights shall grant to the Council an authorised sub-licence to use reproduce and maintain the material. Such licence or sub-licence shall be non-exclusive perpetual and irrevocable and shall include the right to sub-license transfer novate or assign to other contracting authorities or to any other third party providing services to the Council and shall be granted at no cost to the Council
- 17.3 At the termination of the Agreement Vanguard shall at the request of the Council immediately return to the Council all materials work or records held including any back-up media

18 Indemnity and Insurance

- 18.1 Vanguard shall be liable for and shall indemnify and keep indemnified the Council against all and any losses suffered or incurred by the Council and claims made against the Council or Vanguard arising directly or indirectly from any defect incorrect statement or omission contained in any report or other information whether written or verbal supplied to the Council by Vanguard in connection with the performance of the Service
- 18.2 Vanguard shall further indemnify and keep indemnified the Council against all and any losses suffered by the Council and claims made against the Council or Vanguard in respect of personal injury to or death of any person whomsoever (including any employee of the Council or Vanguard) and in respect of damage to or loss of any property whatsoever caused by or arising out of or in the course of the performance or any default in respect of the performance of the Service
- 18.3 Without prejudice to the foregoing Vanguard shall maintain insurance with the following limits of indemnity for any one occurrence or series of occurrences arising out of any one event :-
- 18.3.1 Employers' Liability Insurance in respect of Vanguard's Employees in compliance with the Employers' Liability (Compulsory Insurance) Act 1969 and any Order thereunder or amendment thereto to a limit of not less than ten million pounds for each and every claim or such increased amount as may be specified by the Council's risk management advisor from time to time
- 18.3.2 Public Liability Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person (including any employee of the Council or Vanguard) or injury or damage to any property arising out of or in connection with the performance of the Service for a limit of indemnity of not less than five million pounds for each and every claim or such increased amount as may be specified by the Council's risk management advisor from time to time
- 18.3.3 Professional Indemnity Insurance covering Vanguard's liability hereunder and including without prejudice to the generality of the following any act of negligence or contractual default or omission on Vanguard's part or the part of its sub-contractors

and their respective employees for a limit of indemnity of not less than five million pounds for each and every claim or such increased amount as may be specified by the Council's risk management advisor from time to time

Such insurance cover shall be taken out with a well-established insurance provider or underwriter of good repute and Vanguard shall promptly produce for inspection documentary evidence as and when required by the Council that the insurance so required is properly maintained. In the event that Vanguard is or becomes in breach of any obligation or obligations under this Clause 18.3 the Council may at its discretion insure and deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or which shall become due hereunder to Vanguard or recover the said monies from Vanguard as a debt

- 18.4 Vanguard shall immediately upon receipt of a claim made against it under this Agreement notify its insurer of the claim and shall not without prior Approval settle waive or otherwise compromise any actual or anticipated claim
- 18.5 Vanguard shall give immediate written notice to the Council in the event of the cancellation or a material change in the terms of any of the required insurance policies

19 Notices

- 19.1 Any notice required or authorised to be given by either Party under this Agreement to the other Party shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by electronic mail or facsimile transmission to the other Party at the address stated in this Agreement or such other address as may be specified by the Parties by notice to the other from time to time and shall be deemed duly served:
 - 19.1.1 in the case of a notice delivered personally at the time of delivery; or
 - 19.1.2 in the case of a notice sent by first class pre-paid post two clear Working Days after being posted; or
 - 19.1.3 in the case of an electronic mail or facsimile transmission if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case)

that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Working Day

- 19.2 Both Parties shall promptly notify the other upon any change of address or facsimile number occasioned during the Contract Period

20 Default Notices

- 20.1 If the Council suspects that Vanguard has committed a Default the Council shall be entitled to serve a Default Notice upon Vanguard. This will be without prejudice to any other right or remedy which may be available to the Council either under this Agreement or at law
- 20.2 When the Council serves a Default Notice Vanguard shall take such remedial action as is specified in the Default Notice within the timescale set out and at Vanguard's sole cost
- 20.3 If Vanguard fails to complete the remedial action within the specified time detailed in the Default Notice then the Council shall be entitled to suspend the Service until Vanguard has satisfactorily completed the remedial action
- 20.4 The Council may terminate this Agreement with immediate effect in the event that;
- 20.4.1 Vanguard has failed to take steps to rectify a Default within 10 Working Days after the Service has been suspended in accordance with clause 20.3; or
- 20.4.2 Vanguard commits a Persistent Default; or
- 20.4.3 Vanguard has been shown to have committed a Serious Default

21 Termination on Default

- 21.1 In entering into this Agreement the Council has relied on the information provided or representations made by Vanguard and any material misrepresentation therein shall entitle the Council but not unreasonably or vexatiously to rescind the Agreement or at its option to terminate the Agreement
- 21.2 In the event that through any Default of Vanguard data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable Vanguard shall be liable for the cost of reconstitution of that data and shall provide a full

credit in respect of any charge levied for its transmission and shall reimburse the Council for any costs charged in connection with such Default of Vanguard

- 21.3 Vanguard may terminate the Agreement if the Council is in material breach of its obligations to pay undisputed charges by giving the Council 60 Working Days notice specifying the breach and requiring its remedy. Vanguard's right of termination under this clause 21.3 shall not apply to non payment of the charges where such non payment is due to the Council exercising its rights under clause 7.1

22 General Termination

The Council may terminate this Agreement at any time on giving not less than 3 months notice to Vanguard

23 Termination on change of control and insolvency

- 23.1 The Council may terminate this Agreement by notice in writing with immediate effect where Vanguard:

23.1.1 becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal made in respect of its company for a voluntary arrangement for the composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986;

23.1.2 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;

23.1.3 has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

23.1.4 has a provisional liquidator receiver or manager of its business or undertaking duly appointed;

23.1.5 has an administrative receiver as defined in the Insolvency Act 1986 appointed;

23.1.6 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the

- floating charge;
- 23.1.7 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitle the Court to make a winding-up order;
- 23.1.8 any similar event occurs under the law of any other jurisdiction
- 23.2 Vanguard shall notify the Council immediately when any change of control occurs
- 23.3 If Vanguard being an individual shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 the Council shall be entitled to terminate the Agreement by notice to Vanguard with immediate effect

24 Consequences of Termination

Where the Council terminates this Agreement under clause 21 or terminates the provision of any part of the Agreement under that clause and then makes other arrangements for the provision of Service the Council shall be entitled to recover from Vanguard the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period or any extension and the Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 21 no further payments shall be payable by the Council to Vanguard until the Council has established the final cost of making those other arrangements

25 Recovery upon Termination

- 25.1 Termination of this Agreement shall be without prejudice to any rights remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry
- 25.2 At the termination of this Agreement (howsoever arising) Vanguard shall forthwith deliver to the Council upon request all the Council's property (including but not limited to materials documents information and access keys) relating to the Agreement in its

possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Council may recover possession thereof and Vanguard grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of Vanguard or its permitted suppliers or sub-contractors where any such items may be held

- 25.3 At the conclusion of the Agreement (howsoever arising) Vanguard shall provide assistance to the Council and any Replacement Provider appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the Agreement terminates due to Vanguard's default Vanguard shall provide such assistance free of charge. Otherwise the Council shall pay Vanguard's reasonable costs of providing the assistance and Vanguard shall take all reasonable steps to mitigate such costs

26 Force Majeure

- 26.1 In the event that the performance of any obligation under this Agreement is prevented restricted or interfered with by reason of circumstances including but not limited to Act of God fire flood civil disobedience Governmental Acts or regulation or industrial action (other than by the Parties employees) beyond the control of the Party obliged to perform it ("Force Majeure Event") the Party so affected (upon giving prompt notice in writing to the other Party) shall be excused from the performance to the extent of the prevention restriction or interference but the Party so affected shall use all reasonable endeavours to avoid or remove the cause of non-performance and shall continue performance under this Agreement with the utmost dispatch whenever such cause is removed or diminished
- 26.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure Event. If any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of six months

from the first day of the Force Majeure Event either Party may terminate the Agreement by notice in writing with immediate effect

27 Dispute Resolution

- 27.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the commercial director or equivalent of each Party
- 27.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act
- 27.3 If the dispute cannot be resolved by the Parties pursuant to clause 27.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 27.5 unless;
- (a) the Council considers that the dispute is not suitable for resolution by mediation; or
 - (b) Vanguard does not agree to mediation
- 27.4 The performance of the Agreement shall not be suspended cease or be delayed by the reference of a dispute to mediation and Vanguard (or Employee agent supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times
- 27.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator then they shall apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure

- (c) Unless otherwise agreed all negotiations connected with the dispute and any settlement or agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings
- (d) If the Parties reach agreement on the resolution of the dispute the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives
- (e) Failing agreement either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties
- (f) If the Parties fail to reach agreement in the structured negotiations within 40 Working Days of the Mediator being appointed or such longer period as may be agreed by the Parties then any dispute or difference between them may be referred to the English courts

28 TUPE

- 28.1 Vanguard shall comply in full with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and shall expeditiously use its best endeavours to liaise with the Council and a Replacement Provider in respect of the performance of its obligations thereunder
- 28.2 Subject to the Council giving notice to Vanguard, Vanguard shall supply TUPE Information (as defined in clause 28.6 below) to the Council within 14 days of such notice
- 28.3 The Council may disclose TUPE Information to any Replacement Provider and shall if requested by Vanguard ensure that prior to such disclosure the Replacement Provider undertakes not to disclose (unless required by law to do so) the information to any other person other than a person;
 - (a) who is a servant or agent (including legal advisor) of the Replacement Provider;
 - and

- (b) who has undertaken not to disclose that information unless required by law to do so
- 28.4 Following disclosure by Vanguard to the Council of TUPE Information Vanguard shall;
- 28.4.1 immediately inform the Council of the substance of any change to the TUPE Information provided or provide any new TUPE Information not previously provided;
- 28.4.2 use its best endeavours to clarify any matter upon which clarification is requested by the Council; and
- 28.4.3 use its best endeavours to comply in full with any other reasonable request made by the Council concerning the TUPE Information or Vanguard's Employees within seven days of any such change discovery of new information or receipt of such request
- 28.5 Subject to the provisions of clause 28.3 above and unless required by law to do so the Council shall not disclose TUPE Information (or any part of that information) to any other person
- 28.6 For the purposes of this clause 28 "TUPE Information" means full written details of;
- 28.6.1 the number of Employees whose employment and other rights would be protected if the Transfer of Undertakings (Protection of Employment) Regulations 2006 applies to a transfer of undertaking from Vanguard to the Replacement Provider; and
- 28.6.2 in relation to each Employee who falls within the scope of paragraph 28.6.1 above;
- 28.6.2.1 the Employee's age and gender (so that pension entitlements can be calculated and provided for); and
- 28.6.2.2 the Employee's salary any pay settlement covering future dates which has already been agreed by Vanguard and any redundancy entitlement
- 28.6.3 information relating to or connected with the other terms and conditions of the contracts of employment with Employees falling within the scope of paragraph 28.6.1 above, and "employee liability information" under TUPE including without limitation details of:-

- 28.6.3.1 terms incorporated from any collective agreement;
- 28.6.3.2 any outstanding or potential liability for past breaches of such contracts;
- 28.6.3.3 those particulars of employment that an employer is obliged to give to an employee pursuant to section 1 of the Employment Rights Act 1996;
- 28.6.3.4 information of any disciplinary procedure taken against an Employee;
- 28.6.3.5 information of any grievance procedure taken by an Employee within the previous two years in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004 apply;
- 28.6.3.6 information of any court or tribunal case claim or action brought by an Employee against Vanguard within the previous two years or that Vanguard has reasonable grounds to believe that an Employee may bring against the Replacement Provider arising out of the Employee's employment with Vanguard;
- 28.6.3.7 any other outstanding or potential liability required to be met by the Replacement Provider if his tender is accepted;
- 28.6.3.8 information of any collective agreement which will have effect after the transfer in its application in relation to the Employee;
- 28.6.3.9 any other outstanding or potential liability requiring to be met pursuant to regulation 5(a) by the Replacement Provider if his tender is accepted;
- 28.6.3.10 such other information as the Council may reasonably require in relation to Vanguard's Employees (other than the name or other details which enable any Employee to be identified unless both Vanguard and that Employee have consented in writing to the provision of such details);
and
- 28.6.3.11 any other information which constitutes "Employee Liability Information" as defined under TUPE

29 Assignment

- 29.1 Vanguard shall not assign or transfer any benefit duty of obligation under this Agreement or any right or remedy available to it hereunder
- 29.2 Vanguard shall not sub-contract to or allow any other person to perform any part of the Service without obtaining prior Approval. Any such sub-contracting shall not in any way relieve Vanguard from its liabilities hereunder and Vanguard shall be and shall remain fully responsible in respect of the Service notwithstanding such sub-contracting

30 Audit and the Audit Commission

Vanguard shall keep and maintain until six years after the Contract Period full and accurate records of the Agreement including the Service provided under it and all payments made by the Council. Vanguard shall on request afford the Council or the Council's representatives or the Audit Commission such access to those records as may be required by the Council in connection with the Agreement

31 Waiver

The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement

32 Remedies Cumulative

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

33 Severability

- 33.1 If any provision of the Agreement is held invalid illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid illegal or unenforceable provision eliminated
- 33.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement the Parties shall immediately commence negotiations in good faith to remedy the invalidity

34 Miscellaneous

- 34.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations representations and undertakings whether written or oral except that this clause shall not exclude liability in respect of any fraudulent misrepresentation
- 34.2 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England
- 34.3 Vanguard shall not be relieved of its obligations to perform the Service in accordance with the terms of the Agreement as the result of a change of law which comes into effect after the Commencement Date
- 34.4 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Council and Vanguard
- 34.5 Nothing in this Agreement shall confer or purport to confer the right to enforce any term hereunder upon any person or legal entity that is not a party to it and the Contracts (Rights of Third Parties) Act 1999 shall not apply
- 34.6 This Agreement shall not be varied except by instrument in writing signed by the authorised representatives of the Parties