

TRAFFORD BOROUGH COUNCIL

TRA 1361

AMEY LG LIMITED

PARTNERSHIP AGREEMENT

VOLUME 1 OF 9

Containing:

Clauses 1-87 of the Agreement
Schedule 1

Trafford Borough Council

Amey LG Limited



7 May 2015

**A DLESHAW
GOD ARD**

DATED 7 MAY 2015

(1) TRAFFORD BOROUGH COUNCIL

(2) AMEY LG LIMITED

PARTNERSHIP AGREEMENT

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THIS AGREEMENT dated the 7th day of May 2015
IS MADE BETWEEN

- (1) TRAFFORD BOROUGH COUNCIL whose principal office is situated at Trafford Town Hall, Talbot Road, Stretford, Greater Manchester, M32 0TH (the Council); and
- (2) AMEY LG LIMITED whose registered office is at The Sherard Building, Edmund Halley Place, Oxford OX4 4DQ and whose company number is 03612746 (the Service Provider);
collectively the Parties and individually a Party.

BACKGROUND

- A. By an advertisement (the Contract Notice) dated 16 April 2014 and referenced 2014/S 075-129837 in the Supplement to the Official Journal of the European Union, the Council sought proposals for the provision of services on behalf of the Council (and other named public bodies), in the case of the Council in relation to:
- (a) Lot 1a: waste collection, street cleaning and grounds maintenance, as further defined in this Agreement (Environmental Services);
 - (b) Lot 2a: highways maintenance, as further defined in this Agreement (Highways Services);
 - (c) Lot 2b: street lighting infrastructure, as further defined in this Agreement (Street Lighting Services); and
 - (d) Lot 3: professional services relating to project management, asset and estate management, property development and other major projects, as further defined in this Agreement (Technical Services).
- B. The Council has selected the Service Provider to enter into a partnering contractual arrangement with the Council to provide the Services in accordance with the terms of this Agreement comprising the Environmental Services, the Highways Services, the Street Lighting Services and the Technical Services.
- C. The Council has procured the Services for and on behalf of itself and the Partner Authorities, who may elect to engage the Service Provider to provide Partner Authority Services in accordance with this Agreement.

IT IS NOW AGREED AS FOLLOWS:

PART 1: PRELIMINARY

1. PURPOSE AND CONDUCT OF THE PARTIES

1.1 Aim

The Parties agree that it is the purpose of this Agreement to establish a collaborative and strategic relationship between the Parties to provide and foster the provision of high quality Services within the Council Area in the most cost effective manner.

1.2 Objectives

The Parties shall at all times have regard to and act in accordance with the following objectives.

- 1.2.1 providing excellent standards of Service to residents of the Council Area and other service users,
- 1.2.2 maximising efficiency in the provision of the Services under this Agreement whilst endeavouring to retain a sustainable margin for the Service Provider,
- 1.2.3 maximising the value for money obtained by the Council,
- 1.2.4 developing and maintaining openness and trust in a transparent information and data sharing environment in respect of the Services,
- 1.2.5 adopting Good Industry Practice in the provision of the Services under this Agreement; and
- 1.2.6 maximising the respective and collective available resources of the Parties

1.3 Openness

The Parties agree, in furtherance of the spirit of openness and honesty, that

- 1.3.1 they will work closely together in a spirit of flexibility, openness and co-operation to facilitate effective efficient and economic delivery of the Services,
- 1.3.2 they will take reasonable action and render reasonable assistance to facilitate the provision of the Services including without limitation
 - (a) disclosure of all relevant documentation,
 - (b) using Open Book Accounting, and
 - (c) notification of events which will or may materially adversely affect the provision of the Services,
- 1.3.3 nothing in Clauses 1.2, 1.3.1 and 1.3.2 shall oblige a Party to make any payments to the other except as calculated and expressly provided for in this Agreement, and
- 1.3.4 without prejudice to the provisions of Clauses 1.3.1, 1.3.2 and 1.3.3 at the Parties' own cost they will co-operate fully with each other and provide such information and assistance as the other may reasonably require in connection with any actual or potential legal proceedings, arbitration hearings, inquiries, Local Commissioner enquiries, Best Value inspections, internal investigations and disciplinary hearings arising out of or in connection with the provision of the Services provided that such obligation shall not extend to any such proceedings between the Parties

1.4 Improvement

The Parties will commit themselves to the achievement of continuous, measurable and measured improvement of the Services supplied by.

- 1.4.1 agreeing quantitative and qualitative targets which are
 - (a) specific,
 - (b) challenging,
 - (c) add value; and

(d) eliminate waste, and

1.4.2 measuring and reviewing contractual performance against those targets

1.5 Limitations on the collaboration

Save as expressly provided in this Agreement, neither Party shall.

1.5.1 make any representations or give any warranty on behalf of the other;

1.5.2 enter into any contract or obligation on behalf of the other, and/or

1.5.3 incur any liabilities on behalf of the other

1.6 Social Value

1.6.1 The Service Provider acknowledges the importance to the Council of providing and enhancing social value through the performance of the Services under this Agreement, including (without limitation).

(a) creating local jobs;

(b) securing investment in, or in-kind contributions to, fuel poverty initiatives in the Council Area;

(c) supporting staff, service users and local residents to fundraise for local charities,

(d) supporting the community and voluntary sector organisations through provision of mentoring; and

(e) supporting local educational and prevention programmes in partnership with local CVS & SMEs to reduce social isolation, fuel poverty and to increase health and well-being

1.6.2 Without prejudice to its other obligations, throughout the Service Period the Service Provider shall provide the Services in accordance with any requirements relating to social value in the Method Statements and so as to seek to maximise its social value contribution

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement words and phrases capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) except where otherwise stated

2.2 In this Agreement except where the context otherwise requires

2.2.1 the masculine includes the feminine and vice versa;

2.2.2 the singular includes the plural and vice versa;

2.2.3 a reference to a "Clause" is a reference to any of clauses 1 – 87 within the main body of this Agreement, and a reference to a "paragraph" is a reference to a paragraph of a Schedule to this Agreement,

2.2.4 a reference to a Schedule is a reference to a Schedule to this Agreement,

2.2.5 except where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document

- 2.2.6 words importing individuals shall be treated as importing corporations and partnerships and vice versa;
 - 2.2.7 headings are for convenience of reference only;
 - 2.2.8 any reference to any enactment, order, regulation or other similar instrument will be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
 - 2.2.9 references to any documents being "in the agreed form" means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
 - 2.2.10 words preceding "include", "includes", "including", and "included" shall be construed without limitation by the words which follow these words.
- 2.3 The Schedules (and any annexes) to this Agreement form part of this Agreement.
- 3. PRECEDENCE OF DOCUMENTS**
- 3.1 If there is any conflict between any parts of this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 3.1.1 the Clauses, Schedule 1 (*Definitions*) and the Special Conditions;
 - 3.1.2 Schedule 2 (*The Specification*) and Schedule 9 (*Payment Mechanism*) and their annexes;
 - 3.1.3 any other Schedules and their annexes (other than Schedule 3 (*The Method Statements*)); and
 - 3.1.4 Schedule 3 (*The Method Statements*).
- 4. ANCILLARY DOCUMENTS**
- 4.1 The Service Provider shall deliver the following documents to the Council on the Agreement Date:
- 4.1.1 true copies of the Service Provider's Memorandum and Articles of Association and Certificate of Incorporation;
 - 4.1.2 copies of board resolutions of the Service Provider approving the entry of the Service Provider into this Agreement; and
 - 4.1.3 the executed Brokers' Letter of Undertaking in the agreed form appended at Schedule 29 (*Required Insurances*).
- 4.2 **Local Government (Contracts) Act 1997**
- 4.2.1 The Council intends to satisfy the Certification Requirements with respect to this Agreement before the end of the period relating to this Agreement within which the Certification Requirements must be satisfied for the Agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.
 - 4.2.2 The Service Provider hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement.
 - 4.2.3 If a certificate is not issued by the Council pursuant to Clause 4.2.2 within six (6) weeks of the date of this Agreement then the Service Provider shall be entitled by giving notice in writing to the Council within five (5) Business Days of such date to terminate this Agreement, whereupon the Council shall pay to the Service Provider an amount equal to the compensation that would be payable in accordance with Clause 52 (*Consequences of Termination*) on termination for the Council Default pursuant to Clause 48 (*Termination for Council Default*).

- 4.2.4 The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are as follows
- (a) the sums referred to in Clause 4.2.4(b)(i) and the adjustment between the Parties of the rights and liabilities relating to the Assets referred to in Clause 4.2.4(b) shall be the relevant discharge terms in relation to this Agreement for the purposes of Section 6 of the Local Government (Contracts) Act 1997
 - (b) in the event of the making of a determination or order by a court of final jurisdiction/no right of appeal remaining on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997), the result of which is that this Agreement does not have effect or is otherwise unenforceable, then.
 - (i) the Service Provider shall be entitled to be paid by the Council the sum which is the sum equivalent to the amount of compensation payable by the Council to the Contractor pursuant to Clause 52.3, and
 - (ii) the Council shall have the option to require the Service Provider to transfer its right, title and interest in and to the Assets to the Council or as directed by the Council, and
 - (c) the Council shall pay to the Service Provider the sums referred to in Clause 4.2.4(b) above within forty (40) Business Days of the determination or order of the court referred to in Clause 4.2.4(b) above.

PART 2: DURATION AND MOBILISATION

5. COMMENCEMENT AND DURATION

- 5.1 This Agreement and the rights and obligations of the Parties to this Agreement shall take effect on the Agreement Date.
- 5.2 The Service Period will commence on the Service Commencement Date and terminate:
- 5.2.1 in respect of the Environmental Services, the Highways Services and the Technical Services, in accordance with Clause 5.3,
 - 5.2.2 in respect of Street Lighting Services in accordance with Clause 5.4.
- 5.3 The Service Period in respect of the Environmental Services, the Highways Services and the Technical Services (subject to Clause 11A in respect of the Technical Services) shall terminate on the earlier of the
- 5.3.1 First Expiry Date, subject to Clause 5.4, and
 - 5.3.2 the Termination Date
- 5.4 At its sole discretion the Council shall be entitled to serve a written notice upon the Service Provider at least eighteen (18) months prior to the First Expiry Date requesting an extension to the Service Period in respect of the Environmental Services, the Highways Services and the Technical Services such that it will expire on the Second Expiry Date
- 5.5 The Service Period in respect of the Street Lighting shall terminate on the earlier of the:
- 5.5.1 First Street Lighting Expiry Date, subject to Clause 5.6, and
 - 5.5.2 the Termination Date
- 5.6 At its sole discretion the Council shall be entitled to serve a written notice upon the Service Provider at least eighteen (18) months prior to the First Street Lighting Expiry Date requesting an extension

to the Service Period in respect of the Street Lighting Services such that it will expire on the Second Expiry Date.

6. MOBILISATION AND TRANSITION

6.1 From the Agreement Date until the Service Commencement Date (or such later date as specified in the Mobilisation Plan), the Service Provider shall:

- 6.1.1 implement and comply with the Mobilisation Plan and take all steps required in order to be able to commence providing the Services on the Service Commencement Date (including, without limitation, any steps required by the Special Conditions);
- 6.1.2 monitor its performance under the Mobilisation Plan and provide a detailed written report of such performance to the Council on a weekly basis; and
- 6.1.3 promptly notify the Council if it fails to achieve (or is likely to fail to achieve) any milestone, target or other stage envisaged under the Mobilisation Plan.

6.2 Without prejudice to the other rights and obligations of the Parties under this Agreement, if any Performance Failure occurs which would entitle the Council to levy any Performance Deductions:

- 6.2.1 during the period from the Services Commencement Date until 6 August 2015, the Council shall not be entitled to levy any amount in respect of any particular Performance Deductions which accrue;
- 6.2.2 during the period from 7 August 2015 until 6 November 2015, the Council shall only be entitled to levy 50% of the value of any particular Performance Deductions which accrue; and
- 6.2.3 any Performance Deductions during such periods and the related Performance Failure giving rise to such Performance Deductions shall be disregarded for the purposes of the Council's right to terminate this Agreement under Clause 46 (Service Provider Termination Events).

6.3 Prior to the Service Commencement Date, the Council shall:

- 6.3.1 provide the Service Provider with access to all TUPE/workforce information as the Service Provider may reasonably request in order to allow for the transfer of employment of the Transferring Employees to the Service Provider to the extent such information is not contained in Schedule 18 (*Workforce Information*) of this Agreement;
- 6.3.2 provide the Service Provider with updated information with regard to any transferring fleet (and any other key assets) listed in Schedule 21 (*Initial Transferring Assets*), and notify the Service Provider promptly in the event that such fleet (or any other key assets) will not transfer in order to allow the Service Provider the time to organise the mobilisation of additional/replacement fleet;
- 6.3.3 provide the Service Provider with access to any depot made available by the Council in accordance with Clause 59 as may be reasonably requested by the Service Provider and subject to agreeing timings with the Council in advance; and
- 6.3.4 provide the Service Provider with all the current data required to enable the Service Provider to operate the Services as identified in the Mobilisation Plan.

6.4 Prior to the Service Commencement Date, the Service Provider shall:

- 6.4.1 provide the executed Partner Admission Agreement in respect of all Transferring Employees as required in accordance with Schedule 31 (*Pensions*) of this Agreement;
- 6.4.2 a duly executed copy of the Guarantee and a duly executed copy of the Bond;

- 6.4.3 enter into a novation agreement (in a form to be agreed by the Parties acting reasonably, reflecting the principle that the Council will be responsible for any obligations or liabilities before the date of novation, and the Service Provider will be responsible for any obligations or liabilities thereafter) in relation to any contract which the Parties (acting reasonably) agree should be transferred to the Service Provider, in each case duly executed by the Service Provider and by each company novating the agreement in respect of each Transferring Contract, and

- 6.4.4 prepare a Business Continuity Plan in accordance with Clause 17.1

PART 3: THE SERVICES

7 PROVISION OF SERVICES

- 7.1 The Service Provider shall provide (or procure the provision of) the Services throughout the Service Period

- 7.1.1 in accordance with the Specification, the Target Service Levels, the Special Conditions and all other terms of this Agreement;

- 7.1.2 in accordance with Good Industry Practice;

- 7.1.3 in accordance with the Method Statements;

- 7.1.4 such that at all times ensure that the Services comply with and meet all Legislation, Guidance, Necessary Consents and applicable Council Policies and Standards; and

- 7.1.5 in full co-operation with the Council and its contractors and all other persons employed at the Council Premises.

- 7.2 The Service Provider shall be entirely responsible for the adequacy and accuracy of the Method Statements and for its ability to carry out all its obligations under this Agreement. In particular,

- 7.2.1 the fact that the Service Provider has complied with the Specification but not the Method Statements shall not be a defence to an allegation that the Service Provider has not satisfied the Method Statements;

- 7.2.2 the fact that the Service Provider has complied with the Method Statements but not the Specification shall not be a defence to an allegation that the Service Provider has not satisfied the Specification;

provided that the Specification shall take priority over the Method Statements in the event of any discrepancy or inconsistency between them.

- 7.3 Each Party shall comply with the Special Conditions

- 7.4 The Service Provider may not amend the Method Statements without the Council's prior written consent.

- 7.5 Each Party shall comply with Schedule 32 (*Review Procedure*)

8 EXCLUSIVITY

- 8.1 The Service Provider shall have the sole and exclusive right to provide the Services to the Council on the terms of this Agreement during the Service Period except,

- 8.1.1 if and to the extent that the Council no longer requires the Services (or any part thereof) to be provided in the Council Area by or on behalf of the Council; and/or

- 8.1.2 if and to the extent that this Agreement has been terminated in whole or in part in accordance with the terms of this Agreement, and/or

- 8.1.3 in relation to the Council's exercise of its right to provide the Services (or any part) itself (or engage a third party to provide the Services (or any part) on its behalf) in accordance with:
- (a) Clause 38 (*Council Step-in;*) and/or
 - (b) in accordance with its rights under any Collateral Warranty; and/or
 - (c) Part 7 of the Highway Special Conditions and Part 8 of the Technical Services Special Conditions; and/or
- 8.1.4 in relation to the Council's exercise of its rights in relation to maintenance of any Assets in accordance with Clause 61 (*Maintenance of Assets and Equipment*); and/or
- 8.1.5 where a Service Absence has occurred and has not been remedied by the date twenty (20) Business Days following the deadline required by the Council pursuant to Clause 36 (*Immediate Action Procedure*).
- 8.2 Clause 8.1 shall not apply to any Partner Authority Services unless and until (at its absolute discretion) the Council or the Partner Authority (as applicable) has agreed that the rights in Clause 8.1 shall apply to such Partner Authority Services.

9. NECESSARY CONSENTS

- 9.1 Save as specified otherwise in this Agreement, the Service Provider shall obtain, maintain and comply with all Necessary Consents as are required to carry out the Services and the Service Provider shall not do anything, or permit anything to be done, in relation to the Services which will cause a Necessary Consent to be breached or revoked.
- 9.2 The Service Provider shall supply to the Council upon request a copy of every Necessary Consent obtained and any variation, relaxation or waiver agreed in relation to such Necessary Consents.
- 9.3 The Service Provider shall at all times during the Service Period pay and indemnify the Council against all Losses incurred by the Council as a result of the Service Provider's failure to comply with this Clause 9.

PART 4: SERVICE PLANNING

10. BEST VALUE AND DUTY OF CONTINUOUS IMPROVEMENT

- 10.1 The Service Provider acknowledges that:
- 10.1.1 the Council is subject to the Best Value Duty; and
 - 10.1.2 the provisions of this Clause 10 (*Best Value and Duty of Continuous Improvement*) are intended to assist the Council in discharging its Best Value Duty in relation to the Services.
- 10.2 The Service Provider shall, throughout the Service Period, but only to the extent of its obligations under this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 10.3 The Service Provider shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with Part 1 of the 1999 Act, including:
- 10.3.1 complying with requests for information, data or other assistance made by the Council in pursuance of its Best Value Duty including to:
 - (a) facilitate any inspection or audit undertaken in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view

- to verifying the Council's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act,
- (b) facilitate the Council preparing any statement, in response to a Council's auditor's report;
 - (c) assist the Council in relation to any action taken by the Secretary of State;
 - (d) enable the Council to comply with any government departmental direction;
 - (e) enable the Council to produce and submit data listed in the Single Data List and to comply with any other data reporting requirements that may be prescribed by any Relevant Authority; and
 - (f) complying with all requests by the Council to procure the attendance of specific officers or employees of the Service Provider or any sub-contractor (or to procure attendance of any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than four (4) in any one (1) Agreement Year), and
- 10.3.2 permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
- (a) premises used by the Service Provider in relation to this Agreement;
 - (b) any document or data relating to the Services, and
 - (c) Personnel

11. SERVICE PLANNING

- 11.1 At any time reasonably requested by the Council the Service Provider shall provide such assistance as the Council reasonably requires to enable the Council to review its current aims objectives and policies and to enable the Council to set its budget for the coming Agreement Year at such a level as will enable the successful realisation of the Council's aims objectives and policies for the coming Agreement Year. Any assistance provided by the Service Provider pursuant to this Clause 11 shall not in any way fetter the exercise of the Council's discretion in relation to the review and determination of its aims objectives and policies and the setting of its budget. All such assistance shall be provided by the Service Provider as part of the Services at no additional cost (unless the Parties agree otherwise).
- 11.2 With the exception of the Technical Services, where the obligations in this Clause 11 shall only apply after the third anniversary of the Agreement Date, the Council will, not later than 30 July prior to the commencement of each Agreement Year notify the Service Provider in writing of the Council's proposed aims, objectives, policy, proposed budget and priorities for the coming Agreement Year and shall inform the Service Provider of any subsequent amendments following that date.
- 11.3 Within thirty (30) Business Days of receipt of notice from the Council under Clause 11.2, the Service Provider will carry out in respect of each Service Element a comprehensive and detailed evaluation of and shall prepare a draft plan (the Service Plan) setting out the ways in which its activities and resources and those of the Council might best be aligned to support the stated aims objectives and priorities of the Council for that Agreement Year. The Service Plan shall cover as a minimum,
- 11.3.1 the activities to be carried out by way of professional advice in that Agreement Year;
 - 11.3.2 the priority areas for the use of the Service Provider resource in the targeting of the Services in that Service Element towards the aims objectives and priorities of the Council in that Agreement Year,

- 11.3.3 proposals in relation to any new Services the Council wishes the Service Provider to provide in that Agreement Year;
- 11.3.4 proposals in relation to any Services the Council wishes the Service Provider to cease to provide in that Agreement Year;
- 11.3.5 if required by the Council, proposals for reducing the Payment, prepared in accordance with Clause 11.4; and
- 11.3.6 any suggested amendments to this Agreement as a result of the proposals in the draft Service Plan,

(together the **Service Plan Areas**).

- 11.4 If the Council requires a reduction of the Payment, the Service Plan must include comprehensive proposals by the Service Provider to that effect, taking into account all reasonable opportunities to accommodate the requirement for a reduction of the Payment of, and prepared on the basis of (without limitation) consideration of the following matters in the following order of precedence:

- 11.4.1 improvements to the efficiency of the provision, performance or delivery of the Services or particular parts of the Services;
- 11.4.2 income generation possibilities including (without limitation) in relation to opportunities to achieve economies of scale by providing Partner Authority Services;
- 11.4.3 reconfiguration of service delivery (including, without limitation, amendments to the Method Statements);
- 11.4.4 adjustments to Target Service Levels to reasonably reflect the effect of the proposed reduction in Payment on the Service Provider's ability to meet the Target Service Levels;
- 11.4.5 adjustments to Performance Indicators to reasonably reflect the effect of the proposed reduction in Payment on the Service Provider's ability to meet the service levels measured by the Performance Indicators;
- 11.4.6 a reduction in the scope of services required under this Agreement and/or proposed changes to the level of capital expenditure in relation to the Services for the coming Agreement Year; and
- 11.4.7 relief from compliance with its obligations under this Agreement,

(each a **Service Plan Consideration**),

as may be proportionate to allow the required reduction to the sums payable to the Service Provider (provided that the Service Provider's margin shall not be increased as a result of the implementation of a Service Plan). The Service Provider's proposals must include such information and evidence (on an Open Book Accounting basis) as is necessary to satisfy the Council that: each Service Plan Consideration has been fully considered and possible savings are exhausted before the next is considered (in the order of precedence listed above); and the proposals achieve the Council's objectives.

- 11.5 Where the Council does not require a reduction of the Payment, the Service Provider shall prepare the Service Plan having regard to each of the Service Plan Considerations as appropriate in the circumstances.
- 11.6 The Service Provider shall ensure that the Service Plan:
- 11.6.1 is in such format and is compiled in accordance with such guidance as the Council shall specify from time to time;

- 11.6.2 is such as to align Service Provider resources and activities to the Council's stated aims objectives and policies including the objectives set out in Clause 12;
 - 11.6.3 does not envisage any expenditure by the Council over and above its stated budget in respect of the Services or where any such expenditure is envisaged provides options for ways in which overall the Council can remain within its budget; and
 - 11.6.4 shall identify what reallocation of resource will be necessary to avoid any adverse impact on the Council's retained services as a result of any proposals for amending or ceasing existing services, the introduction of new services or the targeting of resource in support of the aims objectives and priorities of the Council
- 11.7 The draft Service Plan shall be considered at a meeting of the Partnership Board to be held within twenty (20) Business Days of the Council's receipt of the draft Service Plan.
- 11.8 If the Council is not satisfied that the Service Plan submitted by the Service Provider has been prepared in accordance with the requirements of this Clause 11 the Service Provider shall comply with all reasonable requests of the Council for amendments to be made to the Service Plan.
- 11.9 The Service Provider acknowledges
- 11.9.1 the Council's statutory obligations to set a balanced budget (including without limitation pursuant to the Local Government Finance Act 1992); and
 - 11.9.2 the Council's obligations to engage in public consultation, in relation to which the Service Provider shall provide all reasonable assistance required by the Council
- 11.10 The Service Provider acknowledges that, following consultation and other approvals processes, the Council may require further amendments to the Service Plan in accordance with Clause 11.8 and that the Council will not be able to give formal approval until its approval process has been concluded
- 11.11 On or before the last Business Day in February prior to the commencement of each Agreement Year (other than the Agreement Year commencing on the Service Commencement Date) the Council shall give notice to the Service Provider in writing as to whether the Service Plan (modified, if applicable pursuant to Clause 11.8) is accepted. If the Council accepts the Service Plan the provisions of Clause 11.13 will apply. If the Council rejects a Service Plan (entirely or in relation to any Service Element), the Service Plan shall not be implemented and no reduction to the Payment shall be made in relation to the Services or Service Element (as applicable), unless the Council subsequently instructs a Change in accordance with the Change Control Procedure. The Council shall be entitled to accept or reject the Service Plan (or, choose any individual proposal within that Service Plan) at its sole discretion
- 11.12 The Service Provider shall prepare its draft Annual Programme in accordance with the Specification to reflect the draft Service Plan (as amended pursuant to Clause 11.8 and accepted in accordance with Clause 11.11).
- 11.13 If the Council gives written notice that the Service Plan (modified if applicable pursuant to Clause 11.7) is accepted the Service Provider shall proceed to implement such Service Plan (and shall amend each Annual Programme to reflect any changes to the draft Service Plan which was prepared at the time of preparing the draft Annual Programme in accordance with Clause 11.12) provided that any re-allocation of the Service Provider resources arising out of proposals for the targeting of that resource on the aims objectives and priorities of the Council shall be undertaken by the Service Provider so as to minimise any disruption to the provision of the Services and at no additional cost to the Council.
- 11.14 Notwithstanding that the Council may have accepted the Service Plan, the Council may at any time notify the Service Provider that it wishes to amend the Service Plan and re-prioritise its use of the Service Provider resource as set out in the Service Plan and the Service Provider will make such changes as the Council reasonably requests provided that the amendment shall be deemed to be a Change instructed by the Council

11A TECHNICAL SERVICES TARGET PROFIT

11A.1 The Service Provider shall:

- (a) take all reasonable steps to achieve a service transformation in relation to the Technical Services, such that the Service Provider is able to achieve the Target Profit by the Target Date; and
- (b) include details in each Monthly Report following the Service Commencement Date of its costs of providing the Technical Services on an Open Book Accounting Basis.

11A.2 No later than 8 January 2016, the Service Provider will carry out in respect of the Technical Services a comprehensive and detailed evaluation of and shall prepare a draft plan and budget (the **Technical Services Plan**) setting out its proposals to achieve the Target Profit by the Target Date. In preparing the Technical Services Plan, the Service Provider shall, having regard to the objectives in Clause 1.2, consider the following matters in the following order of precedence:

- (a) improvements to the efficiency of the provision, performance or delivery of the Technical Services or particular parts of the Technical Services;
- (b) income generation possibilities including (without limitation) in relation to opportunities to achieve economies of scale by providing Partner Authority Services;
- (c) reconfiguration of service delivery (including, without limitation, amendments to the Method Statements relating to the Technical Services);
- (d) adjustments to Target Service Levels relating to the Technical Services;
- (e) adjustments to Performance Indicators relating to the Technical Services;
- (f) a reduction in the scope of the Technical Services required under this Agreement (which may include amendments to policies forming part of the Technical Services Specification) and/or proposed changes to the level of capital expenditure in relation to the Technical Services (or to be managed by the Service Provider as a part of the Technical Services); and
- (g) relief from compliance with its obligations relating to the Technical Services under this Agreement.

11A.3 The Technical Services Plan shall be sufficiently detailed and comprehensive so as to demonstrate to the Council:

- (a) the plan is achievable and predicated on realistic assumptions;
- (b) the Service Provider is providing the Technical Services in the most efficient and cost effective manner possible; and
- (c) the Recoverable Costs the Service Provider expects to incur will be able to be recovered in their entirety in accordance with Clause 11A.15.

11A.4 Following receipt of the Technical Services Plan, the Council may make proposals to the Service Provider (or accept proposals made by the Service Provider) in relation to the Technical Services in order to allow the Target Profit to be achieved.

11A.5 The Service Provider shall give careful consideration to any proposals made by the Council in respect of the Technical Services and, to the extent such proposals would assist the Service Provider in achieving the Target Profit by the Target Date, include the proposals in the Technical Services Plan.

11A.6 If the Council is not satisfied that the Technical Services Plan submitted by the Service Provider has been prepared in accordance with the requirements of this Clause 11A the Service Provider

shall comply with all reasonable requests of the Council for amendments to be made to the Technical Services Plan.

- 11A 7 The Council, acting reasonably, shall approve any Technical Service Plan submitted by the Service Provider taking into account each of the considerations identified in Clauses 11A 2 and 11A 3 Within twenty (20) Business Days of being provided with the draft Technical Services Plan the Council shall give notice to the Service Provider in writing as to whether the Technical Services Plan (modified, if applicable pursuant to Clause 11A 6) is accepted If the Council accepts the Technical Services Plan the provisions of Clause 11A 8 will apply If the Council rejects the Technical Services Plan, the Service Provider shall not implement the Technical Services Plan but shall continue to provide the Technical Services in accordance with Clause 11B 3, and the Service Provider may issue a Termination Notice pursuant to Clause 11A 10 if the Target Profit is not achieved by the Target Date The Council shall be entitled to accept or reject the Technical Services Plan (or, choose any individual proposal within that Technical Services Plan) acting reasonably.
- 11A 8 If the Council gives written notice that the Technical Services Plan (modified if applicable pursuant to Clause 11A 6) is accepted the Service Provider shall proceed to implement such Technical Services Plan Once the Technical Services Plan is accepted by the Council, the Service Provider may propose amendments to the plan and the Council shall consider the same If the Council (acting reasonably) accepts such amendments to the Technical Services Plan it shall notify the Service Provider and the Service Provider shall promptly implement the amended plan If the Council rejects the amendments, the Service Provider shall continue to provide the Technical Services in accordance with the existing Technical Services Plan, but may issue a Termination Notice pursuant to Clause 11A 10 if the Target Profit is not achieved by the Target Date
- 11A 8A If the Council rejects a draft Technical Services Plan in accordance with Clause 11A 7 or rejects amendments to the Technical Services Plan in accordance with Clause 11A 8, it may (at its discretion) terminate the Agreement in respect of the Technical Services by serving a Termination Notice on the Service Provider within forty (40) Business Days of such rejection specifying a date for such termination to take effect, which shall be on the earlier of
 - (a) such date as the Council notifies the Service Provider that it is able to arrange for the transfer the Technical Services to another provider (which may include the Council, and the Service Provider shall provide such assistance to the Council in relation to any such transfer as is reasonably requested by the Council); and
 - (b) six months following the date of the Termination Notice
- 11A 8B Upon termination of the Agreement in respect of the Technical Services following the service of a Termination Notice by the Council in accordance with Clause 11A.8A, neither party shall be liable to the other for costs or losses arising from such termination except as provided for under Schedule 30 (TUPE) and Schedule 31 (Pensions), without prejudice to any accrued rights or liabilities and Clause 53.5 shall apply
- 11A 9 The Service Provider shall notify the Council in writing within twenty (20) Business Days following the Target Date whether it has achieved the Target Profit, providing a full breakdown of the costs of providing the Technical Services on an Open Book Accounting basis (Target Profit Breakdown)
- 11A 10 The Target Profit Breakdown shall be considered at a meeting of the Partnership Board to be held within twenty (20) Business Days of the Council's receipt of the Target Profit Breakdown If, having implemented any agreed Technical Services Plan and effected the changes envisaged by the Technical Services Plan, the Service Provider is able to demonstrate to the Council (acting reasonably) that the Target Profit will not be achieved going forward, then the Service Provider may serve a Termination Notice on the Council in relation to the Technical Services no later than twenty (20) Business Days following the meeting of the Partnership Board
- 11A 11 Following issue of a Termination Notice by the Service Provider in accordance with Clause 11A 10, this Agreement shall terminate in respect of the Technical Services on the earlier of,

- (a) such date as the Council notifies the Service Provider that it is able to arrange for the transfer the Technical Services to another provider (which may include the Council); and
 - (b) the second anniversary of the Service Commencement Date.
- 11A.12 If the Service Provider issues a Termination Notice in accordance with Clause 11A.11 the Council shall use reasonable endeavours to make the necessary arrangements (which may include a reprocurement) to allow the Technical Services to be terminated before the second anniversary of the Service Commencement Date and the Service Provider shall provide such assistance to the Council in this regard as is reasonably requested by the Council.
- 11A.13 Upon termination of the Agreement in respect of the Technical Services following the issue of a Termination Notice by the Service Provider in accordance with Clause 11A.10, the Council shall pay the Service Provider an amount equal to the Transition Costs, but otherwise neither party shall be liable to the other for costs or losses arising from such termination, without prejudice to any accrued rights or liabilities and Clause 53.5 shall apply.
- 11A.14 For the purposes of Clause 11A, the following terms shall have the following meanings:
- (a) **Council's Gain Share Amount** shall have the meaning given in the Payment Mechanism;
 - (b) **Council's Additional Gain Share Amount** shall have the meaning given in the Payment Mechanism;
 - (c) **Recoverable Costs** shall mean:
 - (i) Transition Costs; plus
 - (ii) only such other costs approved by the Council as part of the Technical Services Plan [REDACTED]
- in each case during the period from the start of implementation of the Technical Services Plan until the Target Date and to the extent not compensated for by the Payment in respect of the Technical Services during such period (as demonstrated on an Open Book Accounting basis);
- (d) **Target Date** means the date which is eighteen (18) months following the Service Commencement Date;
 - (e) **Target Profit** means that during the period of six (6) months prior to the Target Date [REDACTED] in relation to the Technical Services, measured on the basis of Open Book Accounting, excluding any "one-off" costs incurred by the Service Provider as part of the service transition or charges implemented under the Technical Services Plan; and
 - (f) **Transition Costs** shall mean costs approved by the Council as part of the Technical Services Plan and incurred by the Service Provider in relation to the implementation of the Technical Services Plan during the period from the start of implementation of the Technical Services Plan until the Target Date, including expenditure incurred in anticipation of the carrying out of the Technical Services in the future, but excluding any corporate overhead and margin.

11A.15 If the Service Provider has achieved the Target Profit, then:

- (a) during the two (2) Agreement Years following the Target Date, the Service Provider shall be entitled to retain [REDACTED] of the Council's Gain Share Amount and/or the Council's Additional Gain Share Amount in respect of the Technical Services up to an amount equal to the Recoverable Costs;
- (b) if in the two (2) Agreement Years following the Target Date the Service Provider has not been able to recover an amount equivalent to the Recoverable Costs in accordance with

11A.15(a), then the Service Provider shall be entitled to [REDACTED] of the Council's Gain Share Amount and/or the Council's Additional Gain Share Amount in subsequent Agreement Years until the Service Provider has recovered an amount equal to the Recoverable Costs

11B TECHNICAL SERVICES TRUE-UP

- 11B 1 The Council acknowledges that the Service Provider was selected to perform the Technical Services on the basis of its variant bid, whereby the Service Provider would perform the Technical Services to meet the Council's existing service levels (Existing Service Levels) without requiring any increase in the Payment, in the period between the Service Commencement Date and 1 October 2015 (Interim Period).
- 11B 2 The Parties agree to act reasonably, efficiently and in good faith to effect such changes to the Technical Services Specification, the Technical Services Method Statements, the Financial Model and the KPIs in relation to the Technical Services (Technical Services Documents), by the end of the Interim Period, as may be necessary to ensure that they reflect the Existing Service Levels, without requiring any increase in the Payment. Such changes shall, unless otherwise agreed, be limited to amendments needed to reflect the following principles.
- (a) the Council acknowledge that the requirements in the Technical Services Specification are an enhancement in certain areas to the Existing Service Levels,
 - (b) the Parties shall seek to make the minimum number of changes to the Technical Services Documents as necessary to ensure that they reflect the Existing Service Levels, and
 - (c) during the Interim Period, the Service Provider will be delivering the services in line with the Existing Service Levels in a manner which does not require any payment by the Council in respect of the Technical Services except for the Payment
- 11B 3 To the extent the Parties fail to agree any changes to the Technical Services Documents pursuant to Clause 11B 2, a director of the Service Provider and the Chief Executive of the Council shall meet as soon as possible and in any event within twenty (20) Business Days in order to seek to agree the matter. To the extent such changes are still not agreed, then:
- (a) until such time as a Technical Services Plan is agreed
 - (i) the Service Provider shall perform the Technical Services in accordance with the Existing Service Levels except that to the extent a statutory duty of the Council which is part of the Technical Services requires performance to a higher standard than the Existing Service Levels, the Service Provider shall meet that standard;
 - (ii) the Service Provider's liability in relation to any Service Failure in respect of the Technical Services shall, subject to Clause 41 1 and provided that the Service Provider shall be liable for any Direct Losses relating to a breach of statutory duty arising due to the Service Provider's breach of Clause 11B 3(a)(i), be limited to any Performance Deductions which the Council is entitled to levy, and
 - (b) from the date when a Technical Services Plan is agreed, the Service Provider shall perform the Technical Services in accordance with the Technical Services Documents as amended by the Technical Services Plan
- 11B 4 If any Service Failure occurs in respect of the Technical Services during the Interim Period, then to the extent such failure relates to a standard which is higher than the Existing Service Levels, the Council shall not be entitled to apply any relevant Performance Deductions or, subject to Clause 41 1, make any other claim against the Service Provider

12. 7 YEAR REVIEW

- 12.1 No later than 18 months before the 7 Year Review Date, the Council shall begin a review to assess the overall performance of the Service Provider against the criteria set out in Clause 12.13 and consider any improvements or alterations in respect of the Services which the Council may require (7 Year Review). The Council shall conclude the 7 Year Review no later than 12 months before the 7 Year Review Date.
- 12.2 The Service Provider shall provide such assistance in the conduct of the 7 Year Review as is reasonably required by the Council.
- 12.3 Promptly following conclusion of the 7 Year Review, the Council shall provide written notice to the Service Provider of whether it wishes to:
 - 12.3.1 require no further action to be taken by either Party under this Clause 12; or
 - 12.3.2 consider the implementation of any improvements or alterations in respect of the Services, or effecting a reduction in the Payment.
- 12.4 If the Council notifies the Service Provider that it wishes to exercise its rights under Clause 12.3.2, it shall include with such notice such details as are reasonably necessary for the Service Provider to prepare a 7 Year Options Proposal in accordance with Clause 12.5 and the Parties shall follow the procedure set out at Clauses 12.5 to 12.13.
- 12.5 The Service Provider shall provide the Council within twenty (20) Business Days of receipt of a notice from the Council pursuant to Clause 12.3.2 an outline proposal setting out the Council's options in order to implement any improvements or alterations in respect of the Services or reduction in the Payment (as applicable), and the estimated change in costs for each option (7 Year Options Proposal).
- 12.6 Each 7 Year Options Proposal must include proposals by the Service Provider to reduce the Payment, which shall consider (without limitation) in the following order of precedence:
 - 12.6.1 improvements to the efficiency of the provision, performance or delivery of the Services or particular parts of the Services;
 - 12.6.2 income generation possibilities including (without limitation) in relation to opportunities to achieve economies of scale by providing Partner Authority Services;
 - 12.6.3 reconfiguration of service delivery (including, without limitation, amendments to the Method Statements);
 - 12.6.4 adjustments to Target Service Levels to reasonably reflect the effect of the proposed reduction in Payment on the Service Provider's ability to meet the Target Service Levels;
 - 12.6.5 adjustments to Performance Indicators to reasonably reflect the effect of the proposed reduction in Payment on the Service Provider's ability to meet the service levels measured by the Performance Indicators;
 - 12.6.6 a reduction in the scope of services required under this Agreement and/or proposed changes to the level of capital expenditure in relation to the Services for the coming Agreement Year; and
 - 12.6.7 relief from compliance with its obligations under this Agreement,

(each a **Cost Reduction Method**),

as may be proportionate to allow the required reduction to the sums payable to the Service Provider (provided that the Service Provider's margin shall not be increased as a result of the 7 Year Change). The Service Provider's proposals must include such information and evidence (on an Open Book Accounting basis) as is necessary to satisfy the Council that: each Cost Reduction

Method has been fully considered and possible savings are exhausted before the next is considered (in the order of precedence listed above), and the proposals achieve the Council's objectives.

12.7 The 7 Year Options Proposal shall include

- 12.7.1 a comprehensive range of options which address different aspects of the Services with the adoption of one or more options enabling the Services to be delivered in accordance with the Council's requirements; and
- 12.7.2 in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services, including
 - (a) the Estimated Change in Service Costs,
 - (b) sufficient evidence to allow the Council to satisfy itself that the option achieves the objectives set out in Clause 1.2, and
 - (c) any other information reasonably required by the Council

12.8 No later than thirty (30) Business Days after the Council receives the 7 Year Options Proposal (or 7 Year Options Proposal amended in accordance with Clause 12.8.2), the Council shall notify the Service Provider as to whether it:

- 12.8.1 accepts (in principle) any of the options provided to it,
- 12.8.2 wishes to propose amendments to the 7 Year Options Proposal (provided that the Council may not exercise this option later than 6 months prior to the 7 Year Review Date) in which case the 7 Year Options Proposal shall be updated by the Service Provider within twenty (20) Business Days of the Council's notification to reflect such proposed amendments, or
- 12.8.3 does not accept any of the options provided to it

12.9 If the Council accepts (in principle) an option in accordance with Clause 12.8.1, it shall notify the Service Provider in writing of its preferred option and the Service Provider shall within ten (10) Business Days provide a detailed proposal for that option which shall include:

- 12.9.1 the change in costs (evidenced on an Open Book Accounting basis), and
- 12.9.2 any amendments required to this Agreement (including without limitation the Specification),
(the 7 Year Change Proposal)

12.10 As soon as practicable after the Council receives the 7 Year Change Proposal the parties shall discuss and agree the issues set out in the 7 Year Change Proposal. The Council will not be able to give formal approval until its internal process has been concluded. If requested by the Council, the Service Provider will provide a written estimate (on an Open Book Accounting basis) of the costs which the Council would be obliged to compensate the Service Provider for pursuant to Clause 52.4 on a given termination date

12.11 After a 7 Year Change Proposal has been agreed or otherwise determined the Council and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly execute (as appropriate) such documentation.

12.12 If the Council notifies the Service Provider that it does not accept the options provided to it in accordance with Clause 12.8.3, the Council shall elect to either

- 12.12.1 require no further action to be taken by either Party under this Clause 12, or

- 12.12.2 subject to Clause 12.13, terminate this Agreement (or any one or more Service Elements), in which case this Agreement shall terminate (or partially terminate, as applicable) on the date which is 12 months after such notice.
- 12.13 The Council shall only be entitled to exercise the option to terminate this Agreement (or any one or more Service Elements) under Clause 12.12.2 if the 7 Year Review demonstrates (by reference to minutes of meetings of the Partnership Board and other relevant materials) that the Service Provider has to a material extent failed to:
- 12.13.1 achieve value for money in the provision of any of the Services; and/or
 - 12.13.2 prepare Service Plans which fully meet the requirements of Clause 11.3; and/or
 - 12.13.3 satisfy the users of the Services in relation to the Service Provider's performance under this Agreement; and/or
 - 12.13.4 satisfy the Council in relation to the Service Provider's performance under this Agreement; and/or
 - 12.13.5 provide a competitive service under this Agreement (with regards to price and quality) compared to similar services available to other local authorities in England,
- and either the Service Provider has failed to provide a 7 Year Options Proposal and/or 7 Year Change Proposal (as applicable) or the 7 Year Options Proposal does not (or will not), in the Council's reasonable opinion (having regard to the severity, duration and frequency of such failures), remedy such issues within a reasonable timeframe.
- 12.14 If the Agreement is terminated (or partially terminated, as applicable) pursuant to Clause 12.2.2, the Council shall not state in any formal press release that that such termination has arisen due to a default on the part of the Service Provider.
- 13. PARTNER AUTHORITY SERVICES**
- 13.1 The Parties acknowledge and agree that a Partner Authority may wish to engage the Service Provider to provide services in the form of Partner Authority Services. The Service Provider shall not enter into any Partner Authority Services Agreement without obtaining the Council's consent in accordance with this Clause 13, provided that the Council's consent shall not be required in relation to any arrangement proposed between the Service Provider and a Partner Authority which is procured other than under the Contract Notice.
- 13.2 In respect of any Partner Authority Services Agreement which is entered into, the relevant Partner Authority shall be responsible for instructing and managing the Service Provider in accordance with the Partner Authority Services Agreement and the Council shall have no responsibility or liability for such a relationship or otherwise.
- 13.3 The process to be followed to enable the Service Provider to enter into a Partner Authority Services Agreement with a Partner Authority is as follows:
- 13.3.1 the Service Provider shall notify the Council of any interest which it receives from any Partner Authority who wishes to enter into a Partner Authority Services Agreement with the Service Provider and the Council shall similarly inform the Service Provider if any Partner Authority expresses any interest to the Council in entering into a Partner Authority Services Agreement;
 - 13.3.2 the Service Provider shall request the Council's consent to use the Council's Assets for the provision of any Partner Authority Services pursuant to Clause 22 (*Third Party Contracts and Income*);
 - 13.3.3 the applicable Partner Authority shall notify the Service Provider of the scope of the Partner Authority Services it wishes to procure from the Service Provider and the Service Provider shall provide full details of the same to the Council;

- 13.3.4 the Service Provider and the applicable Partner Authority will determine whether the Services provided under this Agreement meet the requirements of the applicable Partner Authority for the provision of the Partner Authority Services or whether any amendments are required in the context of the specific requirements of the Partner Authority. If any amendments are required, the Service Provider and the applicable Partner Authority shall agree such amendments (including any variations to any of the prices provided that pricing should be on the same basis as this Agreement, save for differences arising from geographical or services specific requirements) which will need to be reflected in the applicable Partner Authority Services Agreement;
- 13.3.5 the Service Provider shall notify the Council in writing as soon as reasonably practicable after the matters referred to in Clause 13.3.4 and Clause 13.3.3 have been agreed (and shall provide a copy of the draft Partner Authority Services Agreement) and the Council may provide its consent to the proposed Partner Authority Services Agreement. Such consent shall not be unreasonably withheld or delayed, provided that the Council may require as a condition of such consent that:
- (a) the Council and the relevant Partner Authority enter into an inter-authority agreement which governs the relationship between them and, amongst other things: excludes any liability on the part of the Council in respect of the procurement and provision of the Partner Authority Services and provides for the Partner Authority to pay to the Council a sum in respect of a proportion of the Council's procurement costs in relation to this Agreement, and
 - (b) the Payment is reduced to reflect economies of scale and efficiencies allowed for by the provision of the Partner Authority Services alongside the provision of the Services (in relation to which the Service Provider will be required to provide the Council with full details on an Open Book Accounting basis)
- 13.3.6 promptly thereafter the Partner Authority and the Service Provider shall execute the said Partner Authority Services Agreement in the same or substantially the same form as provided to the Council in accordance with Clause 13.3.4 and the Service Provider shall provide a copy to the Council promptly on request.

14. BENCHMARKING

- 14.1 The Parties shall comply with the provisions of Schedule 12 (*Benchmarking*) in relation to the benchmarking of any or all of the Services

15. EMERGENCIES

- 15.1 Under the Civil Contingencies Act 2004 the Council is obliged to ensure that its services and therefore its contractors, such as the Service Provider, who are delivering services on its behalf, are able to operate effectively at all times in a way that meets the needs of its residents and addresses the needs of the workforce in the event of a major civil incident. The Service Provider shall ensure that plans and procedures are in place to enable the continued operation of the Services during any form of major civil or other disruption. In the event that the Council Premises are unavailable as a result of a major civil incident, the Service Provider shall use all reasonable endeavours to find alternative premises as soon as reasonably practicable from which to continue the operation of the Services. The type of incident which the Service Provider's plan shall address shall be those covered by the Civil Contingencies Act 2004.

- 15.2 If an Emergency arises at any time during the Service Period (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Council acting reasonably and such Emergency may extend beyond those identified in the Civil Contingencies Act 2004) which cannot be dealt with by the performance of the Services, the Council may instruct the Service Provider to use all reasonable endeavours to procure that such additional or alternative services are undertaken by the Service Provider as and when required by the Council to ensure that the Emergency is dealt with and normal operation of the Services resumes as soon as is reasonably practicable.

15.3 As soon as reasonably practicable following each occasion on which an Emergency arises in accordance with Clause 15.2 the Parties shall liaise and seek to agree upon the additional charge (if any) to the Council of providing any such additional or alternative services. If such charges are not agreed or determined by the Parties the matter shall be resolved in accordance with the Dispute Resolution Procedure.

16. NOT USED

17. BUSINESS CONTINUITY PLAN

17.1 No later than ten (10) Business Days prior to the Service Commencement Date, the Service Provider shall provide for the Council's approval a draft Business Continuity Plan to provide contingency arrangements to address operational disasters and emergencies. Such draft plan, once approved by the Council (acting reasonably), shall become the Business Continuity Plan. The Service Provider shall prepare, and keep the Business Continuity Plan up to date, so as to ensure that it corresponds and allows for a response to developments and/or changes in risks and circumstances, including but not limited to, the following:

- 17.1.1 the loss of access to Personnel;
- 17.1.2 the loss of access to premises including any relevant depot;
- 17.1.3 failure of technologies including Equipment;
- 17.1.4 failure of the supply chain e.g. fuel;
- 17.1.5 other incidents likely to affect the provision or quality of the Services;
- 17.1.6 any matter or circumstance referred to in any previous iteration of the Business Continuity Plan; and
- 17.1.7 any other matter stated in the Special Conditions.

17.2 The Service Provider shall provide an up to date Business Continuity Plan as part of the Annual Programme, with any amendments being subject to the Councils' approval pursuant to the Review Procedure.

17.3 The Parties shall comply with their respective obligations under the agreed Business Continuity Plan (which shall include testing the Business Continuity Plan at regular intervals).

17.4 The Service Provider shall ensure that the Service Provider Representative attends the Council's corporate business continuity group and any Council testing exercises (or exercises the Council is required to participate in). The Council shall provide as much advance notice as reasonably practicable to the Service Provider of each proposed meeting or exercise and the timing and location of each.

PART 5: GOVERNANCE

18. CONTRACT GOVERNANCE – RELATIONSHIPS

18.1 Liaison

18.2 In developing and implementing strategies to deliver the Council's objectives, the Parties agree to set in place mechanisms to understand and take full account of the needs and expectations of all interest groups. These mechanisms will be consistent with, and reflect, the Council's consultation strategy and the Parties commit themselves to regular liaison and contact in respect of their respective aims, methods, focus and timetables for public and stakeholder consultation.

18.3 Interest groups will include:

- 18.3.1 the Council's elected members;

- 18.3.2 officers and employees of the Council;
 - 18.3.3 recipients of services from the Council;
 - 18.3.4 citizens of the Council Area,
 - 18.3.5 businesses in the Council Area,
 - 18.3.6 voluntary sector organisations,
 - 18.3.7 community schools;
 - 18.3.8 other public sector organisations within the Council Area,
- and such other groups or individuals as notified by the Council from time to time
- 18.4 The Service Provider shall liaise and maintain positive working relationships with the Council and with bodies set up by, or including representatives from, the Council and, in addition, with relevant individuals working with or associated with the Council from time to time
 - 18.5 The Service Provider shall attend liaison meetings with the Council's elected members as and when requested by the Council to do so.
 - 18.6 The Service Provider shall be under an obligation to liaise with other bodies, groups or individuals in such manner as may be required by legislation, Government guidance and by good practice as requested by the Council.
 - 18.7 When required and upon reasonable notice to do so by the Council the Service Provider will attend any meeting of the Council, its executive committee and any other committee, sub-committee or working Party, overview and scrutiny committee, community or neighbourhood forum or any other relevant body and make available to the Council such persons, information, records, evidence or other material (written and oral) as may reasonably be required to give efficacy to any such meeting

19 REPRESENTATIVES

19.1 Representatives of the Council

- 19.1.1 The Council Representative shall be the officer listed as such in Schedule 17 (*Key Personnel*) or such other persons appointed pursuant to this Clause 19. The Council Representative shall exercise the functions and powers of the Council under this Agreement.
- 19.1.2 The Council Representative shall be entitled at any time, by Formal Notice to the Service Provider, to authorise any other person to exercise the functions and powers of the Council delegated to him pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Council Representative.
- 19.1.3 The Council may by Formal Notice to the Service Provider change the Council Representative. Such change shall have effect on the date specified in the Formal Notice.
- 19.1.4 During any period when no Council Representative has been appointed (or when the Council Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise their functions under this Contract) the Council shall carry out the functions which would otherwise be performed by the Council Representative.
- 19.1.5 Save where notified in writing by the Council before such act or instruction, the Service Provider shall be entitled to treat any act or instruction by the Council Representative which is authorised by this Agreement as being expressly authorised by the Council and

the Service Provider shall not be required to determine whether authority has in fact been given.

19.2 Service Provider Representative

- 19.2.1 The Service Provider Representative shall be the person listed as such in Schedule 17 (*Key Personnel*) or such other persons appointed pursuant to this Clause 19.
- 19.2.2 The Council may make representations to the Service Provider concerning the performance of the Service Provider Representative from time to time. The Service Provider shall have due regard to all such representations. The Service Provider Representative shall have full authority to act on behalf of the Service Provider during the Services Period for all purposes under this Agreement. The Council shall be entitled to treat any act of the Service Provider Representative in connection with this Agreement as being expressly authorised by the Service Provider and the Council shall not be required to determine whether any express authority has in fact been given.
- 19.2.3 The Service Provider may by Formal Notice to the Council change the Service Provider Representative. Where the Service Provider wishes to do so, it shall by Formal Notice to the Council propose a substitute for approval, taking into account the need for liaison and continuity in respect of the delivery of the Services. Such appointment shall be subject to the approval of the Council (not to be unreasonably withheld or delayed).

20. PARTNERSHIP BOARD

- 20.1 Each Party shall comply with Schedule 14 (*Partnership Board*). The Service Provider and the Council acknowledge the importance of having in place a forum for communication whereby any matters relating to the Services can be discussed between the Parties, with a view to:
 - 20.1.1 ensuring the successful and efficient operation of the Services and this Agreement;
 - 20.1.2 ensuring compliance with the Best Value Duty;
 - 20.1.3 reviewing the Service Provider's performance in the provision of the Services and in relation to its other obligations under this Agreement;
 - 20.1.4 considering operational and strategic issues, costs and the development of the Services; and
 - 20.1.5 avoiding Disputes or settling them without the need to invoke the Dispute Resolution Procedure.

21. DISPUTE RESOLUTION

- 21.1 Any Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 15 (*Dispute Resolution Procedure*).

22. THIRD PARTY CONTRACTS AND INCOME

- 22.1 The Service Provider may use the Council Assets, Exclusive Assets or Staff Resources for the purpose of generating Third Party Revenue subject to the following conditions:
 - 22.1.1 any Third Party Revenue is applied in accordance with the Gain Share Mechanism and the other provisions of the Payment Mechanism;
 - 22.1.2 the Service Provider must always give priority to the delivery of the Services;
 - 22.1.3 the Council's written consent (not to be unreasonably withheld or delayed) shall be required in relation to any activity which is not an Approved Third Party Activity.

- - 22.2 If the Service Provider uses any of the Council Assets or any Staff Resources in breach of Clause 22.1 the Service Provider shall be obliged to account to the Council for all Third Party Revenue generated by such use and the Council shall be entitled to deduct such sum from the Payment or from any other monies owing from the Council to the Service Provider or to recover the same as a debt from the Service Provider
 - 22.3 In the event that the Council at the request of the Service Provider contributes by way of introduction, referrals or references or the implementation of a marketing strategy agreed between the Parties towards the award of any new Service Provider business the Service Provider will agree in advance with the Council a reduction in the Payment or alternatively a benefit (which may include sharing Third Party Revenue) for the Council which would flow from such introductions, referrals or references in accordance with the principles set out in this Clause 22
 - 22.4 Where the Council's consent is required under Clause 22 (a **Third Party Income Consent**) the Service Provider shall engage with the Council as far as reasonably practicable in advance of commencing the relevant activity and shall provide the Council with written details of the following (where applicable and available to the Service Provider):
 - 22.4.1 the name, address and description of each Third Party concerned,
 - 22.4.2 a list of Council Assets, Exclusive Assets or Staff Resources that are required for the provision of such other services,
 - 22.4.3 the length of term of any proposed contract,
 - 22.4.4 the value of the proposed contract and breakdown of costs and income,
 - 22.4.5 the effect of the use of such Council Assets, Exclusive Assets or Staff Resources on the Services,
 - 22.4.6 an estimate of required staff time to be utilised,
 - 22.4.7 details of any Council IPR or Data including documents and processes to be utilised,
 - 22.4.8 any necessary amendments to the agreements for occupation of the Council Premises required in order to provide the Third Party Services; and
 - 22.4.9 any other information reasonably required by the Council.
 - 22.5 Following receipt of a request in accordance with Clause 22.4, the Council shall acting reasonably, promptly consider the matter and notify the Service Provider in writing. If the Council approves the request it shall provide written notice (the "**Third Party Income Consent**") recording the following:
 - 22.5.1 the detail of any action that the Parties agree that the Council will take in relation to the relevant activities that the Service Provider wishes to pursue,
 - 22.5.2 any non-financial conditions in relation to the use of the Council Assets, Exclusive Assets and/or Staff Resources or action required by the Council that the Council (at its discretion) wishes to impose which, if applicable, may include
 - (a) any necessary conditions of such use to mitigate the effect on the Services or on the Council's ability to perform its obligations under the Agreement or to carry out its statutory duties;
 - (b) a termination provision to be included in the Third Party contract whereby the contract terminates if this Agreement terminates;
 - (c) suitable exit arrangements on termination of either the Third Party contract and/or this Agreement;

- (d) the agreement of a reduction in the Payment or alternative benefit (including as to the application of the Gain Share Mechanism or other provisions of the Payment Mechanism); and
 - (e) the parameters of the use of Council Assets and/or Staff Resources and/or Council actions to which the Third Party Income Consent relates.
- 22.6 If the Parties are unable to reach agreement under this Clause 22 nothing in this Agreement will either oblige the Council to sign the Third Party Income Consent or the Service Provider to agree to the conditions attached to the Third Party Income Consent and if the Service Provider does not agree to the conditions referred to in this Clause 22 or the Third Party Income Consent is not signed by the Council the Service Provider shall not be entitled to use the Council Assets or Staff Resources.
- 22.7 Each of the Parties agrees that the other Party shall have no liability for any loss suffered in the event that agreement on the terms of the Third Party Income Consent cannot be achieved.
- 22.8 On issue of the Third Party Income Consent the Service Provider shall, in using the Council Assets and/or Staff Resource, use them only for the purposes outlined in the Third Party Income Consent and in accordance with the in the Third Party Income Consent.
- 22.9 Without prejudice to this Clause 22 the Service Provider shall ensure that at all times the provision of the Services takes priority over any use of the Council Assets, Exclusive Assets and/or Staff Resources for purposes unconnected to the Services.
- 22.10 The Service Provider shall have no entitlement to relief against the Council in any circumstances for a loss of Third Party Income as a result of the Service Provider's obligation to provide the Services or the prioritisation thereof.
- 22.11 The Council may (acting reasonably) express any Third Party Income Consent to apply prospectively for any similar opportunities to generate Third Party Income using Council Assets or Staff Resources, which may be limited by reference to a period of time and/or type of Third Party Income and/or a particular Third Party, in which case the definition of Approved Third Party Activities shall be deemed to be amended accordingly and the Service Provider will not need to seek further consent under Clause 22.1 in relation to activities within the relevant approved category.
- 22.12 The Service Provider shall include in the Monthly Report, the details listed in Clause 22.4 in relation to all activities which involve generation of Third Party Revenue, including (without limitation) matters where a Third Party Income Consent has been given, and all Approved Third Party Activities.

PART 6: CHANGE

23. SERVICE CHANGE

- 23.1 Subject to Clause 24 (*Change in Law*) any change to the Services or to this Agreement including the Schedules shall be dealt with in accordance with the Change Control Procedure.

24. CHANGE IN LAW

- 24.1 The Service Provider shall take all steps necessary to ensure that the Services are performed in accordance with the terms of this Agreement following any Change in Law.

24.2 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 24.2.1 any necessary change to the Services;

- 24.2.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;
- 24.2.3 whether relief from compliance with obligations is required, including but not limited to the obligation of the Service Provider to meet the Specification during the implementation of any relevant Qualifying Change in Law;
- 24.2.4 any loss of or increase in revenue that will result from the Qualifying Change in Law;
- 24.2.5 any Estimated Change in Service Costs that directly result from the Qualifying Change in Law;
- 24.2.6 any capital expenditure that is required or no longer required as a result of a Qualifying Change in Law; and
- 24.2.7 any necessary change to any Council Policies and Standards,

in each case giving in full detail the procedure for implementing the change in the Services. Responsibility for the costs of implementation (and any resulting variation to the Payment) shall be dealt with in accordance with Clauses 24.3 to 24.5

24.3 Parties to Discuss

As soon as practicable after receipt of any notice from either Party under Clause 24.1, the Parties shall meet to discuss and agree the issues referred to in Clause 24.1 and any ways in which the Service Provider can mitigate the effect of the Qualifying Change in Law including:

- 24.3.1 providing evidence that the Service Provider has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige the Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 24.3.2 demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Service Provider;
- 24.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses for services similar to the Services;
- 24.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 24.2.4 and/or 24.2.6.

24.4 Change Agreed – Capital Expenditure

If the Parties agree or it is determined under the Dispute Resolution Procedure that the Service Provider is required to incur additional capital expenditure due to a Qualifying Change in Law, then the Council shall pay the Service Provider an amount equal to such capital expenditure as demonstrated on an Open Book Accounting basis by reference to the Service Provider's costs and shall not include any element of profit or margin, on or before the date falling twenty (20) Business Days after the capital expenditure has been incurred

24.5 Change Agreed – Adjustment to the Payment

If the Parties agree or it is determined under the Dispute Resolution Procedure that the Service Provider is entitled to an adjustment (upward or downward) to the Payment due to a Qualifying Change in Law, then the Parties agree that such adjustment shall be undertaken on an Open Book Accounting basis by reference to the Service Provider's costs and shall not include any element of profit or margin.

PART 7: PAYMENT

25. MONTHLY PAYMENT

25.1 Payment

The Council shall pay the Service Provider the Monthly Payment in respect of each Payment Period, calculated in accordance with Schedule 9 (*Payment Mechanism*).

25.2 Report and Invoice

Within ten (10) Business Days of the end of each Payment Period or as otherwise required by this Agreement the Service Provider shall submit to the Council:

- 25.2.1 a report in accordance with Schedule 9 (*Payment Mechanism*) detailing the amount which the Service Provider believes it is entitled to be paid by the Council for that Payment Period and the amount (if any) which the Service Provider believes the Council is entitled to deduct from the Monthly Payment in respect of that Payment Period; and
- 25.2.2 an invoice for the amount shown by the report as being payable by the Council to the Service Provider and for any VAT payable by the Council in respect of that amount.

25.3 Payment

- 25.3.1 Subject to Clause 25.4, the Council shall pay the amount stated in any invoice submitted under Clause 25.2.2 within twenty (20) Business Days of its submission,
- 25.3.2 Where a report shows a net amount owed by the Service Provider to the Council, the Service Provider shall pay that amount to the Council within twenty (20) Business Days of the report or, at the option of the Council, may carry forward that amount to the next report and associated invoice in reduction of amounts which would otherwise have been owed by the Council to the Service Provider.

25.4 Disputed Amounts

- 25.4.1 If the Council disputes the Service Provider's entitlement to any part of the amount claimed by the Service Provider pursuant to Clause 25.2 in respect of any Payment Period the following provisions of this Clause 25 shall apply.
- 25.4.2 The Council shall notify the Service Provider in writing within fifteen (15) Business Days of receipt by the Council of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Council is reasonably able to quantify it) which the Council disputes (a "Disputed Amount") and submit to the Service Provider such supporting evidence as the Council may have.
- 25.4.3 The Council may withhold payment of any Disputed Amount pending agreement or determination of the Service Provider's entitlement in relation to the Disputed Amount.

25.5 Response to Council Notice

- 25.5.1 Within ten (10) Business Days following receipt by the Service Provider of any notice served by the Council pursuant to Clause 25.4, the Service Provider shall respond by notifying the Council as to whether or not it agrees with the statements made in that notice. If the Service Provider indicates that it does agree, or if the Service Provider fails to make such a response within that time limit, the Council shall be entitled:
 - (a) to retain on a permanent basis any amounts withheld pursuant to Clause 25.4; and
 - (b) to reclaim from the Service Provider the amount of any over-payment which may have been made to the Service Provider together with interest on any such

amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after determination.

25.6 Dispute

If the Service Provider responds (pursuant to Clause 25.5) that it does not agree with all or any of the statements made in any notice served by the Council pursuant to Clause 25.4, the matter or matters in question shall be resolved in accordance with the Dispute Resolution Procedure.

25.7 Determination of Dispute

If the determination of any Dispute conducted pursuant to clause 25.6 shows that:

- 25.7.1 the Council has withheld any amount which the Service Provider was entitled to be paid, or
- 25.7.2 the Service Provider has claimed under clause 25.2 any amount which it was not entitled to be paid,

the Council shall either pay such amount to the Service Provider or the Service Provider shall repay such amount to the Council with interest as the case may be on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Council) or from the date on which over payment was made (in the case of excessive claims by the Service Provider) until all relevant monies have been paid in full and whether before or after determination.

25.8 Indexation

- 25.8.1 The Payment shall be indexed in accordance with the provisions of Schedule 9 (*Payment Mechanism*).
- 25.8.2 In the event of a Dispute regarding the adjustments to be made in accordance with Clause 25.8, or as to the proper adjustment to be made pursuant to Clause 25.8.1, such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 25.9 The Service Provider shall make payments to its Sub-Contractors and suppliers on the basis of a payment timetable which is similar to the timetable reflected for payment by the Council to the Service Provider under this Clause 25.

26 FINANCIAL ADJUSTMENTS

- 26.1 In calculating the amount of any Monthly Payment the Council shall be entitled to:

- 26.1.1 make Performance Deductions in accordance with the Payment Mechanism;
- 26.1.2 make adjustments to the amount claimed in accordance with Clause 15 (*Emergencies*);
- 26.1.3 make adjustments to the amount claimed for any Change as may arise from the application of the Change Control Procedure;
- 26.1.4 make any arithmetical or mathematical corrections to any errors in the amount claimed that it considers necessary;
- 26.1.5 set-off any amounts due under Clause 27 (*Set-Off*); and
- 26.1.6 deduct or withhold any other amounts which may be properly deducted or withheld under this Agreement, including the Payment Mechanism

- 26.2 If the occurrence of any Relevant Event necessitates an adjustment of the Financial Model due to an adjustment to the Payment provided for under this Agreement, the Service Provider shall adjust

the Financial Model, in consultation with the Council, to reflect the cumulative impact of any prior Relevant Event on the version of the Financial Model applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken.

26.3 Replacement of Financial Model

Any Financial Model produced following adjustments in accordance with this Clause 26 shall become the Financial Model for the purposes of this Agreement until its further amendment in accordance with this Agreement.

26.4 Amendments to Logic and/or Formulae

Where it is necessary to amend the logic or formulae incorporated in the Financial Model to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles so that the Financial Model is fit for purpose.

26.5 Errors in the Financial Model

26.5.1 The Financial Model shall be the sole responsibility of the Service Provider and the Service Provider shall be liable for any errors or omissions therein.

26.5.2 For the avoidance of doubt the Service Provider shall not be entitled to claim any adjustment to the Payment or otherwise arising from any such errors or omissions.

26.6 Copies of the Revised Financial Model

Following any change to the Financial Model under the provisions of this Clause 26, the Service Provider shall promptly deliver a copy of the revised Financial Model to the Council in the same form as is established at the Agreement Date or in such other form as may be agreed between the Parties.

27. SET OFF

27.1 The Service Provider may not retain or set off any amount owed by the Council under this Agreement against any amount owed by the Service Provider to the Council under this Agreement. The Council may retain or set off any amount owed to it by the Service Provider which has fallen due and payable under this Agreement against any amount owed by the Council to the Service Provider.

27.2 If the payment or deduction of any amount referred to in Clause 27.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be resolved in accordance with the Dispute Resolution Procedure.

28. INTEREST ON LATE PAYMENT

28.1 Save where otherwise specifically provided, where any payment or sum of money due from the Service Provider to the Council or from the Council to the Service Provider under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate calculated on a daily basis and compounded quarterly from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Agreement relating to the payment of compensation on termination of this Agreement following the occurrence of an Council Default provide the Service Provider with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

29. VAT

29.1 All amounts due under this Agreement are exclusive of VAT.

- 29.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply ("the Recipient") shall in addition pay the person making the supply ("the Supplier") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 29.3 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment
- 29.4 Where the Council is the recipient of any supplies under Clause 29.2, payment of any VAT thereon will be subject to the Service Provider demonstrating to the Council's reasonable satisfaction that such supplies are chargeable to VAT and upon condition that the Service Provider shall (acting reasonably and in good faith) discuss and take such steps as agreed with the Council to mitigate the impact of the recovery of such VAT on the Council's partial exemption position provided that compliance with this Clause 29.4 will be at no additional cost to the Service Provider.
- 29.5 The Service Provider shall provide the Council with any information reasonably requested by the Council in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Council to the Service Provider

PART 8: RECORDS AND AUDIT

30 COMPLIANCE WITH SECURITY AND PROBITY

- 30.1 The Service Provider shall at all times ensure that all Personnel comply with the provisions of this Clause 30 (*Compliance with Security and Probity*)
- 30.2 At all times the Service Provider shall provide all reasonable assistance and co-operation with any investigation relating to security and/or probity including the prevention and/or detection of fraud which is carried out by or on behalf of the Council or any Third Party (who (where reasonably practicable) will be required to enter into suitable confidentiality undertakings) authorised to carry out any such investigations and:
 - 30.2.1 shall notify the Council immediately upon becoming aware or identifying irregularities including the possibility of fraud and/or corruption or breaches of security in relation to the Services, together with details of the actions it shall undertake to prevent irregularities, fraudulent or corrupt activity or breaches occurring again in relation to the Services. The Council may in such circumstances determine the extent (if any) to which it needs to become involved in such investigations, including disciplinary interviews, to protect its own interests and the Service Provider shall provide to the Council all reasonable assistance in respect of any investigation where the Council does so become involved;
 - 30.2.2 shall make any Personnel identified by the Council available to be interviewed for the purposes of any investigation, and
 - 30.2.3 subject to any applicable legal restriction on disclosure, provide immediate access to all information, documents, records of any form or nature or other material of any kind which may be reasonably required for the purposes of any investigation including original documents and access to its IT systems and other electronic data including e-mail accounts. The Council or any authorised Third Party shall have the right to retain and/or make copies of any such material for use in connection with any investigation and shall provide the Service Provider with a copy of any material retained.

Compliance with Relevant Policies and Procedures

- 30.3 The Service Provider shall and shall procure that its Sub-Contractors shall:
 - 30.3.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("Relevant Requirements"), including but not limited to:

- (a) the Bribery Act 2010; and
 - (b) the Public Sector Internal Audit Standards 2012;
- 30.3.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 30.3.3 comply with the Council's Counter Fraud Policy Statement annexed to this Agreement at Schedule 23 (*Council Policies and Standards*) and in each case as the Council or the relevant government body may update them from time to time and notify to the Service Provider in writing ("Relevant Policies");
- 30.3.4 not do, or omit to do, any act that will cause or lead the Council to be in breach of any of the Relevant Requirements or Relevant Policies;
- 30.3.5 promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this Agreement;
- 30.3.6 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 and the Whistleblowing Policy, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 30.3.2, and will enforce them where appropriate; and
- 30.3.7 within one (1) month of the Agreement Date, and annually thereafter, certify to the Council in writing signed by an officer of the Service Provider compliance with this Clause 30.3 by the Service Provider and all of its Sub-Contractors. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 30.4 The Service Provider shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred, or awarded against, the Council as a result of any breach of Clause 30.3 by the Service Provider or its Sub-Contractors or any breach of provisions equivalent to Clause 30.3 in any Sub-Contract by any Sub-Contractor.
- ## 31. ENQUIRIES, INVESTIGATIONS AND INSPECTIONS
- ### 31.1 Information and Assistance
- 31.1.1 Subject to any obligation in respect of confidentiality, the DPA and Commercially Sensitive Information, the Parties shall use all reasonable endeavours to provide and share information and data reasonably required by the other:
- (a) to enable it to perform its obligations under this Agreement; and/or
 - (b) (in the case of the Service Provider) which is reasonably necessary to enable the Council to perform its statutory obligations insofar as such provision forms part of the Services.
- ### 31.2 Enquiries, Investigations and Inspections
- 31.2.1 The Service Provider shall at all times during the Service Period and for a period of one (1) year afterwards provide all reasonable co-operation and assistance with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other contract of the Council. Such enquiry, investigation or inspection may include:
- (a) routine inspections by the Council or its nominated representative for the purpose of noting the Service Provider's performance of its obligations;

- (b) the Council's executive and the Council's Overview and Scrutiny Committee and sub-committees undertaking their respective functions,
 - (c) an investigation by the Council into a complaint about the acts or omissions of the Service Provider, its employees or agents made under the Equalities Legislation,
 - (d) the Council's auditors (whether internal or external); and/or
 - (e) the Local Commissioner or other ombudsman
- 31.2.2 Such co-operation shall include (but not be limited to) the following
- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, (in hard copy format or otherwise) which relate to the subject or service under investigation;
 - (b) providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Service Provider in the performance of this Agreement,
 - (c) providing access to the Service Provider's staff (of whatever seniority) involved in this Agreement (including managerial or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the Local Commissioner (including providing suitable facilities for interviewing such staff);
 - (d) maintaining the confidentiality of the enquiry or investigation when requested to do so;
 - (e) making such explanations (whether written or oral) as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of this Agreement, the Council's standing orders and financial regulations and statutory provisions relating to this Agreement are being complied with,
 - (f) at all times and without notice allow access to the Local Commissioner, Relevant Authority or to any investigating officer appointed by the Local Commissioner or Relevant Authority, in connection with any complaint, investigation or inspection relating to this Agreement or the Services. This shall extend to the Service Provider's Premises, and to all documentation and information relating to this Agreement to which the Service Provider has access, and to the Service Provider's agents, employees and Sub-Contractors
- 31.2.3 The Service Provider shall, if requested by the Council, co-operate with the Council, at its own expense, in connection with any legal proceedings, arbitration, court proceedings or Local Commissioner enquiries in which the Council may become involved, arising from breaches of the Council's duties under the Equalities Legislation due to the alleged acts or omissions of the Service Provider, its employees, Sub-Contractors or agents
- 31.2.4 The Service Provider shall ensure that the terms of any sub-contract with a Service Provider Sub-Contractor include identical provisions to this Clause 31 and shall indemnify the Council against any losses, damages or claims it suffers in consequence of a failure to ensure the inclusion of such identical items.
- 31.3 Without prejudice to the specific requirements noted in this Clause 18, the Service Provider shall fully co-operate with any of the Council's statutory officers whilst such statutory officers are exercising and performing their statutory powers and duties. For the purposes of this Clause 31.3 "fully co-operate" shall include the matters set out in Clauses 31.2.2(a) to 31.2.2(f) inclusive.

31.4 Local Commissioner

31.5 Where the Local Commissioner conducts an investigation into a complaint out of or in connection with the provision of the Services or any part of them, the Service Provider shall:

- 31.5.1 provide any information requested by the Local Commissioner or by the Council within the timescale allotted;
- 31.5.2 attend any meetings with the Local Commissioner and/or the Council as required for the purposes of the investigation;
- 31.5.3 promptly allow access to and investigation of any relevant documents and data and if requested provide copies;
- 31.5.4 permit the Local Commissioner and/or the Council to interview any members of its staff in connection with the investigation;
- 31.5.5 arrange for relevant members of its staff to appear as witnesses in any ensuing legal proceedings or internal proceedings of the Council;
- 31.5.6 co-operate fully and promptly in every way required by the Local Commissioner during the course of the investigation; and
- 31.5.7 at the request of the Council, issue a suitable apology to the complainant.

31.6 The Parties agree that the Council shall take action in response:

- 31.6.1 to reports of the Local Commissioner in respect of the Services which conclude that injustice has been caused to a person aggrieved in consequence of maladministration, such action to be commensurate with the findings of such reports; and/or
- 31.6.2 if, following any such report, the Local Commissioner makes any recommendations the Council shall be entitled to comply with such recommendations (including the payment of compensation).

31.7 The Service Provider shall be liable for and shall fully and promptly indemnify the Council if, arising directly out of or as a result of any act or omission by the Service Provider or any failure by the Service Provider to provide the Services in accordance with this Contract, the Council incurs or suffers any costs, expenses, payments of compensation or Losses (including legal costs and the costs of investigating the claim) in connection with the compliance with, or the implementation of any actions in response to a report of or recommendations by the Local Commissioner pursuant to this Clause 31 save where such act or omission by the Service Provider or failure to provide the Services is as a direct result of the Service Provider undertaking the express instructions of the Council.

32. SERVICE PROVIDER RECORDS AND AUDIT

32.1 Service Provider Records

Any obligation in this Agreement requiring the Service Provider to produce, retain, maintain or provide any records or information of any kind shall be interpreted as requiring such records or information to be broken down by reference to the individual Service Elements (so far as reasonably practicable).

32.2 Books of Account

The Service Provider shall keep (and where appropriate procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:

- 32.2.1 administrative overheads;

- 32.2.2 payments made to any Service Provider Related Party and any Sub-Contractors;
- 32.2.3 capital and revenue expenditure,
- 32.2.4 any balances in any account or fund held for the purpose of servicing any debts relating to this Agreement or the Services,
- 32.2.5 such other items as the Council may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure under this Agreement; and
- 32.2.6 information demonstrating the Service Provider's performance of its obligations under this Agreement,

and the Service Provider shall have (and procure that Key Sub-Contractors shall have) the records and books of account evidencing the items in Clauses 32.2.1 to 32.2.6 available for inspection by the Council (and any Expert, representative or auditor of the Council) upon reasonable notice, and shall present a written report of these to the Council as and when requested. The Service Provider shall provide to the Council transparency of all Sub-Contractor costs. The Service Provider will break down such charges to the charging units under the applicable Sub-Contract.

32.3 Maintenance of Records

The Service Provider shall maintain or procure that the following are maintained

- 32.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement,
- 32.3.2 full records of all maintenance procedures carried out during the Service Period,
- 32.3.3 a written record of all performance monitoring carried out under or in relation to this Agreement; and
- 32.3.4 reports and management information in relation to the performance and management of the Services in accordance with the requirements in Schedule 2 (*Specification*), including data required by the Council for reporting to any Relevant Authority on National Performance Indicators,

and the Service Provider shall have the items referred to in Clauses 32.3.1 to 32.3.4 above available for inspection by the Council upon reasonable notice, and shall present a report of them to the Council as and when requested.

32.4 Reports and Accounts

The Service Provider shall permit records referred to in this Clause 32 to be examined and copied from time to time by the Council's auditor and inspectors and their representatives and other representatives of the Council

32.5 The Service Provider shall

- 32.5.1 provide the Council's internal auditors with direct access to all parts of the General Ledger and any feeder systems operated by the Service Provider at all times,
- 32.5.2 account to the Council's internal auditors for any cash or property belonging to the Council or to its service users under the Service Provider's control when called to do so and as soon as reasonably practicable,
- 32.5.3 provide an explanation to the Council's internal or external auditors for any accounting entry made by it in the General Ledger and any feeder systems operated by the Service Provider when called to do so and as soon as reasonably practicable, and

32.5.4 otherwise provide such records, information and access to computer systems to the Council's internal and external auditors as shall be necessary to enable them to undertake audits of the Council's services and an audit of the Council's accounts all in accordance with all legal and accounting requirements and accounting best practice.

32.6 **Retention**

The records referred to in this Clause 32 shall be retained for a period of at least seven (7) years after the Service Provider's obligations under this Agreement have come to an end.

32.7 **Information on Termination or Expiry**

Upon termination or expiry of this Agreement, and in the event that the Council wishes to enter into another contract for the provision of the Services the Service Provider shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Council to provide information relating to the Service Provider's costs of providing the Services.

32.8 **Confidentiality of Information**

32.8.1 All information referred to in this Clause 32 is subject to the obligations set out in Clause 68 (*Information and Confidentiality*) and clause 67 (*Freedom of Information*).

32.8.2 For the purposes of the examination and certification of the Council's accounts and/or any examination of the economy, efficiency and effectiveness with which the Council has used its resources, the District Auditor, internal or external auditor may examine such documents premises, systems and staff as he may reasonably require which are owned, held or otherwise within the control or employ of the Service Provider or Sub-Contractors (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require the Service Provider to produce such oral or written explanation as he considers necessary.

32.9 **Audit**

32.9.1 The Council may (without prejudice to its other rights under this Agreement), not more than twice in any Agreement Year, conduct routine audits for the following purposes:

- (a) to verify the accuracy of each Monthly Payment (and proposed or actual variations to the Payment in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of the Council Data;
- (c) to review the Service Provider's compliance with the Data Protection Legislation, the FOIA in accordance with Clauses 66 (*Data Protection*) and 67 (*Freedom of Information*) and any other Legislation applicable to the Services;
- (d) to review the Service Provider's compliance with its obligations under Clauses 7 (*Provision of Services*) and 34 (*Performance Monitoring*);
- (e) to review any records created during the design and development of the Services ;
- (f) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (g) to carry out the audit and certification of the Council's accounts;
- (h) to carry out an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council has used its resources;

- (i) to verify the accuracy and completeness of any management information delivered or required by this Agreement;
 - (j) to inspect any Council's assets, including the Council's IPRs, equipment, facilities and maintenance and Assets, for the purposes of ensuring that the Council's assets and Assets are secure and that the Rolling Inventory or any other register of assets is up to date;
 - (k) to ensure that the Service Provider is complying with the Council Policies and Standards and any British or equivalent European standards, and
 - (l) any other audit that may be required by any Relevant Authority.
- 32.9.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services
- 32.9.3 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including
- (a) all information requested by the Council within the permitted scope of the audit;
 - (b) reasonable access to any Service Provider's Premises controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services,
 - (c) access to the Service Provider's systems; and
 - (d) access to Personnel
- 32.9.4 The Council shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' notice of its intention to conduct an audit
- 32.9.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material breach by the Service Provider in which case the Service Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit
- 32.9.6 If an audit identifies that
- (a) the Service Provider has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Payment, proposed Payment or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Council has made any overpayment, the Service Provider shall pay to the Council the amount overpaid within twenty (20) Business Days. The Council may deduct the relevant amount from any Monthly Payment if the Service Provider fails to make this payment, and
 - (c) the Council has failed to pay any amount, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a breach by the Service Provider in relation to invoicing within twenty (20) Business Days

33. OPEN BOOK ACCOUNTING

- 33.1 The Service Provider will keep books and records of the provision of the Services (including in relation to design, implementation, transition, maintenance, management, operation and finance) in accordance with sound and prudent financial management and the principles of Open Book Accounting (including making available to the Council all invoices received from Sub-Contractors).
- 33.2 Without prejudice to any other provision of this Agreement the Service Provider shall, at the request of the Council, provide to the Council a Certificate of Costs within fifteen (15) Business Days of such request provided that the Council may not request a Certificate for Costs more than once in any Agreement Year. The Certificate of Costs shall be prepared in accordance with generally accepted accounting principles and Good Industry Practice. The Service Provider shall arrange for the Certificate of Costs to be audited as soon as practicable after submission to the Council and a copy of the audited version of the Certificate of Costs shall be provided to the Council.
- 33.3 The Certificate of Costs shall set out the Service Provider's actual costs, expenses and profits in providing the Services over the preceding Agreement Year including the following details:
- 33.3.1 actual Capital Expenditure, including capital replacement costs;
 - 33.3.2 actual operating expenditure relating to the provision of the Services with an analysis showing the costs of staff consumables sub-contracted and bought in services;
 - 33.3.3 all interest expenses and other third party financing costs incurred in relation to the Services;
 - 33.3.4 details of the overhead recoveries that have been made in relation to the Services;
 - 33.3.5 the profit which the Service Provider and any Key Sub-Contractors achieved in the provision of the Services including any profit element forming any part of the overhead recoveries disclosed by reason of Clause 33.3.4 above or any part of sub-contracted or bought in services from Key Sub-Contractors or Affiliates; and
 - 33.3.6 details of any efficiency savings or economies of scale derived from any Partner Authority Services.
- 33.4 Following receipt of the Certificate of Costs the Service Provider shall provide to the Council such additional information as it may reasonably request so that the Council can verify the accuracy of the Certificate of Costs. The Council shall have the right to appoint an independent Third Party auditor ("Auditor") not being a direct competitor of the Service Provider on confidentiality terms substantially the same as those set out in Clause 68 (*Information and Confidentiality*) to verify the Certificate of Costs.
- 33.5 The Auditor shall be paid for by the Council unless the Certificate of Costs prepared by the Service Provider is found to be manifestly inaccurate, incomplete or misleading in which case the Service Provider shall be solely responsible for paying the Auditor's costs.
- 33.6 The Service Provider shall allow the Auditor and its authorised agents the right of reasonable access to (and, the right to take copies of) the books of account and other source data in whichever form held of the information identified in any Financial Model or such other information as may be necessary or reasonably desirable for the purpose of verifying the Certificate of Costs or for the purpose of monitoring and calculating the Service Provider's profit margins and applying the provisions of the Payment Mechanism.
- 33.7 The Certificate of Costs may be used by the Council for verification of cost expenditure or estimated expenditure in particular but without limitation for the purpose of calculating the effect of a Change or Qualifying Change in Law or compensation payable on termination of this Agreement.

PART 9: PERFORMANCE MONITORING

34 PERFORMANCE MONITORING

34.1 Service Provider Monitoring

The Service Provider shall monitor its performance in the delivery of the Services, provide a Monthly Report, an Annual Report and an Annual Programme and comply with its other obligations, in each case in accordance with Schedule 11 (*Performance Monitoring*)

34.2 Council Monitoring

34.2.1 The Service Provider shall procure that the Council or any representative or adviser of the Council shall have at all reasonable times and on reasonable notice, the right to enter any premises used by the Service Provider or the Sub-Contractors in the provision of the Services:

- (a) in order to ensure that the Services are being provided in accordance with this Agreement, and
- (b) to ensure that the Service Provider is complying with the provisions of the Principles of Good Employment Practice

34.2.2 The Council shall be entitled to notify the Service Provider of the outcome of the performance monitoring exercise, and the Service Provider shall have due regard to the Council's comments in relation to the future provision of the Services.

34.2.3 Without prejudice to the Council's rights under Clause 46.1 (*Termination for Service Provider Default*) and any other express rights under this Agreement, where the Service Provider has been found to be fraudulent, have submitted erroneous reports or fraudulent claims for payment or the Council reasonably believes such reports to be misleading the Council may, by notice to the Service Provider, increase the level of its monitoring of the Service Provider, or (at the Council's option), of the Service Provider's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Service or Services the subject of such fraudulent, erroneous or misleading reporting until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that it will perform (and is capable of performing) its obligations under this Agreement, in which case, the following provisions shall apply

- (a) any such notice to the Service Provider shall specify in reasonable detail the additional measures to be taken by the Council or by the Service Provider (as the case may be) in monitoring the performance of the Service Provider,
- (b) if the Service Provider (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Council in writing within two (2) Business Days of the receipt of the notice of the measures objected to (and of any changes necessary in order to prevent prejudice to the Service Provider's performance of its obligations under this Agreement),
- (c) the measures to be taken by the Council and the Service Provider (as the case may be) shall be agreed between the Parties or, in the absence of agreement within five (5) Business Days of the Council's receipt of the Service Provider's objection, determined pursuant to the Dispute Resolution Procedure, and
- (d) the Service Provider shall bear its own costs and indemnify and keep the Council indemnified at all times from and against all costs and expenses incurred by or on behalf of the Council in relation to such increased level of monitoring

34.3 Service Provider Responsible

The Service Provider acknowledges and agrees that, notwithstanding any provision of this Agreement which contemplates that the Council will or may from time to time:

- 34.3.1 monitor or inspect any performance of the Services;
- 34.3.2 check compliance by the Service Provider with its obligations;
- 34.3.3 confirm or indicate approval of or non-objection to proposals made by the Service Provider; or
- 34.3.4 request that the Service Provider makes a Change to the Services

it will always be fully the responsibility of the Service Provider, and not the responsibility of the Council, to ensure that the Services are performed in all respects in accordance with the Service Provider's obligations under this Agreement and no such action by or on behalf of the Council will in any way limit or affect such obligations.

35. CUSTOMER COMPLAINTS

- 35.1 The Service Provider shall maintain an up to date, comprehensive and detailed written record of all Customer Complaints it receives regarding the provision of the Services (or any other aspect of the Service Provider's performance of this Agreement) which shall be made available to the Council by the Service Provider for inspection upon request as soon as practicable and in any event within five (5) Business Days of such request by the Council. The Service Provider shall also record all Customer Complaints and related communication on the CRM System, in accordance with the Specification. Such records shall contain all relevant details of the Customer Complaint including the following:
 - 35.1.1 the person to whom the Customer Complaint was made and the name of the job title of that person;
 - 35.1.2 the name and address (if known) of the person making the Customer Complaint and the capacity in which that person made the Customer Complaint;
 - 35.1.3 the nature and extent of the default alleged in the Customer Complaint including the details of personal injury suffered or property lost, damaged or otherwise affected;
 - 35.1.4 the date and time of the Customer Complaint; and
 - 35.1.5 any action taken to investigate and/or remedy the Customer Complaint and the timescale in which it was done and if no action was taken the reason why.
- 35.2 If in providing the Services, the Service Provider receives any Customer Complaints in relation to the Services, the Council and/or the provision by the Council of any services (whether or not they are services provided by the Service Provider under this Agreement), the Service Provider shall notify the Council in writing immediately and provide the details of the Customer Complaint within two (2) Business Days of becoming aware of it. The Council shall have the right to investigate all Customer Complaints and take such steps, or require the taking of such steps by the Service Provider, as the Council shall reasonably deem necessary. The Service Provider shall promptly provide such documentation, information and assistance (including access to Personnel) as the Council may reasonably require in order to enable the Council to investigate and respond to the Customer Complaint.
- 35.3 The Service Provider shall ensure that its customer complaints procedure is consistent with the Council's Customer Complaints Procedure.
- 35.4 If the Council receives any Customer Complaints made against the Service Provider, the Council shall provide details to the Service Provider (including any instructions in relation to the steps the Service Provider should take to resolve the complaint) and the Service Provider shall investigate the

complaint in accordance with the Council's Customer Complaints Procedure, and provide the Council with all details as required by this Clause 35 including details of the action the Service Provider has/is taking to investigate the Customer Complaint or to otherwise satisfy the complainant (provided that the Council may elect, at its discretion, to take responsibility for the handling of a complaint).

36 IMMEDIATE ACTION PROCEDURE

36 1 Where due to any breach by the Service Provider of its obligations in this Agreement

36 1 1 the Service Provider's performance falls below the Minimum Acceptance Level in relation to any Performance Indicator, or

36 1 2 the Council's representative reasonably believes-

(a) such breach places the Council in breach of any of its regulatory or statutory obligations; or

(b) that for reputational or health and safety related reasons such breach requires immediate corrective action,

the Council Representative (or any appointee of the Council Representative) shall be entitled to instruct the Service Provider to take appropriate remedial action immediately. If the Council Representative gives an instruction orally then such instruction shall be immediately effective and will be followed by an instruction in writing given to the Service Provider Representative within twenty four (24) hours of the oral instruction. The Service Provider shall, following receipt of such oral or written instruction, immediately comply with the instruction within the time specified in such instruction.

36 2 Subject to Clause 36.3, no adjustment to the Payment shall be made in respect of any action taken by the Service Provider following a Council instruction pursuant to this clause and the Service Provider's actions under this Clause 36 shall be carried out entirely at the Service Provider's own cost and expense.

36 3 If it is later determined (following referral to the Dispute Resolution Procedure) that the Council had no grounds for its decision to issue an instruction under Clause 36 1, the Council shall reimburse the Service Provider for its reasonably incurred costs in complying with such instruction.

37. CORRECTIVE ACTION PROCEDURE

37 1 In the event that there has been, or is reasonably likely to be, in the Service Period

37 1 1 a Material PI Failure, and/or

37.1 2 the Service Provider commits a material default which has a significant adverse affect on the provision of all or a significant part of a Service Element that is capable of remedy (and for these purposes a material default may be a single material default or a number of defaults or repeated defaults (whether of the same or different obligations and regardless of whether such defaults are remedied) which taken together constitute a material default),

(each a "Notifiable Default"), the Service Provider shall notify the Council of the Notifiable Default as soon as practicable but in any event within three (3) Business Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Corrective Action Plan Failure or other Service Provider Termination Event, the Council may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Corrective Action Procedure.

Notification

- 37.2 If:
- 37.2.1 the Service Provider notifies the Council pursuant to Clause 37.1 that a Notifiable Default has occurred; or
 - 37.2.2 the Council notifies the Service Provider that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Service Provider has to rectify),

then, unless the Notifiable Default also constitutes a Service Provider Termination Event and the Council serves a Termination Notice, the Service Provider shall comply with the Corrective Action Procedure in Clauses 37.3 to 37.8 shall apply.

Corrective Action Procedure

- 37.3 The Service Provider shall submit a draft Corrective Action Plan to the Council for it to review as soon as possible and in any event within ten (10) Business Days (or such other period as may be agreed by the Council) after the original notification pursuant to Clause 37.2. The Service Provider shall submit a draft Corrective Action Plan even if the Service Provider disputes that a Notifiable Default has occurred.
- 37.4 The draft Corrective Action Plan shall set out:
- 37.4.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
 - 37.4.2 the actual or anticipated effect of the Notifiable Default; and
 - 37.4.3 the steps which the Service Provider proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 37.5 The Service Provider shall promptly provide to the Council any further documentation that the Council reasonably requires to assess whether the draft Corrective Action Plan is acceptable.
- 37.6 The Council may reject the draft Corrective Action Plan by notice to the Service Provider if, acting reasonably, it considers that the draft Corrective Action Plan does not comply with Clause 37.4 and/or:
- 37.6.1 is insufficiently detailed to be capable of proper evaluation;
 - 37.6.2 will take too long to complete;
 - 37.6.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 37.6.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Council.
- 37.7 The Council shall notify the Service Provider whether it consents to the draft Corrective Action Plan as soon as reasonably practicable. If the Council rejects the draft Corrective Action Plan, the Council shall give reasons for its decision and the Service Provider shall take the reasons into account in the preparation of a revised Corrective Action Plan. The Service Provider shall submit the revised draft of the Corrective Action Plan to the Council for review within five (5) Business Days (or such other period as agreed between the Parties) of the Council's notice rejecting the first draft.
- 37.8 If the Council consents to the Corrective Action Plan:
- 37.8.1 the Service Provider shall immediately implement the Corrective Action Plan; and

- 37.8.2 provided that the Service Provider implements the Corrective Action Plan in accordance with its terms, the Council may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default
- 37.9 If it is later determined (following referral to the Dispute Resolution Procedure) that the Council had no grounds for its decision to issue an instruction under Clause 37.2.2, the Council shall reimburse the Service Provider for its reasonably incurred costs in complying with such instruction

38. COUNCIL STEP-IN

38.1 Right to Step-In

If the Council reasonably believes that it needs to take action in connection with the Services or a Service Element

- 38.1.1 because a material risk exists to the health or safety of persons or property or to the environment,
- 38.1.2 to discharge a statutory duty,
- 38.1.3 because an Emergency has arisen; and/or
- 38.1.4 because a Service Absence has occurred which the Service Provider has failed to remedy in the manner and timeframe required by the Council pursuant to Clause 36 (*Immediate Action Procedure*),

then the Council shall be entitled to take action in accordance with Clauses 38.2 to 38.6

38.2 Notice to the Service Provider

If Clause 38.1 (Right to Step-In) applies and the Council wishes to take action, the Council shall notify the Service Provider in writing of the following

- 38.2.1 the action it wishes to take in relation to the relevant parts of the Services or Service Element in order to deal with the relevant circumstances,
 - 38.2.2 the reason for such action,
 - 38.2.3 the date it wishes to commence such action;
 - 38.2.4 the time period which it believes will be necessary for such action, and
 - 38.2.5 to the extent practicable, the effect on the Service Provider and its obligation to provide the Services or the relevant Service Element during the period such action is being taken
- 38.3 The Council shall provide the Service Provider with as much notice as is reasonably practicable in the circumstances when issuing a notice under Clause 38.2

38.4 Action by Council

- 38.4.1 Following service of such notice, the Council shall take such action as notified under Clause 38.2 (*Notice to the Service Provider*) and any consequential additional action as it reasonably believes is necessary (together the "Required Action" and the Service Provider shall give all reasonable assistance to the Authority while it is taking the Required Action including (without limitation) making any assets available for use by the Council or its nominee. The Council shall provide the Service Provider with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- 38.4.2 Where the Required Action has been taken otherwise than as a result of a breach by the Service Provider, the Council shall undertake the Required Action in accordance with

Good Industry Practice and shall indemnify the Service Provider against all Direct Losses where it fails to do so.

38.5 Step-In without Service Provider Breach

If the Service Provider is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any part of the Services:

- 38.5.1 the Service Provider shall be relieved from its obligations to provide such part of the Services; and
- 38.5.2 in respect of the period in which the Council is taking the Required Action and provided that the Service Provider provides the Council with reasonable assistance (such assistance to be at the expense of the Council to the extent that additional costs are incurred):
 - (a) the Monthly Payment due from the Council to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period; and
 - (b) the Council shall use reasonable endeavours to generate Third Party Revenue (and shall remit any Third Party Revenue which the Council receives to the Service Provider, without prejudice to the Gain Share Mechanism).

38.6 Step-In on Service Provider Breach

If the Required Action is taken as a result of a breach of the obligations of the Service Provider under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any part of the Services:

- 38.6.1 the Service Provider shall be relieved of its obligations to provide such part of the Services;
- 38.6.2 in respect of the period in which the Council is taking the Required Action, the Monthly Payment due from the Council to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Council's costs of operation in taking the Required Action;
- 38.6.3 the Council shall use reasonable endeavours to provide the Services in accordance with Good Industry Practice (taking into account the resources and expertise available to the Council); and
- 38.6.4 the Council shall provide such co-operation as the Service Provider reasonably requires to enable the Service Provider to continue to provide the Services which are not the subject of the Required Action (taking into account the resources and expertise of the Council).

PART 10: SUPERVENING EVENTS

39. EXCUSING CAUSE

- 39.1 If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Service and the Service Provider has given written notice of the effect of such Excusing Cause within ten (10) Business Days of the date on which the Service Provider become aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then to the extent such failure or interference arises as a direct result of such Excusing Cause:
 - 39.1.1 such interference shall not be taken account of in measuring the performance of the Service for the purpose of accruing Performance Deductions; and

- 39.1.2 such failure by the Service Provider to perform, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Agreement
- 39.2 The Service Provider shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Service Provider's ability to perform its obligations under this Contract. To the extent that the Service Provider does not take such steps, the Service Provider shall not be entitled to, and shall not receive, the relief specified in this Clause 39.
- 40 FORCE MAJEURE**
- Force Majeure**
- 40.1 No Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability (including Performance Deductions) to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Council shall not be entitled to terminate this Agreement for a Service Provider Termination Event if such Service Provider Termination Event arises from a Force Majeure Event (but without prejudice to Clauses 40.5 to 40.7 below).
- 40.2 Not used
- 40.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect
- 40.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement
- 40.5 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, subject to Clause 40.8 below, either Party may terminate this Agreement by giving forty (40) Business Days' written notice to the other Party
- 40.6 If this Agreement is terminated under Clause 40.5, or Clause 40.7, then Clause 52 (*Consequences of Termination*) shall apply
- 40.7 If the Service Provider gives notice to the Council under Clause 40.5 that it wishes to terminate this Agreement, then the Council has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Agreement to continue. If the Council gives the Service Provider such notice (the *Continuation Notice*), then:
- 40.7.1 the Council shall pay to the Service Provider the Monthly Payment from the day after the date on which this Agreement would have terminated under Clause 40.5 as if the Services were being fully provided; and
- 40.7.2 this Agreement will not terminate until expiry of written notice (of at least thirty (30) Business Days) from the Council to the Service Provider that it wishes this Agreement to terminate
- 40.8 The Parties shall at all times following the occurrence of a Force Majeure Event, use all reasonable endeavours to prevent and mitigate the effects of any delay and the Service Provider shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event
- 40.9 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this

Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

PART 11: LIABILITY

41. INDEMNITIES AND LIABILITY

- 41.1 Neither Party excludes or restricts its liability (if any) to the other Party for:
 - 41.1.1 death or personal injury caused by their negligence;
 - 41.1.2 fraud;
 - 41.1.3 fraudulent misrepresentation;
 - 41.1.4 save in respect of the Council Assets, any of the terms implied into this Agreement (if any) by Section 12 Sale of Goods Act 1979 and Sections 2 and 7 Supply of Goods and Services Act 1982; or
 - 41.1.5 any other matter for which it would be unlawful for either Party to exclude or attempt to exclude liability.
- 41.2 Neither Party shall in any event be liable to the other under or in relation to this Agreement, or in tort, negligence, breach of statutory duty or otherwise for any Indirect Losses howsoever caused, provided that any liability of the Service Provider under Clause 52 (*Consequences of Termination*) shall not constitute Indirect Losses.
- 41.3 Subject to Clause 41.4, the Service Provider shall be responsible for, and shall release and indemnify the Council, its employees, agents and partners from and against, all liability for:
 - 41.3.1 loss of or damage to property (including property belonging to the Council or for which it is responsible); and/or
 - 41.3.2 Losses, costs and expenses (including all reasonable legal expenses); and/or
 - 41.3.3 breach of statutory duty; and/or
 - 41.3.4 any other Losses or damage to third party property and any claims, demands or proceedings brought against the Council by any third party,which may arise out of, or in consequence of, the performance or non-performance by the Service Provider (or any Service Provider Related Parties) under this Agreement (or in relation to Third Party Services).
- 41.4 The Service Provider shall not be obliged to indemnify the Council pursuant to clause 41.3 in relation to:
 - 41.4.1 any matter which arises as a direct result of any breach by the Council of its obligations under the Contract or any wilful misconduct by the Council; and/or
 - 41.4.2 any Losses caused by a Performance Failure to the extent that the Council is compensated in respect of the same Losses through corresponding Performance Deductions.
- 41.5 If the Council enforces its rights in accordance with Clause 38 (*Council Step-In*) as a result of a breach of the obligations of the Service Provider under this Agreement, the Service Provider shall indemnify the Council and keep the Council indemnified in full from and against all reasonable Losses, costs and expenses incurred or suffered, awarded against or paid by the Council as a result of the Council having to exercise its rights under Clause 38 (*Council Step-In*) including (but not limited to) the cost of making alternative arrangements for the provision of the Services (or any part of the Services) including the provision of temporary or alternative accommodation, facilities,

assets or services which should have been provided by the Service Provider provided that the Service Provider shall only be liable to the extent that such Losses, costs and expenses exceed the proportion of the Payment which relates to the Services subject to Clause 38 (*Council Step-In*).

- 41.6 The Parties acknowledge and agree that the allocation of risk and liability contained in this Agreement is reasonable in all circumstances.
- 41.7 The Parties shall in all circumstances take reasonable steps to minimise and mitigate their respective losses (including, but not limited to, Losses) in respect of all matters for which the one Party has agreed to indemnify the other.
- 41.8 If any sum is due under this Agreement from the Service Provider to the Council and the Service Provider fails to make such a payment in accordance with the terms of this Agreement or such a payment would result in the insolvency of the Service Provider, the Council may, subject to the terms of the Guarantee, call upon the Guarantee and/or subject to the terms of the Bond, call upon the Bond, in each case for such payment (without prejudice to the Council's rights of set-off as provided in Clause 27 (*Set-Off*)).
- 41.9 Subject to Clauses 41.1, 41.2 and 41.11 the maximum aggregate liability of the Service Provider to the Council in contract, tort, negligence, breach of statutory duty or otherwise arising under or in connection with this Agreement (including, but not limited to, in relation to Losses) shall, except in relation to liability arising as a result of termination of this Agreement, and in relation only to Losses in respect of which the Service Provider is not required to maintain insurance in accordance with this Agreement, not (except as stated in the Special Conditions) exceed:

41.9.1 in the period from the Agreement Date until the expiry of the first Agreement Year, [REDACTED] £00 provided that:

- (a) in relation to each Service Element (but in relation to Street Lighting Services, excluding liability in relation to LED Services) the Service Provider's liability in respect of any Losses caused by a Service Failure regardless of whether the Council is entitled to levy Performance Deductions (except for a Service Absence or a Third Party Claim), shall not exceed an amount equal [REDACTED] and [REDACTED]
- (b) in relation to LED Services, the Service Provider's Liability in respect of any Losses caused by a Service Failure (except for a Service Absence or a Third Party Claim), shall not exceed an amount equal [REDACTED] and [REDACTED]

41.9.2 in each Agreement Year following the first Agreement Year, [REDACTED] % of the aggregate Payment in respect of all Service Elements which would be payable to the Service Provider on the basis of full performance of its obligations under this Agreement in such Agreement Year provided that:

- (a) in relation to each Service Element (but in relation to Street Lighting Services, excluding liability in relation to LED Services) the Service Provider's liability in respect of any Losses caused by a Service Failure regardless of whether the Council is entitled to levy Performance Deductions (except for a Service Absence or a Third Party Claim), shall not exceed [REDACTED] and [REDACTED]
- (b) in relation to LED Services, the Service Provider's liability in respect of any Losses caused by a Service Failure (except for a Service Absence or a Third Party Claim), shall not exceed [REDACTED] and [REDACTED]

in each case being the Service Provider Liability Cap.

- 41.10 Subject to Clauses 41.1, 41.2 and 41.11 the maximum aggregate liability of the Service Provider to the Council in contract, tort, negligence, breach of statutory duty or otherwise arising under or in

connection with the termination of this Agreement (including, but not limited to, in relation to Losses) shall, without prejudice to the Service Provider's liability relating to the period prior to termination of this Agreement, not exceed

41.10.1 If the Agreement is terminated in whole [REDACTED] to the Service Provider on the basis of full performance of its obligations under this Agreement in the Agreement Year prior to the Agreement Year in which this Agreement terminates (except if the Agreement is terminated in the first Agreement Year, in the first Agreement Year); or

41.10.2 If the Agreement is partially terminated [REDACTED] in relation to the relevant Service Element or Service Elements (but in relation to the Street Lighting Services, [REDACTED] aggregated with the LED Payment) being terminated which would be payable to the Service Provider on the basis of full performance of its obligations under this Agreement in the Agreement Year prior to the Agreement Year in which this Agreement terminates (except if the Agreement is so terminated in the first Agreement Year, in the first Agreement Year), or

41.10.3 If the Agreement is partially terminated in relation to the LED Services only [REDACTED] of the LED Payment which would be payable to the Service Provider on the basis of full performance of its obligations under this Agreement in the Agreement Year prior to the Agreement Year in which this Agreement terminates (except if the Agreement is so terminated in the first Agreement Year, in the first Agreement Year),

(each being the Service Provider Termination Cap).

41.11 The limitations in Clause 41.9 and Clause 41.10 shall not apply to the Service Provider's liability in respect of its indemnity obligations set out in:

41.11.1 Clause 9 (Necessary Consents),

41.11.2 Clause 66 (Data Protection),

41.11.3 Clause 62 (Intellectual Property Rights),

41.11.4 Schedule 30 (TUPE);

41.11.5 Schedule 31 (Pensions)

41.12 Subject to Clauses 41.1, 41.2 and 41.13, the maximum aggregate liability of the Council in contract, tort, negligence, breach of statutory duty or otherwise arising, under or in connection with this Agreement (including, but not limited to, Losses) shall not exceed:

41.12.1 In the period from the Agreement Date until the expiry of the first Agreement Year, [REDACTED] and

41.12.2 in each subsequent Agreement Year [REDACTED]

provided that the aggregate liability of the Council under or in connection with this Agreement shall [REDACTED]

41.13 The limitations in Clause 41.12 shall not apply to the Council's liability in respect of its indemnity obligations set out in:

41.13.1 Clause 56 (Employees),

41.13.2 Schedule 30 (TUPE);

41.13.3 Schedule 31 (Pensions)

41.13.4 Clause 62 (Intellectual Property Rights),

41 13 5 Clause 66 (Data Protection)

41 14 Without prejudice to any entitlement of the Service Provider,

41.14.1 to specific performance of any obligation under this Agreement, or

41.14.2 to injunctive relief, or

41 14 3 to bring an action in breach of Agreement, tort and actions in debt,

the Service Provider's sole remedy in relation to matters for which any express right or remedy is stated in this Agreement shall be those rights or remedies and the Service Provider shall have no additional right or remedy arising by common law, in equity, by statute or otherwise

42 CONDUCT OF CLAIMS

42.1 Each Party agrees to promptly notify the other by Formal Notice upon becoming aware or upon receipt of any Claim in which the Council or the Service Provider is named in connection with the Services. No litigation will be commenced in connection with the Services by the Service Provider without the Council's prior written consent (not to be unreasonably withheld or delayed) unless such litigation is against the Council

42 2 If either Party ("the Indemnified Party") receives any notice, demand, letter or other document concerning any Claim from which it appears that it is or may become entitled to be indemnified under this Contract or otherwise becomes aware that it may be entitled to be indemnified by the other (the "Indemnifying Party"), the Indemnified Party shall give Formal Notice to the Indemnifying Party as soon as reasonably practicable detailing the nature of the Claim

42 3 Subject to Clauses 42.4, 42.5 and 42.6, on the giving of a notice by the Indemnified Party pursuant to Clause 42.2, where it appears that the Indemnified Party is or may be entitled to indemnification from the Indemnifying Party in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifying Party shall (subject to providing the Indemnified Party with reasonable security against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Indemnified Party at the Indemnifying Party's own expense and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Indemnified Party shall give the Indemnifying Party all reasonable co-operation, access and assistance for the purposes of considering, resisting and/or settling such Claim.

42 4 With respect to any Claim conducted by the Indemnifying Party pursuant to Clause 42.3 above

42 4 1 the Indemnifying Party shall keep the Indemnified Party fully informed and consult with it about material elements of the conduct of the Claim,

42 4 2 the Indemnifying Party shall not bring the name of the Indemnified Party into disrepute, and

42 4 3 the Indemnifying Party shall not pay or settle such claims without the prior consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed

42.5 The Indemnified Party shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if

42 5 1 the Indemnifying Party is not entitled to take conduct of the Claim in accordance with Clause 42.3 above; or

42 5 2 the Indemnifying Party fails to notify the Indemnified Party of its intention to take conduct of the relevant Claim within five (5) Business Days of the notice from the Indemnified Party under Clause 42.2 above or notifies the Indemnified Party that it does not intend to take conduct of the Claim, or

- 42.5.3 the Indemnifying Party fails to comply in any material respect with the provisions of Clause 42.4 above.
- 42.6 The Indemnified Party shall be free at any time to give notice to the Indemnifying Party that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim (or of any incidental negotiations) to which Clause 42.3 above applies. On receipt of such notice the Indemnifying Party shall promptly take all steps necessary to transfer the conduct of such Claim to the Indemnified Party, and shall provide to the Indemnified Party all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. If the Indemnified Party gives any notice pursuant to this Clause 42.6 then the Indemnifying Party shall be released from any liability under its indemnity under this Agreement in relation to that Claim and, without prejudice to any accrued liabilities, and any liability pursuant to Clause 42.3 in respect of the costs and expenses of such Claim.
- 42.7 If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Indemnified Party shall forthwith repay to the Indemnifying Party whichever is the lesser of:
- 42.7.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; and
 - 42.7.2 the amount paid to the Indemnified Party by the Indemnifying Party in respect of the Claim under the relevant indemnity,
- provided that there shall be no obligation on the Indemnified Party to pursue such recovery and that the Indemnifying Party is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifying Party exceeds any loss sustained by the Indemnified Party (including for this purpose indirect or consequential losses or claims for loss of profits which may be excluded by this Agreement from being recovered from the Indemnifying Party).
- 42.8 Any person taking any of the steps contemplated by Clauses 42.2 to 42.6 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.
- 42.9 After the Indemnifying Party has received a notice from the Indemnified Party under Clause 42.2, the Indemnifying Party may within five (5) days give the Indemnified Party notice that it does not consider the Claim should be defended and provide the Indemnified Party with its proposals for settling the Claim. If the Indemnified Party unreasonably refuses the Indemnifying Party's proposal for settlement then the Indemnifying Party shall, without prejudice to any accrued liabilities, be released from any liability under its indemnity in relation to the Claim and/or any liability pursuant to Clause 42.3 in respect of the costs and expenses of such Claim except to the extent that the Indemnifying Party would have been liable to indemnify the Indemnified Party had the Indemnified Party not unreasonably refused the Indemnifying Party's proposal made under this Clause 42.9.
- 43. INSURANCE**
- 43.1 The Service Provider shall throughout the Agreement Period, take out and maintain, or procure the maintenance of, the insurances as set out in and in accordance with Schedule 29 (*Required Insurances*) and any other insurances as may be required by Law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 43.2 Neither Party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

- 43.3 With the exception of insurances required by law, the insurances referred to in Clause 43.1 shall
- 43.3.1 where indicated in Schedule 29 (*Required Insurances*) be in the joint names of the Parties but otherwise shall note the interest of the Council as principal and contain indemnity to principal provisions;
 - 43.3.2 where indicated in Schedule 29 (*Required Insurances*) contain a waiver of subrogation rights as against the Council;
 - 43.3.3 provide for non-variation protection in respect of any claim by the Council as co-insured.
- 43.3A The Service Provider shall give the Council thirty (30) days' prior written notice of the cancellation, non-renewal or amendment of any of the insurances referred to in Clause 43.1, but only in relation to an amendment where it is relevant to the Services or would result in the insurance not meeting the requirements of this Agreement
- 43.4 The Contractor shall provide, to the Council
- 43.4.1 copies on request, of all insurance policies referred to in Clauses 43.1 and 43.2 (together with any other information reasonably requested by the Council relating to such insurance policies) and the Council shall be entitled to inspect them during ordinary business hours,
 - 43.4.2 evidence that the premiums payable under all insurance policies have been paid up to their respective due dates and that the insurances are in full force and effect in accordance with the requirements of this Clause 43 (Insurance) and Schedule 29 (*Required Insurances*), and
 - 43.4.3 on or before the date of expiry of any insurance required by Clauses 43.1 and 43.2, satisfactory evidence that the relevant insurance has been or is being renewed
- 43.5 Renewal certificates in relation to any of the insurances required by Clause 43.1 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Council) shall be forwarded to the Council as soon as possible but in any event on or before the renewal date
- 43.6 If the Service Provider is in breach of Clause 43.1 the Council may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Service Provider on written demand
- 43.7 The Service Provider shall give the Council notification within ten (10) Business Days after any claim [REDACTED] (indexed) on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Council) give full details of the incident giving rise to the claim.
- 43.8 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Service Provider of its other liabilities and obligations under this Agreement
- 43.9 Save where expressly set out in this Agreement, the insurance premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Service Provider
- 43.10 If any insurance referred to in this Clause 43 becomes unavailable at commercially reasonable terms (except where such terms (including increased premiums) are required by insurers by reason of the relevant party's own claims record or other acts, omissions, matters or things peculiar to the relevant party), the Service Provider shall notify the Council in writing without undue delay and, in any event, within five (5) Business Days detailing the circumstances or events which have caused such insurances to become unavailable. The Parties shall discuss and agree (both acting reasonably and in good faith) what alternative arrangements should be made (if any) to manage any

risk that would otherwise be covered by such insurances and an adjustment shall be made to the Payment (if applicable) in accordance with Schedule 9 (*Payment Mechanism*).

Professional indemnity insurance

43.11 In addition to the Required Insurances, the Service Provider undertakes to procure that it will take out and maintain in force and ensure that any Sub-Contractors maintain in force professional indemnity insurance ("PI Insurance"), and to:

43.11.1 provide evidence satisfactory to the Council (as and when reasonably required by the Council) of the PI Insurance being in full force and effect from the date of the Agreement until the date twelve (12) years following and including the completion of all the Services under this Agreement (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess; insurers; policy number and indemnity limit [REDACTED] except where stated otherwise in the Special Conditions); for each and every claim except for claims arising out of pollution and contamination for which the indemnity limit shall apply in aggregate and as [REDACTED]

43.11.2 provide the Council with notice of:

- (a) any cancellation of the PI Insurance not less than thirty (30) days prior to the relevant cancellation date; and
- (b) any adverse material changes to or suspension of cover relevant to the Services not less than thirty (30) days prior to the relevant change or suspension; and

43.11.3 inform the Council as soon as reasonably practicable of any claim (except a claim brought by the Council under this Agreement) under the PI Insurance in respect of the Services [REDACTED] provide (or use all reasonable endeavours to procure the provision of) such information to the Council as the Council may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit.

43.12 The limit of indemnity and the maximum deductibles for each of the insurances as set out in Schedule 29 (*Required Insurances*).

43.13 The Service Provider shall, where it is obliged to effect insurance under this Clause 43 not bring any claim or action against the Council in respect of any loss or damage in circumstances where the Service Provider is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Agreement), provided that this clause 43.12 shall not by itself prevent the Service Provider from claiming against the Council for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum level of such insurance required by this Agreement.

Reinstatement

43.14 Where insurance proceeds are to be used in accordance with this Agreement to repair, reinstate or replace any Asset, the Service Provider shall carry out the work in accordance with this Agreement so that on completion of the work the provisions of this Agreement are complied with.

Broker's letter of undertaking

43.15 On the Agreement Date, and within thirty (30) days following each renewal of the Required Insurances, the Service Provider shall deliver to the Council a broker's letter of undertaking signed by the insurance broker to the Service Provider in the agreed form as set out in Schedule 29 (*Required Insurances*) ("Brokers Letter of Undertaking").

43 16 The Service Provider shall procure that any broker(s) appointed during the currency of this Agreement shall:

43.16.1 owe the Council such obligations and give to the Council such warranties as are substantially the same as those set out in the Broker's Letter of Undertaking and in Clause 43.15; and

43.16.2 enter into an agreement in substantially the same form as the Broker's Letter of Undertaking of Schedule 29 (*Required Insurances*)

44 WARRANTIES

44 1 The Service Provider warrants, represents and undertakes to the Council that:

44 1 1 the Service Provider and each Sub-Contractor is properly constituted and incorporated under Law and has all necessary authority, power and capacity to enter into this Agreement;

44 1 2 the execution, delivery and performance of this Agreement by the Service Provider and/or any Sub-Contractor does not in any way contravene any Legislation either in force at the date of execution or enacted but not yet in force, any order or decree of any court or arbitrator;

44 1 3 there does not exist any material claim or potential claim and that no litigation arbitration or any other type of proceedings are presently in contemplation or progress to the best of the knowledge of the Service Provider and/or any Sub-Contractor, including pending or threatened material claims or actions, against its directors or in respect of their assets which could materially affect the provision of the Services;

44.1.4 to the best of the Service Provider's and/or any Sub-Contractor's knowledge no actions, proceedings or other steps are in contemplation or have been taken for the winding-up or dissolution of the Service Provider and/or any Sub-Contractor or the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar such officer in respect of the Service Provider,

44 1 5 there are no material facts or circumstances in relation to the financial position or operational constitution of the Service Provider which have not been fully and fairly disclosed to the Council in writing and which if so disclosed might reasonably have been expected to affect the decision of the Council to enter into this Contract,

44 1 6 the Service Provider shall, in accordance with Good Industry Practice, procure for the benefit of the Council manufacturer and/or supplier warranties in respect of all Equipment excluding any Council Assets and any other assets transferred to or licensed to the Service Provider by the Council and which are used or utilised for the provision of the Services;

44 1 7 the Service Provider has and will continue to have all necessary rights in and to Software, IPR or any other materials made available by the Service Provider and/or any Sub-Contractor to the Council necessary to perform the Service Provider's obligations under this Agreement;

44 1 8 the Service Provider will (and shall procure that any Sub-Contractor will) in the course of supplying or performing the Services in accordance with Good Industry Practice use all reasonable endeavours to ensure that it does not introduce any computer viruses, software bombs or similar items into Hardware or Software used by the Council or by the Service Provider or any Sub-Contractor in the provision of the Services,

44.1 9 without prejudice to Clause 44 1 810, the Service Provider has conducted its own analysis and review of the provision of the Services and has satisfied itself as to the accuracy, completeness and fitness for purpose of all information provided by or on behalf of the Council upon which it or any third party places reliance,

44.1.10 the Service Provider has satisfied itself as to the scope, nature and extent of:

- (a) its obligations under this Agreement;
- (b) the Council Assets and all information necessary to perform its obligations under this Agreement and other obligations assumed, including:
 - (i) information as to access and use of the Council Premises;
 - (ii) information relating to any plant, machinery, Equipment (including hardware) including its state, condition, functionality and performance;
 - (iii) information as to the availability and adequacy of specifications and other documentation relating to the Hardware and Software comprised in the Council Assets; and
 - (iv) information relating to any software, intellectual property rights or any third party rights;

44.1.11 there does not exist at the time of execution of this Agreement any material facts or circumstances which have not been fully and fairly disclosed to the Council by the Service Provider or Sub-Contractor which affect the financial operation of the Service Provider or Sub-Contractor or its ability to perform its obligations under this Agreement throughout the duration of the Agreement;

44.1.12 throughout the Agreement Period:

- (a) the Service Provider will upon becoming aware that the same may be threatened or pending and immediately after the commencement thereof give Formal Notice to the Council of all relevant litigation or arbitration or administrative or adjudication or mediation proceedings before or of any court, arbitrator or governmental authority which would materially adversely affect, the Service Provider's or any Sub-Contractor's ability to perform its obligations under this Agreement; and
- (b) the Service Provider will not (and shall procure that no Sub-Contractor shall) without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Service Provider to perform its obligations under this Agreement.

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

44.3 The Council does not give any warranty or undertaking or make any representation (either express or implied) as to the completeness or accuracy of any of the Background Information whether to do with the Services or for any other purpose whatsoever. Neither the Council nor any of its agents or employees shall be liable to the Service Provider or any third party in contract, tort, negligence, breach of statutory duty or otherwise as a result of any of the Background Information being incomplete or inaccurate except in relation to any fraudulent statements.

44.4 The Service Provider shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Council on grounds that any information, including the Background Information, whether obtained from the Council or otherwise (including information made available by the Council) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

45. BOND, GUARANTEE AND COLLATERAL WARRANTIES

- 45.1 The Service Provider shall procure the execution and delivery to the Council on or before the date falling ten (10) Business Days prior to the Service Commencement Date and as a condition of this Agreement of
- 45.1.1 a Guarantee duly executed by the Guarantor to secure the due performance by the Service Provider of its obligations to the Council, and
- 45.1.2 a Bond duly executed by a bank or insurance company established in the UK and with a credit rating of at least A- or equivalent assigned by Moody's, F&P or Fitch.
- 45.2 If during the period between the Agreement Date or the date the Guarantee is given (whichever is the later) and the end of the Service Period the Guarantor ceases to meet any of the Guarantee Criteria (as defined in Clause 45.3) the Service Provider shall immediately notify the Council and procure, within twenty (20) Business Days of such failure, that another company within the Service Provider's group, or a third party company (in each case the identity of which is approved by the Council), which at the relevant time meets all the Guarantee Criteria shall become the Guarantor and provide a Guarantee to secure due performance by the Service Provider of its obligations to the Council or (at the Council's discretion) such alternative security which is acceptable to the Council (acting reasonably)
- 45.3 The Guarantee Criteria for the purposes of Clause 45.2 shall be that the Guarantor has -
- 45.3.1 consolidated net asset value of [REDACTED]
- 45.3.2 consolidated interest bearing debt less cash balances to be no more than two (2) times consolidated shareholders' equity, and/or
- 45.3.3 consolidated profit before interest, tax, goodwill, amortisation and exceptional items to be in excess of one point five (1.5) times consolidated net interest costs. For the avoidance of doubt, net interest costs exclude the elimination of provision discounts and non-cash coupons (for example the finance charges on convertible loan notes).
- 45.4 The Service Provider shall ensure that any Bond provided has a minimum term of three (3) years and that such Bond (or equivalent replacement bonds) remains in force throughout the period from the Agreement Date or the date the Bond is given (whichever is the later) until the end of the Service Period and the Service Provider shall provide such evidence for the existence of the Bond as the Council reasonably requires. Any replacement for the Bond provided at the Agreement Date must be executed by a bank or insurance company whose identity has been approved by the Council. If at any time the Service Provider is unable to procure an extension to an existing Bond or a replacement Bond by the date which is twenty (20) Business Days prior to the expiry date of such Bond, the Council shall be entitled to call on the Bond, the effect of which will be that the monies thereby released will be held in an escrow account in the name of both parties (on terms to be agreed) and released to the Service Provider as soon as all claims by the Council following the end of the Agreement Period have been satisfied.
- 45.5 If either of the Moody's, S&P or Fitch credit ratings of the institution providing the Bond falls below A- (or equivalent) at any time during the term of the Bond where there is more than 12 months left of the term of the Bond, the Service Provider shall procure a replacement Bond on the same terms from a bank or insurance company (registered in England and regulated under the laws of England and Wales) which has a credit rating of A- or higher with either of Moody's, S&P or Fitch, within twenty (20) Business Days.
- 45.6 The Service Provider warrants that at the date of entering into this Agreement there is no Financial Distress Event existing.

- 45.7 The Service Provider shall notify the Council as soon as reasonably practicable (and in any event within five (5) Business Days) after becoming aware of the occurrence, or likely occurrence, of a Financial Distress Event.
- 45.8 Prior to making any demand under the Bond:
- 45.8.1 the Council shall notify the Service Provider in writing five (5) Business Days prior to the issue of any demand stating its intention to make a claim and setting out the value and details of such claim;
- 45.8.2 if the Council's claim notified under Clause 45.8.1 is disputed, no demand shall be made by the Council under the Bond in respect of the disputed element of the Council's claim until such disputed element is agreed, or determined, in accordance with the Dispute Resolution Procedure provided always that if it is determined that the Council was entitled to such disputed element the Service Provider shall pay the Council such amount with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full.
- 45.9 Where the Council lawfully assigns the benefit of this Agreement in accordance with Clause 77 (Assignment), the Service Provider shall procure that:
- 45.9.1 the Guarantee and the Bond are assigned or transferred to the Council's successor; and
- 45.9.2 any collateral warranties given are assigned or transferred to the Council's successor.
- 45.10 The Service Provider shall not engage any Key Sub-Contractor in connection with the Services unless the relevant new Key Sub-Contractor has delivered to the Council an agreement substantially in the form provided under Schedule 27 (Collateral Warranty) duly executed as a deed.

45A DELAYED DELIVERY OF BOND AND GUARANTEE

- 45A.1 If by the date falling ten (10) Business Days before the Service Commencement Date, the Service Provider fails to procure the execution and delivery of the Bond and/or the Guarantee in accordance with Clause 45.1, the Council shall be entitled to withhold payment [REDACTED] from such Monthly Payment(s) as shall become due and payable to the Service Provider until the Service Provider has provided both the Bond and the Guarantee in accordance with Clause 45.1.

PART 12: TERMINATION AND EXIT MANAGEMENT

46. SERVICE PROVIDER TERMINATION EVENTS

- 46.1 Subject to Clause 46.2, Clause 46.3 and Clause 51, if any one of the following events occur the Council may terminate this Agreement (in whole or in part) by giving a Termination to the Service Provider and this Agreement shall terminate on the expiry of the period specified by the Council in such a Termination Notice:
- 46.1.1 an Insolvency Event occurs;
- 46.1.2 the Service Provider fails to commence providing the Services on the Service Commencement Date (provided that a failure of the Service Provider shall be disregarded for the purposes of this limb where it relates to an activity which is programmed in the Mobilisation Plan to be completed following the Service Commencement Date);
- 46.1.3 the Service Provider Abandons the Services;
- 46.1.4 the Service Provider commits a breach of any of its obligations under this Agreement which materially and adversely affects the performance of any of the Services or a Service Element and which the Service Provider has failed to remedy within ten (10) Business Days (or such longer period as the Council, at its absolute discretion, may agree) of a Formal Notice from the Council to do so;

- 46.1.5 the Service Provider commits a series of persistent breaches of its obligations under this Agreement which together materially and adversely affects the performance of any of the Services or a Service Element and which the Service Provider has failed to remedy within ten (10) Business Days (or such longer period as the Council, at its absolute discretion, may agree) of a Formal Notice from the Council to do so;
- 46.1.6 the occurrence of a Corrective Action Plan Failure;
- 46.1.7 a breach by the Service Provider of its obligations to take out and maintain the insurances pursuant to Clause 43 (*Insurance*);
- 46.1.8 a Change of Ownership occurs which is not permitted by Clause 72 (*Change of Ownership*);
- 46.1.9 a breach by the Service Provider of Clause 75.1;
- 46.1.10 if during each month of a period of three (3) consecutive Payment Periods the aggregate value of Performance Deductions (which, disregarding the Performance Deductions Cap, the Council would be entitled to levy) relating to the Services in each Payment Period is equal to or greater than the Global Performance Deductions Cap in such period;
- 46.1.11 if during each month of a period of three (3) consecutive Payment Periods the aggregate value of Performance Deductions (which, disregarding the Performance Deductions Cap, the Council would be entitled to levy) relating to a particular Service Element in each Payment Period is equal to or greater than the Performance Deductions Cap in relation to that Service Element in such period;
- 46.1.12 if during any period of three (3) Payment Periods (whether consecutive or not) the aggregate value of Performance Deductions (which, disregarding the Performance Deductions Cap, the Council would be entitled to levy) relating to the Services is equal to or greater than the Global Performance Deductions Cap in such period;
- 46.1.13 if during any period of three (3) Payment Periods (whether consecutive or not) the aggregate value of Performance Deductions (which, disregarding the Performance Deductions Cap, the Council would be entitled to levy) relating to a particular Service Element is equal to or greater than the Performance Deductions Cap in relation to that Service Element in such period;
- 46.1.14 if during any Agreement Year the aggregate value of Performance Deductions (which, disregarding the Performance Deductions Cap, the Council would be entitled to levy) is equal to or greater than the Global Performance Deductions Cap in such period;
- 46.1.15 if during any Agreement Year the aggregate value of Performance Deductions (which, disregarding the Performance Deductions Cap, the Council would be entitled to levy) relating to a particular Service Element is equal to or greater than the Performance Deductions Cap in relation to that Service Element in such period;
- 46.1.16 if during any Agreement Year the Service Provider accrues more than one thousand (1000) Performance Points in relation to any Service Element;
- 46.1.17 any failure by the Service Provider to implement the changes as set out in the Benchmark Report in accordance Paragraph 4.9 of Schedule 12 (*Benchmarking*);
- 46.1.18 if the Service Provider fails to procure a replacement Guarantee in accordance with Clause 45.2 or fails to extend the Bond or procure a replacement Bond in accordance with Clause 45.4;
- 46.1.19 where a right of termination is expressly reserved in this Agreement;
- 46.1.20 the Service Provider incurs liability under this Agreement in any Agreement Year in excess of an amount equal to [REDACTED] of the Service Provider Liability Cap;

46.1.21 at any time after the Service Commencement Date, the Service Provider commits a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement) which results in the criminal investigation, prosecution and conviction of the Service Provider or any Service Provider Related Party or the Council under the Health and Safety Regime (a **H&S Conviction**). Provided that:

- (a) a H&S Conviction of a Service Provider Related Party or the Council shall not constitute a Service Provider Default if, within sixty (60) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Services of each relevant Service Provider Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Service Provider Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Service Provider in accordance with this Agreement; and
- (b) in determining whether to exercise any right of termination or right to require the termination of the engagement of a Service Provider party under this Clause 46.1.21 the Council shall:
 - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement; and/or

46.1.22 any matter identified in the Special Conditions as a Service Provider Termination Event occurs.

46.2 Insofar as the Council's right to terminate this Agreement under Clause 46.1.1 relates to the Guarantor, the Council shall not be entitled to terminate this Agreement if the Service Provider procures a replacement guarantor in accordance with Clause 47 who enters into a guarantee substantially in the form of the Guarantee within ten (10) Business Days (or such other period agreed by the parties) of the occurrence of the events in Clause 46.1.1.

46.3 If in any two consecutive Agreement Years, in respect of any Service Element, the Council is entitled to levy Performance Deductions in respect of such Service Element which are equal to the Performance Deductions Cap for such Service Element, then the Council shall be obliged to issue a termination notice terminating this Agreement in respect of such Service Element for a Service Provider Termination Event.

47. TERMINATION FOR CORRUPT GIFTS AND FRAUD

47.1 If the Service Provider or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with the provisions of this Clause 47 (*Termination for Corrupt Gifts and Fraud*).

47.2 If a Prohibited Act is committed by the Service Provider or by an employee not acting independently of the Service Provider, then the Council may terminate this Agreement by giving notice to the Service Provider.

47.3 If the Prohibited Act is committed by an employee of the Service Provider acting independently of the Service Provider, then the Council may give notice to the Service Provider of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Service Provider terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

- 47.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor then the Council may give notice to the Service Provider of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Service Provider terminates the relevant Key Sub-Contract and procures the performance of such part of the Services by another person
- 47.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Council may give notice to the Service Provider of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person
- 47.6 If the Prohibited Act is committed by any other persons under the control or direction of the Service Provider but not specified in Clauses 47.2 to 47.5, then the Council may give notice to the Service Provider of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Service Provider procures the termination of such person's employment and of the appointment of their employer (where not employed by the Service Provider or the Sub-Contractor) and (if necessary) procures the performance of such part of the Services by another person
- 47.7 Any notice of termination under this Clause 47 shall specify
- 47.7.1 the nature of the Prohibited Act,
 - 47.7.2 the identity of the party whom the Council believes has committed the Prohibited Act, and
 - 47.7.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause
- 47.8 In this Clause 47, the expression "not acting independently of" (unless used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be)
- 48 TERMINATION FOR COUNCIL DEFAULT**
- 48.1 The Service Provider may terminate this Agreement in the following circumstances and such termination shall be effective on the date falling thirty (30) Business Days following the date of delivery of the Termination Notice to the Council (unless the Council remedies the relevant breach prior to such date) if
- 48.1.1 the Council is in material breach of this Agreement and such breach substantially frustrates or renders it impossible for the Service Provider to perform the Services and the Service Provider has served a notice on the Council which specifies the details of such breach, requires the breach to be rectified within a period of forty (40) Business Days following receipt of the notice, and refers to the Service Provider's intention to issue a Termination Notice if the Council fails to do so, then the Service Provider may issue a Termination Notice if the Council has not remedied the breach within such period of forty (40) Business Days, and/or
 - 48.1.2 the Council is in breach of its payment obligations whereby an aggregate sum equivalent to more than the value of one twelfth of the Payment in respect of the relevant Agreement Year that is due and payable (provided such sums are not the subject of a dispute) to the Service Provider in accordance with the terms of this Agreement is not paid in the following circumstances:
 - (a) the Service Provider has served upon the Council of a Formal Notice specifying the sums overdue and requiring payment,
 - (b) the Service Provider has served a second Formal Notice no earlier than forty (40) Business Days following the first Formal Notice warning that such amount

remains overdue for payment and that the Service Provider intends to terminate the Agreement if payment is not made by the date falling twenty (20) Business Days after the date of such Formal Notice; and

- (c) the Council has not made payment by the date falling twenty (20) Business Days after the date of the second Formal Notice.

49. TERMINATION FOR FORCE MAJEURE

- 49.1 Either Party may terminate this Agreement in accordance with Clause 40 (*Force Majeure*).

50. TERMINATION FOLLOWING 7 YEAR REVIEW

- 50.1 The Council may terminate this Agreement in accordance with Clause 12 (*7 Year Review*).

50A. VOLUNTARY TERMINATION

- 50A.1 The Council may terminate this Agreement at any time before the Expiry Date by serving a Termination Notice on the Service Provider stating:

- 50A.1.1 that the Council is terminating this Agreement under this Clause 50A; and

- 50A.1.2 that this Agreement will terminate on the date specified in the notice, which must be a minimum of six (6) months after the date of receipt of the notice.

- 50A.2 This Agreement will terminate on the date specified in the Termination Notice referred to in Clause 50A.1.

51. PARTIAL TERMINATION

- 51.1 Where the Council has the right to terminate this Agreement under the following Clauses:

- 51.1.1 Clause 46 (*Service Provider Termination Events*);

- 51.1.2 Clause 47 (*Termination for Corrupt Gifts or Fraud*);

- 51.1.3 Clause 49 (*Termination for Force Majeure*);

it may (at its absolute discretion), prior to or instead of terminating the whole of this Agreement, serve a Termination Notice terminating this Agreement only in relation to one or more particular Service Elements, subject to Clause 51.2.

- 51.2 If a Service Provider Termination Event:

- 51.2.1 arises pursuant to Clause 46.1.11, 46.1.13, 46.1.15, 46.1.16 or Clause 46.1.22, the Council may only terminate this Agreement in relation to the relevant Service Element; or

- 51.2.2 arises other than pursuant to any Clause listed in Clause 51.2.1, then if the circumstances giving rise to the Service Provider Termination Event affect only a particular Service Element or Service Elements, the Council may only terminate this Agreement in relation to the relevant Service Element,

provided that for the purpose of this Clause 51 and Clause 52 (*Consequences of Termination*), each of the following shall be deemed to be Service Elements:

- 51.2.3 the Environmental Services, except that if the Service Failure is a Commercial Waste Termination Event, the Commercial Waste Collection Service shall be treated as a separate Service Element;

- 51.2.4 the Highways Services;

- 51.2.5 the Street Lighting Services, except that if the Service Failure is an LED Termination Event, the LED Services may (at the Council's discretion) be treated as a separate Service Element, and
- 51.2.6 the Technical Services
- 51.3 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Payment, provided that
- 51.3.1 the Service Provider shall not be entitled to an increase in the Payment in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Service Provider Termination Event,
- 51.3.2 any adjustment to the Payment shall be calculated in accordance with the Financial Model (as demonstrated on an Open Book Accounting basis), and
- 51.3.3 the Service Provider shall not be entitled to reject the Change (other than as provided for under Clause 51.4)
- 51.4 If the Council notifies the Service Provider pursuant to Clause 51.1 that it intends to terminate this Agreement in part and the Service Provider acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Council's requirements and service performance levels under this Agreement, then the Service Provider shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Council within one (1) month of receiving the Council's Termination Notice
- 52 CONSEQUENCES OF TERMINATION**
- 52.1 Upon termination of this Agreement in whole or in part, Clause 52.7 and the following provisions shall apply
- 52.1.1 if this Agreement is terminated pursuant to Clause 46 (*Service Provider Termination Events*) or Clause 47 (*Termination for Corrupt Gifts and Fraud*), then the provisions of Clause 52.2 shall apply;
- 52.1.2 if this Agreement is terminated pursuant to Clause 48 (*Termination for Council Default*) or Clause 50A (*Voluntary Termination*), then the provisions of Clause 52.3 shall apply;
- 52.1.3 if this Agreement is terminated pursuant to Clause 50 (*Termination following 7 Year Review*), then the provisions of Clause 52.4 shall apply; and
- 52.1.4 if this Agreement is terminated pursuant to Clause 49 (*Termination for Force Majeure*), then the provisions of Clause 52.5 shall apply
- 52.2 Upon the date specified by the Council in the Termination Notice issued by the Council in accordance with either Clause 46 (*Service Provider Termination Events*) (including pursuant to Clause 46.3) or Clause 47 (*Termination for Corrupt Gifts and Fraud*) and in addition to any other consequences which may result from the operation of any provision of the Agreement
- 52.2.1 the Service Provider shall forthwith cease to execute any of the Services (or, in the event of Partial Termination, those Services relating to the relevant Service Element) and this Agreement shall terminate (except in the event of Partial Termination, in which case the Agreement shall terminate in relation to the relevant Service Element),
- 52.2.2 the Service Provider shall fully and promptly indemnify the Council in respect of.
- (a) the direct cost of procuring and performing the Services as would have been performed by the Service Provider during the Service Period (had this Agreement not been terminated or Partially Terminated) to the extent that such

cost exceeds such sums as would have been payable to the Service Provider for performing the Services and the Council:

- (i) shall be at liberty to have such Services executed by any persons (whether or not the servants of the Council) and on such terms as the Council shall in its reasonable discretion think fit; and
- (ii) shall be under no obligation to employ the least expensive method of having such Services executed;
- (b) any other direct losses or expenses (including such costs of re-procurement as are reasonable); and
- (c) any interest on amounts as set out in 52.2.2(a) and 52.2.2(b) above from the Termination Date or the date of Partial Termination (as applicable) until the date of payment of such amounts;

52.2.3 the Council shall be under no obligation to make any further payment to the Service Provider and shall be entitled to withhold any payment which may have fallen due to the Service Provider before termination or Partial Termination until the Service Provider has paid in full to the Council all sums due under this Agreement or to deduct there from any sum due from the Service Provider under the Agreement; and

52.2.4 the Council may at any time sell any unused goods and material and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to it from the Service Provider under this Agreement.

52.3 Where this Agreement is terminated by the Service Provider pursuant to Clause 48 (*Termination for Council Default*) or Clause 50A (*Voluntary Termination*), the Council shall pay to the Service Provider the aggregate of:

52.3.1 [REDACTED]

52.3.2 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

provided the Service Provider has used its reasonable endeavours to mitigate such Direct Losses under this Clause 52.3 and excluding any amounts relating to any Transferring Contract.

52.4 Where this Agreement is terminated pursuant to Clause 50 (*Termination following 7 Year Review*), the Council shall pay to the Service Provider:

52.4.1

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

52.4.2

52.5

52.5.1

52.5.2

52.5.3

52.5.4

provided the Service Provider has used its reasonable endeavours to mitigate such Direct Losses, and excluding any amounts relating to any Transferring Contract

52.6 Termination or expiry of this Agreement shall be without prejudice to any rights and remedies of the Service Provider and the Council accrued before such termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry. The Service Provider's entitlement to payment of any amounts owed by the Council to the Service Provider pursuant to this Clause 52 shall constitute the sole and exclusive entitlements of the Service Provider in respect of termination

52.7 Without prejudice to the Service Provider's obligations under Clause 53 or Schedule 16 (Exit Arrangements), upon termination or expiry of this Agreement (howsoever arising):

52.7.1 the Service Provider shall forthwith vacate any Council Premises, minimise any inconvenience to the Council or any Council Related Party caused by such vacation, and make good any damage caused by the Service Provider (at the Service Provider's expense);

52.7.2 the Service Provider shall forthwith deliver to the Council upon request all the Council's property (including but not limited to materials, documents, information, access keys) relating to this Agreement in its possession or under its control or in the possession of or under the control of any suppliers or Sub-Contractors and in default of compliance with this clause the Council may recover possession thereof and the Service Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

- 52.4.1 the Service Provider's unamortised costs (excluding any amounts relating to any Transferring Contract) relating to-
- (a) vehicles and plant,
 - (b) IT equipment and investment in IT infrastructure;
 - (c) investment in depot infrastructure; and/or
 - (d) mobilisation and training,
- used exclusively by the Service Provider in relation to the Services, and
- 52.4.2 any redundancy payments in respect of staff who are not the subject of a TUPE transfer to a Replacement Supplier or claims made by staff who decline to accept employment by a Replacement Supplier, provided that the Service Provider has taken all reasonable steps to mitigate the costs by reassigning the relevant employees
- 52.5 Where this Agreement is terminated pursuant to Clause 49 (*Termination for Force Majeure*), the Council shall pay to the Service Provider any Direct Losses (excluding any loss of profit) that have been or will be reasonably and properly incurred by the Service Provider as a direct result of the termination of this Agreement but only to the extent that, without double counting, the Direct Losses are incurred in connection with provision of Services including.
- 52.5.1 any materials or goods ordered or subcontracts placed that cannot be cancelled without such Direct Losses being incurred,
 - 52.5.2 any expenditure incurred in anticipation of the carrying out of the Services in the future,
 - 52.5.3 the cost of demobilisation including the cost of any relocation of equipment used in connection with the Services;
 - 52.5.4 redundancy payments,
- provided the Service Provider has used its reasonable endeavours to mitigate such Direct Losses, and excluding any amounts relating to any Transferring Contract
- 52.6 Termination or expiry of this Agreement shall be without prejudice to any rights and remedies of the Service Provider and the Council accrued before such termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry. The Service Provider's entitlement to payment of any amounts owed by the Council to the Service Provider pursuant to this Clause 52 shall constitute the sole and exclusive entitlements of the Service Provider in respect of termination
- 52.7 Without prejudice to the Service Provider's obligations under Clause 53 or Schedule 16 (*Exit Arrangements*), upon termination or expiry of this Agreement (howsoever arising):
- 52.7.1 the Service Provider shall forthwith vacate any Council Premises, minimise any inconvenience to the Council or any Council Related Party caused by such vacation, and make good any damage caused by the Service Provider (at the Service Provider's expense);
 - 52.7.2 the Service Provider shall forthwith deliver to the Council upon request all the Council's property (including but not limited to materials, documents, information, access keys) relating to this Agreement in its possession or under its control or in the possession or under the control of any suppliers or Sub-Contractors and in default of compliance with this clause the Council may recover possession thereof and the Service Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or Sub-Contractors where any such items may be held,

- 52.7.3 the Service Provider shall transfer any assets to the Council as required by the Council in accordance with Clause 60 (*Transferring Assets, Council Assets and Exclusive Assets*);
 - 52.7.4 the Service Provider shall assign (or procure the assignment) to the Council the benefit of any guarantees, conditions and warranties associated with the assets which the Service Provider is obliged to procure are transferred to the Council in accordance with Clause 60 (*Transferring Assets, Council Assets and Exclusive Assets*) and give such assistance as the Council may reasonably require in enforcing such guarantees, conditions and warranties;
 - 52.7.5 to the extent any Council Data is held on systems which are owned or operated by the Service Provider or any Service Provider Related Party, the Service Provider shall take all necessary steps to ensure the prompt transfer of such Council Data to the Council or as the Council may direct in a format as reasonably required by the Council; and
 - 52.7.6 in the event that any data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable as a result of the Termination, the Service Provider 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.
- 52.8 Clause 52.6 and 52.7 shall apply equally in the event of Partial Termination in respect of any premises, property, assets, guarantees, conditions, warranties and/or Council Data associated only with, or used by the Service Provider only in relation to, the relevant Service Element affected by such Partial Termination.
- 52.9 Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.
- 53. EXIT AND SERVICES TRANSFER ARRANGEMENTS**
- 53.1 Upon expiry of this Agreement or termination (in whole or in part) of this Agreement for any reason the Service Provider shall provide the Exit Assistance Services to the Council in accordance with the requirements of the Exit Plan and Schedule 16 (*Exit Arrangements*). The Service Provider shall co-operate with the Council and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the Services from the Service Provider to the Council or, as applicable, the Replacement Supplier and, in the case of any Partner Authority Services, from the Service Provider to any Partner Authority and/or the Replacement Supplier.
 - 53.2 Within ninety (90) days of the Services Commencement Date, the Service Provider shall provide a draft Exit Plan and within ten (10) Business Days of provision of such draft plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the Exit Plan, which must provide for the orderly transition of the Services from the Service Provider to the Council and/or any Replacement Supplier in the event of any termination (in whole or in part) or expiry of this Agreement and allow for the Service Provider to comply with its obligations under Schedule 16 (*Exit Arrangements*). If the Parties are unable to agree the contents of the Exit Plan within a 20 Business Day period, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure. The plan as agreed or determined shall be the Exit Plan.
 - 53.3 The Service Provider shall keep the Exit Plan under continuous review and include any proposed updates to the plan in each Annual Programme.
 - 53.4 In addition, within ten (10) days after service of a Termination Notice by either Party or twelve (12) months prior to the Expiry Date, the Service Provider shall update the Exit Plan into a final form that could be implemented immediately and provides for a transition to and is compatible with any mobilisation plan of any Replacement Supplier or the Council (as the case may be) and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Council for review and approval. The Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in the Termination Notice.

53.5 Clauses 53.1 and 53.4 shall apply equally in any circumstances where one Service Element expires or terminates before any other Service Element including (without limitation) by way of Partial Termination, termination of the Technical Services pursuant to Clause 11A or the expiry of the Service Period relating to the Environmental Services, Highways Services and Technical Services prior to the termination of the Service Period relating to the Street Lighting Services pursuant to Clause 5.

54 CONTINUING OBLIGATIONS

54.1 Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any payment of compensation on termination pursuant to this Agreement

54.1.1 the termination or expiry of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the Expiry Date or the Termination Date, and

54.1.2 the termination or expiry of this Agreement shall not affect the continuing rights or obligations of the Council and the Service Provider as specified in the Special Conditions and under the clauses in the table below (and the Schedules to which those Clauses refer or give effect) and/or under any other provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination.

<i>Clause/Schedule reference</i>	<i>Description</i>
Clause 18	Contract Governance- Relationships
Clause 21	Dispute Resolution
Clause 32	Service Provider Records
Clause 33	Open Book Accounting
Clause 40	Force Majeure
Clause 41	Indemnities and Liability
Clause 43	Insurance
Clause 46	Service Provider Termination Events
Clause 47	Termination for Corrupt Gifts and Fraud
Clause 48	Termination for Council Default
Clause 49	Termination for Force Majeure
Clause 50	Termination following 7 Year Review
Clause 51	Partial Termination
Clause 52	Consequences of Termination
Clause 53	Exit and Services Transfer Arrangements
Clause 54	Continuing Obligations
Clause 56	Employees
Clause 57	TUPE

<i>Clause/Schedule reference</i>	<i>Description</i>
Clause 58	Pensions
Clause 60	Transferring Assets, Council Assets and Exclusive Assets
Clause 62	Intellectual Property Rights
Clause 66	Data Protection
Clause 67	Freedom of Information
Clause 68	Information and Confidentiality
Clause 76	Service of Notices
Clause 80	Further Assurance
Schedule 1	Definitions
Schedule 15	Dispute Resolution Procedure
Schedule 16	Exit Arrangements
Schedule 24	Commercially Sensitive Information

PART 13: WORKFORCE ISSUES

55. PERSONNEL – KEY STAFF

55.1 Subject to Clause 56 (*Employees*), the Service Provider shall provide the Key Staff in relation to the Services and shall obtain the Council's prior written approval before replacing or changing the role of any Key Staff (such approval not to be unreasonably withheld or delayed). The approval or rejection shall not in any way affect or release the Service Provider from any of its obligations under this Agreement and is without prejudice to any other right or remedy the Council may have under this Agreement.

56. EMPLOYEES

56.1 Disclosure and Barring Service

56.1.1 The Service Provider shall ensure that it, and shall procure that each of its subcontractors, takes the following action in respect of all staff, potential staff or persons performing any of the Services (other than Transferring Employees (each a "Named Employee")) before a Named Employee begins to attend the Council Premises to perform any of the Services:

- (a) each Named Employee is questioned as to whether he or she has any Convictions;
- (b) the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each Named Employee; and
- (c) to the extent permitted by Legislation or Guidance a copy of the results of such check are notified to the Council.

56.1.2 The Service Provider shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed or engaged without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

56.1.3 The Service Provider shall procure that the Council is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Service Provider

56.2 Conduct of Staff

56.2.1 Whilst engaged at the Council Premises the Service Provider shall and shall procure that any sub-contractor shall comply with the Council Policies and Standards relating to the conduct of staff and security arrangements. The Service Provider shall take all reasonable measures, including displaying notices or other appropriate means, to ensure that all other persons employed on any work in connection with the Agreement and all Service Provider Related Parties have notice that relevant Council Policies and Standards apply to them. The Service Provider shall ensure that a similar obligation to this clause is included in any contracts that are entered into with the sub-contractors for the provision of the Services. The Council (acting reasonably) may

- (a) instruct the Service Provider that disciplinary action is taken against any employee of the Service Provider or any sub-contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
- (b) where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).

56.3 Admission to the Council Premises

56.3.1 The Service Provider shall at least twenty (20) Business Days before the date on which the Service Provider first provides any of the Services provide the Council with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Council Premises in connection with the provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Services and giving such other particulars as the Council may require. The Service Provider shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Council on whether any person is to be refused admission to the Council Premises shall be final and conclusive and the Council shall not be obliged to give reasons for its decision. The provisions of this clause 56.3 shall not apply to those individuals who shall be required by the Service Provider or any sub-contractor to attend on Council Premises to provide emergency reactive services. In the case of such individuals, the Service Provider shall or shall procure that any sub-contractor shall ensure that such individuals are accompanied at all times while on each Council Premises by a member of the Service Provider or sub-contractor's staff who has been properly notified to the Council in accordance with the terms of this Clause 56.3

56.4 Refusal of Admission

56.4.1 The Council reserves the right (acting reasonably) to refuse to admit to the Council Premises any person, employed or engaged by the Service Provider or a sub-contractor (and may reasonably require the Service Provider to refuse to admit to any Premises any

person, employed or engaged by the Service Provider or a sub-contractor) whose admission would, in the opinion of the Council:

- (a) present a risk to themselves or an Council Related Party or property; or
- (b) in the Council's absolute discretion would be a threat to security or policy operations whether of the Council or otherwise.

56.4.2 The Council shall not be obliged to provide any reasons for refusing to admit any person pursuant to this Clause 56.4.

56.5 Decision to Refuse Admission

56.5.1 The decision of the Council as to whether any person is to be refused admission to the Council Premises pursuant to Clause 56.4 (*Refusal of Admission*) shall be final and conclusive. If the Council declines to give reasons and/or where reasons are given but are found to be unreasonable for exercising its rights under Clauses 56.2 (*Conduct of Staff*), 56.3 (*Admission to the Council Premises*), 56.4 (*Refusal of Admission*) and 56.6 (*Removal from Council Premises*), the Council shall indemnify the Service Provider and keep the Service Provider indemnified against all Direct Losses suffered or incurred by the Service Provider, provided that the Service Provider or the relevant sub-contractors has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

56.6 Removal from Council Premises

56.6.1 The Service Provider shall comply with and/or procure compliance with any notice issued by the Council from time to time requiring the removal from any of the Council Premises of any person employed thereon who in the opinion of the Council acting reasonably is not acceptable on the grounds of risk to themselves or a Council Related Party or property and that such persons shall not be employed again upon the Project without the written consent of the Council.

56.6.2 The Service Provider shall immediately procure the removal from any of the Council Premises of any person employed thereon where the Council Representative requires such removal in the case of an Emergency.

56.7 Relief from Performance Deductions

Where the Council exercises its rights under Clause 56.4 and it can be shown that:

- 56.7.1 the Service Provider or any sub-contractor has acted in accordance with the relevant provisions of this Clause 56; or
- 56.7.2 the Council did not act reasonably in instructing the Service Provider not to employ and/or in requesting any removal and/or in refusing admission,

then the Council shall give the Service Provider such relief from Performance Deductions for a reasonable period to allow the Service Provider or any sub-contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. Any relief from such Performance Deductions given under this Clause 56.7 shall only be in respect of those Services in which such person is or would have been engaged.

56.8 Resources and Training

The Service Provider shall procure that:

- 56.8.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services;

56.8.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement,

56.8.3 from the Service Commencement Date, evidence of all relevant training and instruction of all staff shall be kept together with relevant certificates and qualifications, (and update the same), copies of which shall be provided to the Council on request, and

56.8.4 all staff are appropriately qualified

56.9 Personnel Policies and Procedures

The Service Provider shall procure that there are set up and maintained by it and by all sub-contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Service Provider shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Council.

56.10 Provision of Information

Without prejudice to any other obligations of the Service Provider in this Agreement, and to the extent permitted by Legislation, the Service Provider shall, within a reasonable period of any request by the Council, provide to the Council all information (including any documents) reasonably requested by the Council relating to all staff including, without limitation, information (and any documents) regarding the training, skills and competency of each member of staff, the numbers of staff employed or engaged in provision of the Services and their terms and conditions of employment or engagement. Provided that the Service Provider shall not, unless required by another provision of this Agreement (be required to provide details of the remuneration of any staff to the Council. The Council shall, upon making a request pursuant to this clause 56.10 explain to the Service Provider the reason for such request

56.11 Unsuitable Persons not to be engaged in the Service

The Council may, if it has reasonable grounds for believing that any member of staff or potential member of staff is or would be an Unsuitable Person, serve written notice on the Service Provider requiring the Service Provider to procure (at the Service Provider's own cost and expense) that such person is not engaged or employed directly or indirectly in, or in connection with, the provision of the Service or any part of the Service. The rights contained within this Clause 56.11 shall be exercised reasonably by the Council and not arbitrarily, vexatiously or capriciously. The Service Provider shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this Clause 56.11

56.12 Service Provider's Responsibility

Save as expressly provided in this Agreement, the Service Provider shall be entirely responsible for the employment and conditions of service of its staff and shall procure that a Sub-Contractor and any of its sub-contractors is likewise responsible for the staff employed by them. The Service Provider shall carry out such checks as may be required in order to comply with Immigration Asylum and Nationality Act 2006

56.13 Non-Discrimination

56.13.1 In the performance of the Services the Service Provider shall not unlawfully discriminate within the meaning and scope of any law (including but not limited to the Equality Act 2010), enactment, order or regulation relating to discrimination (whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise) in employment and shall have regard to other official guidance and code of practice in relation to promotion of equality in service provision and employment

- 56.13.2 The Service Provider shall take all reasonable steps to secure the observance of Clause 56.13.1 by its staff employed to provide the Services.
- 56.13.3 The Service Provider shall provide on request such information as the Service Provider may reasonably require for the purpose of assessing the Service Provider's continued compliance with this Clause 56.13.
- 56.13.4 If any court or tribunal, or the Equality and Human Rights Commission should make any finding of unlawful discrimination against the Service Provider or any Sub-Contractor and their sub-contractors then the Service Provider shall take all necessary steps to prevent recurrence of such unlawful discrimination and shall deliver to the Council fully details of the steps taken to prevent such recurrence.

57. TURE

- 57.1 The Parties shall comply with the provisions of Schedule 30 (*TUPE*).

58. PENSIONS

- 58.1 The Parties shall comply with the provisions of Schedule 31 (*Pensions*).

PART 14: PREMISES AND ASSETS

59. ACCESS TO COUNCIL PREMISES

Short Term Depot

- 59.1 The Council acknowledges that the Service Provider's proposal for the provision of the Environmental Services, the Highways Services and the Street Lighting Services was prepared on the basis that premises located at Bridgewater House, Manchester Road, Carrington, M31 4NQ (the Carrington Depot) would be available to the Service Provider on a peppercorn rent for the period between the Service Commencement Date and 30 April 2017 (the Initial Period).
- 59.2 The Council wishes to agree an alternative depot to the Carrington Depot with the Service Provider as the Council expects this will allow for costs savings to be made by the Council. Accordingly, the Council is seeking to secure a break clause to cease occupation of the Carrington Depot on 30 April 2017, failing which the lease of the Carrington Depot will run until 3 May 2022.
- 59.3 If the Council notifies the Service Provider no later than the date twenty (20) Business Days prior to the Service Commencement Date, that it requires the Service Provider to occupy the Carrington Depot, then:
 - 59.3.1 the Service Provider shall use all reasonable endeavours to enter into three separate sub-leases for such demised area as the Parties (acting reasonably) may agree to be appropriate for use by the Service Provider for the delivery of the Environmental Services, the Highways Services and the Street Lighting Services on terms to be agreed by the parties (acting reasonably), including those terms stated in Clause 59.6;
 - 59.3.2 the term of any such sub-lease shall either be for the Initial Period or until a later date but no later than 3 May 2022, as notified by the Council; and
 - 59.3.3 the Service Provider shall not be entitled to any compensation or relief from its obligations.
- 59.4 If the Council notifies the Service Provider no later than the date twenty (20) Business Days prior to the Service Commencement Date, that the premises located at Second Avenue, Trafford Park, M17 1EE (the Trafford Park Depot) and the premises located at Wharf Road, Altrincham, WA14 1ND (the Wharton Road Depot) will be available, then:
 - 59.4.1 the Service Provider shall use all reasonable endeavours to enter into three separate sub-leases for such demised area as the Parties (acting reasonably) may agree to be appropriate for use by the Service Provider for the delivery of the Environmental Services,

- the Highways Services and the Street Lighting Services on terms to be agreed by the Parties (acting reasonably), including those terms stated in Clause 59.6,
- 59.4.2 the term of any such sub-lease shall either be for the Initial Period or until a later date but no later than 3 May 2022, as notified by the Council, and
- 59.4.3 a Council Change shall apply in accordance with Clause 59.11.
- 59.5 Subject to Clauses 59.3 and 59.4, the Council and the Service Provider shall use reasonable endeavours to identify premises appropriate for use by the Service Provider for the delivery of the Environmental Services, the Highways Services and the Street Lighting Services for the Initial Period (and shall prioritise options which have a lower rental costs than the costs incurred by the Council in respect of the Carrington Depot at the Agreement Date) and
- 59.5.1 where either party identifies any proposed location that may be suitable it shall identify the same to the other party together with sufficient details in writing to enable the other party to consider the appropriateness of such proposed location,
- 59.5.2 the other party shall within five (5) Business Days of receipt of such details either confirm its approval for such proposed alternative location (such approval not to be unreasonably withheld or delayed) or identify that such proposed alternative location is not suitable together with its reasons for the same, and
- 59.5.3 where the Parties agree to such proposed alternative location the Council shall enter into one or more leases with the Service Provider as tenant for such alternative location upon such terms as the Parties (acting reasonably) shall agree, and a Council Change shall apply in accordance with Clause 59.11
- 59.6 Any sub-leases to be entered into pursuant to this Clause 59 shall be on the basis that
- 59.6.1 the Parties will agree to exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 and each Party shall complete the necessary procedures to effect such exclusion;
- 59.6.2 a separate demise for each Service Element to be delivered by the Service Provider from the relevant alternative location,
- 59.6.3 a lease capable of termination or assignment to a Replacement Supplier (which may include the Council) at the Council's option if the provision by the Service Provider of the relevant Service Element or Service Elements under this Agreement is terminated or expires in accordance with this Agreement,
- 59.6.4 Council will enter into the headlease with the landlord for the agreed term,
- 59.6.5 the Council will pay the rent, subject to agreeing the level, and
- 59.6.6 the Parties will arrange for appropriate registrations of the leases at the Land Registry.
- 59.7 If neither Clause 59.3 or 59.4 apply, then to the extent the Service Provider is unable to secure a proposed alternative location or locations in accordance with the provisions of Clause 59.5 before the Service Commencement Date then until such time as appropriate depot arrangements are agreed pursuant to this Clause 59:
- 59.7.1 the Service Provider shall be relieved from its obligation to provide any of the Environmental Services, Highways Services, Street Lighting Services and/or Technical Services (or any part of the same) to the extent that the absence of a Depot prevents them from providing such Services;
- 59.7.2 any such failure to provide those Services shall be disregarded for the purposes of the Council's right to terminate this Agreement under Clause 46 (Service Provider Termination Events),

- 59.7.3 the Service Provider shall only be entitled to receive a Payment to the extent it provides the relevant Environmental Services, Highways Services, Street Lighting Services and/or Technical Services (or any part of the same); and
- 59.7.4 the Council will be entitled to perform (or procure the performance of) those elements of the Services which the Service Provider is unable to provide (notwithstanding the terms of Clause 8 (Exclusivity)).

Long term Depot

- 59.8 The Council acknowledges that the Service Provider's proposal for the provision of the Environmental Services, the Highways Services and the Street Lighting Services was prepared on the basis that premises would be provided to the Service Provider on a peppercorn rent from the end of the Initial Period until the expiry or earlier termination of the provision of any Service Element in accordance with this Agreement.
- 59.9 The Parties agree during the Initial Period (or otherwise the period of any interim depot arrangement agreed which is shorter than this period) to work together to develop a depot strategy for the remainder of the Service Period and identify locations which are within the Council Area.
- 59.10 Either Party shall within (20) Business Days of receipt of any proposal from the other either confirm its approval for such proposed alternative location (such approval not to be unreasonably withheld or delayed) or identify to the other Party that such proposed alternative location is not suitable together with its reasons for the same.

Entitlement to Council Change

- 59.11 Where this Clause applies as stated in this Clause 59, there will be a deemed Change requested by the Council to use the relevant alternative premises for the provision of the relevant Service Elements or parts thereof in place of Carrington Depot and such Change request shall be dealt with in accordance with the Change Control Procedure. For the purposes of any deemed Change requested by the Council in accordance with this Clause 59.11, in assessing the Estimated Change in Service Costs the Service Provider shall only be entitled to costs where the alternative premises are more than one (1) mile outside the Council Area, in which case costs will be compensated under the following headings:
- 59.11.1 fuel costs;
- 59.11.2 vehicle costs; and
- 59.11.3 the effect on staffing levels due to additional vehicles being required.

60. TRANSFERRING ASSETS, COUNCIL ASSETS AND EXCLUSIVE ASSETS

- 60.1 The Service Provider and the Council shall enter into a novation agreement in the "agreed form" on the Agreement Date in respect of each Transferring Contract. The Service Provider shall comply with the terms of each Transferring Contract and the Council shall have no liability in relation to any Transferring Contract.
- 60.2 The Council shall transfer the Initial Transferring Assets to the Service Provider on the Service Commencement Date in consideration of the [REDACTED] on an "as is" basis and the Council makes no representation or warranty as to the condition, quality, suitability or fitness for any purpose of the Initial Transferring Assets and the Initial Transferring Assets shall be at the risk of the Service Provider from the Service Commencement Date.
- 60.3 The Council shall permit the Service Provider to use the Council Assets during the Services Period subject to the following conditions:
- 60.3.1 the Service Provider shall (subject to Clause 22 (Third Party Contracts and Income)) use the Council Assets solely for the purpose of providing the Services;

- 60.3.2 the Service Provider acknowledges that the Council Assets are supplied by the Council on an "as is" basis and the Council makes no representation or warranty as to the condition, quality, suitability or fitness for any purpose of the Council Assets;
- 60.3.3 the Service Provider shall satisfy itself in relation to each of the Council Assets as to whether it is suitable for use in providing the Services;
- 60.3.4 such right to use those Council Assets shall terminate automatically without notice from the Council upon the Expiry Date or Termination Date;
- 60.3.5 the Service Provider shall be responsible for the transfer of the Council Assets to the Council on the Expiry Date or Termination Date and shall take all such action as may be required (at its cost) to procure that all Council Assets are transferred into the custody of the Council or such third party as the Council may nominate;
- 60.3.6 the Service Provider shall ensure at all times that the Council Assets are used in a skilful and proper manner (and in accordance with Good Industry Practice and any operating instructions issued for such Council Assets) by properly skilled and trained persons;
- 60.3.7 whilst such Council Assets are in the Service Provider's possession, custody or control
 - (a) such Council Assets shall be at the Service Provider's sole risk and the Service Provider shall procure that they are kept safe and secure in accordance with the provisions of this Contract;
 - (b) the Service Provider shall ensure that the Council Assets are only located or stored (temporarily or otherwise) in premises owned or controlled by the Council or in premises owned or controlled exclusively by the Service Provider (and details of any such premises shall be notified to the Council prior to such location or storage of the Council Assets);
 - (c) the Council shall have access to all or any of the Council Assets for the purpose of viewing, inspecting or testing any of the Council Assets, and
 - (d) the Service Provider shall take all steps necessary to ensure that the Owner's title to the Council Assets is secured against any lien, encumbrance or any other possible claims by third parties, and ensure the Council's rights and interests are protected

60.4 In respect of all Council Assets-

- 60.4.1 the Service Provider acknowledges that neither it nor any Sub-Contractor has any legal or equitable claim to such Council Assets, and agrees not to contest ownership of such Council Assets;
- 60.4.2 the Service Provider shall not create (or attempt to create) any legal or equitable interest in such Council Assets in its favour or otherwise (and shall ensure that no Sub-Contractor will do so),
- 60.4.3 to the fullest extent permitted by law, the Service Provider waives any rights which it may have to take or seek to take a lien over such Council Assets in respect of any sums due from the Council to the Service Provider pursuant to this Contract;
- 60.4.4 the Service Provider shall notify the Council as soon as reasonably practicable in the event of any loss or damage to the Council Assets and such loss or damage shall be recorded in the Assets and Equipment Register,
- 60.4.5 the Service Provider shall not (and shall procure that all and any of the Sub-Contractor shall not) delete, remove or deface any labelling or other markings placed on the Council Assets by or on behalf of the Council,

- 60.4.6 the Service Provider shall maintain, protect and preserve the Assets (including any intellectual property or intangible assets) employed in the performance of its obligations under the Agreement in good standing or good working order, subject to fair wear and tear; and
- 60.4.7 where any Asset is lost, destroyed or otherwise beyond repair, the Service Provider shall replace the Asset with property, rights or liabilities in modern equivalent form to the Asset to be replaced. The Service Provider shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to spares from a third party, to enable it to perform its obligations under the Agreement.
- 60.5 The Council does not give any warranty or undertaking or make any representation (either express or implied) as to the completeness, satisfactory quality, condition, suitability or fitness for purpose of the Initial Transferring Assets, the Council Assets or in relation to any Transferring Contract, in relation to the Services or for any other purpose. Neither the Council nor any Council Related Party shall be liable to the Service Provider or any third party in contract tort, negligence or breach of statutory duty or otherwise as a result of the condition of any Initial Transferring Assets or Council Assets including where such assets are of unsatisfactory quality or condition or being unsuitable or unfit for the provision of the Services or for any other purpose.
- 60.6 The Service Provider shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Council on grounds that any assets or equipment, including the Initial Transferring Assets or the Council Assets are of unsatisfactory quality or condition or unsuitable or unfit for the provision of the Services or for any other purposes and shall be responsible for making its own enquiries as to the suitability or otherwise of such assets or equipment.
- 60.7 Before the Service Commencement Date the Parties shall agree (acting reasonably) in writing which stock and commodities shall be included in the Rolling Inventory and the Council shall transfer and the Service Provider shall accept, on the Service Commencement Date the transfer of any stock and commodities stated in the agreed Rolling Inventory.
- 60.8 The Service Provider shall (at its own cost) be responsible for replacing any Assets or obtaining new Assets as necessary to perform the Services (including in respect of Council Assets and Exclusive Assets). If at any time during the Agreement Period the Service Provider or its Sub-Contractors shall acquire Assets, those assets shall be deemed to be Exclusive Assets unless the parties agree in writing otherwise (except where the Council has approved the shared use of such new Assets to provide Third Party Services in accordance with Clause 22, in which case the assets shall be deemed to be Shared Assets) and a description of the Assets shall then be added to the relevant part of the Rolling Inventory. The Service Provider shall not change the categorisation of any Exclusive Assets or Shared Assets without the prior written consent of the Council.
- 60.9 Subject to Clause 13 (*Partner Authority Services*) and Clause 22 the Service Provider shall be permitted to use Shared Assets to provide services similar to the Services to other organisations provided that:
- 60.9.1 such use shall not adversely affect the Services; and
- 60.9.2 the Service Provider notifies the Council in writing prior to the commencement of such use.
- 60.10 The Service Provider shall promptly Indemnify the Council against all damages to any item of Council equipment caused by a failure or defect in the Service Provider's assets or equipment (including any hardware) or by the acts or omission of the Service Provider or the Service Provider Related Parties.
- 60.11 [REDACTED]
- 60.11.1 [REDACTED]

(a)

(b)

60.11(2)

(a)

(b)

- 60.12 Clause 60.11 shall apply equally in the event of Partial Termination in respect of the assets used by the Service Provider only in relation to the Service Element affected by such Partial Termination.
- 60.13 If the Council exercises its option to purchase the Exclusive Assets or receive a licence of Shared Assets (or any of them), the Service Provider shall procure the delivery of the Exclusive Assets or Shared Assets (as applicable) to the Council in accordance with its obligations contained in this Agreement and shall execute such instruments and do all such things as are necessary to transfer its rights, title and interest in and to the Exclusive Assets or Shared Assets (as applicable) to the Council.
- 60.14 When acquiring any interest in any Shared Asset or Exclusive Asset the Service Provider shall do so on such terms as to allow it to comply with the provisions of this Agreement including (without limitation) Clauses 38.4 and 60.11
- 60.15 On the termination date or Expiry Date (as applicable) the Service Provider shall transfer to the Council the quantities of stock and commodities stated in the most recent version of the Rolling Inventory, less an amount equal to the quantities which the Service Provider has used in the period between the date of the most recent version of the Rolling Inventory and the termination date or Expiry Date (as applicable) provided such use relates to the provision of the Services in accordance with this Agreement.

61 MAINTENANCE OF ASSETS AND EQUIPMENT

- 61.1 The Service Provider shall be responsible for providing or procuring the provision of all Assets necessary for the performance of its obligations under this Agreement, and shall maintain a Rolling Inventory which records all Assets, stock and consumables used in the provision of the Services, identifying Council Assets, Exclusive Assets, Shared Assets and other Assets. The Service Provider shall provide the Council with an up to date copy of the Rolling Inventory within twenty (20) Business Days of the beginning of each Agreement Year, and at any other time as the Council may reasonably require
- 61.2 The Service Provider shall ensure on a continuing basis that at all times the Assets are maintained and renewed or refreshed at no additional cost to the Council sufficient to ensure
- 61.2.1 the Services are performed in accordance with this Agreement and the Target Service Levels from the Service Commencement Date until the earlier of the Expiry Date or the Termination Date,

- 61.2.2 that all Assets are kept secure and in good and serviceable repair and in such condition as is commensurate with the proper performance of the Service Provider's obligations under this Agreement;
 - 61.2.3 with the exception of any Software which shall be dealt with in accordance with Clause 62 (*Intellectual Property Rights*), the Service Provider owns the Intellectual Property Rights or obtains licences from the owner of those rights (to the extent they exist) in the Assets used to perform the Services and shall procure that such licences are freely transferable to the Council on termination or expiry of this Agreement; and
 - 61.2.4 the Exclusive Assets and Council Assets which are required by the Council or any Replacement Supplier are handed back to the Council or the Replacement Supplier (as the Council shall direct) on the Expiry Date or the Termination Date in a condition complying with the requirements of this Clause 61 (*Maintenance of Assets and Equipment*) and the Specification.
- 61.3 If the Council reasonably believes that the Service Provider is in breach of its obligations under Clause 61.2 then it may carry out (or procure) a survey of the Assets to assess whether the Assets have been and are being maintained, renewed and/or refreshed by the Service Provider in accordance with its obligations under Clause 61.2.
- 61.4 The Council shall notify the Service Provider in writing a minimum of ten (10) Business Days in advance of the date on which it wishes to carry out the survey. The Council shall consider in good faith any reasonable request by the Service Provider for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Service Provider's ability to provide the Services.
- 61.5 When carrying out any survey the Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider. The cost of the survey shall, except where Clause 61.6 below applies, be borne by the Council. The Service Provider shall give the Council, or any Third Party acting on its behalf, free of charge any reasonable assistance required by the Council during the carrying out of any survey.
- 61.6 If the survey shows that the Service Provider has not complied or is not complying with its obligations under Clause 61.2 the Council shall:
- 61.6.1 notify the Service Provider of the rectification and/or maintenance work which is required to bring the condition of the Assets to the standard they would have been in if the Service Provider had complied with or was complying with its obligations under Clause 61.2;
 - 61.6.2 specify a reasonable period within which the Service Provider must carry out such rectification and/or maintenance work and/or technology refresh work; and
 - 61.6.3 be entitled to be reimbursed by the Service Provider for the cost of the survey.
- 61.7 If the Service Provider has been notified under Clause 61.6.1 that rectification and/or maintenance work is required, the Service Provider shall carry out such rectification and/or maintenance work and/or technology refresh work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense. If the Service Provider fails to carry out such rectification, maintenance work and/or refresh work within the specified period the Council shall be entitled to carry out such work itself or engage a Third Party to do so and be entitled to be reimbursed by the Service Provider for the cost of such work. The Service Provider shall provide all reasonable assistance to the Council and any Third Party engaged by the Council to facilitate the carrying out of the rectification, maintenance or refresh work.

- 61.8 Any Disputes arising out of this Clause 61 (*Maintenance of Assets and Equipment*) shall be resolved in accordance with the Dispute Resolution Procedure.

PART 15: IPR, DATA, INFORMATION AND CONFIDENTIALITY

62. INTELLECTUAL PROPERTY RIGHTS

IPR Indemnity

- 62.1 The Service Provider shall:

62.1.1 be responsible for, and shall release and indemnify the Council and any Council Related Party on demand from all IPR Liability and against all IPR Claims; and

62.1.2 manage any IPR Claim brought against the Council or any Council Related Party, at its own expense and take such action as is necessary to minimise the impact of any IPR Claim on the Council and any Council Related Party and the delivery of the Services pending the outcome of the IPR Claim,

save where any IPR Liability or IPR Claim has arisen out of the use of any Intellectual Property Rights by the Council or any Council Related Party otherwise than in accordance with the terms of this Agreement or the compliance by the Council with its statutory duties

- 62.2 Where either Party becomes aware of any IPR Claim being brought or any IPR Liability arising it shall, as soon as reasonably practicable, notify the other Party of the same.

- 62.3 The Council shall, where reasonably requested by the Service Provider, assist the Service Provider in the management of any IPR Claim and where the Council does so assist the Service Provider shall reimburse the Council for any costs and expenses reasonably and properly incurred in doing so (including but not limited to reasonable legal costs and disbursements on an indemnity basis)

- 62.4 Neither Party shall make any admissions which could be prejudicial to the defence or settlement of the IPR Claim (or could increase the IPR Liability) without first obtaining the written permission of the other Party, such permission not to be unreasonably withheld or delayed

- 62.5 If an IPR Claim is made, or the Service Provider anticipates that an IPR Claim might be made, the Service Provider may, at its own expense, either

62.5.1 procure for the Council the right to continue using the relevant item which is subject to the IPR Claim; or

62.5.2 replace or modify the relevant item with non-infringing substitutes provided that

- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item,
- (b) the replaced or modified item does not have an adverse effect on any other Services,
- (c) there is no additional cost to the Council, and
- (d) the terms of this Agreement shall continue to apply to the replaced or modified item

- 62.6 If the Service Provider elects to modify or replace an item pursuant to Clause 62.5.2 or to procure a licence in accordance with Clause 62.5.1, but this has not avoided or resolved the IPR Claim, then, without prejudice to the indemnity set out in Clause 62.1, the Service Provider shall be liable for all reasonable and proper costs incurred in the provision of the substitute items and/or Services

Ownership of Intellectual Property Rights

- 62.7 Except as expressly set out in this Agreement, during the course of this Agreement:
- 62.7.1 the Council shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Service Provider or its licensors in:
- (a) the Service Provider Software;
 - (b) the Third Party Software; and
 - (c) the Service Provider Background IPR; and
- 62.7.2 the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors in:
- (a) the Council Software;
 - (b) the Council Data;
 - (c) the Database;
 - (d) the Council Background IPR; and
 - (e) any documentation relating to the Services prepared by the Council.

62.8 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 62.7, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

Licences granted by the Service Provider

62.9 The Service Provider:

- 62.9.1 hereby grants to the Council, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefit under this Agreement or at any time following termination of this Agreement) licence to use the Intellectual Property Rights which are or become vested in the Service Provider, the Service Provider Software and the Third Party Software, the Documentation and the Database; and
- 62.9.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a licence to that referred to in Clause 62.10.1 to the Council for the purpose of:
- (a) the Council complying with its statutory duties, performing its obligations and exercising its rights under this Agreement and receiving the benefit of the Services; and
 - (b) following termination of this Agreement, the continued delivery of the services similar to the Services,

(together, the **Approved Purposes**), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

Licences granted by the Council

62.10 Subject to Clause 62.11 the Council hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence during the Agreement Period to use:

- 62.10.1 the Council Software;

- 62.10.2 the Database;
- 62.10.3 the Council's documentation, processes and procedures, and
- 62.10.4 the Council Data.

62.11 The licence granted in Clause 62.10

- 62.11.1 includes the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Service Provider on the same terms as set out in Clause 68 (*Information and Confidentiality*); and
 - 62.11.2 is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Service Provider shall not, and shall procure that the Subcontractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Council
- 62.12 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 62.13 In the event of the termination or expiry of this Agreement, the licence referred to in Clause 62.10 and any sub-licence granted in accordance with Clause 62.11 shall terminate automatically and the Service Provider shall deliver to the Council all material licensed to the Service Provider pursuant to Clause 62.10 or Clause 62.11 in the Service Provider's possession or control

63. BRANDING

- 63.1 The Service Provider shall only use the Council's name and logos for purposes which the Council approved in writing as being connected with the provision of the Services and shall return to the Council any unused publicity material of any description (whether stored electronic or otherwise) at the end of the Agreement Period, or when otherwise directed by the Council to do so.
- 63.2 Notwithstanding Clause 63.1, the parties agree to work together to agree ways in which the partnership can be branded and publicised. The Service Provider shall when directed by the Council to do so, provide a written proposal (not breaching the Intellectual Property Rights of any Third Party and subject to the indemnity provided by the Service Provider in Clause 62 (*Intellectual Property Rights*)) outlining its plans to brand and publicise the Services.
- 63.3 The Council shall at its sole discretion be entitled to accept, reject or modify any such proposal. Once the branding proposal has been agreed with the Council, such plans shall be implemented by the Service Provider and the Parties agree to review the plan from time to time but no more than on an annual basis
- 63.4 The Service Provider shall not knowingly do or omit to do anything which is contrary to the core values of the Council

64. COUNCIL DATA

- 64.1 The Service Provider hereby assigns to the Council, with full title guarantee, title to and all rights and interest in the Database or shall procure that the first owner of the Database assigns it to the Council on the same basis.
- 64.2 The assignment under Clause 64.1 shall either take effect on the Agreement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.
- 64.3 The Service Provider shall waive or procure a waiver of any moral rights in the Database assigned to the Council under this Agreement
- 64.4 To the extent that it is necessary for the Council to obtain the full benefits of ownership of the Database, the Service Provider hereby grants to the Council and shall procure that any relevant

third party licensor shall grant to the Council a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Database.

- 64.5 The Service Provider acknowledges that (subject to the provisions of the Data Protection Legislation) the Council Data is the property of the Council and the Council hereby reserves all Intellectual Property Rights which may subsist in the Council Data.
- 64.6 The Service Provider shall take all necessary steps to ensure that any Council Data which comes into its possession or control is protected in accordance with the Data Protection Legislation and appropriate security procedures and in compliance with Good Industry Practice (having regard to the nature of their other obligations under this Agreement and under the Data Protection Legislation).

Maintenance of Data

- 64.7 To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, the Service Provider shall:
 - 64.7.1 use all reasonable endeavours to procure for the benefit of the Council, at no charge or at the lowest reasonable fee, the grant of a licence or sub licence for any relevant software to enable the Council or its nominee to access and otherwise use (subject to the payment by the Council of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Service Provider may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and
 - 64.7.2 in relation only to any bespoke software created for the purposes of this Agreement enter into the National Computing Centre's then current multi licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.
- 64.8 The Service Provider shall ensure the back up and storage in safe custody of the data, materials and documents referred to in Clause 64.7 (*Maintenance of Data*) in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Council's Representative for approval its proposals for the back up and storage in safe custody of such data, materials and documents and the Council shall be entitled to object if the same is not in accordance with Good Industry Practice. The Service Provider shall comply, and shall cause all Service Provider Related Parties to comply, with all procedures to which the Council's Representative has given its approval. The Service Provider may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Council's Representative, who shall be entitled to object on the basis set out above.
- 64.9 In the event that Council Data used in the provision of the Services is corrupted or lost by the Service Provider as a result of a breach by the Service Provider of Clause 64.8, the Council shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:
 - 64.9.1 the Council may require the Service Provider at its own expense to restore or procure the restoration of such Council Data using the back-up copy referred to in Clause 65 (*Data Back Up*); or
 - 64.9.2 the Council may itself restore or procure restoration of such Council Data using the back-up copy referred to in Clause 65 (*Data Back Up*), and shall be reimbursed by the Service Provider any reasonable expenses so incurred.
- 64.10 The Service Provider shall:
 - 64.10.1 not use the Council Data, except as may be required to provide the Services or as instructed by the Council;

- 64.10.2 not disclose the Council Data to any third party, other than in accordance with the requirements of the Data Protection Legislation for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Council or as required by this Agreement;
- 64.10.3 undertake its obligations under this Agreement in such a manner as to preserve so far as reasonably possible the integrity and prevent any loss, disclosure, theft, manipulation or interception of the Council Data, and/or
- 64.10.4 upon request provide the Council with full access to any systems of the Service Provider or its Key Sub-Contractors where Council Data is stored or held

65. DATA BACK UP

- 65.1 The Service Provider shall at all times from the Agreement Date and throughout the Agreement Period ensure that it has arrangements in place for back-up copies of all Council Data in non proprietary electronic form held by the Service Provider on any hardware to be stored and secured safely in a building (not being a Council Premises or Service Provider's Premises) which is approved by the Council, such approval not to be unreasonably withheld ("the Back-Up Location")
- 65.2 Without prejudice to the obligations set out Clause 65.1, the Service Provider shall submit to the Council Representative for approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the Council shall be entitled to object if the same is not in accordance with Good Industry Practice. The Service Provider shall comply, and shall procure that all relevant Sub-Contractors comply, with all procedures to which the Council Representative has given its approval. The Service Provider may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Council Representative, who shall be entitled to object on the basis set out above.
- 65.3 As a minimum requirement back-up copies of all Council Data in electronic form held by the Service Provider on any hardware shall be transferred to the Back-Up Location for the periods and in the number of copies proposed by the Service Provider and agreed by the Council and shall be clearly marked with the date and the fact that the back-up copies are the Service Provider's responsibility but are the property of the Council.

66. DATA PROTECTION

66.1 General

- 66.1.1 Without prejudice to the specific requirements noted in this Clause 66, each Party shall comply with the requirements of the Data Protection Legislation and any equivalent or associated Legislation in relation to the provision of the Services and will not knowingly do anything or permit anything to be done which might lead to a breach by the other party of the Data Protection Legislation
- 66.1.2 In relation to all Personal Data, each Party shall at all times comply with the Data Protection Legislation, if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.
- 66.1.3 The Service Provider and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Services
- 66.1.4 All processing of Personal Data undertaken by the Service Provider in accordance with this Agreement shall at all times comply with the eight Data Protection Principles under the DPA and the Data Protection Legislation in accordance with the interpretation or view of the Council from time to time notified in writing to the Service Provider. In particular, the Service Provider shall
 - (a) ensure that, subject to any exemption under the DPA, all processing of Personal Data is done fairly and lawfully;

- (b) ensure that Personal Data processed for the purposes of this Agreement is not used for any other purpose or provision by or on behalf of the Service Provider;
 - (c) ensure that all Personal Data processed for the purposes of this Agreement is no more than is necessary for the purposes of the Services;
 - (d) ensure that checks are undertaken to ensure accuracy of the Personal Data maintained for the purposes of the Services;
 - (e) ensure that Personal Data maintained for the purposes of the Services is not kept for any longer than is necessary, in accordance with guidelines which shall be provided from time to time by the Council;
 - (f) ensure that it is fully able to comply with all of the rights of Data Subjects under the DPA, including the ability to comply with Data Subject access requests within the statutory maximum period, whether such requests are received by the Service Provider or by the Council. If such requests are received by the Council, they will be forwarded to the Service Provider promptly. The Service Provider shall notify the Council of all notices received from Data Subject, which appear to or purport to exercise that person's rights under the DPA, promptly;
 - (g) bring into effect and maintain technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data, in particular, with regard to sensitive personal data as defined in the DPA;
 - (h) comply with the provisions of BS7799 or procedure representing an equivalent standard; and
 - (i) not transfer any Personal Data to any country or territory outside the EEA without the express written consent of the Council and it shall any such Personal Data in compliance with Principle 8 of the DPA including, but not limited to, ensuring that the Service Provider and the Council have entered into the EU Model Clauses and/or ensuring equivalent adequate protection.
- 66.1.5 The Service Provider shall procure that all employees of all Sub-Contractors and the Service Provider who have access to Personal Data for the purposes of this Agreement shall be trained in data protection to accord with the requirements of this Agreement.
- 66.1.6 Without prejudice to the Service Provider's general obligations to provide data and information to the Council on request, the Council shall be entitled to request, and the Service Provider shall provide within a reasonable time, employment and relevant personal information in relation to the Service Provider's employees or any Sub-Contractor's employees for the purposes of anti-fraud measures such as data matching. The Service Provider shall ensure that it takes any measures necessary pursuant to the Data Protection Legislation and any other relevant Legislation to facilitate such disclosure lawfully and fairly.
- 66.1.7 The Service Provider may only authorise a third party sub-contractor to process the Personal Data:
- (a) subject to the Council's prior written consent (not to be unreasonably withheld) where the Service Provider has supplied the Council with full details of such sub-contractor, including details of the location where it will process any of the Personal Data;
 - (b) provided that the sub-contractor's contract is on terms which are substantially the same as those set out in this Agreement; and

- (c) provided that the sub-contractor's contract terminates automatically on termination of this Agreement for any reason
- 66.1.8 Where any sub-contractor appointed under Clause 66.1.7 fails to fulfil its obligations under such written agreement, the Service Provider shall remain fully liable to the Council for the performance of the sub-contractor's obligations under such agreement
- 66.2 No Disclosure**
- 66.2.1 The Service Provider shall not disclose Personal Data to any third parties other than:
- (a) to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Service Provider to perform the Services,
 - (b) to the extent required under a court order or Legislation; or
 - (c) disclosures made with the Data Subject's express written consent,
- provided that disclosure under Clause 66.2.1(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 66.2.1. The Service Provider shall give notice in writing to the Council of any disclosure of Personal Data which either the Service Provider or a Sub-Contractor is required to make under Clause 66.2.1(b) immediately upon becoming aware of such a requirement
- 66.2.2 The Service Provider shall bring into effect and maintain and procure that all relevant Sub-Contractors have in effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 66.2.3 The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider or the Sub-Contractors referred to in Clause 66.2.2. Within twenty (20) Business Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Legislation
- 66.3 Indemnity**
- The Service Provider shall indemnify and keep indemnified the Council against Direct Losses incurred by it in respect of any breach of this Clause 66 by the Service Provider and/or any act or omission of any Sub-Contractor.
- 67. FREEDOM OF INFORMATION**
- 67.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the Council's compliance with its information disclosure requirements pursuant to and in the manner provided for in this Clause 67
- 67.2 Where the Council receives a Request for Information in relation to Information that the Service Provider is holding on its behalf the Council shall transfer to the Service Provider such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Service Provider shall:
- 67.2.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Council acting reasonably may specify) of the Council's request, and
 - 67.2.2 provide all necessary assistance as reasonably requested by the Council in connection with such Request for Information to enable the Council to respond to a Request for

Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- 67.3 Following notification under Clause 67.2, and up until such time as the Service Provider has provided the Council with all the Information specified in Clause 67.2.1, the Service Provider may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
- 67.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 67.3.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Service Provider respond directly or allow its sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 67.4 The Service Provider acknowledges that (notwithstanding the provisions of Clause 67 (*Freedom of Inform*) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the FOIA Code), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Services:
- 67.4.1 in certain circumstances without consulting with the Service Provider; or
- 67.4.2 following consultation with the Service Provider and having taken its views into account.
- 67.5 The Service Provider shall ensure that all Information held on behalf of the Council is retained for disclosure for at least seven (7) years from the date it is acquired and shall permit the Council to inspect such Information as requested from time to time.
- 67.6 The Service Provider shall transfer to the Council any Request for Information received by the Service Provider as soon as practicable and in any event within two (2) Business Days of receiving it.
- 67.7 The Service Provider acknowledges that any lists provided to it listing or outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with the requirements FOIA and the Environmental Information Regulations.
- 67.8 In the event of a request from the Council pursuant to Clause 67.2, the Service Provider shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Council of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Council shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with the request and where it does require the Service Provider to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under Section 10 of the FOIA. In such case, the Council shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the request to the extent the Council is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 68. INFORMATION AND CONFIDENTIALITY**
- 68.1 The Parties agree that provisions of this Contract shall, subject to Clause 68.2, not be treated as Confidential Information and may be disclosed without restriction.

- 68.2 Clause 68.1 shall not apply to the provisions of this Agreement designated as Commercially Sensitive Information and listed in O (*Commercially Sensitive Information*) to this Agreement which shall, subject to Clause 68.3 be kept confidential for the relevant periods specified in that Schedule
- 68.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement or the Services and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information
- 68.4 Clauses 68.2 and 68.3 shall not apply to:
- 68.4.1 any disclosure of information that is reasonably required by any Party engaged in the performance of their obligations under this Agreement for the performance of those obligations;
 - 68.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of breach of this clause;
 - 68.4.3 any disclosure to enable a determination to be made under Clause 21 (*Dispute Resolution*) or in connection with a dispute between the Service Provider and any of its subcontractors;
 - 68.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned,
 - 68.4.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party,
 - 68.4.6 any provision of information to the Parties' own professional advisers or insurance advisers or to a lender or a lender's professional advisers or insurance advisers, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Service Provider to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the Service Provider in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal,
 - 68.4.7 any disclosure by the Council of information relating to the performance of the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to:
 - (a) any proposed new Service provider, its advisers and lenders, should the Council decide to retender this Agreement; or
 - (b) any person in connection with Clause 14 (*Benchmarking*);
 - 68.4.8 any application for registration or recording of the Necessary Consents and property registration required,
 - 68.4.9 any disclosure of information by the Council to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to this Agreement, or
 - 68.4.10 any disclosure for the purpose of:
 - (a) the examination and certification of the Council's or the Service Provider's accounts,

- (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council has used its resources;
- (c) complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies; or
- (d) (without prejudice to the generality of Clause 68.4.3) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 68.4.10(d) or Clause 68.4.3 shall permit disclosure of Confidential Information otherwise prohibited by Clause 68.3 where that information is exempt from disclosure under section 41 of the FOIA.

68.5 Where disclosure is permitted under Clause 68.4, the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

68.6 For the purposes of:

- 68.6.1 the examination and certification of the Council's accounts;
- 68.6.2 any Legislation relating to the inspection, examination and auditing of the Council's accounts; and
- 68.6.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council has performed its functions,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Service Provider and any sub-contractor and may require the Service Provider and any sub-contractor to produce such oral or written explanations as he or it considers necessary.

68.7 The Service Provider shall not make use of this Agreement or any information issued or provided by or on behalf of the Council in connection with this Agreement otherwise than for the purpose of the Agreement, except with the written consent of the Council.

68.8 Where the Service Provider, in carrying out its obligations under this Agreement, is provided with information relating to users of the Services the Service Provider shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Service Provider has sought the prior written consent of that user of the Services and has obtained the prior written consent of the Council.

68.9 On or before the Expiry Date, the Service Provider shall ensure that all documents or computer records in its possession, custody or control, which contain Personal Data including any documents in the possession, custody or control of a Service Provider Sub-contractor, are delivered up to the Council.

68.10 The Parties acknowledge that the National Audit Office has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

68.11 The provisions of this Clause 68 (*Information and Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

69. PUBLIC RELATIONS AND PUBLICITY

69.1 Save as required by law and/or the requirements of any relevant stock exchange, no publicity shall be made by the Service Provider without the Council's prior written consent relating to any matter in connection with this Agreement (including the provision of Services) and the Service Provider shall not disclose details of this Agreement to any Third Party without the prior written consent of the Council.

69 2 The Service Provider shall not by itself, its employees or agents and procure that its Sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written approval of the Council

69 3 No facilities to photograph or film in or upon any property used in relation to the Services shall be given or permitted by the Service Provider unless the Council has given its prior written approval.

PART 16: GENERAL

70 HEALTH AND SAFETY

70.1 Health and Safety Policies

The Service Provider shall comply with and shall procure that all Service Provider Related Parties shall comply with:

70.1.1 all applicable health and safety precautions necessary (whether required by Legislation or not) for the protection of itself and all Service Provider Related Parties,

70.1.2 all applicable rules, regulations and requirements of statutory or regulatory authorities concerning works and fire prevention,

70.1.3 the Council's Health & Safety Policy; and

70.1.4 the Service Provider's Health and Safety Manual

70.1A Health and Safety Manual

Prior to the Service Commencement Date the Service Provider shall provide to the Council a draft Health and Safety Manual which includes a detailed methodology of how the Service Provider will address health and safety issues in performance of its obligations under this Agreement. The Service Provider shall within five (5) Business Days of receipt of any request by the Council amend the draft Health and Safety Manual to the Council's satisfaction (acting reasonably). Once such manual is approved by the Council, it shall become the Health and Safety Manual

70.2 Reporting of Accidents and Unsafe Events

The Service Provider shall:

70.2.1 ensure that all accidents to Personnel which ordinarily require reporting in accordance with the Health and Safety at Work etc. Act 1974 shall also be reported, as soon as practicable, to the Council, and

70.2.2 promptly, upon it becoming so aware, provide the Council with full details of any significant unsafe event which relates in any way to the Services

70.3 Reasonable Instructions

The Service Provider shall comply with, and shall procure that all Service Provider Related Parties shall comply with:

70.3.1 all reasonable instructions given to it by the Council; and

70.3.2 all instructions given to it by police and/or fire officers,

concerning matters arising out of or connected to the Services and representing a danger to persons or property

70.4 Compliance with Instructions

The Service Provider shall:

- 70.4.1 not be obliged to comply with any instruction of the Council given pursuant to Clause 70.3, if it is likely, in the reasonable opinion of the Service Provider, to give rise to a breach of Clause 70.1; and
- 70.4.2 immediately provide the Council with full details of why such breach would occur together with details of the Service Provider's proposals for carrying out the Council's instruction in an alternative way which, in the Service Provider's reasonable opinion, would not give rise to a breach of Clause 70.1.

70.5 Health and Safety Documentation

The Service Provider shall, and shall procure that a Sub-Contractor shall, retain records relating to health and safety at work where there is a strict liability to so maintain such records pursuant to Legislation and shall, if reasonably requested by the Council, provide copies to the Council of all certificates, approvals, records and/or other documents.

70.6 Council's Obligations

The Council shall be responsible for the observance by itself and each Council Related Party of all applicable health and safety precautions necessary (whether required by Legislation or not) for the protection of the Council and each Council Related Party.

70.7 CDM Regulations

In respect of the CDM Regulations:

- 70.7.1 in this Clause 70.7 and Clause 70.8 "*Client Executive, Health and Safety File*" and "*CDM Co-ordinator*" have the same meanings as in the CDM Regulations;
- 70.7.2 the Service Provider hereby elects that for the purposes of the CDM Regulations, the Service Provider shall be treated as the only client in relation to the Service pursuant to Regulation 8 of the CDM Regulations and the Council hereby agrees to such election;
- 70.7.3 the Service Provider shall ensure that the relevant Sub-Contractor, and its subcontractors, is aware of such election and warrants to the Council that it is competent to perform the duties imposed on a Client by the CDM Regulations and shall not at any time terminate, withdraw or derogate in any manner from its declaration or its acceptance of its responsibilities as Client; and
- 70.7.4 the Service Provider shall within twenty (20) Business Days of issue of the final Certificate of Compliance deliver to the Council the Health and Safety File.

70.8 Compliance with CDM Regulations

The Service Provider shall observe, perform and discharge or shall procure the observance, performance and discharge of:

- 70.8.1 all the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Service; and
- 70.8.2 any obligations incumbent on the Client under any Code of Practice for the time being approved by the Health and Safety Commission issued in connection with the CDM Regulations.

71 NOT USED

72 CHANGE OF OWNERSHIP

72 1 The Service Provider shall give the Council at least thirty (30) Business Days' written notice of any Change of Ownership of the Service Provider. Within twenty (20) Business Days of such notice the Council shall notify the Service Provider of any objection to such Change of Ownership. If no such notice of objection is given the Council shall be deemed to have agreed to such Change of Ownership. If a notice of objection is served the Parties shall meet within five (5) Business Days of such notice in order to discuss the Council's concerns. If the Council's concerns have been resolved to the reasonable satisfaction of the Council, the Council shall withdraw its notice of objection. If the Council's concerns have not been resolved and as a result of the Change of Ownership

72 1 1 the Service Provider will be owned or controlled by an entity domiciled in a country outside of the European Union and this gives the Council reasonable grounds for concern,

72 1 2 in the reasonable opinion of the Council, the Service Provider's ability to perform the Services may be materially affected, or

72 1 3 in the reasonable opinion of the Council, it would be detrimental to the Council's reputation and obligations and functions as a Local Authority to continue to contract with the Service Provider;

then the Council may issue a second notice within twenty (20) Business Days of its first notice identifying which of the above conditions it believes apply and the reasons for such belief and if the Change of Ownership then proceeds it shall constitute a Service Provider Termination Event.

73 COUNCIL'S SUB-CONTRACTORS

73 1 Should the Council engage third party sub-contractors to undertake any part of its business operations and to the extent that such sub-contractors have contact with the Service Provider in the provision of the Services then (subject to the Special Conditions)

73.1.1 the Service Provider shall provide any such third party sub-contractors all assistance and/or co-operation as may be reasonably required, and for which the Service Provider is reasonably responsible to the Council under this Agreement, and

73.1.2 the Council shall use all reasonable endeavours to ensure, subject to the terms of the sub-contract, that any such sub-contractors provide all assistance and/or co-operation as may be reasonably required by the Service Provider in order that the Services might be performed

74 KEY SUB-CONTRACTORS

74 1 Not used

74 2 Prior to the appointment of any Key Sub-Contractors or to varying the extent of any Key Sub-Contractors contract the Service Provider shall obtain the Council's prior written consent (not to be unreasonably withheld). Notwithstanding any sub-contracting permitted hereunder, the Service Provider shall remain primarily responsible for the delivery of the Services and for the acts and omissions of its Sub-Contractors (whether Key Sub-Contractors or otherwise) as though they were its own.

74 3 The Service Provider shall ensure that any contract by which the Service Provider appoints a Key Sub-Contractor and which relates to the Services shall provide for immediate assignment or novation to the Council (at the Council's option) on the Termination Date or in the event of the Council exercising its rights under Clause 38 (*Council Step-in*) (in which case, the Council shall be entitled and the Service Provider shall accept assignment or novation back to the Council in the event the Council Step-In).

- 74.4 The Service Provider shall ensure that the relevant terms of this Agreement are reflected in all material respects in its appointment of all Sub-Contractors (including for the avoidance of doubt any obligations in relation to Schedule 30 (*TUPE*) and Schedule 31 (*Pensions*) and Clause 56 (*Employees*)).
- 74.5 The Council shall have the right at its absolute discretion to direct that the relevant Sub-Contract be terminated by the Service Provider or that a Sub-Contract not be entered into where in the reasonable opinion of the Council Representative, the Sub-Contractor is not or has not implemented provisions identical or similar to those contained in Schedule 30 (*TUPE*) and Schedule 31 (*Pensions*) and Clause 56 (*Employees*).
- 74.6 Where the Service Provider subcontracts any of its obligations under this Agreement, the Service Provider shall ensure that its subcontractors comply with relevant provisions of this Agreement, and the Service Provider shall not be relieved of any of its liabilities or obligations under this Agreement by entering into any subcontract and the Service Provider accepts liability for the acts and omissions of any subcontractor or any member of staff as fully as if they were the acts or omissions of the Service Provider.

75. ASSIGNMENT

- 75.1 Subject to Clause 74 (*Service Provider's Sub-Contracts*), the Service Provider will not be entitled to assign, transfer, sub-contract or otherwise deal in any way with the benefit of this Agreement or any part thereof without the prior written consent of the Council, such consent not to be unreasonably withheld.

75.2 Restrictions on Transfer of this Agreement by the Council

The rights and obligations of the Council under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Council under this Agreement being:

- 75.2.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 75.2.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Council under this Agreement;
- 75.2.3 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Service Provider) by the Council or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Council under this Agreement.

76. SERVICE OF NOTICES

Formal Notices

- 76.1 Any notice in connection with this Agreement shall be:

- 76.1.1 in writing in English; and
- 76.1.2 delivered by hand, fax, registered post or by courier,

to the addresses set out in the Parties at the head of this Agreement and marked for the attention of the following:

- 76.1.3 Council: FAO Chris Hindle, Trafford Borough Council, Trafford Town Hall, Talbot Road, Stretford, Greater Manchester M32 0TH

- 76.1.4 Service Provider FAO Company Secretary, Amey LG Limited, The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ
- 76.2 A notice given in connection with this Agreement is deemed to have been received
- 76.2.1 if delivered personally, at the time of delivery, or
 - 76.2.2 in the case of fax, at the time of transmission; or
 - 76.2.3 if sent by commercial courier, at the time of signature of the courier's delivery receipt; or
 - 76.2.4 in the case of pre-paid first class post or recorded delivery, 9.00 am on the second Business Day after posting

Electronic Mail

- 76.3 The contents of all electronic mail passing between the Parties in relation to this Agreement are to be kept confidential by the recipient. Electronic mail communications must not be disclosed, copied or distributed to any person. No liability is accepted by the sender for any viruses which infect electronic mail. No contract may be concluded on behalf of the sender, nor service of court proceedings accepted, by electronic mail

Copy Notices

- 76.4 Where the Service Provider is required to provide notice to (or otherwise notify) the Technical Services Provider in respect of any matter, the Service Provider must provide a copy of such notice to the Council. Where the Service Provider is required to provide notice to (or otherwise notify) the Council in respect of any matter, the Council may require the Service Provider to provide a copy of such notice to the Technical Services Provider

77 CONFLICTS OF INTEREST

- 77.1 The Service Provider shall at all times take appropriate action to ensure that neither the Service Provider nor any Service Provider Related Party is placed in a position where there is or may be an actual conflict, or potential conflict between their pecuniary or personal interests and the duties owed by the Service Provider to the Council under this Agreement. In particular the Service Provider will take into account the probity regime affecting local government when considering whether such a conflict arises
- 77.2 The Service Provider shall notify the Council immediately upon becoming aware of any such matters and shall use its reasonable endeavours to remove such conflict of interest and until such removal mitigate at its own expense the consequences thereof.
- 77.3 The Council shall acting reasonably decide whether any conflict of interest notified by the Service Provider is significant enough to prevent the Service Provider from performing the Services in accordance with the terms of this Agreement. If the Service Provider disagrees with any such decision by the Council, the Service Provider shall be entitled to refer the matter to be dealt with in accordance with the Dispute Resolution Procedure to determine whether there is a conflict of interest in the Service Provider providing the Services or any of them
- 77.4 If the Council decides and/or it is ratified by the Dispute Resolution Procedure that the Service Provider is unable to continue to perform the Services in accordance with the terms of this Agreement as a result of any such conflict of interest, the Council shall be entitled to treat such inability to continue to perform the Services (whether or not the Service Provider has ceased to perform the Services as a termination event under Clause 46 (*Service Provider Termination Event*) where the conflict is significant and material and has an effect on the Service Provider's ability to deliver the Services

78. AGENCY, PARTNERSHIP AND RELATED PARTIES

- 78.1 Nothing in this Agreement is intended to or shall be construed as creating a partnership, joint venture or contract of employment between the Council and the Service Provider.
- 78.2 Save as expressly provided otherwise in this Agreement, the Service Provider shall not be, or be deemed to be, an agent of the Council and the Service Provider shall not hold itself out as having authority or power to bind the Council in any way. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 78.3 Subject to the provisions of this Agreement, the Service Provider shall be responsible as against the Council for the acts and omissions of the Service Provider Related Parties as if they were the acts and omissions of the Service Provider and the Council shall be responsible as against the Service Provider for the acts and omissions of the Council Related Parties as if they were the acts and omissions of the Council. The Service Provider shall, as between itself and the Council, be responsible for the selection of and pricing by any Service Provider Related Party.

79. ENTIRE AGREEMENT

Each of the Parties acknowledges that:

- 79.1.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and
- 79.1.2 this Clause 79 shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement; and
- 79.1.3 except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

80. FURTHER ASSURANCE

Each Party shall from time, to time upon the request of the other Party, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions or the purposes of this Agreement.

81. VARIATION

- 81.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

82. COUNTERPARTS

- 82.1 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

83. INVALIDITY AND SEVERABILITY

- 83.1 If any provision of this Agreement is agreed or held to be invalid, unenforceable or void, such decision shall not have the effect of invalidating or rendering void the remainder of this Agreement, and the Parties agree that they shall immediately commence in good faith negotiations to jointly vary the terms of this Agreement in order to remedy such invalidity, unenforceability or illegality.

84. EXERCISE OF STATUTORY AUTHORITY

84.1 The obligations of the Council under this Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity (to include carrying out its statutory duties), nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising on the part of the Council to the Service Provider).

85. WAIVER

85.1 No term or provision of this Agreement shall be considered as waived or amended by any Party to this Agreement unless an express waiver or amendment is made in writing and signed by authorised representatives of each Party.

85.2 Without prejudice to Clause 85.1 failure by a Party to exercise, or a delay in exercising, any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which that Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

85.3 No waiver under Clause 85.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

86. LAW AND JURISDICTION

86.1 The formation, interpretation and operation of the Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the law of England.

86.2 This Agreement is governed by the laws of England and, subject to Disputes which are properly referred to and resolved in accordance with the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England.

87. THIRD PARTY RIGHTS

No term of this Agreement is enforceable by a person who is not a Party to this Agreement and nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

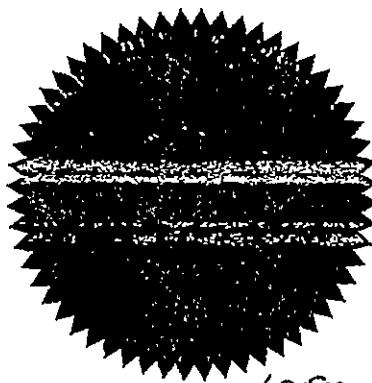
This Agreement shall be executed as a deed and delivered on the date stated at the beginning of this Agreement.

The Council

The common seal of
Trafford Borough Council
was affixed to this deed in the presence of

Authorised Signatory

)
)
)



68517

The Service Provider

Executed as a deed by
Amey LG Limited
acting by
a director and ^{in the presence of a} witness
a director witness

)
)
)
)
)

Director

Director

witness name D MARIN

witness address 113 MCGREGOR DRIVE
ST MCGREGOR PARK
MUNIGATION
CV11 6GD

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SCHEDULE 1

DEFINITIONS

1. GLOSSARY OF TERMS

1.1 In this Agreement the following capitalised terms shall have the following meanings:

Phrase	Meaning
"7 Year Change Proposal"	has the meaning given to it in Clause 12.9;
"7 Year Options Proposal"	has the meaning given to it in Clause 12.5;
"7 Year Review"	has the meaning given to it in Clause 12.1;
"7 Year Review Date"	means 1 July 2022;
"1999 Act"	means the Local Government Act 1999;
"Abandon"	means not to provide a Service Element for five (5) consecutive Business Days or during ten (10) Business Days (whether consecutive or not) in any Agreement Year;
"Acquired Rights Directive"	means the EC Acquired Rights Directive 77/187 as amended;
"Affected Party"	has the meaning given to it in the definition of Force Majeure Event in this Schedule 1 (<i>Definitions</i>);
"Affiliate"	means in respect of a relevant company, a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that relevant company, and in the case of the Service Provider shall include its holding company and each of the Shareholders. References to "holding company" and "subsidiary" shall have the meaning given to them in Section 736 of the Companies Act 1985;
"Agreement Date"	the date of this Agreement;
"Agreement Period"	the period commencing on and including the Agreement Date and ending on the same date as the relevant Service Period;
"Agreement Year"	means the period of twelve (12) months commencing on 1 April and ending on the day immediately following 31 March provided that the first Agreement Year shall commence on the Service Commencement Date and the final Agreement Year shall end on the earlier of the Expiry Date or the Termination Date;
"Annual Programme"	means the annual programme to be provided by the Service Provider to the Council in accordance with Schedule 11 (<i>Performance Monitoring</i>);
"Annual Report"	means the annual report to be provided by the Service Provider to the Council in accordance with Schedule 11 (<i>Performance Monitoring</i>);
"Approved Third Party Activities"	means: (a) those matters listed in Schedule 34 (<i>Approved Third Party</i>

Phrase	Meaning
	<i>Activities),</i>
	(b) such other activities as the Council agrees in writing from time to time in accordance with Clause 22; and
	(c) any activities performed by the Service Provider pursuant to any Partner Authority Services Agreement entered into in accordance with Clause 13 (Partner Authority Services);
"Assets"	means all assets and rights used by the Service Provider to operate and maintain the Services in accordance with this Agreement, including:
	(d) hardware which the Service Provider employs in the provision of the Services,
	(e) any rights in Software and any other intellectual property rights which the Service Provider employs in the provision of the Services,
	(f) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
	(g) any plant, machinery, equipment (including Equipment), spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
	(h) any contractual rights (including rights arising under any Hardware related agreements) which are in the provision of the Services, and
	(i) land or buildings which the Service Provider occupies in the provision of the Services,
"Assigned Employees"	has the meaning set out in Schedule 30 (<i>TUPE</i>),
"Background Information"	means all and any materials, documents, drawings, plans, data, models, financial information or any other information whatsoever relating in any way to the Services which has been made available by the Council or its agents in connection with the negotiation and preparation of this Agreement and during the procurement process which preceded entry into this Agreement,
"Background IPR"	<p>(a) IPRs owned by the Service Provider before the Agreement Date, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider's Know-How or generic business methodologies, and/or</p> <p>(b) IPRs created by the Service Provider independently of this Agreement,</p> <p>but excluding IPRs owned by the Service Provider subsisting in the Service Provider Software,</p>
"Back-Up Location"	has the meaning given to it in Clause 65.1,

Phrase	Meaning
"Benchmark Report"	the report produced by the Benchmarking following the Benchmark Review as further described in Paragraph 4 of Schedule 12 (<i>Benchmarking</i>);
"Benchmark Review"	a review of one or more of the Services carried out in accordance with Paragraph 3 of Schedule 12 (<i>Benchmarking</i>) to determine whether those Services represent Good Value;
"Benchmarked Service"	a Service that the Council elects to include in a Benchmark Review under Paragraph 1.3 of Schedule 12 (<i>Benchmarking</i>);
"Benchmarker"	the independent third party appointed under Paragraph 2.1 of Schedule 12 (<i>Benchmarking</i>);
"Best Value Duty"	the duty imposed on the Council by Section 3 of the 1999 Act in relation to, <i>inter alia</i> , the Services;
"Bond"	a bond in the form set out in Schedule 25 (<i>Bond</i>) provided in accordance with Clause 45 (<i>Bond, Guarantee and Collateral Warranties</i>);
"Broker's Letter of Undertaking"	has the meaning in Clause 43.15;
"Business Continuity Plan"	means the plan approved by the Council, and updated by the Service Provider from time to time, in each case pursuant to Clause 17 (<i>Business Continuity Plan</i>);
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
"Capital Expenditure"	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
"CDM Regulations"	means the Construction (Design and Management) Regulations 2007;
"Certificate of Costs"	a certificate prepared in accordance with and including the information required under Clause 33 (<i>Open Book Accounting</i>);
"Certification Requirements"	the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
"Change Control Confirmation"	means the confirmation issued by the Council that a change is agreed in accordance with paragraph 1.4 of Schedule 13 (<i>Change Control Procedure</i>);
"Change Control Procedure"	means the procedure for changing the contract set out in Schedule 13 (<i>Change Control Procedure</i>);
"Change Control Report"	has the meaning given to it in Schedule 13 (<i>Change Control Procedure</i>);
"Change in Law"	means the coming into effect after the Agreement Date of: <ul style="list-style-type: none"> (i) legislation, other than any Legislation which on the date of this Contract has been published: <ul style="list-style-type: none"> (a) in a draft Bill as part of a Government Departmental Consultation Paper;

Phrase	Meaning
	<ul style="list-style-type: none"> (b) in a Bill, (c) in a draft statutory instrument, or (d) as a proposal in the Official Journal of the European Communities,
	<ul style="list-style-type: none"> (i) any Guidance, (ii) any Directions; or (iii) any applicable judgment of a relevant court of law which changes a binding precedent,
"Change"	any change to the Services or this Agreement initiated through the Change Control Procedure set out in Schedule 13 (<i>Change Control Procedure</i>),
"Change of Ownership"	means- <ul style="list-style-type: none"> (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Service Provider (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or (b) any other arrangements that have or may have or which result in the same effect as limb (a) above,
"Collateral Warranty"	means a collateral warranty in the form set out in Schedule 27 (<i>Collateral Warranty</i>) provided in accordance with Clause 45 (<i>Bond, Guarantee and Collateral Warranties</i>),
"Commercial Waste Collection Service"	has the meaning given in the Environmental Services Specification,
"Commercial Waste Termination Event"	has the meaning given in Paragraph 15 of the Environmental Services Special Conditions,
"Commercially Sensitive Information"	the sub set of Confidential Information listed as Commercially Sensitive Contractual Provisions and Commercially Sensitive Material in each case for the period specified in column 2 of 0 (Commercially Sensitive Information);
"Comparable Service"	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance),
"Comparison Group"	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmark under Paragraph 3.8 of 1 (<i>Benchmarking</i>) which consists of organisations which are either of similar size to the Service Provider or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmark's professional opinion) fair comparators with the Service Provider or which, in the professional opinion of the Benchmark, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom,

Phrase	Meaning
"Confidential Information"	means:
	(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and
	(b) Commercially Sensitive Information.
"Continuous Improvement programme"	means a plan for continuous improvement of the Services prepared, updated and implemented in accordance with the requirements of Schedule 11 (<i>Performance Monitoring</i>)
"Contract Notice"	has the meaning given to it in Recital A;
"Convictions"	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made subject of a prohibition or restriction under section 218 (6) of the Education Reform Act 1988;
"Corrective Action Plan"	a plan in the form agreed by the Council pursuant to Clause 37;
"Corrective Action Plan Failure"	(a) the Service Provider fails to submit or resubmit a draft Corrective Action Plan to the Council within the timescales specified in Clauses 37.3 (<i>Submission of the draft Corrective Action Plan</i>) or 37.7 (<i>Agreement of the Corrective Action Plan</i>); (b) the Council, acting reasonably, rejects a revised draft of the Corrective Action Plan submitted by the Service Provider pursuant to Clause 37.6 (<i>Agreement of the Corrective Action Plan</i>); (c) the Service Provider fails to rectify a Notifiable Default within thirty (30) Business Days of a notification made pursuant to Clause 37.2 (<i>Notification</i>) or such longer period specified in a Corrective Action Plan; (d) a Material PI Failure re-occurring in respect of the same Performance Indicator for the same (or substantially the same) root cause in any of the 3 Payment Periods subsequent to the Payment Period in which the initial Material PI Failure occurred; and/or (e) following the successful implementation of a Corrective Action Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

Phrase	Meaning
"Corrective Action Procedure"	the procedure set out in Clause 37,
"Council Area"	means the Borough of Trafford
"Council Assets"	means any assets designated as Council Assets by written agreement of the Parties,
"Council Background IPR"	means any IPR (including, without limitation, the Council Data) existing at the Agreement Date provided by, for or on behalf of the Council to the Service Provider in anticipation of, in connection with the performance or receipt of the Services,
"Council Data"	any data (including metadata), record, document or information howsoever stored which is communicated in writing, orally, electronically or by any other means by the Council or any Council Related Party to the Service Provider relating to the Services or services similar to the Services (including in relation to the period prior to the Agreement Date) or is obtained, gleaned, compiled, produced or processed by the Service Provider during the course of the Service Provider providing the Services,
"Council Existing Employee"	means in relation to any service equivalent to any of the Services all these persons employed by the Council under a contract of employment (excluding to avoid doubt (without limitation) any person employed by the Council as an independent contractor or persons employed by any sub-contractor engaged by the Council) who are wholly or substantially engaged in the provision of that service as at the Service Commencement Date,
"Council Policies and Standards"	means the policies and standards at the Agreement Date referred to in Schedule 23 (<i>Council Policies and Standards</i>);
"Council Premises"	any premises owned or occupied by the Council where any of the Services may be or are carried out;
"Council Related Party"	means any officer, agent, employee of the Council acting in the course of his office or employment including any contractors or sub-contractors (other than the Service Provider or any Service Provider Related Party),
"Council Representative"	means the person listed in Schedule 17 (<i>Key Personnel</i>) as changed from time to time by notification to the Service Provider from time to time in accordance with Clause 19.1 (<i>Contract Governance - Representatives</i>)
"Council Software"	software which is owned by or licensed to the Council, including software which is or will be used by the Service Provider for the purposes of providing the Services but excluding Service Provider Software and Third Party Software,
"Council System"	means the Council's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Service Provider in connection with this Agreement which is owned by or licensed to the Council by a third party and which interfaces with the Service Provider System or which is necessary for the Council to receive the Services,
"CRM System"	means the electronic system (or systems) to be implemented by the Council for the management of communications, including complaints and requests for service, with service users and residents (which may or may not be used exclusively in respect of

Phrase	Meaning
	the Services);
"Customer Complaints"	means a complaint received by the Council and/or Service Provider in relation to the Services;
"Customer Complaints Procedure"	means the procedure included in Schedule 23 (<i>Council Policies and Standards</i>);
"Data Protection Legislation"	the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner as amended or superseded from time to time;
"Data Subject"	has the meaning given to them in the DPA;
"Database"	means the electronic or paper systems holding data (either in paper copy or electronic form) relating to the Services and all Council Data contained therein;
"Depot"	means: <ul style="list-style-type: none"> (a) the Environmental Depot; (b) the Highways Depot; and/or (c) the Street Lighting Depot, as the context requires;
"Direct Loss"	means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt, excluding Indirect Losses;
"Direction"	means any binding directions relevant to the provision of the Services issued by a Secretary of State from time to time;
"Disclosure and Barring Service"	the service that was established following the merger of the criminal records bureau and independent safeguarding authority under the Protection of Freedoms Act 2012;
"Dispute Resolution Procedure"	the procedure for the resolution of disputes set out in Schedule 15 (<i>Dispute Resolution Procedure</i>);
"Dispute"	any difference or dispute between the Council and the Service Provider arising out of or in connection with this Agreement, including any question as to the validity or interpretation of this Agreement, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure, and including any dispute arising before or after termination of this Agreement;
"Disputed Amount"	has the meaning given to it in Clause 25.4 (<i>Disputed Amounts</i>) of

Phrase	Meaning
	the Agreement,
"Documentation"	descriptions of the Services and technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as <ul style="list-style-type: none"> (a) is required to be supplied by the Service Provider to the Council under this Agreement, (b) is required by the Service Provider in order to provide the Services, or has been or shall be generated for the purpose of providing the Services,
"DPA"	the Data Protection Act 1998 as amended or replaced from time to time;
"EEA"	from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
"Emergency"	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services,
"Employee Liability Information"	means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of the Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE,
"Environmental Depot"	means any depot or premises used by the Service Provider to provide the Environmental Services,
"Environmental Depot Lease"	means any lease of the Environmental Depot entered in to from time to time by the Service Provider,
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations,
"Environmental Services "	has the meaning given in the Environmental Services Specification;
"Environmental Services Method Statements"	means the method statements in relation to Environmental Services set out in Part 1 of Schedule 3 (<i>The Method Statements</i>);
"Environmental Services Provider"	means the Service Provider in its capacity as provider of the Environmental Services under this Agreement or any replacement provider of any of those services appointed by the Council (which may include the Council)
"Environmental Services	means the specification in relation to Environmental Services set

Phrase	Meaning
Specification"	out in Part 1 of Schedule 2 (<i>Specification</i>);
"Environmental Services Special Conditions"	means the conditions set out in Schedule 5 in relation to Environmental Services;
"Equalities Legislation"	all Legislation which makes unlawful discrimination on grounds of sex, sexual orientation, gender reassignment, age, disability, colour, race, ethnic or national origin or religion, marital status or partnership status, part-time or temporary status in employment or otherwise including Equality Act 2010, The Duty to Promote Disability Equality: Statutory Code of Practice (England and Wales) issued by the Disability Rights Commission, and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000);
"Equipment"	means the plant, machinery, vehicles, equipment (including Hardware) and other items to be provided and/or maintained by the Service Provider in accordance with the terms of this Agreement and used in the provision of the Services;
"Equivalent Services Data"	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Schedule 12 (<i>Benchmarking</i>) provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
"Estimated Change in Service Costs"	in relation to a Change or a Qualifying Change in Law, the aggregate of any estimated increase in the Service Provider's costs and revenues less the aggregate of any reduction in the Service Provider's costs and revenues, in each case demonstrated on the basis of Open Book Accounting;
"EU Model Clauses"	means the EU model clauses (data controller to data processor) adopted by the European Commission under Decision 2010/87/EU as amended from time to time by the European Commission or appropriate governing body;
"Exclusive Assets"	means assets which the Service Provider may only use for the purpose of providing the Services, being the Initial Transferring Assets, and (unless agreed otherwise by the Parties in accordance with Clause 60.8) any new Assets;
"Excusing Cause"	means: <ul style="list-style-type: none"> (a) or any breach of any express provision or obligation of this Agreement by the Council or any agent, servant, employee or Sub-Contractor of the Council (unless, and to the extent, caused or contributed to by the Service Provider or any of its agents, servants, employees or Service Provider Sub Contractors); (b) a Force Majeure Event; or (c) any matter identified in the Special Conditions as an Excusing Cause;
"Exit Assistance Services"	means the exit assistance services to be provided by the Service Provider to the Council in accordance with the requirements of this Agreement and the Exit Plan;

Phrase	Meaning
"Exit Plan"	the plan as agreed or determined (and amended from time to time pursuant to Clause 53 (<i>Exit and Services Transfer Arrangements</i>)),
"Expert"	shall mean the person selected in accordance with paragraph 5 of Schedule 15 (<i>Dispute Resolution Procedure</i>) to consider a dispute referred to them,
"Expiry Date"	means
	(a) in respect of the Environmental Services, the Highways Services and the Technical Services, the First Expiry Date unless the Agreement is extended in accordance with the provisions of clause 5 (<i>Commencement and Duration</i>) in which case it shall be the Second Expiry Date,
	(b) in respect of the Street Lighting Services, the First Street Lighting Expiry Date unless the Agreement is extended in accordance with the provisions of clause 5 (<i>Commencement and Duration</i>) in which case it shall be the Second Expiry Date,
"Fees Regulations"	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (as amended, varied or replaced from time to time),
"Final Employee List"	has the meaning set out in Schedule 30 (<i>TUPE</i>),
"Financial Distress Event"	means where neither the Service Provider nor the Guarantor has a credit rating to "2A2" or above (as determined by the Dun & Bradstreet credit reference agency from time to time);
"Financial Model Assumptions"	has the meaning given to it the Payment Mechanism,
"Financial Model"	means the financial model agreed between the Parties prior to the Agreement Date (as updated from time to time in accordance with the terms of this Agreement) for the purpose of, amongst other things, calculating the Payment (and contained within the CD-ROM attached as Schedule 10 (<i>Financial Model</i>)),
"First Employee List"	has the meaning set out in Schedule 30 (<i>TUPE</i>);
"First Expiry Date"	means 30 June 2030,
"First Street Lighting Expiry Date"	means 30 June 2035,
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act,

Phrase	Meaning
"Force Majeure Event"	<p>means the occurrence after the Agreement Date of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict, rebellion, revolution, insurrection, riot or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Service Provider or its Sub-Contractors; or (c) pressure waves caused by devices travelling at supersonic speeds; or (d) blockade or embargo, strikes, lockouts, industrial or trade disputes in each case to the extent that the same do not involve employees of the party claiming relief or any Sub-Contractor, <p>which directly causes either party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Agreement except to the extent that:</p> <ul style="list-style-type: none"> (i) it is directly caused or materially contributed to by either party seeking to rely on Clause 40 (<i>Force Majeure</i>); and/or (ii) it is subsisting as at the date hereof;
"Formal Notice"	means a formal notice issued under this Agreement in accordance with Clause 76 (<i>Service of Notices</i>);
"Gain Share Mechanism"	means the mechanism in paragraph 7 of the Payment Mechanism;
"General Ledger"	means the central repository for all the Council's financial transactions;
"Global Performance Deductions Cap"	<p>means an amount equal to the aggregate of:</p> <ul style="list-style-type: none"> (a) an amount equal to 30% of the Payment which would have been payable to the Service Provider in respect of the Environmental Services in the relevant period had the Service Provider been fully performing its obligations; (b) an amount equal to 30% of the Payment which would have been payable to the Service Provider in respect of the Highways Services in the relevant period had the Service Provider been fully performing its obligations; (c) an amount equal to 60% of the Payment which would have been payable to the Service Provider in respect of the Street Lighting Services (excluding payment in respect of the LED Services, as defined in the Street Lighting Specification) in the relevant period had the Service Provider been fully performing its obligations; (d) an amount equal to 30% of the Payment which would have been payable to the Service Provider in respect of the Technical Services in the relevant period had the Service Provider been fully performing its obligations;
"Good Industry Practice"	means using standards, practices and methods and procedures of operating (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, care, prudence and foresight which would reasonably and ordinarily be expected from time to time of a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as that of the Service Provider as under this Agreement (or any Sub-Contractor) under

Phrase	Meaning
	the same or similar circumstances;
"Good Value"	in relation to a Benchmarked Service, that,
	(a) having taken into account the Performance Indicators, the value for money of the Payment attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
	(b) any Performance Indicators applicable to that Benchmarked Service are, having taken into account the Payment, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data;
"Guarantee"	a guarantee in the form set out in Schedule 26 (<i>Guarantee</i>) provided in accordance with Clause 45 (<i>Bond, Guarantee and Collateral Warranties</i>);
"Guarantor"	Amey UK PLC (company number 04736639) or any replacement appointed in accordance with Clause 45 (<i>Bond, Guarantee and Collateral Warranties</i>) with the Council's written approval,
"Guidance"	means any applicable guidance (statutory or otherwise) with which the Council or the Service Provider is bound to have regard to or comply with in the provision of the Services,
"Hardware"	means any and all computer, telecommunications and network equipment and any asset which relies in any respect on computer hardware or other information technology (whether embedded or not),
"Health and Safety Manual"	means the health and safety manual approved by the Council pursuant to Clause 70 1A,
"Highways Depot"	means any depot or premises used by the Service Provider to provide the Highways Services,
"Highways Depot Lease"	means any lease of the Highways Depot entered in to from time to time by the Service Provider,
"Highways Services"	has the meaning given in the Highways Services Specification;
"Highways Services Method Statements"	means the method statements in relation to Highways Services set out in Part 2 of Schedule 3 (<i>The Method Statements</i>);
"Highways Services Special Conditions"	means the conditions set out in Schedule 6 in relation to Highways Services,
"Highways Services Specification"	means the specification in relation to Highways Services set out in Part 2 of Schedule 2 (<i>Specification</i>),
"Household Waste Collection Service"	has the meaning given in the Environmental Services Specification
"ICT Environment"	means the Council System and the Service Provider System;

Phrase	Meaning
"Indirect Loss"	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Initial Transferring Assets"	those assets of the Council identified in Schedule 21 (<i>Initial Transferring Assets</i>) which are transferred to the Service Provider pursuant to Clause 60 (<i>Transferring Assets, Council Assets and Exclusive Assets</i>) for the purpose of being used by the Service Provider in the provision of the Services;
"Insolvency Event"	means if any of the following occur: <ul style="list-style-type: none"> (a) the Service Provider or the Guarantor calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; (b) the Service Provider or the Guarantor proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; (c) the Service Provider or the Guarantor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; (d) the Service Provider or the Guarantor has a receiver (and manager), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; (e) any restraint, execution or other process is levied or enforced on any of the Service Provider's or Guarantor's property and is not paid out, withdrawn or discharged within fifteen (15) Business Days; (f) the Service Provider or the Guarantor has passed a resolution for its winding up; (g) the Service Provider or the Guarantor has a petition presented to any Court for its winding up or any corporate action, legal proceedings or other procedure or step is taken in relation to the appointment of an administrator in respect of the Service Provider or the Guarantor; or (h) the Service Provider or the Guarantor ceases to trade.
"Intellectual Property Rights" "IPR"	means: <ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, service marks, moral rights, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other

Phrase	Meaning
	rights in Confidential Information whether or not registered or capable of registration;
(b)	applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and/or
(c)	all other rights having equivalent or similar effect in any country or jurisdiction,
"IPR Claims"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Service Provider (or to which the Service Provider has provided access) to the Council in the fulfilment of its obligations,
"IPR Liability"	any loss, damage, cost, charges, expenses, claims, actions or demands which may arise out of, or in consequence of, any infringement or alleged infringement by the Council or the Service Provider of any Intellectual Property Rights used to provide the Services,
"Key Staff"	means the individuals detailed in Schedule 17 (<i>Key Personnel</i>) as replaced or amended with the Council's approval in accordance with Clause 55;
"Key Sub-Contractors"	means any Sub-contractor appointed by the Service Provider under a sub-contract with an annual value in excess of ten (10)% of the Payment per annum;
"Law"	means any statute, including Legislation, statutory instrument, standards, law, production, order resolution, notice, rule of court, bye-law, directive, code of conduct or other instrument or requirement having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by H.M. Parliament (including but not limited to the Human Rights Act 1998), the legislative making institutions of the European Union, any court or other judicial form, any Commission of Inquiry, local authority, statutory undertaker or relevant authority or any other body or person having such power and having force contemporaneously with the Service Provider's performance of the Services,
"LED Payment"	means the payment relating to the installation of LED luminaires referred to as "FLED" in, and calculated in accordance with, paragraph 46 of the Payment Mechanism,
"LED Performance Deductions Cap"	means an amount equal to 30% of the LED Payment that would have been payable in the relevant period had the Service Provider been fully performing its obligations,
"LED Services"	has the meaning given in the Street Lighting Services Specification;
"LED Termination Event"	has the meaning given in Paragraph 21 of the Street Lighting Services Special Conditions,
"Legislation"	means:
(a)	any Act of Parliament or subordinate legislation within the

Phrase	Meaning
	meaning of Section 21(1) of the Interpretation Act 1978;
(b)	any exercise of the Royal Prerogative; and
(c)	any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;
"LGPS"	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;
"Local Commissioner"	means (as appropriate) the Commission for Local Administration in England (as defined in Part III of the Local Government Act 1974 and commonly known as the 'Local Government Ombudsman') or a member of that Commission acting in his/her capacity as such a member;
"Losses"	means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law;
"Material PI Failure"	means: (a) a failure by the Service Provider to meet the Minimum Acceptance Level in respect of: (i) 25% or more of the Performance Indicators in relation to any Service Element; or (ii) 25% or more of the Performance Indicators in relation to all Services; and/or (b) a failure by the Service Provider to meet the Target Service Level in respect of (i) 50% or more of the Performance Indicators in relation to any Service Element; or (ii) 50% or more of the Performance Indicators in relation to all Services, In each case in respect of Performance Indicators required to be reported in relation to all Services in any Payment Period;
"Method Statements"	means the general Method Statements appended at Part 5 of Schedule 3 (<i>Method Statements</i>) and (as applicable): (a) the Environmental Services Method Statements; (b) the Highways Services Method Statements; (c) the Street Lighting Services Method Statements; and/or (d) the Technical Services Method Statements;
"Minimum Acceptance Level"	means the minimum acceptable standard of service specified in relation to a Performance Indicator;

Phrase	Meaning
"Mobilisation Plan"	means the plan set out in Schedule 33 (<i>Mobilisation Plan</i>),
"Monthly Payment"	has the meaning given in the Payment Mechanism,
"Monthly Report"	means the monthly report to be provided by the Service Provider in accordance with Schedule 11 (<i>Performance Monitoring</i>),
"Named Employee"	has the meaning set out in Clause 56.1.1,
"National Performance Indicators"	means the single set of national indicators published in 'The New Performance Framework for Local Authorities and Local Council Partnerships' published by the Secretary of State, October 2007 as supplemented by the 'National Indicators for Local Authorities and Local Council Partnerships' Handbook of Definitions' published by the Secretary of State, 1 April 2008 or any other national performance indicators issued by any competent authority relating to performance for local authorities and local authority partnerships as may be issued from time to time;
"Necessary Consent"	means all permissions, consents, approvals, certificates, permits, licences and authorisations (including, where appropriate, any licence or consent under NRSWA) of a Relevant Authority or owner of Intellectual Property Rights which are required for the performance of any of the Service Provider's obligations under this Agreement excluding any Council Consents,
"Net Book Value"	the value of any item being its purchase price less an amount equal to the amortisation of such item in a straight line at the time such value is to be calculated in accordance with UK GAAP,
"New Employees"	means those new employees employed by the Service Provider to provide the Services who will be working alongside the Transferring Employees,
"Notice of Change"	means a notice issued by the Council to the Service Provider pursuant to paragraph 12 of Schedule 13 (<i>Change Control Procedure</i>);
"Notifiable Default"	shall have the meaning given in Clause 37 (<i>Corrective Action Plan Procedure</i>);
"NRSWA"	means The New Roads and Street Works Act 1991,

Phrase	Meaning
"Open Book Accounting"	means the disclosure by the Service Provider of all material data and information which relate to the performance of the Service Provider's obligations under this Agreement including staff costs, resources used, valuations, cost variations, profit margins, payment mechanisms, budget planning, defaults, claims, insurance, recovery of costs, administration and overhead costs, payments to sub-contractors and suppliers, transactions with intra-group and related parties, corporate overheads and the basis of such charges, capital expenditure, income from third parties and any other matter which is reasonably incidental to the performance of the Service Provider's obligations under this Agreement provided always that such information shall at all times be prepared and maintained in accordance with appropriate accounting practices (in accordance with Good Industry Practice);
"Partial Termination"	means the partial termination of this Agreement in accordance with Clause 51 (<i>Partial Termination</i>);
"Partner Admission Agreement"	has the meaning given to it in Schedule 31 (<i>Pensions</i>);
"Partner Authority"	means any of the following: Blackburn with Darwen Borough Council; Blackpool Council; Bolton Council; Bury Council; Cheshire East Council; Commission for New Economy; Greater Manchester Combined Authority; Greater Manchester Fire and Rescue Authority; Greater Manchester Police Authority; Manchester Central Convention Complex; Manchester City Council; Oldham Council; Rochdale Metropolitan Borough Council; Tameside Metropolitan Borough Council; Transport for Greater Manchester; Wigan Council; and Warrington Borough Council;
"Partner Authority Services"	the services set out in the Contract Notice that a Partner Authority requires the Service Provider to perform, as referred to in Clause 13 (<i>Partner Authority Services</i>);
"Partner Authority Services Agreement"	the agreement between the Service Provider and a Partner Authority in similar terms to this Agreement;
"Partnership Board"	means the board convened in accordance with Schedule 14 (<i>Partnership Board</i>);
"Payment"	has the meaning given in Schedule 9 (<i>Payment Mechanism</i>);

Phrase	Meaning
"Payment Mechanism"	the mechanism for payment set out in Schedule 9 (<i>Payment Mechanism</i>),
"Payment Period"	a calendar month, save that- <ul style="list-style-type: none"> (a) the first payment period shall begin on the Service Commencement Date and expire at the end of the calendar month in which the Service Commencement Date falls, and (b) the final payment period shall commence on the first day of the calendar month in which the Agreement expires or terminates and end on the expiry or termination of the Agreement;
"Performance Deduction"	means a deduction in relation to a Performance Failure which the Council is entitled to levy in accordance with Schedule 9 (<i>Payment Mechanism</i>),
"Performance Deductions Cap"	means <ul style="list-style-type: none"> (a) in respect of the Environmental Services, an amount equal to 30% of the Payment that would have been payable in the relevant period had the Service Provider been fully performing its obligations, (b) in respect of the Highways Services, an amount equal to 30% of the relevant Payment that would have been payable in the relevant period had the Service Provider been fully performing its obligations, (c) in respect of the Street Lighting Services an amount equal to 60% of the relevant Payment that would have been payable in the relevant period (excluding payment in respect of the LED Services, as defined in the Street Lighting Specification) had the Service Provider been fully performing its obligations; and (d) in respect of the Technical Services an amount equal to 30% of the relevant Payment that would have been payable in the relevant period had the Service Provider been fully performing its obligations;
"Performance Failure"	means a failure by the Service Provider to achieve a Target Service Level,
"Performance Points"	has the meaning given in the Payment Mechanism;
"Performance Reports"	means each of- <ul style="list-style-type: none"> (a) the Monthly Report, (b) the Annual Report, (c) the Weekly Report, and/or (d) any other performance reports required pursuant to this Agreement,

Phrase	Meaning
"Performance Indicators"	means the key performance indicators as set out in Schedule 9 (<i>Payment Mechanism</i>) and references to KPIs are to Performance Indicators;
"Personal Data"	personal data as defined in the DPA which is supplied to the Service Provider by the Council or is obtained by the Service Provider in the course of performing the Services;
"Personnel"	means the employees, servants, agents, sub-contractors or other representatives, of the Service Provider, or of any Service Provider Related Party involved directly, or indirectly, in the provision of the Services;
"Premises"	any premises where any of the Services may be or are carried out;
"Prescribed Rate"	means 2% plus the Bank of England Base Rate from time to time;
"Prohibited Act"	means:
	<ul style="list-style-type: none"> (a) offering giving or agreeing to give any officer or employee of the Council any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council; (b) entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; or (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010, Prevention of Corruption Acts 1889-1916 or under Section 117(2) of the Local Government Act 1972 as amended from time to time; (ii) under Legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; (iv) defrauding or attempting to defraud or

Phrase	Meaning
	conspiring to defraud the Council,
"Project Specific IPR"	(a) IPRs in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Agreement and updates and amendments of these items; and/or (b) IPRs arising as a result of the performance of the Service Provider's obligations under this Agreement, but which shall not include the Background IPRs,
"Promptly" or "promptly"	means that the required step shall be completed within two (2) Business Days or such other period as agreed by the parties in writing),
"Proposal"	means a proposal as described in Schedule 13 (<i>Change Control Procedure</i>);
"Proposed Workforce"	has the meaning set out in Schedule 30 (<i>TUPE</i>),
"Qualifying Change in Law"	means (a) any Change in Law which specifically refers to the provision of a service the same or similar to the Services, (b) a Change in Law the terms of which apply expressly to (i) the provision of the Services in accordance with the terms of this Agreement and to similar services; (ii) the Service Provider and not to other persons; and/or (iii) contractors whose business activity is the provision of services the same as or similar to the Services;
"Relevant Authority"	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, officer or public or statutory person of the Government of the United Kingdom or of the European Union,
"Relevant Employees"	the employees who are the subject of a Relevant Transfer,
"Relevant Event"	a Change, Qualifying Change in Law or other event as a result of which there may be an adjustment to the Payment, in accordance with Clause 26 (<i>Financial Adjustments</i>),
"Relevant Policies"	has the meaning in Clause 30 3.3,
"Relevant Requirements"	has the meaning in Clause 30 3.1;
"Relevant Transfer"	means a relevant transfer for the purposes of TUPE,
"Remuneration Costs"	has the meaning set out in Schedule 30 (<i>TUPE</i>);
"Reorganisation Costs"	has the meaning set out in Schedule 30 (<i>TUPE</i>);
"Replacement Supplier"	means any successor service provider(s) who will provide a service the same or similar to the Services (or a Service Element) from expiry or termination of this Agreement (in whole or in part), as the case may be,

Phrase	Meaning
"Request for Information"	has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;
"Required Insurances"	means those insurances that the Service Provider is obliged to take out and maintain pursuant to Clause 43 (<i>Insurance</i>);
"Retendering Information"	has the meaning given to it in Schedule 30 (<i>TUPE</i>) (<i>Retendering</i>);
"Returning Employees"	has the meaning set out in Schedule 30 (<i>TUPE</i>);
"Review Procedure"	means the procedure set out in Schedule 32 (<i>Review Procedure</i>);
"Rolling Inventory"	means the rolling inventory agreed by the Parties pursuant to Clause 60.7 as may be updated from time to time thereafter and as a minimum every twelve (12) months to create a rolling and up to date inventory of all Assets used by the Service Provider in the operation of the Services;
"Second Expiry Date"	means 30 June 2038;
"Service Absence"	means abandonment of, or complete failure by the Service Provider to comply with any obligation to be performed as part of the Services;
"Service Commencement Date"	means 6 July 2015;
"Service Element"	means each of: <ul style="list-style-type: none"> (a) the Environmental Services; (b) the Highways Services; (c) the Street Lighting Services; and/or (d) the Technical Services; as the context requires;
"Service Failure"	means: <ul style="list-style-type: none"> (a) a failure to provide the Environmental Services in accordance with the Environmental Services Specification or Environmental Services Special Conditions; (b) a failure to provide the Highways Services in accordance with the Highways Services Specification or Highways Services Special Conditions; (c) a failure to provide the Street Lighting Services in accordance with the Street Lighting Specification or Street Lighting Services Special Conditions; or (d) a failure to provide the Technical Services in accordance with the Technical Services Specification or Technical Services Special Conditions, as the context requires;
"Service Period"	means the period specified in Clause 5.2;
"Service Plan"	has the meaning given to it in Clause 11.3;
"Service Plan Areas"	has the meaning given to it in Clause 11.3;

Phrase	Meaning
"Service Provider Background IPR"	means any IPR existing at the Agreement Date provided by, for or on behalf of the Service Provider to the Council in anticipation of, in connection with the performance or receipt of the Services;
"Service Provider IT Equipment"	means the hardware, computer and telecoms devices and equipment (excluding any communications links leased from a network operator or internet connectivity provided by an internet service provider) which is owned, leased or licensed by the Service Provider Related Parties or their Sub-contractors (but not hired, leased or loaned from the Council) for the provision of the Services,
"Service Provider Liability Cap"	has the meaning given in clause 41.9;
"Service Provider Related Party"	any of the following <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of the Service Provider, or any Affiliate of the Service Provider and any officer, servant, employee or agent of such a person acting in that capacity, (b) any contractor or sub-contractor of the Service Provider of any tier and any of their directors, officers, servants, employees or agents acting in that capacity,
"Service Provider Representative"	means the person listed in Schedule 17 (<i>Key Personnel</i>) as changed from time to time by notification to the Council from time to time in accordance with Clause 19.1 (<i>Contract Governance - Representatives</i>)
"Service Provider Scheme"	has the meaning given in paragraph 1.7 of Schedule 31 (<i>Pensions</i>);
"Service Provider Software"	software which is proprietary to the Service Provider, including software which is or will be used by the Service Provider for the purposes of providing the Services,
"Service Provider Sub-Contractors"	means the Key Sub-Contractors or any other sub-contractor approved as such in accordance with the provisions of this Agreement,
"Service Provider System"	means the information and communications technology system used by the Service Provider in performing the Services including the Software, the Service Provider IT Equipment and related cabling (but excluding the Council System),
"Service Provider Termination Event"	any of the events set out in Clause 46 (<i>Service Provider Termination Event</i>),
"Services"	means: <ul style="list-style-type: none"> (a) the Environmental Services; (b) the Highways Services, (c) the Street Lighting Services; and/or (d) the Technical Services, and all other obligations of the Service Provider under this Agreement,

Phrase	Meaning
"Shared Assets"	means any assets other than Council Assets and Exclusive Assets, which the Service Provider may, subject to Clause 60.8, use for the purpose of providing the Services;
"Shareholders"	each person from time to time holding share capital in the Service Provider or its holding company;
"Single Data List"	means the Single Data List for Central Government Departments (2011-12) published by the Department for Communities and Local Government on 14 April 2011, containing a comprehensive list of all data required of local government by central government, and any subsequent lists of central government's data requirements from local government, as may be issued by Communities and Local Government or any other competent authority from time to time;
"Software"	<p>means</p> <ul style="list-style-type: none"> (a) all computer programs in both source and object code form, including all modules, routines and sub-routines of such programs and all source and other preparatory materials relating to them, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow charges, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other documentation relating to them and computer generated works; and/or (b) Specially Written Software, Service Provider Software and Third Party Software;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;
"Special Conditions"	<p>means (as applicable):</p> <ul style="list-style-type: none"> (a) the Environmental Services Special Conditions; (b) the Highways Services Special Conditions; (c) the Street Lighting Services Special Conditions; (d) the Technical Services Special Conditions;
"Specially Written Software"	any software created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Agreement;

Phrase	Meaning
"Specification"	means (as applicable)- <ul style="list-style-type: none"> (a) the Environmental Services Specification, (b) the Highways Services Specification, (c) the Street Lighting Services Specification, and (d) the Technical Services Specification
"Staff Resources"	Personnel during the hours in which they are assigned to and paid to provide Services for the Council;
"Street Cleansing Service"	has the meaning given in the Environmental Services Specification
"Street Lighting Depot"	means any depot or premises used by the Service Provider to provide the Street Lighting Services;
"Street Lighting Depot Lease"	means any lease of the Street Lighting Depot entered in to from time to time by the Service Provider,
"Street Lighting Services"	has the meaning given in the Street Lighting Services Specification,
"Street Lighting Services Method Statements"	means the method statements in relation to Street Lighting Services set out in Part 3 of Schedule 3 (<i>Method Statements</i>);
"Street Lighting Services Special Conditions"	means the conditions set out in Schedule 7 in relation to Street Lighting Services;
"Street Lighting Services Specification"	means the specification in relation to Street Lighting Services set out in Part 3 of Schedule 2 (<i>Specification</i>);
"Sub-Contractor"	means any person engaged by the Service Provider from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them), including each Key Sub-Contractor. References to sub-contractors mean sub-contractors (of any tier) of the Service Provider,
"Sub-Leases"	means the <ul style="list-style-type: none"> (a) the Environmental Depot Lease; (b) the Highways Depot Lease, and/or (c) the Street Lighting Depot Lease,
"Target Service Level"	means the target service level as specified in relation to each KPI;
"Technical Services"	has the meaning given in the Technical Services Specification;
"Technical Services Method Statements"	means the method statements in relation to Technical Services set out in Part 4 of Schedule 3 (<i>Method Statements</i>);
"Technical Services Special Conditions"	means the conditions set out in Schedule 8 in relation to Technical Services;
"Technical Services Specification"	means the specification in relation to Technical Services set out in Part 4 of Schedule 2 (<i>Specification</i>),
"Termination Date"	the date of the early termination of this Agreement in accordance with the provisions of this Agreement, or in respect of Partial

Phrase	Meaning
"Termination Notice"	Termination, the date of early termination of the relevant Service Element in accordance with the provisions of this Agreement;
"Third Party"	a Formal Notice delivered by the Service Provider to the Council indicating that it intends to terminate this Agreement or delivered by the Council indicating that it wishes to terminate this Agreement (in whole or in part);
"Third Party Claim"	means a party other than the Council, the Service Provider, any Council Related Party or any Service Provider Related Party;
"Third Party Income Consent"	means a claim for which the Service Provider is obliged to indemnify the Council pursuant to Clause 41.3.1, 41.3.3 and/or Clause 41.3.4;
"Third Party Revenue"	means a consent issued by the Council pursuant to Clause 22;
"Third Party Services"	has the meaning given in the Payment Mechanism;
"Third Party Service Provider"	services provided to third parties pursuant to Clause 22;
"Third Party Software"	means an employer other than the Council of any Relevant Employee immediately prior to the Service Commencement Date;
"Transferring Assets"	software which is proprietary to any third party other than an Affiliate of the Service Provider and is used by the Service Provider or any Service Provider Related Party in relation to this Agreement;
"Transferring Contract"	means those assets which the Council requires to be transferred pursuant to Clause 60 (<i>Transferring Assets, Council Assets and Exclusive Assets</i>) on termination or expiry of this Agreement;
"Transferring Employees"	any contract which the Parties agree (acting reasonably), is to be novated or transferred from the Council to Service Provider in accordance with Clause 6.4.3;
"Transferring Original Employees"	means an employee of the Council whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement, a contract of employment with someone other than the Council;
"TUPE"	means an employee of the Council whose contract of employment has become, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out preceding contract(s) between the Council and previous service providers which related to the Services, a contract of employment with someone other than the Council, and in relation to what is done for the purposes of carrying out this Agreement, a contract of employment with someone other than the employee's incumbent employer;
"Unsuitable Person"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law;
	means any person who:
(a)	has any Conviction;
(b)	in the reasonable opinion of the Council:

Phrase	Meaning
	(i) is or is likely to cause damage to the reputation of the Council, or
	(ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Service Provider under this Agreement, or
	(iii) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any part of the Service, or
	(iv) may present an actual or potential risk to the health, safety or welfare of any Council employee or member of the public, or
	(v) is not appropriately trained, qualified, skilled and/or competent to carry out any part of the Service, or
	(vi) is not complying with the Council's policies for use of its buildings (e.g. smoking in a non-smoking area), or
	(vii) is or is deemed to be guilty of misconduct, fraud, dishonesty or negligence,
"Upper Quartile"	the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service,
"Use"	means
	(a) with respect to the Standard Licence Terms, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that Software,
	(b) with respect to the Enhanced Licence Terms for Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that Software, and
	(c) with respect to the Enhanced Licence Terms for Project Specific IPR other than Software, the right to copy, adapt, publish (including on the ICT Environment), distribute or otherwise use any other Project Specific IPR

