

DATED

1st April 2020

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

and

PARK-MOBILE (UK) LIMITED

CONTRACT FOR THE SUPPLY OF SERVICES:

**Parking Permit Management Software and
Paid for Parking Management Software**

London Borough of Camden
Legal Services Department
5 Pancras Square

London N1C 4AG

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A **CONTRACT** made the 1ST day of April 2020

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** [REDACTED] ("the Council"); and
(2) **Park-Mobile (UK) LIMITED** [REDACTED]
[REDACTED] ("Contractor").

The parties are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties"

WHEREAS

- A. The Council wishes to commission the provision of the Paid for Parking and Permit Management ("the Services") as more specifically described in the Specification.
- B. The Contractor has represented that it has the requisite expertise to carry out such Services and has in accordance with the Council's requirements submitted proposals for carrying out the Services and a statement of the Contract Price.

IT IS AGREED as follows:

1. DEFINITIONS AND CONSTRUCTION

- 1.1 In the Contract, save where the context otherwise requires, the following words and expressions shall have the meanings assigned to them:
- (a) "**Authorised Officers**" mean the Operations Manager and Operations Expert appointed by the Council and notified in writing to the Contractor from time to time to act as the Council's representative(s) for the purposes of the management and supervision of the Contract;
 - (b) "**Conditions**" means these conditions of contract;
 - (c) "**Confidential Information**" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which 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 2018. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of **Condition 29** (Confidentiality));
 - (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - (iv) is independently developed without access to the Confidential Information;
- (d) "**Contract Manager**" means the representative of the Contractor for the time being appointed under **Condition 6**;
 - (e) "**Contract Period**" means the period during which the Contract shall remain in force in accordance with **Condition 2**;
 - (f) "**Contract Price**" means the price exclusive of VAT stated in Schedule 3 Charges and payable to the Contractor by the Council under the Contract;
 - (g) "**Contractor**" means Park-Mobile (UK) Ltd and shall where the context so requires include its personal representatives, successors and permitted assignees;
 - (h) "**Contract Standard**" means such standard as complies in each and every respect with the Specification, all relevant provisions of the Contract and is to the satisfaction of the Authorised Officer;
 - (i) "**Default**" means any failure to fulfill an obligation or promise or to perform specified acts under the Contract;
 - (j) "**Environment**" means all or any of the following media, namely the air, surface water, groundwater, and land, including the sub-surface soils, and vegetation, and the medium of air includes without limitation the air within other natural or man made structures whether above or below ground;
 - (k) "**Environmental Information Regulations**: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
 - (l) "**Equipment**" means as set out in *Schedule 2* the parts, materials, articles, or mechanisms used by the Contractor in the provision of the Service under the Contract;
 - (m) "**Fraud**" means any fraudulent act or any offence at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Council;
 - (n) "**Intellectual Property Rights**" means patents, inventions, trade marks, service marks, logos, design rights (whether capable of being registered or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether capable of being registered or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
 - (o) "**Location(s)**" means as set out in *Schedule 2* the place, places or site or sites where the Service is to be provided by the Contractor;
 - (p) "**Monitoring Meetings**" shall mean the regular meetings to take place on a fortnightly basis, or at the request of the Council on a

more regular basis as the Council shall require, between the authorised representatives of the Council and of the Contractor to ensure that the Contract is being performed in accordance with the terms and conditions specified in the Contract;

- (q) “**Necessary Consents**” shall mean all consents and permissions which the Contractor needs to obtain in order to enable the Contractor to provide the Services.
- (r) “**Personnel**” means employees, self-employed contractor, agency staff and volunteers as appropriate that are engaged or proposed for engagement in the delivery of the Service;
- (s) “**Schedules**” means any schedules annexed hereto;
- (t) “**Service(s)**” means the service(s) described within the Specification to be provided by the Contractor in accordance with the terms of the Contract including any modification thereof as may from time to time be made in accordance with **Condition 9**;
- (u) “**Service User(s)**” means the person or persons receiving the Service provided by the Contractor;
- (v) “**Specification**” means the service specification set out *Schedule 2* describing the Service to be provided by the Contractor including any modification thereof as may from time to time be made in accordance with **Condition 9**;
- (w) “**Staff**” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;
- (x) “**Transferring Employees**” means those employees who have transferred from the Council to the Contractor;
- (y) “**Transparency Data**” means the objective, factual data on which policy decisions are based and on which public services are assessed, or which is collected or generated in the course of public service delivery, in accordance with the Local Government Transparency Code 2015;
- (z) “**Workforce Standards**” means those standards of good employment practice.
- (aa) “**Working Days**” means Monday to Friday excluding public and bank holidays in England and Wales.

- 1.2. Unless the context otherwise requires, reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, etc. as amended or re-enacted, from time to time.
- 1.3. The headings to these Conditions are for ease of reference only, and shall not affect the construction of the Contract.
- 1.4. All references to the masculine shall include the feminine, and all references to the singular shall include the plural, except where the context clearly indicates the one or the other.
- 1.5. Any act which the Council is required to do under the Contract, may be done by any person authorised by the Council, provided that upon receipt

of a written request the Council shall inform the Contractor of the name of any person so authorised.

- 1.6. Where the Contractor is more than one person those persons shall be jointly and severally liable under the Contract.
- 1.7. Reference to employees, personnel, staff and managers of the Contractor shall include references to all persons engaged by the Contractor in the performance of the Service and shall (if the context so permits) include references to the personnel staff and managers of any sub-contractor of the Contractor.

2. CONTRACT PERIOD

- 2.1. The Contract shall commence on *1st April 2020* (“the Commencement Date”) and shall continue in force (subject as hereinafter provided and to earlier termination in whole or in part in accordance with these Conditions and in particular **Condition 31**) until *31st September 2020* (“the Expiry Date”).

3. THE SERVICE

- 3.1. The Contractor shall throughout the Contract Period carry out and complete the Service in accordance with the Contract.
- 3.2. If the Contractor is unable or fails to provide the Service or any part thereof in accordance with the requirements of **Condition 3.1**, the Council may itself provide or may employ and pay other persons to provide the Service or any part thereof and all costs incurred thereby may be deducted from any sums due to the Contractor under the Contract or shall be recoverable from the Contractor by the Council as a debt. The Council's right under this **Condition 3.2** shall be without prejudice to any other rights or remedies which it may possess.
- 3.3. The Contractor shall at all times comply with the reasonable directions of the Authorised Officer.

4. CONTRACTOR'S OBLIGATIONS

- 4.1. The Contractor shall provide the Service in compliance with the Specification and the terms of this Agreement.
- 4.2. The Contractor shall provide the Service with all reasonable skill, care and diligence in accordance with Specification.
- 4.3. The Contractor shall promptly inform the Authorised Officer (and confirm in writing) if the Service, or any part of it, is not being, or may not be, performed, whether or not as the result of any act or omission of the

Council, giving details, reasons and likely duration. The provision of this information shall not relieve the Contractor from its contractual obligations.

- 4.4. If the Contractor requires any further instruction or information in connection with the provision of the Service, the Contractor shall make a sufficiently detailed, and sufficiently timely, written application to the Authorised Officer specifying any critical date by which a response is needed, but otherwise giving the Authorised Officer reasonable time to respond.
- 4.5. The Contractor shall at all times comply with all relevant Council's policies, Codes of Practice and Financial Regulations, provided a copy has been supplied by the Council.
- 4.6. Except as otherwise provided in the Contract, the Contractor shall provide all Personnel, equipment, materials, information, data and other things whatsoever required for the provision of the Service including any modifications pursuant to **Condition 9**. Except as otherwise provided, the Contractor shall not in any circumstances use any premises or equipment of the Council.
- 4.7. The Contractor shall co-operate and co-ordinate its activities with other contractors or sub-contractors engaged by the Council as appropriate.
- 4.8. The Contractor shall ensure that neither the Contractor nor its personnel shall do any act or thing at any premises owned or occupied by the Council other than the proper performance of the Service, and no signs or advertisements shall be exhibited without prior Council written approval.
- 4.9. The Contractor shall not accept any orders for provision of the Service other than those issued in writing either by the Authorised Officer.

5. CONTRACTOR'S PERSONNEL

- 5.1. The Contractor shall employ sufficient personnel for the provision of the Service and such personnel shall be properly and suitably qualified, competent, skilled, honest and experienced and shall at all times exercise reasonable care in the execution of their duties. The Contractor shall ensure that each such person is properly and sufficiently instructed and supervised with regard to the provision of the Service.
- 5.2. The Authorised Officer shall have the power upon written notice with details of any concerns to require the Contractor, but not unreasonably or vexatiously, to remove from the provision of the Service any employee, sub-contractor or agent of the Contractor including the Contract Manager. The Contractor shall forthwith remove such person/s from the provision of the Service and as soon as reasonably practicable shall provide a replacement. The Contractor shall fully and promptly indemnify the Council against any claim made by such person where this relates directly to their removal from the provision of the Services.

- 5.3. The Contractor shall take all reasonable steps to avoid changes to key personnel involved in provision of the Service and shall first discuss any changes in key personnel with the Council.

6. CONTRACT MANAGEMENT

- 6.1. The Contractor shall at all times properly manage and monitor the Service.
- 6.2. The Contractor shall appoint a Contract Manager to act on its behalf for all purposes connected with the Contract, and any replacements shall be subject to the prior written approval of the Council not to be unreasonably withheld or delayed. Notices, information, instructions or other communications given to the Contract Manager shall be deemed to have been given to the Contractor.
- 6.3. The Contractor shall ensure that at all times the Authorised Officer have current contact details for the Contract Manager or any temporary or permanent replacement including name, address, work and mobile telephone numbers. The Contract Manager or a duly authorised and competent representative shall be available to meet the Authorised Officer at all reasonable times and shall provide such written reports as the Authorised Officer requests.

7. CONTRACT PRICE

- 7.1 The Contract Price shall (subject to the provisions of the Contract (if any) which provide for modification thereof) apply from the Commencement Date and is payable by the Council.
- 7.2 The Contract Price shall include all costs of providing the Service howsoever incurred including (without limitation) the costs of all labour, equipment, accommodation, fuel, materials, purchasing and maintaining vehicles and equipment, travelling, all accounting and banking systems and all costs, charges, expenses and outgoings of whatever nature incurred by the Contractor in performing its obligations under the Contract.
- 7.3 The Contract Price may not be modified at any time otherwise than in accordance with the provisions of **Condition 9** and where the provisions of this Contract permit.

8. PAYMENT OF CONTRACT PRICE

- 8.1 The Council operates a paperless Purchase to Pay system which enables the full purchasing and payment process to be carried out on-line from order creation and authorisation to receipting and invoice matching.
- 8.2 In order that the Council can make payment to the Contractor the Contractor must comply with the following conditions:

- 8.2.1 the Contractor will supply the Services only when in receipt of a valid Purchase Order generated from the Council's ordering system;
 - 8.2.2 the Contractor must quote the valid Purchase Order number on all invoices or credit notes submitted to the Council;
 - 8.2.3 the Contractor must at its own expense submit all invoices and credit notes electronically through any reasonable means requested by the Council. This may include but is not limited to connecting to the Council's e-invoicing hub operated by Royal Bank of Scotland to submit XML, PO Flip, printer or paper for OCR scanning; and
 - 8.2.4 the Contractor will accept all payments by bank transfer.
- 8.3 The Council shall make payment of the sum set out in the invoice received in accordance with **Conditions 8.1 and 8.2** within 30 days of receipt of a valid and undisputed invoice. The Council shall also pay the VAT as properly chargeable thereon provided that a valid VAT invoice is received by the Council. However, the Council shall be entitled to challenge any invoice that, acting reasonably, it considers incorrect, which shall be communicated to the Contractor together with the Council's grounds for thinking this. The parties shall then agree the correct charges and the Council shall make payment within 21 days of agreement being reached.
- 8.4 The Contractor shall submit with the invoice such records as the Council may reasonably require including, but not limited to, time sheets, expense receipts, invoices paid or any other documents which would enable the Council to verify the information and the amounts referred to in that invoice. The Council shall consider and verify invoices in a timely fashion, and undue delay in so doing shall not be sufficient reason for an invoice not to be regarded as valid and undisputed.
- 8.5 The Contractor shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format the Council may require.
- 8.6 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Service shall be inclusive of all costs of Personnel, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging its obligations under the Contract.
- 8.7 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 20 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under **Condition 41**.

8.8 The Contractor shall not suspend the supply of the Service unless the Contractor is entitled to terminate the Contract under **Condition 8.7** above for failure to pay undisputed sums of money.

8.9 Any disputes relating to invoices and/or payment shall be resolved using the dispute resolution procedure in **Condition 43**.

9. MODIFICATION OF THE CONTRACT

9.1 The Council may request a modification to the Contract provided that such modification does not alter the overall nature of the Contract or amount to a substantial change to the Contract. ("Variation").

9.2 The scope of any such Variation shall be limited to a change in the scope of the Services and/or the Contract Price which may be requested by the Council when it considers such change is necessary to fulfil the purpose of the Contract.

9.3 The Council may request a Variation by notifying the Contractor in writing of:

9.3.1 the scope and nature of the proposed Variation and giving the Contractor sufficient information to assess the extent of the Variation;

9.3.2 whether it considers any change to the Contract Price is required in order to implement the Variation; and

9.3.3 a time limit within which the Contractor shall respond to the request for a Variation and such time limits shall be reasonable having regard to the scope and nature of the Variation.

9.4 If the Contractor accepts the Variation, it shall confirm the same in writing.

10. ASSIGNMENT AND SUB-CONTRACTING

10.1 The Council shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Contractor.

10.2 The Contractor shall not sub-contract or transfer, assign, charge or otherwise dispose of the Contract or any part of it without the previous written consent of the Council (excepting only the assignment of any undisputed debt due under the Contract, to the extent permitted by law, of which the Contractor has previously notified the Council of the assignment, and the date on which the assignment became effective) such consent not to be unreasonably withheld or delayed.

10.3 The Contractor shall include a term in the sub-contract with the sub-contractor that payment to the sub-contractor shall be made within 30 days of receipt of a valid and undisputed invoice and that the Contractor shall consider and verify invoices in a timely fashion, and undue delay in so doing shall not be sufficient reason for an invoice not to be regarded as

valid and undisputed. Further, the subcontractor shall include such terms in any sub-sub-contracts it enters into.

- 10.4 The Contractor shall provide documentary evidence of compliance with this obligation when requested to do so by the Authorised Officer.
- 10.5 The Contractor shall monitor the number, type and value of contract opportunities advertised and placed in its own supply chain.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Except where otherwise expressly agreed in writing, all Intellectual Property Rights in any guidance, drawings, specifications, instructions, toolkits, plans, software, designs, data, databases (including working documents, maps and photographs), patents, patterns, models or other material:
 - 11.1.1 furnished or made available to the Contractor by the Council in connection with the Contract shall remain the property of the Council; and
 - 11.1.2 completed and prepared by the Contractor or the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council save that the foregoing shall not apply to
 - (a) Intellectual Property Rights owned by the Contractor before the Commencement Date in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's know-how or generic business methodologies; and/or
 - (b) Intellectual Property Rights created by the Contractor independently of this Contract(the "IP Materials").
- 11.2 Except where necessary for the performance of the Contract, the Contractor shall not, and shall ensure that the Personnel shall not, use or disclose any Intellectual Property Rights in the IP Materials without prior written consent.
- 11.3 The Contractor hereby assigns to the Council all existing and future Intellectual Property Rights in the IP Materials embodying such rights to the fullest extent permitted by law.
- 11.4 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor in the performance of the Contract.
- 11.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are, or which may be used to perform the Contract, grants to the Council a non-exclusive licence or, shall grant to the Council an authorised sub-licence to use the Intellectual Property Rights in the

same solely to the extent that is necessary to enable the Council to benefit from the Services. Such licence shall be non-exclusive, royalty free and revocable and shall terminate on expiry or termination of the Contract.

- 11.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this **Condition 11**, except where any such claim arises from:
- 11.6.1 items or materials based upon the designs supplied by the Council; or
 - 11.6.2 the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract; or
 - 11.6.3 the use by Council of such Intellectual Property Rights in breach of the provisions herein.
- 11.7 The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Contractor.

12. LIABILITY, INDEMNITY AND INSURANCE

- 12.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
 - (b) Fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 12.2 Subject to **Conditions 12.3 and 12.4**, the Contractor shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or the Contractor's Personnel on the Locations, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 12.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or willful misconduct or any act or omission of the Council or by breach by the Council of its obligations under the Contract. The Contractor's total liability to the Council in respect of all losses arising under or in connection with

the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the Contract Price.

- 12.4 Neither party shall be liable to the other party for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue save for any parking revenues lost due to a failure of the Supplier to provide the Services such parking revenues being recoverable;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 12.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 12.6 Public liability insurance must provide a minimum cover of Ten Million Pounds 10,000,000 for each individual claim.
- 12.7 The Contractor shall hold employer's liability insurance in respect of Contractor's Personnel in accordance with any legal requirement from time to time in force, with a minimum cover of Ten Million Pounds 10,000,000 for each individual claim.
- 12.8 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this **Condition 12** and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than 2,000,000 for each individual claim. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 12.9 The Contractor shall give the Council, on request, copies of all insurance policies referred to in this **Condition 12** or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 12.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 12.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in this **Condition 12**, subject to the minimum requirements of the Council as set out above.

13. NOT USED

14. QUALITY CONTROL, COMPLAINTS AND SERIOUS INCIDENTS

- 14.1 The Contractor shall throughout the Contract Period provide the Service in accordance with the Contract Standard.
- 14.2 Throughout the Contract Period, the Council's Authorised Officer shall monitor the provision of the Service. The Contractor shall provide all reasonable facilities and allow full access to the Authorised Officer to:
- 14.2.1 all offices and premises of the Contractor for the purpose of inspecting work being performed pursuant to the provision of the Service;
 - 14.2.2 all offices and premises of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Service;
 - 14.2.3 all technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.
- 14.3 The Contractor shall by a term in any authorised sub-contract secure a similar right of access for the Authorised Officer and the Council's other representatives for the purpose of inspection and monitoring.
- 14.4 The Authorised Officer shall have the right not more than once per calendar year save where this is required due to any audit requirements for legal or regulatory reasons to inspect the Locations or any Location or area, whether before, during or after the carrying out of the Service or any part thereof and to interview at any Location and at any time any member of the Contractor's Personnel in connection with the carrying out of all or part of the Service.
- 14.5 The Contractor shall make available a copy of its complaints procedure to all Service Users. This procedure must be provided in the main Camden community languages, and where appropriate in braille, large print or on tape.

- 14.6 Service Users must be informed of their right to make a complaint directly to the Council's complaints unit or the Authorised Officer. The Council has the right to investigate a complaint at any time and following such investigation may issue a Default Notice as described in **Condition 30**.
- 14.7 The Contractor shall notify the Authorised Officer within 24 hours of any incident that occurs whilst the Service is being delivered which impacts on the wellbeing, safety or security of the Service User ("Serious Incidents") and shall provide any further information that the Authorised Officer requires.
- 14.8 No extra payment shall be made for any remedial work following a complaint or a Serious Incident where this results from any act or omission of the Contractor.
- 14.9 The Provider shall from the Commencement Date and throughout the Contract Period institute and maintain a properly documented system of quality control designed to ensure that the Contract, including the Specification, Conditions of Contract and Contract Standard, are being complied with in all respects. Such system shall include daily supervision, the carrying out of frequent inspections and compliance with the reasonable instructions of the Authorised Officer.
- 14.10 The quality control system shall be operated by the Contract Manager on behalf of the Contractor and be open to inspection by the Authorised Officer. In the event that any reasonable written recommendations concerning the improvement of such a system are made by the Authorised Officer from time to time, such recommendations shall immediately be implemented by the Contractor in accordance with the provisions in **Condition 9** and subject to any appropriate adjustments being made to the Contract Price.

15. REPRESENTATIONS AND WARRANTIES

- 15.1 All representations, statements or warranties made or given by the Contractor, its servants and agents (whether orally, in writing or in any of the Contractor's brochures, catalogues and advertisements) regarding the provision of the Service or any part thereof shall be deemed to be express conditions of the Contract.
- 15.2 The Contractor shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same. For the avoidance of doubt, the Contractor will not be responsible for those consents which the Council is required to put in place in connection with the Services.
- 15.3 The Contractor acknowledges and confirms that:

- 15.3.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
 - 15.3.2 it has received all information requested by it from the Council pursuant to **Condition 15.3.1** to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - 15.3.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to **Condition 15.3.2**
 - 15.3.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - 15.3.5 it has entered into this contract in reliance on its own due diligence.
- 15.4 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Contractor by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 15.5 The Contractor:
- 15.5.1 as at the Commencement Date, warrants and represents that all information contained in the Contractor's offer remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the contract; and
 - 15.5.2 shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any service levels set out in the Specification.
 - 15.5.3 The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Contractor in accordance with **Condition 15.5.2** save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Council.
 - 15.5.4 Nothing in this **Condition 15** shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

16. THE CONTRACTOR'S INFORMATION

- 16.1 In performing its obligations under the Contract, the Contractor shall supply to the Council all information which may be required by the Council in order that the Council may act reasonably, properly and in accordance with its statutory obligations in connection with the subject matter of the Contract and any tendering exercise. The Council may make a request for such information at any reasonable time and the Contractor shall comply with the request as soon as practically possible.

17. NOT USED

18. ENVIRONMENT AND HEALTH & SAFETY

HEALTH & SAFETY

- 18.1 The Contractor shall:
- 18.1.1 at all times comply with the requirements of the Health and Safety at Work, etc., Act 1974 and of any other provisions of any Acts, regulations, orders or rules of law pertaining to health, safety and welfare, applying to work being carried out by the Contractor;
 - 18.1.2 in performing the Service adopt safe methods of work in order to protect the health, safety and welfare of its own employees, and to the extent applicable, the employees of the Council and all other persons including members of the public;
 - 18.1.3 throughout the Contract Period maintain a written safety policy. The Contractor shall review its health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices or the introduction of new materials, Equipment, vehicles or machinery and shall ensure that the Council and the Contractor's Personnel are notified in writing of any such revisions to the policy;
 - 18.1.4 at all times comply with the requirements of its own safety policy and safety codes of practices and any safety codes of practice and safety policy statements that the Council may adopt or require and notify to the Contractor; and
 - 18.1.5 provide such information and documents as the Council or the Authorised Officer may require as evidence of such compliance and shall maintain copies of all relevant legislation, codes of practice and working rules for the kind of work undertaken and shall permit its employees to use and refer to them.
- 18.2 The Contractor shall:
- 18.2.1 inform the Authorised Officer as soon as it becomes aware of any prosecution or pending or likely or previous prosecution of the Contractor for any offence pertaining to the health and safety of its employees or of other persons or of any conviction or other outcome on such prosecution and shall provide the Authorised Officer with such further information and documents as the Authorised Officer may require;

- 18.2.2 permit the Authorised Officer for the time being or any officer nominated by him for the purpose to enter and inspect without prior notice at any reasonable time any premises, Equipment, plant, machinery, vehicles or materials used, in the process of being used or proposed to be used, by the Contractor in the provision of the Service. The Contractor shall co-operate with the Authorised Officer and any such nominated officers, and permit them to test, take measurements, samples and photographs of any premises, Equipment, plant, machinery, vehicles or materials used, in the process of being used or proposed to be used, by the Contractor and persons working in or about the provision of the Service;
- 18.2.3 provide the Authorised Officer with a copy of the Contractor's current Safety Policy and safety codes of practice;
- 18.2.4 prior to the Commencement Date appoint a person who shall be responsible for co-ordinating health and safety matters with the Council and shall notify the Authorised Officer of that persons name.
- 18.3 The Contractor shall provide the Service safely and in a manner that is not, and is not likely to be, injurious to health or detrimental to the Environment or to the fabric of property on or comprising all or part of the Location or any premises.
- 18.4 The Authorised Officer may suspend the provision of the Service in whole or in part in the event of non-compliance by the Contractor with any provision of this **Condition 18**. The Contractor shall not resume provision of the Service unless or until the Authorised Officer determines in his absolute discretion that the act complained of has been rectified so far as reasonably practicable as to the lowest practical level as appropriate. The Contractor shall indemnify the Council in respect of any additional cost occasioned to the Council by any such suspension. If the matter is not rectified to the satisfaction of the Council's Safety officer, the Council shall be entitled to terminate the Contract under the provisions of **Condition 31**.
- 18.5 The Contractor shall, when requested by the Council, provide a copy of its risk assessment under relevant Health and Safety Regulations.
- 18.6 The Contractor shall comply with all the provisions of the Specification which apply to matters of health, safety and welfare.

ENVIRONMENT

- 18.7 The Contractor shall not in the performance of the Services use or specify the use of any products containing ozone depleting chemicals, such as chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrobromofluorocarbons (HBFCs), carbon tetrachloride, 1, 1, 1-trichloroethane, methyl bromide or halons. Products containing organic solvents should be avoided wherever possible.

- 18.8 The Contractor shall not in the performance of the Services use or specify the use of any tropical hardwoods. In the case of other timber products, the Contractor shall endeavour to only use or specify the use of products that are derived from sustainably managed sources.
- 18.9 The Contractor shall work with the Council in improving the effects of the Services on the environment.
- 18.10 The Contractor shall use its best endeavours to strive to improve the environmental efficiency of the Services and provide a flexible approach to the management of the Services. The Contractor shall at all times throughout the Contract:-
- 18.10.1 demonstrate to the Council or its Authorised Officer a commitment to continuous improvement and to employing the best practicable environmental options in the provision of the Services wherever possible;
 - 18.10.2 demonstrate to the Council or its Authorised Officer a commitment of compliance with environment legislation in place from time to time;
 - 18.10.3 incorporate the provisions of this **Condition 18** into the decision making process of the Contractor;
 - 18.10.4 demonstrate to the Authorised Officer a commitment to managing and operating the Service in accordance with best practice; and
 - 18.10.5 upon written request by the Authorised Officer, the Contractor shall supply within 28 days the Authorised Officer, evidence in writing to demonstrate compliance with this **Condition 18**.
- 18.11 The Contractor shall consider environmental efficiency as part of the operational planning process on an ongoing basis throughout the Contract. In this respect, the Contractor shall have regard to the following:
- (a) **Transport Management**
 - (i) Use of energy efficient vehicles used in the provision of Services; and
 - (ii) the efficient use of vehicles whilst providing the Services.
 - (b) **Waste Management**
Reduce, reuse and recycle waste generated directly by the Contractor in providing the Services.
 - (c) **Energy Management**
Efficient use of energy for buildings and equipment used in the provision of the Services.
 - (d) **Water Management**
Efficient use and reuse of water used in the provision of the Services.
 - (e) **Resource Management**
Efficient use of resources used in the provision of the Service.

Fly-tipping, Waste Disposal and Undesirable Practices

- 18.12 The Contractor shall in relation to the provision of the Service:
- 18.12.1 ensure that no waste material is in the performance of the Service deposited, dumped or fly-tipped in the Council's area or that of any other Council except in the case of lawful disposal and with the previous consent in writing of the Authorised Officer;
 - 18.12.2 ensure that no waste oil, lubricant, fuel, or other polluting material is in the performance of the Service illegally discharged or allowed to lead directly or indirectly into the public sewers, drains or soakaways;
 - 18.12.3 ensure that all waste and/or rubbish referred to in 18.12.1 and 18.12.2 is in the performance of the Service disposed of at appropriately authorised or licensed facilities.
 - 18.12.4 make its employees fully aware that dumping or fly-tipping in any form is strictly prohibited, and that offenders will be prosecuted;
 - 18.12.5 supply to the Authorised Officer, for approval in advance, the name and address of any sub-contractor used by them for the removal of any Waste;
 - 18.12.6 at its own expense forthwith comply with any instructions issued to it by the Authorised Officer with regard to any remedial or clean up work arising from a breach of this **Condition 18** or the performance of any obligations imposed upon it by the Conditions;
 - 18.12.7 ensure that no unauthorised burning of the Council's or the Boroughs' waste takes place; and
 - 18.12.8 fully indemnify the Council for all costs directly or indirectly arising from breaches of the above by the Contractor.
- 18.13 The Authorised Officer shall be entitled to terminate this Contract forthwith if the Contractor fails to remedy any breach of this **Condition 18** within 5 Working Days of service of a written notice on the Contractor requiring it to do so without prejudice to the other provisions of this Contract and the Council shall be entitled to recover from the Contractor the amount of any loss resulting from such termination. For the purpose of this **Condition 18** 'loss' shall include the reasonable cost to the Council of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Service, including any increase in costs.

19. LONDON LIVING WAGE

19.1 In this **Condition 19**, the following expressions shall have the following meanings:

“London Living Wage” the basic hourly wage as defined on the Greater London Authority website (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Contractor;

19.2 Without prejudice to any other provision of this Contract, the Contractor shall:

19.2.1 ensure that none of its Personnel and sub-contractors’ employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by the Council);

19.2.2 ensure, where payment of the London Living Wage is specified in a contract and the contractor agreed to pay it, that none of its Personnel and sub-contractors’ employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;

19.2.3 provide to the Council such information concerning the application of the London Living Wage as the Council or its nominees may reasonably require from time to time;

19.2.4 disseminate on behalf of the Council to its Personnel and sub-contractors’ employees engaged in the provision of the Services such questionnaires as the Council may reasonably require from time to time and promptly collate and return to the Council responses to such questionnaires; and

19.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage on the quality of service provided under the Contract.

19.3 Any breach by the Contractor of the provisions of this **Condition 19** shall be treated as a material breach capable of remedy in accordance with **Condition 31**

20. RECORDS, AUDIT AND INSPECTION

20.1 The Contractor shall, and shall procure that its sub-contractors shall:

20.1.1 keep and maintain a complete and correct set of records pertaining to (“Records”):

- a) all activities relating to the performance of the Services;
- b) the Contractor’s obligations under the Contract; and
- c) all transactions entered into by the Contractor for the purposes of the Contract (including but not limited to time-sheets for the Contractor’s Personnel where such records are material to the calculation of the Contract Price, all expenditure reimbursed by the Council and all payments made by the Council).

- 20.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of the Contract (“Retention Period”).
- 20.2 The Council and any person nominated by the Council has the right to:
 - 20.2.1 audit any and all Records at any time during the Retention Period on giving to the Contractor at what the Council considers to be reasonable notice (whether in writing or verbally) to verify the Contractor’s compliance with the terms set out herein;
 - 20.2.2 at any reasonable time, inspect any aspect of the Contractor’s performance of the Services, including its compliance with Condition 19, London Living Wage, and the Contractor’s technical and organisational security measures.
 - 20.2.3 (if applicable) test the Services to ascertain the conformance of the Services with the Contract.
- 20.3 For the purpose of conducting any audit investigation of the Contract where this is to verify the Contractor’s meeting of its obligations under the Contract, the Contractor shall throughout the Contract Period provide all facilities and allow full access to the Council or its auditors to:
 - 20.3.1 all offices and premises of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Service;
 - 20.3.2 all technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service; and
 - 20.3.3 interview the Contractor’s Personnel and officers; and
 - 20.3.4 verify that any of the Contractor’s policies, procedures, systems referred to in this Contract are up-to-date and are in place for the duration of the Contract.
- 20.4 The Contractor shall by a term in any sub-contract authorised by the Council, secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Contract.
- 20.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **Condition 20**, unless the audit identifies a material breach of Contract by the Contractor in which case the Contractor shall reimburse the Council for all the Council’s reasonable costs incurred in the course of the audit.
- 20.6 For the purposes of allowing the Council to access London Living Wage information under **Conditions 20.2.2 and/or 20.3**, the Contractor shall provide the Council and/or any person nominated by the Council with all reasonable co-operation including:

- 20.6.1 granting access to any premises, equipment, plant, machinery or systems used in the Contractor's performance of the Contract, and where such premises, equipment, plant, machinery or systems are not the Contractor's own, using all reasonable endeavours to procure such access;
 - 20.6.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;
 - 20.6.3 making all Records available for inspection and providing copies of any Records if requested; and
 - 20.6.4 making the Contractor's Personnel available for discussion with the Council.
- 20.7 Any audit, inspection and/or testing by the Council pursuant to **Condition 20.3** shall not relieve the Contractor (or any of its sub-contractors) from any obligation under the Contract or prejudice any of the Council's rights, powers or remedies against the Contractor.
- 20.8 If as a result of any audit, inspection and/or testing pursuant to **Condition 20.3** the Council is not satisfied that the Services are conforming or will conform in all respects with the Contract and the Council so informs the Contractor, the Contractor will take all steps necessary to ensure compliance.

21. EQUAL OPPORTUNITIES

- 21.1 As a manager, employer and Contractor for the Services, the Contractor shall do all it reasonably can to seek the elimination of all forms of discrimination in its employment practices, ensuring that in the management and provision of its services no person is discriminated against whether directly or indirectly or by way of victimisation or harassment in relation to sex, religion, race, disability, colour, nationality, ethnic or national origins, marital status, maternity, paternity, gender reassignment, age, part time or temporary status and sexual orientation in accordance with an established single equality scheme (as amended from time to time). The Contractor shall provide a copy of its equal opportunities policy to the Council upon request.

- 21.2 During the Contract Period the Contractor shall and shall procure that its Personnel comply with the provisions of the Equality Act 2010 together with any applicable anti-discrimination legislation and with the Council's policies as may be amended from time to time, copies of which the Council will provide to the Contractor upon written request
- 21.3 The Contractor shall follow all relevant codes of good practice including those produced by the Equality and Human Rights Commission and its successors.
- 21.4 In the event of any judicial or other official finding of unlawful discrimination by the Contractor, the Contractor shall take all reasonable steps to prevent a repetition of the unlawful discrimination and shall provide details of those steps to the Council upon request.
- 21.5 The Council is a public authority for the purpose of the Human Rights Act 1998, and the Contractor is providing services to Service Users on the Council's behalf. The Contractor shall therefore act compatibly with the Convention rights set out in that Act, in all aspects of providing the Service.
- 21.6 The Contractor shall, at its own cost, carry out such Equalities Impact Assessments as are required by the Council from time to time.
- 21.7 The Contractor shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate in accordance with this **Condition 21**.
- 21.8 The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this **Condition 21**.

22. BRIBERY, CORRUPTION AND GRATUITIES

- 22.1 The Contractor shall:
- 22.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery, anti-money laundering and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 22.1.2 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;
 - 22.1.3 comply with the Council's Anti-Fraud and Corruption Strategy and Bribery Policy (as the Council may update from time to time) (**Relevant Policies**); and
 - 22.1.4 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, to ensure

compliance with the Relevant Requirements, the Relevant Policies and **Condition 22.1.2**, and will enforce them where appropriate;

- 22.2 The Council shall be entitled to terminate the Contract immediately or any part of it and to recover from the Contractor the amount of any loss resulting, if in relation to the Contract or any other contract with the Council the Contractor, or any of its personnel (whether with or without that Contractor's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful subcontract); or the Contractor or any of its personnel shall have:-
- (a) committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - (b) committed any offence under the Bribery Act 2010
 - (c) given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

23. OBSERVANCE OF STATUTORY REQUIREMENTS

- 23.1 The Parties shall comply with all legislation and other statutory provisions and codes of practice to be observed and performed in connection with the Services and shall indemnify the other for any losses or claims arising from the breach of this **Condition 23**.

24 BEST VALUE & EFFICIENCY

- 24.1 The Council is a Best Value Council under the Local Government Act 1999 and is subject to a statutory obligation to make arrangements to secure continuous improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness ("the Best Value duty").
- 24.2 The Contractor agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council's performance of its Best Value duty.
- 24.3 The Contractor shall observe and facilitate any request by the Council to identify potential cost savings in the event that the Council undertakes a value engineering exercise or other assessment of the scope or cost of the Services.

25 AGENCY OR PARTNERSHIP

- 25.1 Nothing in this Contract shall be construed as constituting a partnership between the Parties. Neither the Contractor nor its Personnel shall in any circumstances hold itself out as being the employee, servant, partner or agent of the Council, or as being authorised to enter into any contract on behalf of the Council or in any other way bind the Council to the performance, modification, release or discharge of any obligation

otherwise than in circumstances expressly or implicitly permitted by the Council under the Contract.

26 NOT USED

27 SECURITY

27.1 The Council shall by prior arrangement provide such access to Council premises or the Council's computer systems as the Contractor and its Staff may reasonably require to fulfil its obligations under the Contract. The Contractor shall comply with all Council Security Policies as provided by the Council to the Contractor, including but not limited to Schedule 8 "Camden Acceptable Use Policy".

27.2 The Contractor and its Staff shall comply with all security requirements of the Council while at Council premises or while having access to its computer systems including providing identity details and submitting to security checks on request and complying with Council requirements relating to security passes and passwords including returning them on exiting Council premises (which the Council may amend during the course of the contract, subject to such changes being reasonable).

27.3 The Council reserves the right acting reasonably to:
27.3.1 refuse admission to or require the removal of the Contractor's Staff from Council premises where their presence is considered unacceptable for any reason; and/or
27.3.2 revoke or block the Contractor and its Staff' access to the Council's computer systems where such access is deemed to be unacceptable for any reason.

27.4 The Contractor shall be responsible for theft, loss or damage to:
27.4.1 its own property, plant, equipment, data or personal possessions brought onto Council premises; and
27.4.2 Council property, plant, equipment, or data used by or within the care and control of the Contractor.

27.5 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Contractor or its Staff of this **Condition 27**.

28. FREEDOM OF INFORMATION AND DATA PROTECTION

Freedom of Information

28.1 The Council is subject to the provisions of the Freedom of Information Act 2000 ("the FOIA") and the Environmental Information Regulations (EIR). As such the Contractor and its Staff acknowledge that the Council may be obliged to disclose information relating to this Contract and shall not be liable to the Contractor or any other person for any loss suffered as a result

of a bona fide disclosure of information under the FOIA or the EIR. More particularly:

- 28.1.1 upon receipt of a request for information the Council shall, wherever possible, consult with the Contractor and take into account (but not in any way be bound by) its views on disclosure and the applicability of any exemptions;
- 28.1.2 the Contractor shall not respond directly to a request for information under FOIA or EIR and shall instead pass any request to the Council within two (2) Working Days of receipt; and
- 28.1.3 the Contractor shall and shall procure that its sub-contractors shall provide the Council with a copy of all information in its possession or power including such information given to or required to be collected or arising from and kept by the Contractor in the provision of the Services in a form that the Council requires within five Working Days of request at no cost to the Council; and
- 28.1.4 provide all necessary assistance as reasonably requested by the Council to respond to a request for information within the time for compliance set out in FOIA, EIR, or any other similar legislation, regulations guidelines or codes of practice.

28.2. DATA PROTECTION

Definitions

“Controller” shall have the same meaning as set out in the GDPR and for the purposes of this Contract shall be the Council;

“Data Loss Event” shall mean any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

“Data Protection Impact Assessment” shall mean an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” shall mean:

- (i) the GDPR, the LED and any applicable national implementing Law as amended from time to time
- (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (iii) all applicable Law about the processing of personal data and privacy;

“Data Protection Officer” shall have the same meaning as set out in the GDPR and for the purposes of this Contract shall be identified in the Schedule of Processing, Personal Data and Data Subjects;

“Data Subject” shall have the same meaning as set out in the GDPR and for the purposes of this Contract shall be identified in the Schedule of Processing, Personal Data and Data Subjects;

“Data Subject Access Request” shall mean a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“DPA 2018” Data Protection Act 2018

“GDPR” shall mean the General Data Protection Regulation (Regulation (EEA) 2016/679);

“Law” shall mean any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

“LED” shall mean the Law Enforcement Directive (Directive (EEA) 2016/680);

“Personal Data” shall have the same meaning as set out in the GDPR and for the purposes of this Contract shall be identified in the Schedule of Processing, Personal Data and Data Subjects;

“Personal Data Breach” shall have the same meaning as set out in the GDPR and includes but is not limited to the exposure or potential or possible exposure of data including but not limited to Personal Data to any third parties to the Contract or those who have neither a contractual nor statutory right of access to the data including any circumstances in which such exposure or possible exposure would constitute a breach of the provisions of the Data Protection Legislation;

“Process” has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, the processing activities taking place are described in the Schedule of Processing, Personal Data and Data Subjects;

“Processor” shall have the same meaning as set out in the GDPR and for the purposes of this Contract shall be the Contractor;

“Protective Measures” shall mean the appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Staff” shall mean all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

“Sub-processor” shall mean any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

- 28.1 The Parties shall (and shall procure that any of its Personnel) duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.
- 28.2 The Provider may be requested to obtain an appropriate accreditation certificate as required by the Council, to demonstrate such compliance with Data Protection Legislation.
- 28.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Council and may not be determined by the Contractor.
- 28.4 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 28.5 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 28.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) Process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure it does not knowingly or negligently do or omit to do anything which places the Contractor or the Council in breach of the Council's obligations under the Data Protection Legislation;
 - (c) ensure that it has in place Protective Measures to protect against:
 - i. unauthorised or unlawful processing of Personal Data;
 - ii. accidental loss or destruction of, or damage to, Personal Data, and such measures to be reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account

of the:

- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (d) ensure the Personal Data is kept and stored securely in accordance with any reasonable requirements of the Council;
- (e) ensure that:
- (i) the Staff do not process Personal Data except in accordance with this Agreement (and in particular the Schedule of Processing, Personal Data and Data Subjects);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this Condition;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (f) not transfer Personal Data outside of the EEA unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data; and
- (g) at the written direction of the Council, securely destroy or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

- 28.7 Subject to Conditions 28.10 and 28.11, the Contractor shall notify the Council immediately if it:
- (a) is in breach of the Protective Measures required to be put in place pursuant to Condition 28.6(c);
 - (b) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (c) receives a request to rectify, block or erase any Personal Data;
 - (d) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (e) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (f) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (g) becomes aware of a Data Loss Event, and without undue delay and in any event within 24 hours, the Contractor shall notify the Council, by:
 - (i) contacting the Authorised Officer; and
 - (ii) calling the Council's ICT Helpdesk on 0207 974 4321; and
 - (iii) emailing the Council's Data Protection Officer
dpo@camden.gov.uk
to inform them of the Data Loss Event, including in its notification to the Council:
 - (A) a description of the Data Loss Event including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of data records concerned; and
 - (B) a description of the measures that the Contractor has taken or proposes to take to address the Data Loss Event, including, where appropriate, measures to mitigate its possible adverse effects
- 28.8 Following the Contractor's notification of a Data Loss Event under Condition 28.7 (g) the Contractor shall immediately assess the risks and consequences of the Data Loss Event and take measures, including:
- (i) to mitigate the possible adverse effects of the Data Loss Event; and
 - (ii) to protect the data and the interests/safety of the Data Subject and/or Data Controller, and inform the Council as to the measures that it has taken.
- 28.9 The Contractor's obligation to notify under Condition 28.7 shall include the provision of further information to the Council in phases, as details become available.
- 28.10 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 28.7 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 28.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Council determines that the processing is not occasional;
 - (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 28.12 The Contractor shall provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the Data Protection Legislation, in relation to this Contract.
- 28.13 The Contractor shall allow for audits of its data processing activity by the Council or the Council's designated auditor, in accordance with the Contract's Audit Condition to inspect and audit, the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract and Data Protection Legislation.
- 28.14 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 28.15 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition such that they apply to the Sub-processor; and

- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 28.16 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 28.17 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Contractor or its Staff of this Condition, including but not limited to any fine imposed by the Information Commissioner's Office upon the Council for a Data Loss Event caused by the Contractor, its Staff and any appointed Sub-processors.
- 28.18 The Contractor may, at any time on not less than 30 Working Days' notice, revise this Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by variation to this Contract, subject to the Council's prior written agreement).
- 28.19 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 (thirty) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance.
- 28.20 The provisions of this Condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

Local Government Transparency Code 2015

- 28.21 The Council shall publish Transparency Data in compliance with the mandatory requirements within the Local Government Transparency Code 2015 and the Contractor and its Staff must cooperate and assist the Council in meeting such requirements.
- 28.22 The Council may publish Transparency Data in accordance with the recommended requirements within the Local Government Transparency Code 2015 and the Contractor and its Staff must cooperate and assist the Council in meeting such requirements.

29 CONFIDENTIALITY

- 29.1 The Council reserves the right to disclose any information about this Contract, unless otherwise agreed in writing. ***[To be discussed. Confidentiality provisions should apply to both parties.]***
- 29.2 The Contractor shall not make any public statement or press release in connection with its provision of the Service without the prior written approval of the Council.

- 29.3 The Contractor shall not advertise the fact that it is providing services to the Council under this Contract other than with the written permission of the Council, except where it is contained in any submission to any other public body in response to an invitation to tender from that public body.
- 29.4 The Contractor shall not without the written consent of the Authorised Officer during the Contract Period or for two years afterwards make use of for its own purposes, or disclose to any person (except as may be required by law), the documents embodying the Contract or any information contained in them or in any material provided to the Contractor by the Council pursuant to the Contract or prepared by the Contractor pursuant to the Contract, all of which information shall be deemed to be confidential.
- 29.5 Neither the Contractor nor its personnel shall divulge or dispose of or part with possession, custody or control of any Confidential Information provided to the Contractor by the Council pursuant to the Contract or prepared or obtained by the Contractor pursuant to the Contract, other than in accordance with the express written instructions of the Authorised Officer.
- 29.6 The Contractor shall take reasonable security precautions to protect all Confidential Information relating to the Contract or the Service and shall only disclose it to its employees or sub-contractors on a need-to-know basis and then only where the Council has written and executed agreements in place with those employees or sub-contractors to enable it to comply with this **Condition 29**.
- 29.7 The Contractor shall not and shall procure that its employees or sub-contractors do not use any of the Confidential Information received other than for the purposes of this Contract.
- 29.8 Confidential Information may be disclosed, reproduced, summarised or distributed only in relation to performance of the Service.
- 29.9 The Contractor shall immediately upon discovery notify the Council of any unauthorised use or disclosure of Confidential Information and will co-operate in every reasonable way to help regain possession of the confidential information or to prevent its further unauthorised use.
- 29.10 The Contractor shall return or destroy all originals, copies, reproductions and summaries of Confidential Information as requested by the Council.
- 29.11 The Contractor acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure of Confidential Information and that the Council, without waiving any other rights or remedies, may be entitled to injunctive or equitable relief in the courts.
- 29.12 The Council may visit the Contractor's premises with reasonable prior notice and during normal business hours to review compliance with this **Condition 29**.

29.13 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Contractor or its Staff of this **Condition 29**.

30 DEFAULT

30.1 If, at any time after the Commencement Date, the Contractor fails in any material respect to provide the Service or any part thereof in accordance with the Contract or with due diligence or in a proper and skilful manner, or to the Contract Standard or to the entire satisfaction of the Authorised Officer, the Council may do one or more of the following:

30.1.3 issue a default notice in respect of any Default by the Contractor, whether such Default is in the form of any act, omission, default or neglect; and

30.1.4 the default notice shall state;

(a) the location of the Default (if relevant);

(b) the nature of the Default; and

(d) the payment period to which it applies.

(e) the time within which the Default should be remedied (being a reasonable period of time not less than 7 days).

30.1.5 deduct such amount from any sums payable to the Contractor as , having regard to the rates set out in the Pricing Schedules, is necessary to reflect recovery of sums paid or to become payable in respect of any part of the Service for which a default notice has been served and not complied with; or

30.1.6 provide or employ and pay other persons to provide the Service or any part thereof in respect of which a default notice has been served and not complied with, deducting the costs incurred thereby from any sums due to the Contractor;

30.2 If a default notice is served on the Contractor in respect of a Default which can be put right, upon receiving the default notice, the Contractor shall take the action specified in the default notice within the timescale set out at the Contractor's own cost. If the Contractor fails to put right the Default within the timescale set out in the default notice the Authorised Officer shall be entitled to certify in accordance with **Condition 31.2.16**

31 TERMINATION OF THE CONTRACT

31.1 The Council has relied on the information provided by the Contractor contained in the Form of Tender and documentation submitted to the Council prior to its acceptance and prior to the Council entering into this Contract and any misrepresentation contained therein shall entitle the Council to rescind or terminate this Contract at its option.

- 31.2 The Council shall be entitled upon the happening of any of the following events to terminate the Contract or part thereof, without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect:
- 31.2.3 the Contractor offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council, or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor);
 - 31.2.4 if the Contractor has entered into any contract with the Council in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge unless before the Contract is made particulars of such commission and the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council;
 - 31.2.5 if the Contractor has committed in relation to any contract with the Council an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) Local Government Act 1972;
 - 31.2.6 if any of the warranties, representations and undertakings in **Condition 15** prove to be materially untrue or incorrect;
 - 31.2.5 if the Contractor has submitted a tender which is based on Confidential Information gained by virtue of the Contractor's employment of former officers of the Council with access to relevant confidential information;
 - 31.2.7 the Contractor ceases to carry on business;
 - 31.2.8 the Contractor suffering an execution to be levied on its goods;
 - 31.2.9 if the Contractor consists of one or more individuals, entering into a composition or arrangement for the benefit of his creditors or becoming bankrupt or being the subject of similar procedures under the law of any other state;
 - 31.2.10 if the Contractor consists of a body corporate, the Contractor having a receiver, manager, administrator or provisional liquidator appointed or having a proposal in respect of its company for a voluntary arrangement approved in accordance with the Insolvency Act 1986 or being the subject of a resolution

or order for winding up or being the subject of similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall not be deemed to be a breach of this Condition if the company resulting therefrom effectively agrees to be bound by or to assume the obligations imposed on the Contractor under the Contract and is capable of fulfilling those obligations;

- 31.2.11 the Contractor having an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or having an administrative receiver appointed or being the subject of similar procedures under the law of any other state;
- 31.2.12 the Contractor having possession taken, by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge or being the subject of similar procedures under the law of any other state;
- 31.2.13 the Contractor being in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the court to make a winding-up order or a similar order under the law of any other state;
- 31.2.14 the Contractor has abandoned the Contract;
- 31.2.15 the Authorised Officer certifying in writing to the Contract Manager that the Contractor without reasonable excuse has failed to commence the Service on the Commencement Date or has suspended the performance of the Service or a substantial part thereof for seven days after receiving from the Authorised Officer written notice to proceed;
- 31.2.16 the Authorised Officer certifying in writing to the Contract Manager that the Contractor has committed a substantial irremediable Default. For the purposes of this Condition the Contractor commits a substantial irremediable Default where it commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 (seven) calendar days after being notified in writing to do so or such other period as may be specified in a default notice;
- 31.2.17 For the purposes of the above provision, material breach means a breach that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:

- a) a substantial portion of this Contract; or
- b) any of the material obligations set out in this Contract

over the duration of this Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap mistake or misunderstanding;

31.2.18 a change in control of the Contractor or (where the Contractor is a subsidiary company) its ultimate holding company where such change in control impacts on the ability of the Contractor to deliver the Services; and/or

31.2.19 The Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

31.3 Upon such termination of the Contract under **Condition 31.2** in addition to such consequences as are set out in the other provisions of these Conditions of Contract:-

31.3.3 the Contractor shall forthwith cease to perform the Service or part thereof;

31.3.4 the Council shall cease to be under any obligation to make further payment to the Contractor and shall be entitled to retain any payment which may have fallen due to the Contractor, before termination, until the costs, loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Contractor;

31.3.5 the Contractor shall return all Council property (which shall include but not be limited to all documents, papers, discs, manuals, recorded materials howsoever stored) belonging to the Council relating to the Service or part thereof to the Council within ten (10) calendar days of termination and failing such return the Contractor shall allow an authorised representative of the Council access to the Contractor's premises to allow the removal of such Council property;

31.3.6 subject to **Condition 31.3.3** the Council shall pay the Contractor any balance due to the Contractor;

31.3.7 the rights of the Council under this **Condition 31** are in addition to and without prejudice to any other rights or remedies the

Council may have against the Contractor directly or pursuant to any guarantee or indemnity; and

31.3.8 termination or expiration of the Contract or part thereof shall be without prejudice to the rights and remedies of the Contractor and the Council accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either such Party to recover any amount outstanding at the termination or expiration.

32 NOT USED

33 NOT USED

34 NOT USED

35 EMOLUMENTS AND OUTGOINGS

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

36 NOT USED

37 NOT USED

38 NOT USED

39 NOT USED

40 NOT USED

41 RECOVERY OF SUMS DUE TO THE COUNCIL

41.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council, the same may be deducted from any sum due to the Contractor under this Contract or any other contract between the Contractor and the Council.

42 NOT USED

43 DISPUTE RESOLUTION

- 43.1 If any dispute or problem arises in relation to the Contract, it shall first be discussed at a meeting between the Parties. If no satisfactory resolution is reached at that meeting the dispute or difference shall be referred for determination to one sufficiently senior Officer, Partner or Director of each Party to resolve the dispute.
- 43.2 If the dispute or difference is not resolved as a result of the meetings referred to in **Condition 43.1**, either Party may propose to the other Party that structured negotiations be entered into with the assistance of the neutral adviser.
- 43.3 If the Parties are unable to agree on a neutral adviser or the neutral adviser agreed on is unable to unwilling to act, either Party may give to the other Party fourteen days' notice of that Party's intention to apply to the Centre for Dispute Resolution ("CEDR") to appoint a neutral adviser.
- 43.4 Within fourteen days of the appointment of a neutral adviser the Parties shall meet with him or her in order to agree in good faith a programme for the exchange of information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 43.5 All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 43.6 If the Parties accept the neutral adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be put into writing and, once their duly authorised representatives sign it, shall be binding on the Parties.
- 43.7 Failing agreement, either Party may invite the neutral adviser to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced without the prior written agreement of both Parties.
- 43.8 The costs of the neutral adviser appointed under this **Condition 43** shall be equally apportioned between the Parties or as may otherwise be directed by the neutral adviser.
- 43.9 The Council and the Provider shall on request promptly supply to the neutral adviser all such assistance, documents and information as they may require for the purpose of the determination and the Council and the Contractor shall each use all reasonable endeavours to procure the prompt determination of the reference.

- 43.10 Nothing in this Contract shall prevent either the Council or the Contractor at any time from seeking any interim or interlocutory relief from Court.
- 43.11 Either of the Parties may, within ninety (90) days after receipt of the determination of the neutral adviser, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the Parties in respect of such matters.
- 43.12 Without prejudice to **Condition 12** (Variation of the Service), until the time that a dispute between the Parties is resolved the Contractor shall continue to perform the Services and be paid by the Council in accordance with this Contract.

44 CONFLICTS OF INTEREST

- 44.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Personnel is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract.
- 44.2 The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise. The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary to avoid such actual or potential conflict.
- 44.3 The actions of the Council pursuant to this **Condition 44** shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

45 FORCE MAJEURE

- 45.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure, provided that each Party;
- 45.1.3 promptly notifies the other in writing of the nature and extent of the Force Majeure causing its failure or delay in performance; and
- 45.1.4 uses all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure;
- 45.2 “Force Majeure” shall mean any circumstance arising from or attributable to acts, events, omissions or accidents beyond its reasonable control, which renders the continued performance of any obligations under the Contract illegal or impossible, including, but not limited to:

- 45.2.1 act of God, fire, flood, earthquake, windstorm or other natural disaster;
 - 45.2.3 epidemic or pandemic;
 - 45.2.4 riot, civil disturbance, industrial dispute (not directly involving either Party), war, sabotage or *terrorist attack*;
 - 45.2.5 nuclear, chemical or biological contamination;
 - 45.2.5 compliance with any law or governmental order, rule, regulation or any action taken by the government or any public authority;
 - 45.2.6 loss at sea;
 - 45.2.6 extreme adverse weather conditions;
 - 45.2.7 interruption or failure of utility service; and
 - 45.2.8 non-performance by suppliers or subcontractors, provided that such suppliers and subcontractors are themselves impeded by Force Majeure.
- 45.3 Each Party shall bear their own costs arising as a consequence of the Force Majeure event.
- 45.4 Payment for the Service affected by a Force Majeure will be reduced or waived by a reasonable amount to be agreed between the parties to reflect the extent and standard to which the affected Service is being provided. If a Force Majeure results in suspension of part of the Service the Council will not be liable to pay for that part of the Service. If a Force Majeure results in suspension of all of the Service or in the Service being provided to a level of negligible value to the Council, the Council will not be liable to pay for any of the Service.
- 45.5 If the Force Majeure continues for more than 30 days either party may terminate this Contract by giving 30 days' written notice. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Contract occurring prior to such termination.

46 BUSINESS CONTINUITY MANAGEMENT

- 46.1 In order to support the Council's Business Continuity and Emergency Planning obligations as defined by the Civil Contingencies Act 2004, and or its Business Continuity Policy and requirements, the Contractor shall have, on commencement or within four weeks from commencement of the Contract, documented arrangements that meet good practice guidelines, to effectively protect the Council from the consequences of a business interruption (or series of interruptions). Such arrangements must meet the Council's business continuity planning requirements and include plans for restoring and maintaining the delivery of the Services and for maintaining communication with the Council.
- 46.2 The Contractor shall undertake a test of their business continuity arrangements as agreed with Council (usually no less than once per annum).

- 46.3 The Contractor shall inform the Council when such tests or exercises are scheduled (providing at least one months' notice) and, if requested to do so, provide the outcomes of these tests or exercises to the Council in writing.
- 46.4 The Council reserves the right to attend any business continuity test or exercise undertaken by the Contractor and to invite the Contractor to any relevant exercises held by the Council.
- 46.5 The Council reserves the right to audit the Contractor's business continuity arrangements, but will accept audits that cover the Services carried out by a United Kingdom Accreditation Service accredited auditor, provided that the scope of the audit covers the Services delivered by the Contractor.
- 46.6 The Contractor shall promptly (and in any case within three months) implement any actions or remedial measures which the Contractor or Council (in agreement with the Contractor) considers to be necessary as a result of audits tests or exercises; business interruptions; emerging risks; a change to the Services or any underlying business processes.

47 ENTIRE AGREEMENT

- 47.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with therein. The Contract supersedes any previous agreement between the parties relating to such matters, all prior negotiations between Parties, and all representations and undertakings made by one Party to the other, whether written or oral. This Condition shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

48 THIRD PARTY RIGHTS

- 48.1 This Contract does not create or intend to confer a benefit on, and shall not be enforceable by any person who is not a Party to this Contract except as stated in Condition **48.2** below.

49 WAIVER

- 49.1 No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

50 SEVERABILITY

- 50.1 If any provision of this Contract shall become, or be declared by a Court or other competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the

provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

51 NOTICES

51.1 Any notice demand or other communication in connection with the Contract shall be given by letter (sent by hand, first class post, recorded delivery or special delivery) or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in **Condition 51.2**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

51.2 For the purposes of **Condition 51.1**, the address of each Party shall be:

(a) For the Council:

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) For the Contractor:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

51.3 Either Party may change its address for service by serving a notice in accordance with this **Condition 51**.

52 ASSISTANCE IN PROCEEDINGS

52.1 The Contractor shall notify the Authorised Officer of any accident, damage or breach of any statutory provision relating in any way to the Service immediately upon becoming aware of it.

52.2 If requested to do so by the Authorised Officer, the Contractor shall provide the Authorised Officer with any relevant information arising out of the provision of the Service in connection with any legal inquiry, hearing, arbitration or Court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings.

- 52.3 No payment shall be made for this part of the Service to the extent that the incident, accident or other matter resulted from a breach, act or omission on the part of the Contractor.

53 OMBUDSMAN INVESTIGATIONS

- 53.1 If a complaint is made about the acts or omissions of the Contractor or its employees or agents when undertaking work for the Council the Contractor could be the subject of an investigation by the Ombudsman. In such circumstances the Contractor shall make documents available and co-operate with the investigation and to the extent that either (i) maladministration or (ii) a failure in a service which it is the Council's function to provide or (iii) a failure to provide such a service is found to have occurred due to the acts or omissions of the Contractor, its employees or agents the Contractor shall pay any compensation awarded or recommended by the Ombudsman.

- 53.2 For the avoidance of doubt, no additional payment shall be made to the Contractor for performing the requirements set out in **Condition 53.1** above.

- 53.3 For the further avoidance of doubt, where any financial redress or other compensation is ordered by the Local Government Ombudsman or the Criminal Injuries Compensation Board or similar body in any investigation arising directly or indirectly out of the provision of the Service or any other action by the Contractor or its staff then the Council shall seek to recover the cost of that financial redress or other compensation from the Contractor in accordance with Condition 12 (Liability, Indemnity and Insurance).

54 CIVIL CONTINGENCIES ACT 2004

- 54.1 The Contractor acknowledges and accepts that the Council has obligations under the Civil Contingencies Act 2004 ("CCA") and hereby agrees:
- 54.1.3 during and after the Contract Period to provide any information, documentation and assistance that the Council may reasonably require to be able to comply with its obligations under section 2 of the CCA;
 - 54.1.4 to put in place such measures as may be reasonably practicable so that as far as reasonably possible the Contractor can continue to undertake its obligations under this Contract in the event of an Emergency (as defined in section 1 of the CAA) and to notify the Council of such measures; and
 - 54.1.5 to obey any instruction of the Council during and in respect of an Emergency. The Council undertakes to remunerate and indemnify the Contractor against any direct claims, costs or losses directly arising from the Contractor's compliance with such instructions.

55 LATE PAYMENT COMMERCIAL DEBTS (INTEREST) ACT 1998

- 55.1 If the Council is late in making any payment due to the Contractor under this Contract then the Council shall pay the Contractor interest on the amount of any such late payment, unless the unpaid sum is in dispute between the parties.
- 55.2 The interest payable will be calculated on a daily basis from the day after payment should have been made to the date when payment is actually made.
- 55.3 The applicable interest rate will be the base rate of the Bank of England from time to time plus 2 % per annum. The Parties acknowledge and agree that this interest rate provides the Contractor with a substantial remedy in respect of any late payment of sums due under this Contract, and any right to receive statutory interest, defined under the Late Payment of Commercial Debts (Interest) Act 1998, shall not apply to any payment under the Contract.

56 WHISTLE BLOWING

- 56.1 In this clause, "Whistle Blowing" or to "Whistle Blow" has the meaning set out in the Public Interest Disclosure Act 1998 and includes the exposure of unlawfulness, malpractice, negligence, abuses or dangers, such as professional misconduct or incompetence, which exists in the organisation in which the whistle blower works.
- 56.2 Nothing in this Contract shall prevent any of the Contractor's Personnel from Whistleblowing. Workers who Whistle Blow must be afforded the protection under the Public Interest Disclosure Act 1998.
- 56.3 The Contractor shall:
- 56.3.3 comply with all applicable laws, statutes, regulations, and codes relating to Whistle Blowing, including but not limited to the relevant provisions under the Public Interest Disclosure Act 1998 ("Whistle Blowing Legislation") and insert the same provision in any sub-contract relating to provision of any works, goods or services under the Contract;
 - 56.3.4 have and maintain throughout the term of this Contract, policies and procedures to ensure compliance with the Whistle Blowing Legislation, and will enforce them where appropriate; and
 - 56.3.5 ensure all Personnel are given access to the Contractor's policies on Whistle Blowing.
- 56.4 Where the Contractor has previously breached Whistle Blowing Legislation prior to entering into the Contract, the Contractor shall provide evidence to the Council that suitable processes have been put in place to ensure future compliance.
- 56.5 Upon breach of this condition, the Council shall be entitled to terminate the Contract or any part of it with immediate effect and to recover from the

Contractor the amount of any loss resulting from such termination, including but not limited to, the costs of appointing a third party to complete the Contract requirements on the Contractor's behalf.

57 BLACKLISTING

57.1 The Council supports equality within the workplace and is committed to tackling all forms of malpractice including the illegal practice of blacklisting.

57.2 The Contractor shall:

57.2.3 comply with all applicable laws, statutes, regulations, and codes relating to illegal blacklisting practices, including but not limited to the relevant provisions under the Employment Relations Act 1999 Blacklisting Regulations 2010 and the Data Protection Act 2018 ("Blacklisting Legislation"), and shall insert the same provision in any sub-contract relating to provision of any works, goods or services under the Contract;

57.2.4 not engage in any activity, practice or conduct which would constitute an offence under Blacklisting Legislation if such activity, practice or conduct is carried out in the UK;

57.2.5 have and maintain throughout the term of this Contract, policies and procedures to ensure compliance with the Blacklisting Legislation, and will enforce them where appropriate;

57.2.6 take appropriate steps to ensure that neither the Contractor, sub-contractors nor any Personnel engage in any illegal blacklisting practices.

57.3 Where the Contractor has previously breached Blacklisting Legislation prior to entering into the Contract, the Contractor shall provide evidence to the Council that suitable processes have been put in place to ensure that the practice of Blacklisting does not reoccur.

57.4 Upon breach of this condition, the Council shall be entitled to terminate the Contract or any part of it with immediate effect and to recover from the Contractor the amount of any loss resulting from such termination, including but not limited to, the costs of appointing a third party to complete the Contract requirements on the Contractor's behalf.

58 WORKFORCE STANDARDS

58.1 The Contractor will comply with the Workforce Standards.

58.2 The Contractor will provide to the Council on request evidence of their compliance with the Workforce Standards.

58.3 In the event the Council is not satisfied that the Contractor is complying with the Workforce Standards the parties will discuss and agree how such compliance may be achieved during the remainder of the Contract Period

59 RIGHTS CUMULATIVE

- 59.1 All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right under this Contract shall restrict or prejudice the exercise of any other right granted by this Contract or otherwise available to it.

60 NOT USED

61. COMPLIANCE WITH HUMAN TRAFFICKING LEGISLATION

- 61.1 In performing its obligations under the Contract, the Contractor shall:
- 61.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 (“Human Trafficking Legislation”); and
 - 61.1.2 where required by Human Trafficking Legislation, have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance; and
 - 61.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 61.1.4 include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Condition.
- 61.2 The Contractor represents and warrants that at the date of this Contract that neither the Contractor nor any of its officers, employees or other persons associated with it:
- 61.2.1 has been convicted of any offence involving slavery and human trafficking; and
 - 61.2.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 61.3 If the Council agrees that the Contractor may subcontract its obligations, the Contractor shall implement an appropriate system of due diligence, for its subcontractors that is designed to ensure their compliance with this Condition.
- 61.4 The Contractor shall notify the Council as soon as it becomes aware of:
- 61.4.1 any breach, or potential breach, of Human Trafficking Legislation; and/or
 - 61.4.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

.....
Director

in the presence of a witness:

Name:.....

Address:.....

.....

.....

Occupation:.....

**SCHEDULE 1
NOT USED**

SCHEDULE 2

STATEMENT OF REQUIREMENTS

Refer to attached Statement of Requirements

SCHEDULE 3

CHARGES

Refer to attached Charges document

SCHEDULE 4

NOT USED

SCHEDULE 5

NOT USED

SCHEDULE 6

NOT USED

SCHEDULE 7

WORKFORCE STANDARDS

The Council recognises the importance and value of good employment practices in delivering public services. In support of this and to encourage and safeguard good employment practice, the Council has developed a set of minimum standards against which bidders will be evaluated and suppliers will be required to accept. Suppliers will be required to demonstrate adherence to these standards through discussion and provision of information as part of the monitoring and review process.

The Council believes these standards will help create a well-managed, engaged and motivated workforce and through them, better delivery of public services. The Council believes that these represent a minimum approach to the management of a supplier's workforce and therefore does not expect its suppliers will incur additional costs as a result of these.

Workforce standards
<p><i>Managing employees</i></p> <ul style="list-style-type: none">• Suppliers will have clear policies, processes and/or practices in place for dealing with employees in relation to performance, attendance, conduct and employee concerns;• Staff will be made aware of these processes and/or practices;• Suppliers will make staff aware at the earliest opportunity where their performance (including absence and conduct) fall below the standards required and provide the necessary support to bring about improvement.• Suppliers will induct staff into working on the contract so that they are aware both of the significance and importance of their individual contributions and also of their duties and obligations.
<p><i>Training and skills</i></p> <ul style="list-style-type: none">• Staff will be provided with the appropriate training, development and / or qualifications relevant to their role, including customer relations and health and safety training;• Staff will be supported to develop their skills and gain experience in line with any future roles that may be expected of them.• Suppliers will ensure that its managers are appropriately trained and developed to perform their role.
<p><i>Health and Safety</i></p> <ul style="list-style-type: none">• The supplier will have adequate policies and procedures in place to ensure the health and safety of its workforce and customers in keeping with all legal requirements.

Equality and diversity

- Suppliers' policies and procedures will be consistent with the responsibilities employers have under the Equality Act 2010.

Employee relations

- Suppliers will have regard to good industrial relations practice on dispute resolution, including treating employees fairly and ensuring compliance with legislation on trade union membership;
- Suppliers will ensure that where there is a dispute, employees are aware of and have access to clear processes for dispute resolution;
- Suppliers are encouraged to recognise trade unions; trade unions are an important way of involving employees and ensuring good employee relations. Suppliers will respond promptly and positively to requests for recognition from the trade union(s) or employee groups, in line with the statutory procedure;
- Where an employee has a right to be represented by a trade union, the supplier will work with the employee and the recognised trade union.

Flexible Working


- Suppliers have a clear process for considering requests for flexible working;
 - Staff will be made aware of this process;
 - Suppliers will respond to requests for flexible working in a fair and timely manner;
 - Suppliers will ensure that contracts that don't guarantee or specify hours are only used where it is not reasonably practicable to offer contracts with fixed hours;
- Suppliers will ensure that where these contracts are in place, staff are not prevented from carrying out work with other organisations.

SCHEDULE 8

CAMDEN ACCEPTABLE USE POLICY

For the LB Camden employee requesting the site:

Site/system name that is to be accessed:

Please ensure this form is completed for each external person that will be accessing a Camden site. Completed forms should be returned to 

For the External person accessing the site:

Please read the following and sign below. Once completed please email back to the person that sent you this form.

Acceptable use policy for external people accessing LB Camden systems, databases & Information

The Council has a general duty in common law to safeguard the confidentiality of personal information which it holds in connection with its functions.

All staff both internal and external, handling personal information about service users are bound by the duty of confidentiality to clients and the legal framework for confidentiality which is contained in the common law duty of confidentiality, the Human Rights Act 1998, EU General Data Protection Regulation, the Data Protection Act 2018 and legislation relating to casework e.g. the Children act 1989 and the Housing Act 2004.

All staff given access to casework and data systems in Camden should be fully aware of the importance of confidentiality and security of information on the system and be familiar with their responsibilities under the relevant legislation and the Camden IT Code of Conduct.

Users of these systems can have their activities recorded via their user ID and regular audits will be undertaken to establish which cases have been accessed by individual staff.

Where usage reveals evidence of unauthorised access, appropriate action will be taken by the Council. Misuse will be regarded as gross misconduct and will result in disciplinary action. Under the Data Protection Act 2018 any employee may be personally liable in a court of law for unauthorised disclosure of personal data. And the Computer Misuse Act 1990 makes it a criminal offence to gain access to unauthorised information on a computer system.

I understand that I will be using systems that contain highly sensitive and confidential personal information concerning service users. I hereby agree to adhere to the following obligations:

- I understand that as an external user able to access LB Camden's information systems and databases, I am bound by the Council's Code

of Conduct and legislation relating to confidentiality and that I owe a duty of confidentiality to service users on whom Camden holds information.

- I understand that I am not permitted to access *any* records on service users that are not allocated to me or my service, unless requested to do so by a manager.
- I will use and disclose confidential information only in connection with and for the purpose of performing my duties.
- I understand that all sensitive information that I send externally, should be sent securely
- I undertake not to access, use, download, disclose or retain any information from the system except in the performance of my duties
- I understand that any information supplied to me by another service or partner agency is 3rd party information and remains under their primary control and that I must seek express permission from them before this information is shared with others.
- I agree to record both that consent for the sharing of 3rd party information has been obtained and any restrictions on disclosure that may be attached to certain pieces of information. I will also record with whom the information has been shared and the purpose for sharing.
- I agree to discuss confidential information only in the work place and only for job related purposes and not to discuss such information outside of the work place or within hearing of other people who do not have a need to know about the information.
- I will not share my user ID or password with another person
- I will undertake to ensure that unauthorised persons are not able to view information displayed on my computer screen
- I will take all reasonable care to properly secure confidential information in my possession or on my computer at my work place or at home
- I will only store sensitive client information in authorised, designated drives and will not retain the information for longer than is necessary
- I will not personally seek out, view or extract information relating to myself, family, friends, neighbours, or colleagues that may be held on any system.
- I will immediately inform my manager if there is a conflict of interest should I be allocated a case where the client is known to me
- I agree to notify my supervisor immediately should I become aware of an actual breach of confidentiality or a situation which could potentially result in a breach, whether this be on my part or on the part of another person.
- I understand that my use of the system will be audited and that records will be kept of any unauthorised access to the social work case record and that action will be taken if access is detected.
- I also understand and agree that any failure on my part to fulfil any of the obligations set out within this agreement may result in formal action being taken against me under the Council's policies and procedures or of civil or criminal action in a court of law

I have read and understood this Acceptable Use Policy and understand that I am bound by a duty of confidentiality and agree to adhere to the stated obligations and the requirements of the Data Protection act and other related legislation.

Name:

Signature:

Date:

(Please sign and ensure that a copy is retained on your personnel file and a copy sent to LB Camden)

SCHEDULE 9

Refer to Data Protection Schedule