

**DYNAMIC PURCHASING AGREEMENT**

**DATED JANUARY 2022**



**THE LONDON BOROUGH OF HACKNEY**

**AND**

**[insert name of provider]**

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**DYNAMIC PURCHASING AGREEMENT  
FOR THE  
PROCUREMENT AND MANAGEMENT  
OF THE  
COUNCIL'S TEMPORARY ACCOMMODATION SCHEME**

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London Borough of Hackney  
Hackney Town Hall  
Mare Street  
London  
E8 1EA

**Ref: FIN028766. ProContract Ref: DN124883**



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**THIS AGREEMENT** is made on the ..... day of ..... 2022

**BETWEEN:-**

- (1) **THE LONDON BOROUGH OF HACKNEY** of Hackney Town Hall, Mare Street, London E8 1EA (hereinafter called "**the Council**")

and

- (2) [insert name of provider] (Company Number: [insert company number]) whose registered address is at [insert address of registered office] (the "**Contractor**").

**BACKGROUND**

- (A) The Council placed a voluntary OJEU contract notice on 08/04/2016 ("the Contract Notice) to establish a Dynamic Purchasing System seeking expressions of interest from Contractors for the provision of **Private Managed Temporary Accommodation Services** to the Council under a DPS Agreement.
- (B) The Council invited potential Contractors (including the Contractor) to tender for the provision of Private Managed Temporary Accommodation.
- (C) The Contractor submitted a tender for the provision of Private Managed Temporary Accommodation.
- (D) On the basis of the Contractor's tender, the Council appointed the Contractor to the Dynamic Purchasing System ("**the System**") by way of executing a Dynamic Purchasing System Agreement ("the Agreement") to provide services to the Council through the placing of orders for services by the Council in respect of the Services in accordance with this Agreement for Lots [ ] and [ ].
- (E) This Agreement sets out the award and Protocol for services which may be required by the Council and the obligations of the Contractor during and after the term of this Agreement.
- (F) It is the Parties' intention that there will be no obligation for the Council to place any Orders under this Agreement during the Contract Term.

**IT IS AGREED** as follows:-

1. **INTERPRETATION**

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

- "**Agreement**" means this Dynamic Purchasing Agreement, all Schedules to this agreement and any Order for Services accepted by the Contractor.
- "**Audit**" means an audit carried out pursuant to Clause 19
- "**Auditor**" means the Council's internal auditor and/or the National Audit Office as the context requires

<b>“Authorised Officer”</b>	means the Council’s authorised representative with day-to-day conduct of the Agreement and as stated at <b>Clause 43.3</b> .
<b>"Award Criteria"</b>	means the Award Criteria as contained in <b>Schedule 2</b>
<b>"Commencement Date"</b>	means 01 April 2017
<b>"Commercially Sensitive Information"</b>	means any Confidential Information comprised of information:- <ul style="list-style-type: none"><li>(a) which is provided in writing by the Contractor to the Council in confidence and designated as Commercially Sensitive Information; and/or</li><li>(b) that constitutes a trade secret</li></ul>
<b>"Complaint"</b>	means any formal complaint raised by the Council in relation to the performance of the Agreement or provision of the Services in accordance with <b>Clause 44</b> .
<b>"Confidential Information"</b>	means:- <ul style="list-style-type: none"><li>(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and</li><li>(b) the Commercially Sensitive Information</li></ul> but does not include any information:- <ul style="list-style-type: none"><li>(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 20 (Confidential Information));</li><li>(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li><li>(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li><li>(iv) is independently developed without access to the Confidential Information</li></ul>
<b>“Contract Price”</b>	means the price (excl. VAT) payable by the Council as consideration for the provision of Services by the Contractor as set out in the

Order Form, but subject always to the maximum price payable by the Council (including management fees, utilities and other costs as the case may be) as set out in **Schedule 3**.

<b>"Contract Term"</b>	means the period commencing on the Commencement Date and continuing for an initial period of four (4) years, subject to any extensions in accordance with <b>clause 3</b> or on earlier termination of this Agreement
<b>"Contract Variation Procedure"</b>	means the procedure set out in <b>Schedule 8</b>
<b>"Contracting Authority"</b>	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Council
<b>"Contractor's Lease"</b>	Means a lease of a Unit granted to the Contractor by the Owner where the Owner is a third party
<b>"Default"</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Agreement and in respect of which such Party is liable to the other
<b>"Deliverables"</b>	means those deliverables listed in the Order Form(s) (where applicable)
<b>"DPA"</b>	means the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
<b>"Emergency Placement"</b>	means a referral from the Council in exceptional circumstances requiring the Contractor to provide emergency services to a Nominee for housing; such requests being in accordance with the Specification;
<b>"Environmental Information Regulations"</b>	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
<b>"Equipment"</b>	means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement;
<b>"Fees Regulations"</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

<b>"Force Majeure"</b>	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <p>(a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or</p> <p>(b) the failure by any sub-contractor to perform its obligations under any sub-contract;</p>
<b>"FOIA"</b>	<p>means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;</p>
<b>"Fraud"</b>	<p>means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud the Council;</p>
<b>"Good Industry Practice"</b>	<p>means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;</p>
<b>"Guidance"</b>	<p>means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;</p>
<b>"Information"</b>	<p>has the meaning given under Section 84 of the Freedom of Information Act 2000;</p>
<b>"Intellectual Property Rights"</b>	<p>means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;</p>
<b>"ITT"</b>	<p>means the invitation to tender issued by the Council on 22/07/2016;</p>
<b>"Key Personnel"</b>	<p>means any individual identified in the Order Form as being key personnel</p>



"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply
"Lease Agreement"	Means the lease agreement(s) entered into between the Council and Lessor(s) in relation to Hostel accommodation (Lot 3) and Private Sector Leased Premises (Lot 4).
"Management & Maintenance Services"	Means the property management and maintenance services forming part of the Services which the Contractor shall provide for each Unit as more particularly described in the Order Form(s) and Specification
"Management Information"	means the management information specified in <b>Schedule 6</b>
"Month"	means a calendar month
"Nomination Notice"	Means a notice in writing from the Council to the Contractor providing the details of the main applicant (the Nominee) and each member of their household submitted in accordance with the procedure set out in the Specification
"Nominee"	Means a person aged 16 or over named in a Nomination Notice to whom the Council has a duty under the Housing Act 1996 (as amended) and the Homelessness Act 2002
"Order"	means an order for Services served by the Council on the Contractor in accordance with <b>clause 8</b> and the Protocol
"Order Form"	means a document setting out details of an Order in the form set out in <b>Schedule 4</b> which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Unit(s), the timeframe, the Deliverables and the Quality Standards, which incorporates the terms and conditions contained in this Agreement
"the Owner"	Means : <ul style="list-style-type: none"><li>(i) the Contractor (if the Contractor owns the freehold of a Unit); or</li><li>(ii) a third party who may lawfully grant to the Contractor a lease in respect of a Unit(s) pursuant to the Contractor's Lease</li></ul>
"Parent Company"	means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the

same or similar business to the Contractor. The term "**Holding Company**" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto;

"Party"	means the Council and/or the Contractor;
"Premises"	means the location where the Services are to be supplied, as set out in the Order Form;
"Pricing Schedule"	means the schedule setting out the Contract Price and other charges at <b>Schedule 3</b> ;
"Private Sector Leased Premises"	Premises which the Council possesses of by way of a Lease Agreement between it and the Landlord;
"Prohibited Act"	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"><li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:<ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li><li>(c) committing any offence:<ul style="list-style-type: none"><li>(i) under the Bribery Act 2010;</li><li>(ii) under legislation creating offences concerning fraudulent acts;</li><li>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</li><li>(iv) defrauding, attempting to defraud or conspiring to defraud the Council.</li></ul></li></ul>
"Property"	means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Agreement;
"Protocol"	means the ordering (and award) procedures referred to in <b>Clause 8</b> , which underpins the methodology the Council shall operate when ordering Services under the Agreement;
"Quality Standards"	means the quality standards as specified within the Specification and published by BSI British Standards, the National Standards

	Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form(s)) and any other quality standards set out in the Order Form(s);
<b>"Questionnaire"</b>	means the response submitted by the Contractor to the questionnaire issued by the Council <i>for the purposes of establishing the Agreement</i> ;
<b>"Quarter"</b>	Means 1 Jan - 31 March; 1 Apr - 30 June; 1 July - 30 Sept; 1 October - 31 December;
<b>"Regulations"</b>	means the Public Contracts Regulations 2015 as amended;
<b>"Regulatory Bodies"</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council;
<b>"Replacement Contractor"</b>	means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement;
<b>"Requests for Information"</b>	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
<b>"Services "</b>	means the private managed temporary accommodation scheme services and/or property management services to be supplied as specified in the Specification ( <b>Schedule 1</b> ) and set out in the Order Form;
<b>"Staff"</b>	means all persons employed by the Contractor together with the Contractor's servants, agents, suppliers and sub-contractors used in the performance of its obligations under Agreement;
<b>"Special Conditions"</b>	Means any additional conditions which are not set out in the Agreement and/or the Order that supplement or refine the Agreement and which are agreed between the Contractor and the Council in respect of a Service and which shall form part of the Agreement;
<b>"Staff Vetting Procedures"</b>	means the Council's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive of confidential nature or the handling of

information which is subject to any relevant security measure and safeguarding legislation to which the Council is subject when contracting with external contractors.

<b>"Tender"</b>	means the tender submitted by the Contractor in response to the Council's open invitation to Contractors for formal offers to supply it with the Services pursuant to the Agreement;
<b>"Transferring Employees"</b>	Means any transfer of employees by operation of TUPE or otherwise in connection with this Agreement on expiry or earlier termination of this Agreement;
<b>"TUPE"</b>	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
<b>"Unit(s)"</b>	Means self-contained or non-self-contained residential dwelling(s) within a property for occupation by a Nominee (and their household);
<b>"Void"</b>	Means a Unit(s) which is vacant and either available for occupation by a Nominee or under repair;
<b>"Variation"</b>	has the meaning given to it in Clause 35 (Variation);
<b>"Working Day(s)"</b>	means any day other than a Sunday or public holiday in England and Wales;
<b>"Year"</b>	means a calendar year.

- 1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:-
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
  - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.6 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.7 references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
- 1.2.8 references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
- 1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

## **2. STATEMENT OF INTENT**

- 2.1 In delivering the Services, the Contractor shall operate at all times in accordance with any and all of the Council's published policies and in accordance with the Specification.
- 2.2 The Contractor has been appointed and the Council has entered into this Agreement on the basis of the Contractor's response to the Questionnaire and ITT and, in particular, the representations made by the Contractor to the Council in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- 2.3 Clause 2 is an introduction to this Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

# **PART ONE: AGREEMENT, AWARD PROCEDURE AND SERVICE PROVISION**

## **3. TERM OF AGREEMENT**

- 3.1 The Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Contract Term.
- 3.2 Subject to clause 3.1 above and the satisfactory performance of its obligations under the Agreement the Council may (at its sole discretion) extend this Agreement for successive periods on giving at

least 3 months' written notice to the Contractor. The provisions of the Agreement will apply throughout any such extended period unless varied in writing.

- 3.3 The duration of services called-off under the Agreement will be specified in the Order and will be unaffected by the termination of this Agreement.

#### **4. SCOPE OF AGREEMENT**

4.1 This Agreement governs the relationship between the Council and the Contractor in respect of the provision of Services by the Contractor to the Council.

4.2 The Council may at its absolute discretion and from time to time order Services from the Contractor in accordance with the Protocol during the Contract Term.

4.3 The Contractor acknowledges that there is no obligation for the Council to purchase any Services from the Contractor during the Contract Term.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total value of Services to be ordered by them pursuant to this Agreement and the Contractor acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

4.5 The Council may Order Services as and when the need arises taking into account the Contractor's accommodation availability and the order process is set out in **Clause 8** below.

#### **5. CONTRACTOR'S APPOINTMENT AND STATUS**

5.1 In consideration of the payment by each Party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each Party the Council appoints the Contractor as a potential Contractor of the Services referred to in the Specification and the Contractor shall be eligible to be considered for the placing of Orders for such Services by the Council during the Contract Term.

5.2 At all times during the Contract Term the Contractor shall be an independent contractor and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Agreement.

#### **6. NON-EXCLUSIVITY**

6.1 The Contractor acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Council for the Services from the Contractor and that the Council is at all times entitled to enter into other contracts and agreements with other contractors for the provision of any or all services, which are the same as or similar to the Services.

#### **7. SPECIAL CONDITIONS**

7.1 The Parties agree that there should be provision for Special Conditions to be applied to individual Orders for Services to meet any specific or unique needs relating to the Services or service users at

any point in time; however such conditions shall not seek to substantially alter the terms set out in the Agreement.

7.2 Any Special Conditions to be applied to specific Orders shall be agreed between the Contractor and the Council and set out in the Order.

## 8. AWARD PROCEDURES

### Awards under the Agreement

8.1 If the Council decides to source Services through the Agreement then it may award its Services requirements in accordance with the procedures set out in the Protocol (as set out in **Schedule 2**).

8.2 Subject to **Clause 8.1** the Council when ordering Services under the Agreement shall place an Order with the successful Contractor adhering to the procedures stated to within the Protocol which:-

8.2.1 states the Service requirements including the relevant Lot which is being called off;

8.2.2 identifies the required amount of Unit(s) and where available, the name of the Nominee the Council is nominating to the Contractor;

8.2.3 states the Contract Price payable for the Services requirements in accordance with the Pricing Schedule applicable for the Services; and

8.2.4 incorporates the Agreement and includes any Special Conditions.

8.3 Where a mini competition is undertaken by the Council, the Contractor agrees that all tenders submitted by the Contractor in relation to a mini-competition shall remain open for acceptance for fourteen (14) days (or such other period specified in the invitation to tender issued by the Council in accordance with the Protocol).

8.4 Notwithstanding the fact that the Council has followed the procedure set in the Protocol, the Council shall be entitled at all time to decline to make an award for its Services requirements. Nothing in this Agreement shall oblige the Council to place any Order for Services with the Contractor.

## 8.5 RESPONSIBILITY FOR AWARDS

Not used.

## 8.6 FORM OF ORDER

8.6.1 Subject to **Clauses 8.1 to 8.5** above, the Council may place an Order with the Contractor either following a request for suitable properties instigated by the Council or the Contractor. Once the Contractor has identified suitable properties which meets the Council's requirements, the Contractor shall submit its availability as referred to in Schedule 2 to the Council who shall inform the Contractor whether the proposed properties meets its needs or not. Where the Council deems the properties suitable, they shall issue an Order to the Contractor, in writing, in substantially the form set out in **Schedule 4** or such similar or analogous form agreed with the Contractor including systems of ordering by facsimile.

## 8.7 ACCEPTING AND DECLINING ORDERS

8.7.1 Following receipt of an Order issued in accordance with **clause 8.6**, the Contractor shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the Council and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed four (4) hours for Emergency Placement) acknowledge receipt of the Order and either:-

- (a) notify the Council that it declines to accept the Order; or
- (b) notify the Council that it accepts the Order by signing and returning the Order Form, which shall always be deemed to incorporate the Agreement.

### 8.7.2 If the Contractor:-

- (c) notifies the Council that it declines to accept an Order; or
- (d) the time-limit referred to in **Clause 8.7** has expired;

8.7.3 Then the offer from the Council to the Contractor shall lapse and the Council may offer that Order to another Contractor in accordance with the process set out in the Protocol for ordering Services.

8.7.4 A binding contract shall be formed on receipt of an Order Form signed by the Contractor pursuant to **Clause 8.6** in relation to those Services in the Order.

8.7.5 Once a Call-Off Contract has come into existence in accordance with this **Clause 8**, the Council shall be entitled to nominate Nominee(s) to the Unit(s) using the Nomination Notice form attached to the Specification at **Schedule 1** (Specification).

## 9. SUPPLY OF SERVICES

### 9.1 The Services

9.1.1 The Contractor shall supply the Services during the Contract Term in accordance with the Council's requirements as set out in the Agreement in consideration for the payment of the Contract Price. The Council may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

9.1.2 Payments made for Voids shall be determined by the accommodation type as follows:

- 9.1.2.1 Lot 1 – Bed and Breakfast: No payments shall be made;
- 9.1.2.2 Lot 2 – Annexes: No payments shall be made;
- 9.1.2.3 Lot 3 – Hostels: The Council shall pay the Contract Price for Voids PROVIDED the Unit(s) is ready for re-let within 24 hours of it becoming Void. . If minor repairs are needed by a Unit then up to 5 days void period is allowed provided that an inspection by the Council first confirms the necessity for the repairs. In the event that major repairs are required this must be confirmed with the Council in advance and no more



than 24 hours after the vacancy date to allow for void payment. Payment shall not be made for Voids which exceed 5 days unless agreed in advance by the Council.

9.1.2.4 Lot 4 PSL: The Council shall pay the Contract Price for Void Unit(s) PROVIDED the Unit(s) is/are ready for re-let within five (5) days of becoming Void. For the avoidance of doubt the Council shall be entitled to cease payment of the Contract Price where a Unit is not ready for letting within the period stated. The Contract Price shall become payable by the Council to the Contractor when a Unit is ready to be re-let. Where repairs to the Void Unit will exceed five (5) days the Contractor may request an extension of time to effect the required repairs. Provided the extension is requested within 72 hours of the Unit becoming vacant and provided further that an inspection by the Council confirms the necessity for the repairs and the repair time, the Council shall pay the Contract Price for the void period. Where the Contractor fails to request an extension of time to effect repairs or where the repair period overruns the agreed extension period the Council shall be entitled to withhold payment of the Contract Price for the extended period or overrun period, as the case may be.

9.1.3 If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Agreement or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.

9.1.4 Subject to the Council providing prior written approval in accordance with **Clause 9.3** (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Agreement, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

9.1.5 The Contractor shall license to the Council for the use and occupation by the Council's Nominees any available and vacant Units as and when instructed to do so by the Council, in accordance with the Specification.

9.1.6 The Contractor undertakes to procure any number or type of Units or to fill any number or type of vacant Units as reasonably instructed by the Council.

9.1.7 The accommodation will consist of Units that may be shared or self-contained, with respect to the latter, the proportion and numbers of which the Council will inform the Contractor and may vary according to its requirements from time to time for housing accommodation for homeless households. The Council may also require some of the Units to be accessible for Nominees to prevent their households from being homeless and/or Nominees with physical disabilities, including those providing full wheelchair accesses.

9.1.8 Each Unit shall be furnished in accordance with requirements set out in the Services Specification.

9.1.9 The Council will nominate Nominees to the Units in accordance with the Specification. The Nominees will be granted non-secure Licences by the Council and the Contractor will manage the Unit in accordance with the Management and Maintenance Services specified within the Specification.

- 9.1.10 The Contractor shall maintain up to date records and information relating to the performance of the Services and shall allow the Council's Authorised Officer and any such persons as may from time to time be nominated by the Authorised Officer (including representatives of other public bodies or agencies) access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to:
- 9.1.10.1 all work places used by the Contractor for the purposes of inspecting work being performed for the provision of the Services;
  - 9.10.1.2 all work places used by the Contractor for the purposes of inspecting records and documents in the possession custody or control of the Contractor in connection with the provision of the Services;
  - 9.10.1.3 any personnel or agent of the Contractor for the purposes of interviewing such persons in connection with the provision of the Services.
- 9.1.11 The Contractor shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation relating to the operation of the Agreement.
- 9.1.12 The Contractor shall facilitate the inspection of Units (undertaken in the course of spot checks) by the Council, its officers or agents at any time.
- 9.1.13 Not used
- 9.1.14 Notwithstanding anything to the contrary contained herein, if the Contractor or any of its Staff is the Owner of the premises that is due to be a "Unit" which it is intended by the Parties be occupied by a Nominee in accordance with this Agreement, the Contractor shall disclose in writing ownership thereof (together with title thereto) in advance.
- 9.1.15 The Contractor shall provide to the Authorised Officer performance indicators in such form and at such intervals as specified in the Specification or as otherwise agreed between the Parties. This is further set out in Schedule 6.
- 9.1.16 The Contractor shall) carry out regular inspections of all Units to identify any repair requirements or other issues and to also ensure that they are occupied by the Council's Nominee and must notify the Council of any irregularities and/or unauthorised occupants as soon as reasonably practicable. The Contractor shall further submit details of any inspections to the Council as follows:
- 9.1.16.1 Lot 1 – Bed and Breakfast: Daily sign in sheets are required for all households and monthly inspections of all Units shall be conducted. The Contractor must notify the Council as soon as a household do not sign in for 48 hours and also conduct an immediate room inspection.
  - 9.1.16.2 Lot 2 – Annexes: Inspections of Units shall be conducted 7 days after occupation and then monthly thereafter.
  - 9.1.16.3 Lot 3 – Hostels: Daily sign in sheets are required for all households and monthly inspections of all Units shall be conducted. The Contractor must notify the Council as

soon as a household do not sign in for 48 hours and also conduct an immediate inspection of the Unit.

- 9.1.16.4 Lot 4 – PSL: Inspections of Units shall be conducted 7 days after occupation, monthly thereafter for the first 6 months and quarterly thereafter.
- 9.1.17 The Contractor shall notify the Authorised Officer of any changes in the Nominees circumstances as may be relevant to the Council's statutory duty to provide accommodation as it comes to the attention of the Contractor.
- 9.1.18 The Contractor shall comply with their Contractor's Lease terms and pay all sums due thereunder promptly.
- 9.1.19 The Contractor shall notify the Council as soon as they become aware of a household vacating a Unit in the event that the Council has not already notified the Contractor.
- 9.1.20 Subject to the provisions of this clause 9 and as determined by the accommodation concerned, the Contractor may serve notice on the Council at any time to the effect that a Unit will no longer be available for use or letting pursuant to this Agreement as follows.
- 9.1.20.1 Lot 1 – Bed and Breakfast: One months' notice is required.
- 9.1.20.2 Lot 2 – Annexes: Two months' notice is required.
- 9.1.20.3 Lot 3 – Hostels: Notice shall be given in accordance with the Lease Agreement. Lease renewal negotiations will commence 6 months prior to the end of the lease.
- 9.1.20.4 Lot 4 – PSL: Notice shall be given in accordance with the Lease Agreement. Lease renewal negotiations will commence 6 months prior to the end of the lease.
- 9.1.21 The Contractor shall supply in writing within one (1) Working Day to the Council full details of whether and when any offer for accommodation has been accepted or rejected by each Nominee and if the offer is rejected the reason given by the Nominee for rejection.
- 9.1.22 Service Providers providing Services under Lot 4 (PSL) shall provide Management & Maintenance Services in respect of the relevant Lot 4 properties in accordance with the Management Agreement conditions of contract set out in the Specification (**Schedule 1**).

## **9.2 Provision and Removal of Equipment**

- 9.2.1 Unless otherwise stated in the Order, the Contractor shall provide all the Equipment necessary for the supply of the Services.
- 9.2.2 Other than for purposes of effecting repairs to Voids or in the case of an emergency, the Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining the Council's prior written approval.
- 9.2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of

Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

9.2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

9.2.5 The Contractor shall, at the Council's written request, at its own expense and as soon as reasonably practicable:-

9.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Agreement; and

9.2.5.2 replace such item with a suitable substitute item of Equipment.

9.2.6 On completion of the Services, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

### **9.3 Manner of Carrying Out the Services**

9.3.1 The Contractor shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Agreement the Contractor shall agree the relevant standard of the Services with the Council prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Agreement in accordance with the Law and Good Industry Practice.

9.3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

### **9.4 Key Personnel**

9.4.1 The Parties have agreed to the appointment of the Key Personnel as detailed with the Contractors Tender. The Contractor shall, and shall procure that any sub-contractor shall, obtain the prior Council's prior written approval before removing or replacing any Key Personnel during the Contract Term, and, where possible, at least one (1) months' written notice must be provided by the Contractor of its intention to replace Key Personnel.

9.4.2 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

9.4.3 The Council may also require the Contractor to remove any Key Personnel that the Council considers in any respect unsatisfactory. The Council shall not be liable for the cost of replacing any Key Personnel.

## 9.5 Contractor's Staff

9.5.1 The Council may, by written notice to the Contractor, require the Contractor to refuse to admit onto, or withdraw permission to remain on, the Premises:-

9.5.1.1 any member of the Staff; or

9.5.1.2 any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

9.5.2 At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Agreement to the Premises, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Council may reasonably request.

9.5.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

9.5.4 If the Contractor fails to comply with **Clause 9.6.1** or **Clause 9.6.2** within one (1) Month of the date of the request then the Council may terminate the Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

9.5.5 The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with **Clause 9.6.2** shall be final and conclusive.

9.5.6 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Staff employed or engaged by the Contractor at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

## PART TWO: CONTRACTOR'S GENERAL OBLIGATIONS

### 10. WARRANTIES AND REPRESENTATIONS

10.1 The Contractor warrants and represents to the Council that:-

10.1.1 it has full capacity, authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;

10.1.2 this Agreement is executed by a duly authorised representative of the Contractor;

10.1.3 in entering into this Agreement or accepting any Order it has not committed any Fraud;

10.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender and the Questionnaire Response (including statements made in relation to the categories

referred to in Regulations 57 and 58 of the Regulations) for the provision of Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 10.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Agreement;
- 10.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 10.1.5 above;
- 10.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for the Services under the Agreement;
- 10.1.8 it has not committed any offence under the Bribery Act 2010 (or under any replacement enactment);
- 10.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and any Order;
- 10.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations (if any) under this Agreement and any Order;
- 10.1.11 it has taken all required "right to work" checks to make sure that all employees are entitled to be employed or engaged by the Contractor to perform the Services;
- 10.1.12 it has taken all required DBS and other safeguarding checks in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time to ensure that any employees are not barred from the activity;
- 10.1.13 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Agreement;
- 10.1.14 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 10.1.15 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and

in the three (3) years prior to the date of this Agreement:-

- 10.1.15.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

10.1.15.2 it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and

10.1.15.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Agreement.

10.2 The Contractor warrants and represents the statements in **Clause 10.1** above to the Council.

## 11. PREVENTION OF CORRUPTION

11.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council or any other public body or person employed by or on behalf of the Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Agreement, any Order or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body (including its award to the Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.

11.2 The Contractor warrants that it has not paid commission or agreed to pay any commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with this Agreement, any Order or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body.

11.3 In the event the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by **Clauses 11.1** or **11.2** above or commits a Prohibited Act the Council may:-

11.3.1 terminate the Agreement and cancel any Orders (including Orders accepted by the Contractor) with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination; or

11.3.2 recover in full from the Contractor and the Contractor shall indemnify the Council in full from and against any other loss sustained by the Council in consequence of any breach of this Clause, whether or not the Agreement has been terminated.

## 12. CONFLICTS OF INTEREST

12.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are 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 or Staff and the duties owed to the Council under the Agreement.

12.2 The Contractor shall promptly notify and provide full particulars to the Council if such conflict as referred to in **Clause 12.1** above arises or is reasonably foreseeable to arise.

12.3 The Council reserves the right to terminate the Agreement immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary 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 this Agreement. The action of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

12.4 This Clause shall apply during the Contract Term and for a period of one (1) year after its termination or expiry.

### **13. SAFEGUARD AGAINST FRAUD**

13.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Council.

13.2 The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

13.3 If the Contractor or its Staff commits any Fraud in relation to the Agreement or any other contract with a Contracting Authority or the Council, the Council may:-

(e) terminate the Agreement with immediate effect by giving the Contractor notice in writing and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Term; and/or

(f) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause.

### **14. CONTRACT PERFORMANCE**

14.1 The Contractor shall perform all Services in accordance with:-

14.1.1 the requirements of this Agreement; and

14.1.2 any special or further conditions set out in an Order it has accepted.

14.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Agreement and the terms and conditions of an Order, the terms and conditions of this Agreement shall prevail.

### **15. CONTRACT PRICE AND PAYMENT**

15.1 The prices offered by the Contractor for the provision of Services shall be the price as stated when the Order is placed.

#### **Contract Price**

15.2 In consideration of the Contractor's performance of its obligations under the Agreement, the Council shall pay the Contract Price in accordance with **Clauses 15.4 – 15.10** (Payment and VAT).



- 15.3 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Agreement.

### **Payment and VAT**

- 15.4 The Council shall pay all sums due to the Contractor within twenty-eight (28) days of receipt of a valid invoice, submitted monthly, in arrears, in accordance with the payment profile set out in the Order.
- 15.5 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 15.6 The Contractor shall be entitled to payment of the Contract Price in accordance with **Clause 15.4** from the first day a Unit is ready to be let to the Council that has executed an Order Form, notwithstanding whether the Licence Agreement has commenced.
- 15.7 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding twenty-eight (28) days from the receipt of a valid invoice.
- 15.8 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 15.9 The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Agreement. Any amounts due under this Clause 15.9 shall be paid by the Contractor to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.
- 15.10 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under Clause 26.4 (Termination on Default) for failure to pay undisputed sums of money.

### **Recovery of Sums Due**

- 15.11 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Council.
- 15.12 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

repairs

- 15.13 The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.
- 15.14 All payments due shall be made within a reasonable time unless otherwise specified in the Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **REVIEW OF CONTRACT PRICE**

- 15.15 The rates contained in the Pricing Schedule (Schedule 3) shall be reviewed from time to time. The Contractor acknowledges that the Council is subject to the Pan London agreement and is obliged to honour the rates set by the Pan London group.
- 15.16 Where the rates set out in Schedule 3 are varied, up or down, they shall not apply retrospectively but only to new Services Ordered.

## **16. POLICY AND STATUTORY OBLIGATIONS**

- 16.1 The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the provision of the Services.

### **Health and Safety**

- 16.2 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and/or Unit(s) and which may affect the Contractor in the performance of its obligations under the Agreement.
- 16.3 While on the Premises and/or Unit(s), the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 16.4 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises and/or Unit(s) where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 16.5 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Agreement.
- 16.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

### **Environmental Requirements**

- 16.7 The Contractor shall, when working on the Premises, perform its obligations under the Agreement in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and

minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **17. NON-DISCRIMINATION**

- 17.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 17.2 The Contractor shall take all reasonable steps to secure the observance of **Clause 17.1** by all Staff, servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Agreement.

## **PART THREE: CONTRACTOR'S INFORMATION OBLIGATIONS**

## **18. CONTRACT PERFORMANCE AND MANAGEMENT INFORMATION**

- 18.1 The Contractor shall submit Management Information to the Council in the form set out in **Schedule 6** throughout the Contract Term on the last day of every Quarter in respect of any Services being provided.
- 18.2 The Contractor shall also comply with the monitoring arrangements set out in the Specification and Order Form including, but not limited to, providing such data and information as the Contractor may be required to produce under the Agreement.
- 18.3 The Contractor shall attend meetings as and when required by the Council and shall also supply monthly Key Performance Indicator reports as set out in Schedule 6.
- 18.4 The Council may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) month's written notice of any changes.

## **19. RECORDS AND AUDIT ACCESS**

- 19.1 The Contractor shall keep and maintain for six (6) years after the termination or expiry of the Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Agreement including the Services provided under it and the amounts paid by the Council.
- 19.2 The Contractor shall keep the records and accounts referred to in **Clause 19.1** above in accordance with good accountancy practice.
- 19.3 The Contractor shall, on reasonable notice, afford the Council and/or the Auditor such access to such records and accounts as may be required from time to time.
- 19.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Contract Term and for a period of six (6) years after expiry of the Contract Term to the Council and the Auditor.

- 19.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services; save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.
- 19.6 Subject to the Council's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable cooperation and assistance in relation to each Audit, including:-
- 19.6.1 all information requested by the Auditor within the scope of the Audit;
  - 19.6.2 reasonable access to sites and/or Premises controlled by the Contractor and to equipment used in the provision of the Services; and
  - 19.6.3 access to its Staff.
- 19.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **Clause 19**, unless the Audit reveals a Default by the Contractor in which case the Contractor shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

## **20. CONFIDENTIALITY**

- 20.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 20.1.1 treat the other Party's Confidential Information as confidential; and
  - 20.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 20.2 Clause 20.1 shall not apply to the extent that:
- 20.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 22 (Freedom of Information);
  - 20.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 20.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 20.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - 20.2.5 it is independently developed without access to the other party's Confidential Information.
- 20.3 The Contractor may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

- 20.4 The Contractor shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement. In this regard the Council may, on written request, require that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 20.5 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:
- 20.5.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - 20.5.2 to any consultant, contractor or other person engaged by the Council or any person conducting a Crown Commercial Service gateway review;
  - 20.5.3 for the purpose of the examination and certification of the Council's accounts;
  - 20.5.4 for any examination pursuant to any Best Value/Value for Money reviews of the economy, efficiency and effectiveness with which the Council has used its resources.
- 20.6 The Council shall use all reasonable endeavours to ensure that any Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 20.5 is made aware of the Council's obligations of confidentiality.
- 20.7 Nothing in this clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 20.8 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Council to publish the Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.

## 21. DATA PROTECTION

- 21.1 For the purposes of this **Clause 21**, the terms "Data Controller", "Data Processor", "Data Subject" "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

21.2 The Contractor shall (and shall procure that its entire Staff) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Agreement.

21.3 Notwithstanding the general obligation in Clause 21.2, where the Contractor is Processing Personal Data as a Data Processor for the Council the Contractor shall:-

21.3.1 Process the Personal Data only in accordance with instructions from the Council as set out in this Agreement or as otherwise notified by the Council;

21.3.2 comply with all applicable laws;

21.3.3 Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Contractor's obligations under the Agreement;

21.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;

21.3.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

21.3.6 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Council;

21.3.7 not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council;

21.3.8 co-operate with the Council to enable the Council to comply with any request under section 7 of the DPA; and

21.3.9 notify the Council within three (3) Working Days if it receives:

(a) a request from a Data Subject to have access to that person's Personal Data; or

(b) a complaint or request relating to the Council's obligations under the DPA.

21.4 The provisions of this **Clause 21** shall apply during the Contract Term and indefinitely after its expiry.

## 22. **FREEDOM OF INFORMATION**

22.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

22.2 The Contractor shall and shall procure that its Sub-contractors shall:

- 22.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 22.2.2 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
  - 22.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 22.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 22.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 22.5 The Contractor acknowledges that (notwithstanding the provisions of **Clause 22.2**) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 22.5.1 in certain circumstances without consulting the Contractor; or
  - 22.5.2 following consultation with the Contractor and having taken their views into account:
  - 22.5.3 provided always that where **Clause 22.5.2** applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 22.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 22.7 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 7 (of the Agreement) is of indicative value only and that the Council may be obliged to disclose it in accordance with **Clause 22.5**.

## 23. PUBLICITY

- 23.1 Unless otherwise directed by the Council, the Contractor shall not make any press announcements or publicise this Agreement in any way without the Council's prior written consent.
- 23.2 The Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Auditor.

23.3 The Contractor shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

## 24. INTELLECTUAL PROPERTY RIGHTS

24.1 The Intellectual Property Rights in all documents, records, data, or other information produced by the Contractor as part of the Services shall belong exclusively to the Council and the Contractor shall not make or distribute to a third party any copies without the prior written consent of the Authorised Officer.

24.2 The Council grants to the Contractor a bare licence to use the Intellectual Property Rights referred to in Clause **24.1** only for the purposes of performing the Services; such licence to expire on the termination or expiry of this Agreement.

24.3 The Contractor shall indemnify the Council against any claims, liabilities, costs, losses, expenses, proceedings and damages arising out of any infringement of any third party Intellectual Property Rights in connection with the provision of the Services.

## PART FOUR: AGREEMENT, TERMINATION AND SUSPENSION

### 25. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

25.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Agreement, then the Council shall take all reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with **Clauses 26.1 or 26.2** (Termination on Default) of the Agreement.

25.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, then the Council may, without prejudice to its rights under **Clauses 26.1 and 26.2** (Termination on Default), do any of the following:-

25.2.1 without terminating the Agreement, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the Agreement;

25.2.2 without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

25.2.3 terminate, in accordance with **Clauses 26.1 or 26.2** (Termination on Default), the whole of the Agreement; and/or



25.2.4 charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

25.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Agreement and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Council's instructions or such other period of time as the Council may direct.

25.4 In the event that the Contractor:-

25.4.1 fails to comply with **Clause 25.3** above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

25.4.2 persistently fails to comply with **Clause 25.3** above;

25.4.3 the Council may terminate the Agreement with immediate effect by giving the Contractor notice in writing.

## **26. DEFAULT, DISRUPTION AND TERMINATION**

### **Termination on Default or for Cause**

26.1 The Council may terminate the Agreement by serving written notice on the Contractor with effect from the date specified in such notice where the Contractor commits a Default and:-

26.1.1 the Contractor has not remedied the Default to the satisfaction of the Council within ten (10) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

26.1.2 the Default is not, in the opinion of the Council, capable of remedy; or

26.1.3 the Default is of such a serious nature that even if it is capable of remedy justifies termination by the Council.

26.2 The Council may also terminate the Agreement by serving written notice on the Contractor with immediate effect or with effect from the date specified in such notice where any of the following apply:

26.2.1 any conduct on the Contractor's part, whether or not in the course of performing services under the Agreement, which is likely to cause damage to the reputation or standing of the Council; or

26.2.2 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

- 26.3 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 26.4 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 ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Agreement 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 Clauses 15.11 – 15.14 (Recovery of Sums Due).

#### **Termination on Financial Standing**

- 26.5 The Council may terminate the Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply the Services under this Agreement.

#### **Termination on Insolvency and Change of Control**

- 26.6 The Council may terminate this Agreement with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:-
- 26.6.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 26.6.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 26.6.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
  - 26.6.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 26.6.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 26.6.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
  - 26.6.7 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business;

- 26.6.8 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 26.6.9 any event similar to those listed in **Clause 26.6.1** to **Clause 26.6.8** occurs under the law of any other jurisdiction.
- 26.7 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Council may terminate the Agreement by giving notice in writing to the Contractor with immediate effect within six (6) Months of:-
- 26.7.1 being notified that a Change of Control has occurred; or
  - 26.7.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,
  - 26.7.3 but shall not be permitted to terminate where written approval was granted prior to the Change of Control.

#### **Termination by the Council**

- 26.8 The Council shall have the right to terminate this Agreement, or to terminate the provision of any part of the Agreement at any time by giving six (6) Months' written notice to the Contractor.
- 26.9 In the event of termination of the Agreement, the Council shall only be liable to pay the Contractor such sums as may be due for the Services supplied against an Order entered into prior to the termination of the Agreement.

#### **27. SUSPENSION OF CONTRACTOR'S APPOINTMENT**

- 27.1 Without prejudice to the Council's rights to terminate the Agreement in **Clause 26** above, if a right to terminate this Agreement arises in accordance with **Clause 26**, the Council may suspend the Contractor's appointment to supply Services to the Council by giving notice in writing to the Contractor. If the Council provides notice to the Contractor in accordance with this **Clause 27**, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Council in writing from time to time.

#### **28. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 28.1 Notwithstanding the expiry or termination of the Agreement for any reason, the Contractor shall continue to fulfil its obligations under the Agreement with respect to any Services it may still be providing on the expiry or termination of the Agreement.
- 28.2 While no new Orders shall be placed after the expiry or termination of the Agreement, Services being provided on the expiry or termination of the Agreement shall continue to be provided in accordance with the Agreement until they are terminated by the Council.
- 28.3 Where the Council terminates the Agreement under **Clauses 26.1** and **26.2** (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional

expenditure incurred by the Council throughout the remainder of the Contract Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under **Clause 26.1** or **26.2** (Termination on Default), no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.

- 28.4 Subject to **Clauses 10, 29, 30** and **31**, where the Council terminates the Agreement under Clause 26.8 (Break), the Council shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 26.8.
- 28.5 The Council shall not be liable under **Clause 28.4** to pay any sum which:-
- 28.5.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- 28.5.2 when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Contract Term.
- 28.6 Save as otherwise expressly provided in the Agreement:-
- 28.6.1 termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 28.6.2 termination of the Agreement shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under Clauses 11 (Prevention of Corruption), 15.4 – 15.10 (Payment and VAT), 15.11 – 15.14 (Recovery of Sums Due), 19 (Records and Audit Access), 20 (Confidentiality), 21 (Data Protection), 22 (Freedom of Information), 24 (Intellectual Property Rights), 28 (Consequences of Termination and Expiry), 29 (Liability), 30 (Insurance), 40 (Cumulative Remedies), 46 (Law and Jurisdiction).
- 28.7 Any termination of this Agreement by effluxion of time or otherwise shall not take effect in respect of any Unit which is occupied by a Nominee until possession of the Unit has been lawfully secured as soon as reasonably practicable after the termination of the Agreement. If the Council in discharge of its statutory duty to its homeless clients needs to secure alternative accommodation for a Nominee of a Unit occupied on the date of termination of the Agreement the Council may itself postpone or instruct the Contractor to postpone taking actual possession of a Unit until the Council has secured alternative accommodation for the Nominee.

- 28.8 Within thirty (30) Working Days of the date of termination or expiry of the Agreement, the Contractor shall return to the Council:
- 28.8.1 all Personal Data and Confidential Information belonging to the Council in the Contractor's possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its statutory obligations or obligations under the Agreement, or for such period as is necessary for such compliance; and
- 28.8.2 all Property (including materials, documents, information and access keys) provided to the Contractor under **clause 9.3**. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear).
- 28.9 In addition to the return of materials, on the termination of the Agreement for any reason, the Contractor shall:
- 28.9.1 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
- 28.9.2 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Contractor to conduct due diligence.
- 28.10 If the Contractor fails to comply with **clause 28.8** the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 28.11 Where the end of the Contract Term arises due to the Contractor's Default, the Contractor shall provide all assistance under **clause 28.9** free of charge.
- 28.12 At the end of the Contract Term (howsoever arising) the licence granted pursuant to Clause 24.2 shall automatically terminate without the need to serve notice.
- 28.13 The Council shall be entitled to require access to data or information arising from the provision of Services from the Contractor until the latest of:-
- 28.13.1 the expiry of a period of twelve (12) Months following termination or expiry of the Agreement; or
- 28.13.2 the expiry of a period of six (6) Months following the date on which the Contractor ceases to provide Services under any Order.

28.14 Termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Agreement prior to termination or expiry.

## 28.15 Disruption

28.15.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Agreement it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

28.15.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

28.15.3 In the event of industrial action by the Staff, the Contractor shall seek the Council's prior written approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Agreement.

28.15.4 If the Contractor's proposals referred to in **Clause 28.15.3** are considered insufficient or unacceptable by the Council acting reasonably then the Agreement may be terminated with immediate effect by the Council by notice in writing.

28.15.5 If the Contractor is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## PART FIVE: INSURANCE, LIABILITY and INDEMNITIES

### 29. LIABILITY

29.1 Neither Party excludes or limits its liability for:-

29.1.1. death or personal injury caused by its negligence, or that of its Staff;

29.1.2 fraud or fraudulent misrepresentation by it or its Staff;

29.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

29.1.4 any claim under **Clause 31**; or

29.1.5 any claim under the indemnity in **Clause 24.3**.

29.2 Subject to **Clause 29.3** and **Clause 29.4** the Contractor shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any

other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Agreement or the presence of the Contractor or any Staff on the Premises, 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. 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 wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement.

29.3 Subject always to **Clause 29.1** and **Clause 29.4**, the liability of either Party for Defaults shall be subject to the following financial limits:-

29.3.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed £1,000,000 (one million pounds)

29.4 Subject to **Clause 29.1**, in no event shall either Party be liable to the other for any:-

29.4.1 loss of profits;

29.4.2 loss of business;

29.4.3 loss of revenue;

29.4.4 loss of or damage to goodwill;

29.4.5 loss of savings (whether anticipated or otherwise); and/or

29.4.6 any indirect or consequential loss or damage.

29.5 The Council may, amongst other things, recover as a direct loss:-

29.5.1 any additional operational and/or administrative expenses arising from the Contractor's Default;

29.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default; and

29.5.3 the additional cost of procuring replacement services for the remainder of the Contract Term following termination of the Agreement as a result of a Default by the Contractor.

29.6 Nothing in the Agreement shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Council, or the Council's employees, servants or agents.

## 30. **INSURANCE**

30.1 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 Agreement,

including death or personal injury, loss of or damage to property or any other loss as set out in **Clause 30.2**. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

30.2 For as long as any Services are provided under the Agreement or any Order, the Contractor shall effect and maintain the following insurances:-

**30.2.1 public liability (third party) insurance** with a minimum limit of £5,000,000 (five million pounds) to cover all risks in the performance of this Agreement and the Services from time to time;

**30.2.2 employer's liability insurance** with a minimum limit of indemnity of £10,000,000 (ten million pounds);

**30.2.3 professional indemnity insurance** with a minimum limit of indemnity of £1,000,000 (One Million) for any claim or series of claims arising out of the same occurrence or series of occurrences or such limit as the Council may reasonably require (and as required by law) from time to time and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same with such insurance to be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement;

**30.2.4 Landlord's Buildings Insurance (including Landlords Fixtures & Fittings)** adequate to cover the full reinstatement value of the property which also includes Loss of Rent/Alternative Accommodation cover with the sum insured at the Contractor's discretion.

**30.2.5 Landlord's Contents Insurance** adequate to cover the full replacement value of the contents and furnishings of each individual property.

30.3 Any excess or deductibles under such insurance (referred to in **Clause 30.1** and **Clause 30.2**) shall be the sole and exclusive responsibility of the Contractor.

30.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Agreement or any Order.

30.5 The Contractor shall produce to the Council, on request, copies of all insurance policies referred to in this Clause 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.

30.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

30.7 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. 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 **Clause 29.2**.



## 31. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

- 31.1 The Parties acknowledge and agree that the Agreement constitutes a contract for the provision of Services and not a contract of employment. The Contractor shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Term or arising from termination or expiry of the Agreement.

## PART SIX: OTHER PROVISIONS

### 32. CONTRACT MANAGER

- 32.1 The Contractor shall ensure that at all times during the Contract Term a Contract Manager is appointed and empowered to act on behalf of the Contractor and that he or she or his or her duly authorised deputy is available to be contacted by an Authorised Officer or as the Authorised Officer may direct at all times during which the Service is to be provided ("**the Contract Manager**").
- 32.2 Any notice, information, instruction or other communication given or made to the Contract Manager, or the Contract Manager's authorised deputy, shall be deemed to have been given or made to the Contractor.
- 32.3 Any person proposed to be authorised to act as deputy for the Contract Manager must first be approved in writing by the Authorised Officer before the start of the period during which he or she is proposed to be authorised to act. The Provider shall inform the Council when that person ceases to be authorised to act.
- 32.4 The Contract Manager and his duly authorised deputy shall:
- 32.4.1 be suitably qualified and experienced;
  - 32.4.2 be responsible for organising sufficient supervision at all times when the Service is being provided in accordance with the Agreement.
  - 32.4.3 consult with the Authorised Officer and with such other of the Council's supervisory staff as may from time to time be specified by the Authorised Officer or as often as may reasonably be necessary to ensure a continuous and efficient provision of the Service in accordance with the Agreement; and
  - 32.4.4 follow and comply with any reasonable instruction or direction given or issued by the Authorised Officer in connection with the performance of the Service.

### 33. THE AUTHORISED OFFICER

- 33.1 The Authorised Officer shall be the person appointed by the Council's Director of Customer Services (or equivalent) from time to time to act as Authorised Officer and notified to the Contractor in writing.
- 33.2 The Authorised Officer shall have full power and authority to issue instructions and directions on any matter in connection with the proper and adequate performance of the part of the Service to the Contractor and the Contractor shall be bound by the same.
- 33.3 The Director of Customer Services shall within a reasonable time give notice in writing to the Contractor of the replacement of the Authorised Officer or if any person ceases to be an Authorised Officer.
- 33.4 The Council will ensure that an Authorised Officer is available for consultation with the Contractor at all reasonable times. From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer for all purposes in relation to the Agreement. As reasonably practicable after such appointment is made, the Authorised Officer shall give written notice to the Contractor.

### 34. TRANSFER AND SUB-CONTRACTING

- 34.1 The Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Agreement or any part thereof without the prior written approval of the Council. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Agreement, without having obtained the written consent of the Council's Authorised Officer.
- 34.2 Sub-contracting any part of the Agreement shall not relieve the Contractor of any of its obligations or duties under the Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 34.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.
- 34.4 Subject to **Clause 34.6**, the Council may assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to:-
- 34.4.1 any Contracting Authority; or
  - 34.4.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
  - 34.4.3 any private sector body which substantially performs the functions of the Council,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Agreement.
- 34.5 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to **Clause 34.6**, affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Council.

- 34.6 If the rights and obligations under the Agreement are assigned, novated or otherwise disposed of pursuant to **Clause 34.4** to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**"):-
- 34.6.1 the rights of termination of the Council in **Clauses 26.6** (Termination on insolvency and change of control) and **26.1** and **26.2** (Termination on Default) shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- 34.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof with the previous consent in writing of the Contractor.
- 34.7 The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Agreement. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 34.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Agreement.

## **35. VARIATIONS TO THE AGREEMENT**

- 35.1 Subject to the provisions of this **Clause 35** the Council may request a variation to the Services ordered provided that such variation does not amount to a material change to the Agreement or which may prevent the Contractor from performing its obligations under the Agreement. Such a change is hereinafter called a "Variation".
- 35.2 The Council may request a Variation by completing and sending the Variation form attached at Schedule 5 to the Contractor giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 35.3 In the event that the Contractor is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:-
- 35.3.1 agree that the Contractor continues to perform its obligations under the Agreement without the Variation; or
- 35.3.2 terminate the Agreement with immediate effect, except where the Contractor has already delivered part or all of an Order in accordance with an Order Form or where the Contractor can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the

matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 45.

35.4 If the Parties agree the Variation and any variation in the Contract Price it shall be reduced to writing failing which it shall not be of any effect. Once reduced to writing the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Agreement.

## **36. FORCE MAJEURE**

36.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement with immediate effect by notice in writing.

36.2 Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

36.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 36.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

36.4 For the avoidance of doubt, a Force Majeure event shall not include any labour dispute between the Contractor and its employees or failure to provide the Services by any of its agents, contractors or sub-contractors.

## **37. TUPE and HANDOVER**

37.1 It is acknowledged by the Contractor and the Council that TUPE may apply upon expiry or termination of the Agreement for any reason in accordance with the TUPE regulations. The Contractor shall within ten (10) Working Days of the Council's request, provide a list of employee details for all Staff assigned to the provision of the Services, their terms and conditions, including all relevant information as may be reasonably required for disclosure to third parties the Council may appoint for any subsequent contract for the provision of the Services. If the Contractor fails to provide this information it shall not be permitted to tender for any subsequent contract.

37.2 In the event that TUPE applies to any subsequent contract for the provision of Services, then the Contractor shall ensure that the information disclosed is accurate and up to date as at the point of transfer and that it uses all reasonable endeavours to ensure that all known liabilities have been discharged. The Contractor shall provide the Council and any Replacement Contractor with all assistance and information that the Council or the Replacement Contractor reasonably requires for that purpose. The Contractor shall indemnify the Council and the Replacement Contractor against:

37.2.1 all claims, costs, expenses, damages, compensation, fines and other liabilities resulting from a cause of action prior to the date of transfer; and

37.2.2 all claims, costs, expenses, damages, compensation, fines and other liabilities resulting from breach by the Contractor of Regulation 13 of TUPE as amended or from failure to consult with the workforce or any part of it.

37.3 For the avoidance of doubt, breach of this Clause 37 shall be regarded as a material and fundamental breach of the Agreement entitling the Council to immediately terminate the Agreement by written notice.

#### **38. RIGHTS OF THIRD PARTIES**

38.1 A person who is not party to this Agreement ("**Third Party**") has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement, such rescission or variation will not require the consent of any Third Party.

#### **39. SEVERABILITY**

39.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated.

39.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Council and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

#### **40. CUMULATIVE REMEDIES**

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

#### **41. WAIVER**

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

41.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 43.

41.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

## 42. ENTIRE AGREEMENT

- 42.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 42.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 42.3 Nothing in this **Clause 42** shall operate to exclude Fraud or fraudulent misrepresentation.

## 43. NOTICES

- 43.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.
- 43.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 43.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (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.
- 43.3 For the purposes of Clause 43.2, the address of each Party shall be:

43.3.1 For the Council:

Address: Hackney Town Hall, Mare Street, London E8 1EA

For the attention of: Jennifer Wynter - Head of Benefits and Housing Needs

Tel: 020 8356 3000

Fax: n/a

Email: jennifer.wynter@hackney.gov.uk

43.3.2 For the Contractor:-

[ ]

Address:

For the attention of:

Tel:

Fax:

Email:

43.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

#### 44. COMPLAINTS HANDLING AND RESOLUTION

44.1 The Contractor shall notify the Council of any Complaint made by service users or other third parties within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint.

44.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement and without prejudice to any obligation of the Contractor to take remedial action under the provisions of the Agreement, the Contractor shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

44.3 Within two (2) Working Days of a request by the Council, the Contractor shall provide full details of steps taken to resolve the Complaint as well as measures to avoid repeat complaints.

#### 45. DISPUTE RESOLUTION

45.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Director of Customer Services.

45.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

45.3 If the dispute cannot be resolved by the Parties pursuant to Clause 45.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 45.5 unless:

45.3.1 the Council considers that the dispute is not suitable for resolution by mediation; or

45.3.2 the Contractor does not agree to mediation.

45.4 The obligations of the Parties under the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and its employees, personnel and associates shall comply fully with the requirements of the Agreement at all times.

45.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

45.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working

Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the President for the time being of the Law Society or such individual's appointee to appoint a Mediator;

- 45.5.2 the Parties shall within [ten (10)] Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the latest version of the Centre for Effective Dispute Resolution ('CEDR') to provide guidance on a suitable procedure;
- 45.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 45.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 45.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties; and
- 45.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60)] Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**46. LAW AND JURISDICTION**

46.1 The Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Agreement is to be governed by and construed according to English Law.

**IN WITNESS whereof the parties have executed this Agreement the day and year first before written:**

.....  
**Signed on behalf of**  
**THE LONDON BOROUGH OF HACKNEY**

.....  
**Signed on behalf of**  
**[insert name of provider]**



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**Schedule 1**  
**SERVICES SPECIFICATION**

**Schedule 2**  
**ACCOMMODATION PROTOCOL and CALL-OFF PROCESS**

Bed and Breakfast	Annexes	Hostels	Private Sector Leased
	<b>Lot 1 – Bed and Breakfast</b>		
Call off process	<p>The Council will inform all contractors of its likely weekly accommodation requirements via the DPS system. This will done every Monday morning.</p> <p>Contractors should then notify the Council on a daily basis, Monday to Friday, of their availability and this should be done as early in the morning as possible.</p> <p>Availability notices from the contractor should include the full address and postcode, unit number, size of unit (in square metres), number of occupants permitted and facilities provided in the room and those that are shared with other residents and price.</p> <p>The Council will select a unit by cross matching a nominee’s requirements with units that are available or soon to be available. Room size, location, facilities and price will be considered to determine the most suitable unit for the nominee.</p>		
New units	<p>If the unit has not been used before by the Council, or if more than 6 months has elapsed since its last use, it must be inspected and safety certificates checked before use.</p> <p>The Council will arrange a suitable time with the Contractor to view the unit and a decision will then be made whether to accept it on to the scheme.</p> <p>If accepted the unit will only be deemed okay to use once this inspection process has been completed and this includes completing any requested remedial works and receiving the relevant certificates. The contractor will be notified in writing of this and this will done via email or through the DPS system.</p>		
Void in existing use	<p>The unit will generally not need to be inspected prior to use but the Council may re-inspect and re-check safety certificates. The contractor will be notified either way.</p>		
Booking process	<p>The Council will contact the contractor, either by phone, email or the on-line DPS system and establish the availability of a unit and inform the contractor of the intended dates of occupation. The contractor will confirm availability and agree a price. The price agreed at this stage will be the price paid for the length of the booking.</p> <p>Bookings are generally made with no end date. See cancellation process for end of booking process.</p>		

	<p>The Council will confirm with the contractor the client’s details and this will include, but not be limited to, name, household size and any special requirements.</p> <p>A booking confirmation form, with all of the above details, will be sent to the contractor and this must be signed and returned to the Council to confirm the booking.</p>
Cancellation process	<p>While the Council will attempt to give as much advance notice as possible when cancelling a booking, cancellations can be made up until midday on the day of any current booking. For example if the Council wanted Sunday night to be the last night it has until 12pm (midday) Monday to cancel the booking.</p> <p>The contractor will be notified of a cancellation in writing by email or through the DPS system. This cancellation notice will confirm the last night that the Council will pay for.</p> <p>Although the Council will have notified their client of the cancellation date it is advisable that the Contractor also confirms this with the client.</p>
Invoicing	<p>Payments will be made via self-billing. Contractors will be sent Invoices (issued by the Council on behalf of the Landlord), Remittance and Payment and contractors must confirm receipt to the Council within two weeks from payment date in accordance with HMRC requirements. Failure to comply will result in the suspension of any further payments.</p>
Handback	<p>If the contractor requires the return of a unit it shall give the Council two months’ written notice to vacate the unit.</p> <p>If a contractor identifies a suitable alternative unit for the household then they must contact the Council to discuss a possible transfer.</p>
	<p><b>Lot 2 - Annexes</b></p>
Call off process	<p>The Council will inform all contractors of its likely weekly accommodation requirements via the DPS system. This will done every Monday morning.</p> <p>Contractors should then notify the Council on a daily basis of their availability and this should be done as early in the morning as possible (Monday to Friday)</p> <p>Availability notices from the contractor should include the full address and postcode, number of bedrooms, number of occupants permitted and price.</p> <p>The Council will select a unit by cross matching a nominee’s requirements with units that are available or soon to be available. Room</p>

	size, location, facilities and price will be considered to determine the most suitable unit for the nominee.
New units	Due to the high turnover of properties it is not possible to inspect all new properties before use. Contractors must therefore ensure that all units adhere to the specifications as set out in the service specification and the Setting the Standard framework. The Council will retrospectively inspect a proportion of all new units from each contractor but retains the right to inspect all new units before use should it elect to.
Void in existing use	The unit will generally not need to be inspected prior to use but the Council may re-inspect and re-check safety certificates. The contractor will be notified either way.
Booking process	<p>The Council will contact the contractor, either by phone, email or the on-line DPS system and establish the availability of a unit and inform the contractor of the intended dates of occupation. The contractor will confirm availability and agree a price. The price agreed at this stage will be the price paid for the length of the booking.</p> <p>Bookings are generally made with no end date. See cancellation process for end of booking process.</p> <p>The Council will also confirm with the contractor the client's details and this will include, but not be limited to, name, household size and any special requirements.</p> <p>A booking confirmation form, with all of the above details, will be sent to the contractor and this must be signed and returned to the Council to confirm the booking within 24 hours of receipt.</p>
Cancellation process	<p>While the Council will attempt to give as much advance notice as possible when cancelling a booking, cancellations can be made up until midday on the day of any current booking. For example if the Council wanted Sunday night to be the last night it has until 12pm (midday) Monday to cancel the booking.</p> <p>The contractor will be notified of a cancellation in writing and this will be done via email or through the DPS system. This cancellation notice will confirm the last night that the Council will pay for.</p> <p>Although the Council will have notified their client of the cancellation date it is advisable that the Contractor also confirms this with the client.</p>
Invoicing	Payments will be made via self-billing. Contractors will be sent Invoices (issued by the Council on behalf of the Landlord), Remittance and Payment and contractors must confirm receipt to the Council within two

	<p>weeks from payment date in accordance with HMRC requirements. Failure to comply will result in the suspension of any further payments.</p>
Handback	<p>If the contractor requires the return of a unit it shall give the Council two months' written notice to vacate the unit.</p> <p>If a contractor identifies a suitable alternative unit for the household then they must contact the Council to discuss a possible transfer.</p>
	<b>Lot 3 – Hostels</b>
Call off process	<p>The Council will inform all contractors of its likely weekly accommodation requirements via the DPS system. This will be done every Monday morning.</p> <p>Contractors should then notify the Council to confirm upcoming availability.</p>
New units	<p>The Council will explore and negotiate with contractors offers of hostel units. Lease lengths and rates offered will be depend on unit location, size of units, facilities and build standard. Both hostels with shared facilities and self-contained units will be considered.</p> <p>All new units will be inspected prior to use and for units in Hackney this will also include inspections by the Council's Private Sector Housing Team.</p> <p>The units will be only be used when this inspection process is complete. A payment start date will be agreed with the Contractor. This must be confirmed in writing by both the contractor and the Council and this can be done via email or the DPS system.</p>
Bookings and void process	<p>The contractor must inform the Council as soon as a unit becomes void.</p> <p>The Council shall pay the Contract Price for Voids PROVIDED the Unit(s) is ready for re-let within 24 hours of it becoming Void. If minor repairs are needed to the unit then up to 5 days void period is allowed subject to an inspection by the Council. If major repairs are needed this must be confirmed with the Council in advance no more than 24 hours after the unit becomes vacant to allow for void payment.</p> <p>To use a void unit the Council will contact the contractor, either by phone, email or via the DPS system to confirm the availability of a unit and an occupation date.</p> <p>The Council will confirm the client's details with the contractor including, but not limited to, name, household size and any special requirements.</p>

	A booking confirmation form, with all of the above details, will be sent to the contractor and this must be signed and returned to the Council to confirm the booking.
Cancellations	<p>The Council will contact the contractor, either by email or via the DPS system, to cancel a client and the date it is cancelled from. All verbal cancellations will be followed up with written confirmation.</p> <p>The contractor will be responsible for ensuring the client moves out of the unit and that it is prepared for its next occupant. Units are expected to be available for re-let within 24 hours unless agreed in advance otherwise with the Council.</p>
Handback	Will depend upon lease arrangements. Lease and renewal renegotiations will commence 6 months before the end of the lease.
Invoicing	Payments will be made via self-billing. Contractors will be sent Invoices (issued by the Council on behalf of the Landlord), Remittance and Payment and contractors must confirm receipt to the Council within two weeks from payment date in accordance with HMRC requirements. Failure to comply will result in the suspension of any further payments.
	<b>Lot 4 – Private Sector Leased</b>
Call off process	<p>The Council will inform all contractors of its likely weekly requirements via the DPS system. This will done every Monday morning.</p> <p>Contractors should then notify the Council to confirm upcoming availability.</p>
New units	<p>If the unit has not been used before by the Council it must be inspected and safety certificates must be received by the Council before use.</p> <p>The Council will arrange a suitable time with the Contractor to view the unit and a decision will then be made whether to accept it on to the scheme.</p> <p>If accepted onto the scheme the Contractor will be notified in writing as well as of any remedial works that need to be carried out before the unit can be used. A follow up inspection may be necessary to confirm that the required works have been done. The contractor shall be notified either way. The relevant safety certificates must also be received by the Council for the unit to be accepted into the scheme.</p> <p>Once the Council deems the unit ready for letting, that is all the correct safety certificates have been received and verified and the unit has been inspected and the inspection passed, a rent payment start date of no later than 5 days after the unit is deemed ready to let, will be agreed.</p>

	<p>Payment will begin earlier if the Council nominates a client to occupy the Unit before this date.</p> <p>It would not be practicable for a lease to be in place before the Council wishes to use the unit therefore both parties must agree terms, and this must be in writing, before the unit is used.</p> <p>As per the specification lease lengths will be three years with no break clause.</p>
Void in existing use	<p>The unit will generally not need to be inspected prior to use but the Council may re-inspect and re-check safety certificates. The contractor will be notified either way.</p> <p>The Council shall pay the Contract Price for Void Unit(s) PROVIDED the Unit(s) is available for occupation within five (5) days of it becoming Void. For the avoidance of doubt the Council shall be entitled to cease payment of the Contract Price where a Unit is not ready for occupation within the period stated. The Contract Price shall become payable by the Council to the Contractor when a Unit is ready to be re-let. Where an extension is requested, this should be requested within 72 hours of the vacant date and will also be subject to a Council Inspection to confirm the scope and or necessity of the repairs.</p>
Booking process	<p>The Council will contact the contractor, either by phone, email or via the DPS system and confirm the occupation date for the client.</p> <p>The Council will confirm the client’s details with the contractor including, but not limited to, name, household size and any special requirements.</p> <p>A booking confirmation form, with all of the above details, will be sent to the contractor and this must be signed and returned to the Council to confirm the booking.</p>
Cancellation process	<p>The Council will notify the contractor when a client is vacating a unit, which will be confirmed in writing. Void turnaround is 5 days in accordance with clause 9.2.2 and this is also replicated above.</p>
Handback	<p>Will depend upon lease arrangements. Lease and renewal renegotiations will commence 6 months before the end of the lease.</p>
Invoicing	<p>Payments will be made via self-billing. Contractors will be sent Invoices (issued by the Council on behalf of the Landlord), Remittance and Payment and contractors must confirm receipt to the Council within two weeks from payment date in accordance with HMRC requirements. Failure to comply will result in the suspension of any further payments.</p>

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### Schedule 3

#### PRICING SCHEDULE

- ▮ The Contract Price payable to a Contractor under this DPS Agreement shall consist of the following, subject to clause 13 and 13.3

Hackney Temporary Accommodation Maximum Rates are the maximum rates that the Council may pay for accommodation acquired **in Hackney**. For properties based **outside of Hackney**, rates are guided by the **Pan London agreement**. Hackney, along with 32 other London Councils have agreed that all boroughs will honour the maximum rates set by the Council in which a property is located and so do not pay more for accommodation than the rates set by the host Council. Hackney cannot disclose the rates set by other Councils.

These rates cover Bed and Breakfast, Annexe and Private Sector Leased properties. Hostel rates are agreed on a case by case basis. Please refer to section D5 of the Specification document.

HACKNEY DYNAMIC PURCHASING SYSTEM RATES (AUGUST 2017)					
Lot 1		Lot 2		Lot 4	
Bed and Breakfast (shared)		Annexes (self contained)		Private Sector Lease	
	Rate per night		Rate per night		Rate per week
Single Room	£31	Studio	£38	Studio	£290.62
Double Room	£33	1 Bed	£38	1 Bed	£290.62
Triple Room	£35	2 Bed	£48	2 Bed	£351.03
Quad Room	£42	3 Bed	£52	3 Bed	£396.03
		4 Bed	£65	4 Bed	£470.00

Schedule 4

TEMPLATE ORDER FORM

To (Landlord/Supplier):

Booking Ref:

Billing: London Borough of Hackney
1 Hillman Street, London E8 1DY
hnfinance.income@hackney.gov.uk

Date:

Official Order to place a Household in to Temporary Accommodation

Name(s): Contact No:
Adults: DOB (Children)

TA Address:
Arrangement to Collect keys On (Date):
AT (Time):

The temporary Accommodation is to commence on:
The placement is/is not for a limited period ending:

Rate Agreed: £ Per Night/Week
Utilities Y/N: £ Per Night/Week

Supplier to complete and return to LBH:
Booking Accepted:
Name/Signed:
Cancellation Date/Last night of booking
Name/Signed:

Office Use Only:

Preallocated as: .....Bed, .....Person,  
.....Type

TA type – B/B, S/C, PSL, AST,HOS

Borough property is situated:

Pan London Rate: £ Per Night/Week

Reason for rate breach:

*(No other property available on the day, Has Severe Medical Condition, Large Family, DV Case, Other  
(Please specify))*

Placement Officer name/signature: .....

.....

.....

Manager decision – Agree/disagree

.....

Name and signature:

.....

.....

Property Ref:

Rent Account:

TAPL Ref:

UH Ref:

Transfer From:.....(TA Type) Supplier:.....Reason: .....

Address From: .....

**Schedule 5**  
**ORDER VARIATION FORM**

**Name of** .....

**No. of Order Form being varied:** .....

**Variation Form No:** .....

**BETWEEN:**

[                    ] ("**the Council**")

and

[                    ] ("**the Contractor**")

1. The Order is varied as follows: [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Agreement.
3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Council**

Signature .....

Date .....

Name in Capitals .....

Address .....

**Authorised to sign for and on behalf of the Contractor**

Signature: .....

Date: .....

Print name: .....

Address: .....

## Schedule 6

### MANAGEMENT INFORMATION REQUIREMENTS

#### 1. AUTHORISED REPRESENTATIVES

##### 1.1 The Council's initial Authorised Representative:

Mark Billings, Operations Manager, Benefits and Housing Needs

##### 1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

#### 2. KEY PERSONNEL

From the Council

Mark Billings, Operations Manager, Benefits and Housing Needs

Jan Clark, Operations Manager, Benefits and Housing Needs

Derrick Williams, Housing Supply Team Manager, Benefits and Housing Needs

Frances Hayhow, Temporary Accommodation Team Manager, Benefits and Housing Needs

From the Provider

[INSERT DETAILS]

#### 3. MEETINGS

##### 3.1 Type

##### 3.1.1 Contract Management Meetings –

The Council will meet with the Service Provider at regular intervals during the length of the framework. At a minimum these will be set at quarterly yearly meetings but may be more frequent as determined by the Council

##### 3.1.2 Ad hoc Meetings

It may be necessary, from time to time, to call meetings outside of standard contract management meetings. This could be to discuss specific issues around a property or other such matter. Both the Council and the Service Provider can request these meetings.

##### 3.1.3 Emergency Meetings

It may be necessary to call emergency meetings outside of standard contract management meetings on no or very short notice. This could as a result of an incident in a unit such as a fire, flood or other reason which requires an urgent response. It may be necessary to have these meetings outside of normal office hours and contractors should have the necessary procedures in place in order to facilitate this.

##### 3.2 Quorum

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Key personnel from both the Council and the Service Provider or substituted representatives.

3.3 Agenda

Will be agreed in advance and contract management meetings will always include -

<b>Key Performance Indicators</b>	<b>Monitoring</b>
Responsiveness in dealing with tenants	Contract management meetings, data collection and spot checks
Information provided to tenants	Contract management meetings, tenant admission forms
Property Standards	Contract management meetings, inspections, ready to let forms and supporting documentations, complaints
Void turnaround times	Contract management meetings, information sharing, ready to let, pre void / void inspection forms. HB information
Repair turnaround times	Contract management meetings, contract monitoring / TA team and customer feedback
Management responsibilities – Block maintenance	Contract management meetings, submission of maintenance reports, spot checks, inspections and review meetings
Fire safety	Current and reviewed fire risk assessments for all units

4. REPORTS

4.1 Type  
Monthly activity

4.2 Contents  
Current bookings showing move in date and bookings cancelled within that period.  
Confirmation of last tenant sign in/property inspection. Confirmation of number of complaints by residents and outcomes.

4.3 Frequency  
Monthly

4.4 Circulation list  
Key personnel

4.5 Other reports maybe requested by the Council as part of ongoing contract management. This could include, but is not limited to, gas safety checks and property maintenance works.

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**Schedule 7**

**COMMERCIALLY SENSITIVE INFORMATION**

**NOT USED**



## Schedule 8

### DPS AGREEMENT VARIATION PROCEDURE

#### 1. Introduction

- 1.1 Schedule 8 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Agreement.
- 1.2 The Council may propose a variation to the Agreement under Schedule 8 only where the variation does not amount to a material change in the Agreement or the Services.

#### 2. Procedure for proposing a Variation

- 2.1 Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve Contractor with written notice of the proposal to vary the Agreement ("Notice of Variation").
- 2.3 The Notice of Variation shall:-
  - 2.3.1 contain details of the proposed variation providing sufficient information to allow each Contractor to assess the variation and consider whether any changes to the contract prices set out in its Pricing Schedule are necessary; and
  - 2.3.2 require the Contractor to notify the Council within twenty- one (21) days of any proposed changes to the prices set out in its Pricing Schedule.
- 2.4 Upon receipt of the Notice of Variation, each Contractor has fourteen (14) days to respond in writing with any objections to the variation.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each Contractor with a written agreement detailing the variation to be signed and returned by Contractor within fourteen [14 ] days of receipt.
- 2.6 Upon receipt of a signed agreement from each Contractor, the Council shall notify all Framework Contractors in writing of the commencement date of the variation.

#### 3. Objections to a Variation

- 3.1 In the event that the Council receives one or more written objections to a variation, the Council may:-
  - 3.1.1 withdraw the proposed variation; or
  - 3.1.2 propose an amendment to the variation.

#### 4. Changes to the Pricing Schedule

- 4.1 Where a Contractor can demonstrate that a variation would result in a change to the prices set out in its Pricing Schedule, the Council may require further evidence from the Contractor that any

additional costs to the Services will be kept to a minimum. The Contractor acknowledges that a change in price shall not exceed the rate set out in Schedule 3

4.2 The Council may require the Contractor to meet and discuss any proposed changes to the Pricing Schedule that would result from a variation.

4.3 Where a change to a Contractor's Pricing Schedule is agreed by the Council, the Council shall notify its acceptance of the change to the Contractor in writing.

4.4 In the event that the Council and the Contractor cannot agree to the changes to the Pricing Schedule, the Council may:-

4.4.1 withdraw the variation; or

4.4.2 propose an amendment to the variation.

## **5. Variations which are not permitted**

5.1 In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation which:-

5.1.1 may prevent one or more of the Contractors from performing its obligations under the Agreement; or

5.1.2 is in contravention of any law.

**Schedule 9**

**CONTRACTOR'S TENDER PROPOSALS / METHOD STATEMENTS**

**Per Contractor's Submitted Documents**