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SCHEDULES

SCHEDULE 1	SPECIFICATION
SCHEDULE 2	METHOD STATEMENTS /CONTRACTOR'S TENDER SUBMISSION
SCHEDULE 3	PRICING SCHEDULE

THIS AGREEMENT is made on the _____ day of _____ 2015

BETWEEN

- (1) **THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF BRENT** of Brent Civic Centre, Engineers Way, Wembley HA9 0FJ (hereinafter referred to as "the Council") and;
- (2) **"CONTRACTOR NAME"** (a Charitable Industrial and Provident Society (registration number 31241R) and a registered provider of social housing HCA No 4655)) of **"ADDRESS"** (hereinafter called "the Contractor")

WHEREAS:

- (A) The Council placed an OJEU contract notice on **"DATE"** ("the Contract Notice") seeking expressions of interest from Contractors for the provision of **Housing Association Leasing Scheme for Managed Temporary Accommodation Services ("the Services")**.
- (B) The Contractor was shortlisted and invited to tender on 11TH November 2014 with other potential contractors to tender for the provision of the Services.
- (C) The Contractor submitted a tender on 12th December 2014
- (D) The Council owes a statutory duty under Part VII of the Housing Act 1996 (as amended by The Homelessness Act 2002 and the Localism Act 2011). The Council is bound by statute to provide temporary accommodation to applicants who are assessed as homeless under the Housing Act 1996 by the provision of assured shorthold tenancies of privately owned dwellings as hereinafter appears.
- (E) The Council wishes to meet its statutory duty by contracting with the Provider for the provision of the Services.
- (F) The Council wishes, in view of the Contractor's relevant skills, knowledge and experience, to engage the Contractor to provide the Services identified Nominees being the responsibility of the Council.
- (G) The Contractor asserts and confirms that it is permitted under its Articles of Association to enter into this Contract and is willing to provide such Services to the Council on and subject to the terms and conditions of this Contract.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement the following words shall have the following meanings: -

"Acceptance Date"	means the date of the Acceptance Letter;
"Acceptance Letter"	means the letter from the Council notifying the Contractor

	of acceptance of its Form of Tender;
"Acquisition and Management Stage"	means the period of the Agreement as detailed in Condition 2 during which the Contractor will source, enter into Headleases and manage the Rented Units in accordance with the Specification whilst accepting nominations from the Council;
"Agreement"	means this agreement entered into between the Council and the Contractor comprising these Conditions of contract and any attached Schedules, the Invitation to Tender, the Contractor's Tender and all appendices, and the Acceptance Letter.
"Authorised Officer"	means the person defined in Condition 19;
"Authorised Officer's Representative"	means the person for the time being appointed by the Authorised Officer to administer the agreement on behalf of the Council and as identified in Condition 29 or such other person as may be nominated by the Authorised Officer and notified to the Contractor in accordance with Condition 29;
"Commencement Date"	1 February 2015
"Complaints Procedure"	means the procedure in Appendix 4 of the Specification.
"Condition(s)"	means a condition forming part of this Agreement and any reference to "these Conditions" shall be construed accordingly;
"Contractor's Representative"	means the person for the time being appointed by the Contractor to administer the agreement on its behalf and as identified in Condition 29 or such other person as may be nominated by the Contractor and notified to the Council in accordance with Condition 29;
"Contractor's Tender Submission"	means all documents returned by the Contractor with its Form of Tender;
"Council's Customer Charter"	means a standard of service as contained in Appendix 9 of the Specification setting out a standard of service to be given to all persons having business with it;
"Form of Tender"	means the tender form submitted by the Contractor for the performance of the Service;
"Furniture Specification"	means the requirements for furniture set out in Appendix 2 of the Specification;
"Headlease"	means a lease taken by the Contractor of any Rented Unit which complies with the criteria set out in Condition 4 to

	fulfil its obligations under this Agreement and "Headleases" shall be construed accordingly;
"Housing Benefit"	means housing benefit (or its successor) as defined in the Housing Benefit General Regulations 1989 (SI 1997) as amended made under the Housing Benefit Regulations 2006 and the Universal Credit Regulations 2013 as amended;
"Housing Service"	means the business unit within the Council referred to as the Housing Service;
"Index"	Means the All Items Retail Prices Index issued by the Office of National Statistics (or any government department upon which have duties in connection with the compilation and maintenance of such Index shall devolved).
"Intellectual Property"	means all manner of intellectual property rights including, without limitation, patents, trademarks and service marks, copyright and design right and know-how;
"Management Stage"	means the period lasting up to 3 years following the Acquisition and Management Stage during which the Contractor will manage the Rented Units in accordance with the Specification whilst accepting nominations from the Council;
"Method Statements"	means the statements provided by the Contractor as part of its tender and attached as Schedule 2 detailing how the Services will be provided.
"Monitoring Requirements"	means the requirements in Appendix 5 of the Specification.
"month"	means a calendar month.
"Nomination Fee"	means that sum payable by the Council to the Contractor in accordance with Condition 3 and the Pricing Document and "Nomination Fees" shall be construed accordingly;
"Nomination Notice"	means a written notice given by the Council to the Contractor in accordance with the Nomination Procedure in such form as may be agreed by the Contractor and the Council from time to time;
"Nominations Procedure"	means the procedure in Appendix 3 of the Specification;
"Nominee"	means a person named in a Nomination Notice and "Nominees" shall be construed accordingly;
"Parties"	means the parties to this Agreement or any of them and "Party" shall be construed accordingly;

"Performance Default"	means any failure by the Contractor properly to perform any of the terms and conditions of the Contract (including without limitation) any failure to perform the Service to the Specification and in accordance with the Method Statements;
"Pricing Document"	means the document attached as Schedule 3 to the Agreement;
"Property Specification"	means the requirements for properties set out in Appendix 1 of the Specification;
"Records"	means all records of the Council and documentation, data or any other information produced by or received from or for or on behalf of the Council (subject to any prior rights) in relation to the Service and stored on whatever medium;
"Replacement Contractor"	means any third party Contractor appointed by the Council from time to time, to provide 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, whether those services are provided by the Council internally and/or by any third party.
"Rented Units"	means the dwellings taken or to be taken on Headleases (being separate dwellings as the term is referred to in Section 1 Housing Act 1988) by the Contractor from private owners in accordance with this Agreement and "Rented Unit" shall be construed accordingly;
"Service"	means the provision of the procurement and management of temporary accommodation services under the Council's HALS scheme as further described in the Specification and its Appendices;
"Specification"	means the detailed specification of the Service attached as Schedule 1 to the Agreement as varied by the Council from time to time;
"Tenancy Agreement"	means an assured shorthold tenancy agreement as defined by the Housing Act 1988 (as amended) in a form prepared by the Contractor approved by the Council and containing terms which accord with the guidance on housing management issued by the Homes and Community Agency (HCA) pursuant to Section 36 Housing Act 1996 as amended by the Housing and Homelessness Act 2002;
"Term"	means the term of this Agreement as detailed in Condition 2, subject to earlier termination or extension in accordance with these Conditions;
"Transferring Employees"	means those employees whose contract of employment becomes, by virtue of the application of TUPE in relation to

	what is done for the purposes of carrying out this Agreement between the Council and the Contractor, a contract of employment with the Contractor or its sub-contractor;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Vacancy Notice"	means a written notice given by the Contractor to the Council in accordance with Condition 3 in such form as may be agreed by the Contractor and the Council from time to time;
"Void"	means a Rented Unit which is vacant and available for letting on a Tenancy Agreement and for which a Vacancy Notice has been served or one which would be so available save that the Headlease in respect of that Rented Unit has less than 9 months left to run:
"Working Day"	means from 9.00 a.m. to 5.00 p.m. any day Monday to Friday but excluding Bank and Public Holidays and any other day when the offices of either of the Parties shall be closed for business.

- 1.2 Words importing the singular number only shall include the plural and vice versa words importing the masculine include the feminine neuter and vice versa and words importing persons include bodies corporate unincorporated associations and partnerships
- 1.3 References to Conditions are (unless otherwise stated) references to the Conditions of this Agreement and references to sub-Conditions paragraphs and sub-paragraphs are (unless otherwise stated) references to sub-Conditions of the Condition or paragraphs of the sub-Condition (or as the case may be Schedule) or sub-paragraph in which the reference appears
- 1.4 References to any statute or section of any statute include a reference to any statutory amendment modification replacement or re-enactment of it for the time being in force and to every instrument order direction regulation by law permission licence consent Condition scheme and matter made in pursuance of any such statute
- 1.5 Any reference to the title of an officer of any of the Parties shall include any person holding such office from time to time by the same or any title substituted for it or such other officer of the relevant Party as it may from time to time appoint to carry out the duties of or to deputise for the officer referred to
- 1.6 The headings to the Conditions and paragraphs are inserted for ease of reference only and shall not affect the interpretation or construction of this Agreement
- 1.7 Any obligation on a party to do anything shall be construed and interpreted as an obligation on that party to do or procure that any such thing is done
- 1.8 The word "including" when used in this Agreement means "including without limitation"

2 TERM

- 2.1 The Agreement with regards to the Acquisition and Management Stage shall be for a term of three (3) years from the Commencement Date. The Council may seek to extend the duration of the Acquisition and Management Stage of the Agreement by one or more periods up to a maximum of two (2) years. The Council shall approach the Contractor if it wishes to do so before the end of the Acquisition and Management Stage or the end of any such extended Acquisition and Management Stage.
- 2.2 On expiry of the Acquisition and Management Stage, the Agreement will continue through the Management Stage and shall not determine prior to the expiration of the last Headlease that shall be a maximum of three (3) years from the expiry of the Commencement Date, subject to a discretionary extension of six (6) months.
- 2.3 These Conditions will apply throughout both the Acquisition and Management Stage and the Management Stage unless otherwise stated to the contrary.
- 2.4 Conditions 2.1 and 2.2 are subject to the earlier termination of this Agreement pursuant to Condition 11, 25.2, and 46.

3 CHARGES

- 3.1 In consideration of the rights to nominate granted to the Council under Condition 5 the Council agrees to pay to the Contractor, within 30 days of a receipt of a valid invoice from the Contractor, the following sums:-
- 3.1.1 a Nomination Fee as set out in the Pricing Schedule payable, monthly, in arrears in respect of each Rented Unit from whichever is the earlier of;
- 3.1.1.1 the date a Nominee first occupied the Rented Unit; or
- 3.1.1.2 one month after the service of a Vacancy Notice until the date of termination of the Headlease but excluding such periods that the Rented Unit is not available for letting through the fault of the Contractor either by:
- (i) the Contractor failing to serve a Vacancy Notice within a reasonable time of the Rented Unit becoming available for letting; or
 - (ii) the Contractor failing to maintain the Rented Unit in a reasonable state and Condition so that a Nominee could not be expected to take a Tenancy Agreement of that Rented Unit (i.e. being uninhabitable); or
 - (iii) the Contractor failing to surrender or determine a Headlease in accordance with the provisions of this Agreement otherwise than for reasons wholly outside the Contractor's control but for no other reason;
- 3.1.2 if more than five (5) Working Days after receipt of a Vacancy Notice the Rented Unit has not been let as a result of the Council failing or delaying nominations under Condition 5 and the Council has failed to notify the

Contractor within the five (5) Working Days that there is no suitable Nominee; then for each week or part of a week in which the Council has so delayed the Council shall pay to the Contractor a sum per Rented Unit (which is unoccupied as the result of the above) equal to 100% of the rent payable to the headlessor under the Headlease for that Rented Unit.

3.1.3 interest at the rate of 2% above the base lending rate of National Westminster Bank plc from time to time on late payment of any monies due to the Contractor under this Condition 3 calculated on a day to day basis from the date when the sums were due until the date of actual payment such sums of interest to be payable on demand; and

3.1.4 any Value Added Tax where properly payable on any of the sums due under paragraphs 3.1.1, 3.1.2, and 3.1.3 above and such amounts are all exclusive of Value Added Tax which shall be paid by the Council to the Contractor on receipt of a proper VAT invoice addressed to the Council from time to time.

4. HEADLEASES

4.1 The Contractor shall take Headleases as and when requested by the Council in writing on a monthly basis from private owners on leases for terms of 3 years (or longer with the Council's prior written consent) **PROVIDED THAT** the Contractor shall not enter into any new Headlease after the expiry of the Acquisition and Management Stage or extend any existing Headlease so that its termination date ends after the date of the Management Stage and which dwellings and Headleases shall satisfy the following criteria: -

4.1.1 the dwelling is to be situated in the London Borough of Brent or (subject to the Contractor receiving the Council's prior written consent) in any London borough and/or Outer London borough; and

4.1.2 the dwelling will provide suitable accommodation for temporary housing of homeless persons to whom the Council owes a statutory duty; and

4.1.3 each Headlease will contain provisions permitting the Contractor or its successors in title; (a) to terminate the Headlease without penalty on giving one month's written notice; and (b) to renew the Headlease for a further period of 6 months upon giving to the headlessor of the Headlease at least one month's written notice prior to the end of the term of the Headlease, such renewal to be on the same terms and Conditions as the Headlease so far as consistent with a term of 6 months only; and

4.1.4 all necessary consents for and required by the Headleases are obtained.

4.2 Where a Rented Unit is vacant, the Council may serve notice on the Contractor requiring it forthwith to give the headlessor one month's written notice of its wish to terminate the Headlease.

5 NOMINATIONS

5.1 The Contractor grants to the Council the right to nominate persons to a Rented Unit in accordance with the Nomination Procedure at Appendix 3 to the Specification.

- 5.2 The Contractor and the Council shall follow the Nomination Procedure.
- 5.3 The Nomination Procedure shall be repeated until the Rented Unit has been let on a Tenancy Agreement or until the date when the Headlease has no more than six months left to run.

6. THE COUNCIL'S OBLIGATIONS

- 6.1 The Council agrees and undertakes with the Contractor as follows:-
- 6.1.1 that all Nominees shall be persons in respect of which the Council may have a duty as specified in the Housing Act 1996 as amended, the Children Act 1989 (as amended) and the National Assistance Act 1948;
- 6.1.2 to offer to tenant's alternative accommodation where tenants are unable or unlikely to be able to afford rents due under the Rented Units and the Council has a statutory duty to provide accommodation and to notify the Contractor in writing of all offers made at the time of making such offers;
- 6.1.3 to use its reasonable endeavours to ensure that the majority of Nominees occupy the Rented Units for the duration of the term of the Headlease applicable to such Rented Unit; and
- 6.1.4 in the event that a tenant is housed by the Council without the Contractor having been notified, to pay to the Contractor the amount of money due to the headlessor as rent under the Headlease of the relevant Rental Unit from the date that the tenant vacates until:
- (a) the Rental Unit is re-let; or
 - (b) the expiry of the notice period where the Council requests the Contractor to give one months notice of termination of the Headlease,

PROVIDED THAT the Contractor can show that it has complied with Conditions 7.1.5 and 7.1.6 of this Agreement.

7. THE CONTRACTOR'S OBLIGATIONS

- 7.1 The Contractor further agrees and undertakes with the Council as follows:
- 7.1.1 as soon as completing a Headlease or as soon as a dwelling becomes vacant to take all reasonable steps to prepare that Rented Unit so that it is available for occupation at the earliest possible date, in any event no later than the timescales referred to within the Specification;
- 7.1.2 to provide to the Council performance indicators in such form and at such intervals as the Council may reasonably require having regard where applicable to the Council's Customer Charter;
- 7.1.3 to provide to the Council such information in the form set out in **Appendix 5** to the Specification as the Council may reasonably require so as to enable the Council to assess the Contractor's performance of this Agreement;

- 7.1.4 to take all reasonable steps to obtain possession of a Rented Unit upon the original term of the Tenancy Agreement under which the tenant occupies such Rented Unit having expired PROVIDED THAT the Council shall offer accommodation to the tenant where it has a statutory duty to do so;
- 7.1.5 to make quarterly checks by personal inspections of each of the Rented Units to ensure that each Rented Unit is occupied by the Council's Nominee and to notify the Council of any irregularities;
- 7.1.6 to notify the Council 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;
- 7.1.7 to comply with the terms of each Headlease and pay all sums due thereunder promptly; and
- 7.1.8 to carry out the Service during the Term and in accordance with this Agreement in a proper and skillful manner and in accordance with the written instructions of the Authorised Officer.

7.2 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 7.2.1 The Contractor shall adopt safeguarding policies and such policies shall comply with the Council's safeguarding policy for children and vulnerable adults (available on request) as amended from time to time.
- 7.2.2 The Contractor shall ensure that they do not employ or deploy for the provision of the Services under this Agreement any member of staff be it an employee, volunteer or locum who is on the Adults and/or Children's Barred List created pursuant to the Safeguarding of Vulnerable Groups Act 2006.
- 7.2.3 For the avoidance doubt, where it is likely that the Contractor and its staff will come into direct contact and liaison with children/young people and/or vulnerable adults; the Contractor shall be required to ensure its staff have undergone an Enhanced Disclosure and Barring Service check in order to provide the Services to Nominees and/or their Families.
- 7.2.4 At the reasonable written request of the Council and by no later than 10 Working Days following receipt of such request, the Contractor must provide evidence to the Council that it is addressing any safeguarding concerns.
- 7.2.4 If requested by the Council, the Contractor shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan as they relate to the provision of the Service.

8. TERMINATION OF TENANCY AGREEMENT

- 8.1 The Council may (after consultation with the Contractor) serve notice on the Contractor requiring the Contractor to terminate a Tenancy Agreement and seek to repossess a Rented Unit where the Nominee's circumstances are such that the Council no longer has a statutory duty to provide accommodation.

- 8.2 The Contractor may (after consultation with the Council) terminate a Tenancy Agreement and seek to repossess a Rented Unit where the tenant is in breach of the terms of the Tenancy Agreement and/or where the Nominee's circumstances are such that the Council no longer has a statutory duty to provide accommodation and the Contractor is acting in accordance with all relevant legal requirements.

9. INSPECTION

- 9.1 The Contractor shall procure that the Council is allowed access to any Rented Unit for the purposes of inspection upon 10 Working Days notice or within 24 hours where the Council wish to investigate any fraud or without notice in the event of an emergency in accordance with the Specification at **Schedule 1**.

10. THE CONTRACTOR'S RIGHT TO REJECT NOMINATIONS

- 10.1 The Contractor may only reject Nominees in the following specific circumstances acting reasonably:
- 10.1.1 if the circumstances of the Nominee's household have changed since they were last assessed by the Council,
 - 10.1.2 if inaccurate information about the Nominee or the Nominee's household has been provided by the Council,
 - 10.1.3 if new information about the circumstances of the Nominee's household (of which the Council was unaware) comes to light,
 - 10.1.4 if the Contractor reasonably considers that the Nominee has no means to meet the rental commitments,
 - 10.1.5 if the Contractor reasonably considers that the relevant Rental Unit is unsuitable for the Nominee's household. A Rental Unit is defined as unsuitable where the Contractor (acting reasonably) considers that:
 - 10.1.5.1 the Nominee's household is too large for Rental Unit,
 - 10.1.5.2 the Nominees household does require a home as large as the Rental Unit,
 - 10.1.5.3 the Rental Unit is not suitably adapted for the Nominee's household, or
 - 10.1.5.4 the area is unsuitable for reasons of the Nominee's household potentially suffering harassment or violence.
 - 10.1.6 if the Contractor or the Landlord has previously been the landlord of the Nominee and
 - 10.1.6.1 the Nominee has subsequently been evicted, or
 - 10.1.6.2 the Nominee has abandoned the previous property following an issue of a Notice of Seeking Possession for the following reasons:
 - (a) rent arrears,
 - (b) nuisance,
 - (c) harassment,

- (d) violence towards staff/neighbours, or
- (e) damage to the property.

- 10.2 In exceptional circumstances the Contractor may reject a Nominee on grounds other than those specified above in Condition 10.1. However the rejection of a Nominee under this Condition 10.2 must be for specific reasons and will require the approval of the Council.
- 10.3 In the event of rejection of any Nominee proposed by the Council hereunder the Contractor shall notify the Council within one (1) Working Day of such decision and/or property viewing date giving the reasons therefore.

11. TERMINATION

- 11.1 This Agreement shall determine in accordance with Condition 2 unless terminated earlier under this Condition or Condition 25.
- 11.2 This Agreement may be terminated by either Party serving on the other twelve (12) months prior written notice. Immediately after receipt of such notice the Contractor shall not enter into any more Headleases save where there is a contractual obligation to do so in respect of Rented Units and shall take all reasonable steps to determine or surrender all Headleases then in existence as each Rented Unit becomes vacant. The Council will continue to be responsible for complying with its obligations under this Agreement in respect of the unsurrendered or undetermined Rented Unit until such determination or surrender and upon determination or surrender of each Headlease the Council's obligations to pay sums under Condition 3 hereof shall automatically cease in respect of the surrendered or determined Rented Unit but without prejudice to the Council's obligations to pay sums due up to the date of such determination or surrender.
- 11.3 The Contractor may determine this Agreement by service of at least six months' written notice on the Council, expiring on an anniversary of the date hereof, if there have been material changes in primary or delegated legislation affecting the entitlement of Nominees to Housing Benefit so that Nominees will be unable to pay rents due under tenancies PROVIDED THAT in such circumstances the Contractor shall use its reasonable endeavours to safeguard the Council's future right to nominate persons to the Rented Units.
- 11.4 Termination pursuant to Condition 2 of this Agreement shall be without prejudice to the rights and remedies the Council and the Contractor accrued prior to termination and nothing in this Agreement shall prejudice the right of either party to recover any amount outstanding as at the date of such termination.

12. RISK

- 12.1 If the Contractor shall take any action including take a lease of a Rented Unit it shall do so at its own risk and the Council shall not owe any duties to the Contractor in relation to such property save as specifically provided for in this Agreement.

13. HOUSING BENEFIT SERVICE

- 13.1 The Contractor shall liaise directly with the Council's Revenue and Benefits service in relation to any Housing Benefit (or its successor) claims, delay in payment(s) pursuant the prevailing legislation at the time a claim is made and/or payment is due as specifically set out in the Specification.

14. REVIEW

- 14.1 The rates and prices contained in the Pricing Document shall remain fixed for a period of three (3) years from the Commencement Date of the Agreement.
- 14.2 The rates and prices in the Pricing Document will be reviewed three (3) years after the Commencement Date ("the Review Date") and thereafter on the third anniversary of the Review Date in accordance with the Index, unless otherwise agreed, and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the Index for the 12 months immediately preceding Review Date or the subsequent Review Date and such increase or reduction shall take effect in respect of the period commencing on the relevant Review Date.
- 14.2 If the basis of computation of the index shall change, any official reconciliation between the two bases of computation published by the Office of National Statistics (or any government department upon which duties in connection with the compilation and maintenance of the Index have devolved) shall be binding upon the parties and shall be applied in adjusting the application of the Index hereto.
- 14.3 In the absence of such official reconciliation, such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments the decision of the Council shall be final.

15. LIABILITY AND INDEMNITY

- 15.1 The Contractor shall be liable for and shall fully and promptly indemnify and hold harmless the Council, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with:-
- (a) any claims, demands or proceedings brought against the Council by any third party by reason either directly or indirectly of any default of the Contractor; or
 - (b) any fraudulent or negligent act or omission (including, without limitation, any misappropriation of monies properly due to the Council).
- 15.2 Without prejudice to the generality of Condition 15.1 the Contractor's liability to the Council pursuant to Condition 15.1 in respect of the loss of or damage to any property of any nature whatsoever shall include an obligation to reimburse the Council all costs and expenses reasonably incurred by the Council in the

reinstatement or replacement of any such property, whether or not such reinstatement or replacement results in an improvement on or to the property so lost or damaged.

- 15.3 The Contractor's liability to the Council pursuant to Condition 15.1 shall be without prejudice to any other right or remedy available to the Council.
- 15.4 Except as provided by Condition 15.5 the Council shall not under any circumstances be liable to the Contractor whether in contract, tort or otherwise, for any loss, damage or injury however caused or arising out of, or in the course of, or in connection with, the provision by the Contractor of the Services.
- 15.5 Condition 15.4 shall not apply in relation to:
- (a) any failure by the Council to make proper payment to the Contractor in accordance with the terms of the Agreement; and
 - (b) any deliberate or negligent act or omission of the Council or any of its employees and in particular any negligent act or omission giving rise to death or personal injury.
- 15.6 The Council shall not in any event be liable to the Contractor in contract, tort or otherwise for any indirect or consequential loss whatever and however caused.

16. QUALITY ASSURANCE SYSTEMS

- 16.1 The Contractor shall at the Commencement Date and throughout the term of the Contractor have a documented quality assurance policy.
- 16.2 The Contractor shall prior to the Commencement Date operate or be able to demonstrate that they are working towards implementation of a verifiable system that guarantees compliance with a quality system based on the principles laid down in ISO 9000, EN29000 or British Standard 5750 or any other equivalent quality measures. The quality system shall be designed to ensure that the Services are carried out in accordance with the Contractor.
- 16.3 In order to verify the quality system the Contractor shall allow inspection, checking and auditing of the quality system by the Council's nominated officers at all times during normal office hours and upon reasonable prior notice during the term of the Contractor.
- 16.4 In order to verify the quality system the Contractor shall allow access at any time to the Council's nominated officers to either the Contractor's premises to examine, test or check any premises, equipment, documentation or anything else used or associated in connection with the Contractor. the Contractor shall give all reasonable assistance required by the Council's nominated officers in carrying out quality assurance work.
- 16.5 the Contractor shall allow quality assurance disputes during the term of the Contractor, to be referred to the Council's quality assurance officers at the discretion of the Council who may report their findings to both parties. Where the above officers do so report, account should be taken of the findings before the dispute proceeds further.

- 16.6 Where the quality assurance officers are called on to make a report and the Contractor is found to be at fault, the cost of such investigation shall be met by the Contractor.
- 16.7 Unless otherwise stated, the Council's nominated officers and quality assurance officers shall be Trading Standards Officers.
- 16.8 In the event of any reasonable written recommendation concerning the modification of the quality system being made by the Authorised Officer or a nominated officer or quality assurance officer of the Council from time to time, such recommendation shall, as soon as reasonably practicable be incorporated and implemented by the Contractor.

17. SECURITY OF DOCUMENTS AND COUNCIL'S RIGHT OF ACCESS, INSPECTION AND REMOVAL

- 17.1 The Contractor shall act as the bailee of any data of the Council which may at any time be in the Contractor's possession or under its control and shall store such data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as data relating to the Services.
- 17.2 The Contractor shall:
- 17.2.1 comply with its obligations under the Data Protection Act 1998 ("the Act") insofar as performance of this Agreement gives rise to obligations thereunder;
 - 17.2.2 provide the Council with such information as the Council may require to satisfy itself that the Contractor is complying with its obligations under the Act including (but not limited to) a copy of the Contractor's registration under the Act;
 - 17.2.3 ensure that it does nothing which places the Council in breach of the Council's obligations under the Act and for this purpose the Contractor shall at least 7 (seven) days before the Commencement Date inspect the terms of the Council's registration under the Act, a copy of which registration is available for inspection by the Contractor, on reasonable notice, at the Civic Centre; and
 - 17.2.4 in all respects co-operate with the Council so as to enable the Council to comply with its obligations under the Act.
- 17.3 The Contractor shall at all times both during the currency and following termination of this Agreement allow (or procure for) the Authorised Officer (or any person or persons nominated by him) immediate access to and/or a right of entry to any premises in the possession or under the control of the Contractor or any sub-Agreement and in any way relating to or used in connection with the provision of the Services.
- 17.4 The Contractor shall at all times both during the currency and following Termination of this Agreement allow (or procure for) any member of the Council's Internal Audit or any representative of External Audit or any Authorised Officer (or any person or persons nominated by him):

- (a) immediate access to;
- (b) the permission to copy and remove any copies of; and
- (c) (if in the opinion of the Authorised Officer reasonably necessary or appropriate) the permission to remove the originals of any books, records and information in the possession or under the control of the Association or any sub-Agreement and in any way relating to or used in connection with the provision of the Services (including, without limitation, any data and any such information stored on a computer system used by the Association).

17.5 The Contractor acknowledges that the Council is subject to the requirements of the **Freedom of Information Act 2000** ("FOIA") and the **Environmental Information Regulations** ("EIR") and shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements and the Contractor shall:

- (a) transfer a request for information under the FOIA or EIR to the Council as soon as practicable after receipt and in any event within 2 working days of receiving such request;
- (b) provide the Council with a copy of all information in its possession or power in the form that the Council requires within 5 working days of the Council requesting the information;
- (c) provide all necessary assistance as reasonably required by the Council to enable the Council to respond to the request within the time for compliance specified in the FOIA or EIR.

18. PREVENTION OF FRAUD

18.1 Solely for the purposes of the prevention of fraud the Contractor shall permit the Council to have access to its tenancy files where the same relate to the Nominees and the Rented Units.

18.2 The Contractor shall be required to adhere to the Bribery Act 2010 and not commit any acts hereunder that would constitute an offence under the act.

19. AUTHORISED OFFICER

19.1 The Authorised Officer shall be the Council's Operational Director of Housing and Employment or such representative appointed by the Council from time to time to act in the name of the Council for any or all of the purposes of the Contract.

19.2 The Council shall immediately give notice in writing to the Contractor of the replacement of any Authorised Officer or if any person ceases to be the Authorised Officer.

19.3 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods.

Immediately any such appointment is made, the Authorised Officer shall notify the Contractor, in writing.

20 COMPLAINTS IN RESPECT OF SERVICE PROVISION

- 20.1 The Contractor shall at the request of the Authorised Officer, at such place and in such form as approved by the Authorised Officer, arrange for notices to be permanently displayed giving information as to how complaints about the provision of the Service may be made in any event adhering to the policy contained within Appendix 4 of the Specification.

21. GRATUITIES

- 21.1 The Contractor shall not, whether itself, or by any person employed by it to provide the Service, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Service other than charges properly approved by the Council in accordance with the provisions of the Contract.

22. CONTRACTOR'S WARRANTIES & UNDERTAKINGS

- 22.1 The Contractor, from the Acceptance Date and throughout the Term warrants and represents to and undertakes with the Council that
- 22.1.1 it has in all respects complied with the Tendering Instructions and in particular (but without prejudice to the generality of the foregoing) that it has not done any of the acts or matters referred to prohibiting a bidder to be considered as set out in the Tendering Instructions;
 - 22.1.2 it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract including the Form of Tender, the Specification, the Pricing Document and these Conditions and that it has not submitted the Form of Tender and has not entered into this Contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council;
 - 22.1.3 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Contractor in connection with or arising out of the Form of Tender are true, complete and accurate in all respects;
 - 22.1.4 it has full power and authority to enter into the Contract and thereafter to perform the Service;
 - 22.1.5 it is of sound financial standing and the Contractor is not aware of any circumstances (other than such circumstances as expressly disclosed by the Contractor when submitting its Form of Tender) which may adversely affect such financial standing in the future;

22.1.6 it has or has made arrangements to ensure that it will have sufficient working capital, skilled staff, equipment, machinery and other resources available to it in order to carry out the Service in accordance with the Contract Standard;

22.1.7 it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Service and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Service; and

22.1.8 it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Service so as to assess the full scope and volume of the work involved in performing the Service to the Contract Standard.

22.1.9 it shall not discriminate, in the provision of the Services, on the basis of race, sexual orientation, gender or religion so as to be in breach of the Equality Act 2010.

22.2 The Contractor shall:

22.2.1 alert the Council to the risk or the existence of any reason which may prevent the Contractor from performing the Service as required either in part or at all (the "**Cause of Default**") as long in advance, as soon and as fully as reasonably practicable in the circumstances; and

22.2.2 as soon as reasonably practicable in the circumstances

(a) submit to the Council for its approval written recommendations suggesting ways to; and

(b) take all such steps as the Council may have approved or directed in order for the Contractor to avoid, either partially or entirely, and/or mitigate any loss or damage to the Council arising out of any Cause of Default as soon as reasonably practicable,

and (for the avoidance of doubt) any failure strictly to comply with the provisions of this Condition 22 shall in itself constitute a Performance Default.

23. INSURANCE

23.1 Without prejudice to The Council's rights under the Contract, the Contractor shall throughout the Contract Period take out and maintain with reputable insurers such policies of insurance as may be necessary to insure the Contractor against all manner of risks that might arise in connection with the Contractor's performance of its obligations under the Contract including (without limitation) in respect of the following risks:

23.1.1 **public liability**; such insurance cover shall be not less than £5 million in respect of any one incident; and

23.1.2 **buildings insurance**; such insurance cover being suitable to cover all costs of a potential re-build and/or substantial refurbishment; and

23.1.3 such other risks as may from time to time be required by the Council

and the Contractor's insurance policies effecting such cover shall have the interest of the Council noted on them.

- 23.3 The Contractor shall prior to the Commencement Date and on request submit to the Authorised Officer a copy of the then current insurance, together with documentary evidence in the form of premium receipts that such Insurance remains properly maintained.

24. EVIDENCE IN CONNECTION WITH LEGAL PROCEEDINGS

- 24.1 If requested to do so by the Authorised Officer, the Contractor shall provide to the Authorised Officer any relevant information in connection with any legal inquiry or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Service. The Contractor immediately upon becoming aware of the same shall notify the Authorised Officer of any accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Service.
- 24.2 Where the provision of any assistance under this Condition 24 is required in relation to a matter which has arisen after the Commencement Date the Contractor shall provide such assistance free of charge.
- 24.3 Where the assistance is required in relation to any matter which arose prior to the Commencement Date the Contractor shall be entitled to claim from the Council its reasonable costs.

25 PERFORMANCE DEFAULTS AND REMEDIES

- 25.1 If the Contractor commits a Performance Default the Authorised Officer may (without prejudice to any other rights or remedies available to the Council hereunder) serve notice on the Contractor ("**Default Notice**") requiring the Contractor to remedy such Performance Default within a reasonable period taking into account the nature of the Performance Default; such Default Notice will document the action plan required in order to remedy such Performance Default ("**the Remedial Period**"). For the avoidance of doubt, a Performance Default will include a failure to remedy as required by this Condition 25.1
- 25.2 If the Contractor fails to remedy the Performance Default within the Remedial Period the Council may, without determining the whole Agreement, determine the Agreement in relation to the entering into of Headleases and/or subject to Condition 25.3 where the Council has to re-house any Nominee or provide alternative temporary accommodation, the Council shall be entitled to deduct from the next invoice due sum(s) representing liquidated damages as stated in the Specification, to cover the Council's costs hereunder.
- 25.3 For the purposes of Condition 25.2, a Performance Default shall cover the relevant events referred to in sections 2.2 - 2.5 of the Nominations Procedure attached to the

Specification as Appendix 3, which will entitle the Council to make the relevant deductions following the issue of a Default Notice.

26. RIGHT OF SET-OFF

- 26.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time afterwards may become due to the Contractor under this Contract or any other contract between the Contractor and the Council.

27. CONFIDENTIALITY & ANNOUNCEMENTS

- 27.1 Without prejudice to Condition 27.2, each Party shall both during the currency of the Contract and at all times following termination keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) save as provided by the Contract any confidential information about the business of and/or belonging to the other Party which has come to its attention as a result of or in connection with the Contract, in particular (but without prejudice to the generality of the foregoing) confidential information relating to the Service PROVIDED THAT this obligation shall not relate to any such information which:

27.1.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenantor or any other person to whom the Covenantor is permitted to disclose such information under the Contract); or

27.1.2 is required to be disclosed by law; or

27.1.3 was already in the possession of the other Party (without restrictions as to its use) on the date of receipt.

- 27.2 the Council shall be entitled to use or disclose any confidential information about:

27.2.1 the business of and/or belonging to the Contractor to any other contractor, insofar as this may be reasonably necessary, appropriate or conducive to the performance or provision by such other contractor of any services whatsoever for or to the Council; and

27.2.2 the content or operation of the Contract and/or the performance of the Service by the Contractor or otherwise, insofar as the Council may regard this as being reasonably necessary, appropriate or conducive to the discharge of the Council's functions.

Any disclosure will be notified to the Contractor with reasons.

- 27.3 The Contractor shall forthwith upon the request of the Council enter into a mutual confidentiality undertaking

27.3.1 with such other Contractor of the Council;

and

27.3.2 in such a form and in such a manner

as the Council may in its discretion consider necessary, appropriate or conducive to the performance or provision by the Contractor and any such other contractor of any services whatsoever (including, without limitation, the Service) for or to the Council.

27.4 The Contractor shall not make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of the Contract or the matters contained therein without obtaining the Council's prior approval as to the contents thereof and the manner of its presentation and publication.

28. RECORDS

28.1 Copyright and all other Intellectual Property rights in the Records shall belong to the Council and any documentation, data or other information produced by the Contractor as part of the Service shall belong to the Council.

28.2 The Contractor acknowledges that the Records shall belong to the Council and except as required by law shall not be used by the Contractor or accessed by any of its employees, for any purpose other than as strictly necessary to provide the Service to the Council. The Records or any part of them shall not be disclosed to any third party by the Contractor. The Contractor shall ensure that any of its employees, involved in providing the Service are bound by an undertaking in substantially the same terms.

28.3 The Contractor shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of Records irrespective of the storage media which are under the Contractor's management as part of the Service and shall notify the Authorised Officer of the security safeguards implemented. Such safeguards shall include an obligation on the Contractor to ensure that access to Records are only obtained by such personnel of the Council as may be specifically designated by the Authorised Officer. Any Records that are destroyed, lost or altered without authority shall be reinstated without delay.

28.4 The Contractor shall maintain current, accurate and adequate records and shall ensure that any request by the Authorised Officer for a transfer or copy of all or part of the Records shall be complied with within one working day free of charge.

28.5 If Records are accidentally or wilfully destroyed or an unauthorised alteration is made in the event that the Contractor does not reinstate such Records within one working day of receipt of a notice from the Authorised Officer, then without prejudice to the Council's other rights at law the Contractor shall reimburse the Council's reasonable costs in restoring such Records.

28.6 The Contractor shall permit or procure permission for any authorised representative of the Authorised Officer to have access upon reasonable prior notice to the Contractor's premises and any other site at which Records are stored at any time to inspect the arrangements being maintained by the Contractor to provide the Service. There shall be no right for the Council to inspect any information not directly relating to the Council and if inadvertently any such information is inspected by any authorised representative of the Council under this Condition it shall be treated as strictly confidential.

29. NOTICES

29.1 Any notice to be served under this Agreement shall be given in writing and

29.1.1 If to be served upon the Council shall be delivered by hand or sent by facsimile transmission or first class pre paid recorded delivery post to the Council's Authorised Officer's Representative at:

London Borough of Brent,
Operational Director of Housing and Employment,
Brent Civic Centre
Engineers Way,
Wembley
HA9 0FJ

Facsimile Number – 020 8937 XXXX

The notice shall be marked for the attention of XXXXXX (the Authorised Officer's Representative).

29.1.2 If to be served upon the Contractor shall be delivered by hand or sent by facsimile transmission or first class pre paid recorded delivery post to the Contractor's Representative at

The notice shall be marked for the attention of XXXXXX, Business Development Officer (the Contractor's Representative)

29.1.3 Any notice served by first class post shall be deemed to be served on the second Working Day after the date of posting

29.1.4 Any notices delivered by hand or sent by facsimile transmission shall if delivered by hand or sent by facsimile transmission before 4.00 p.m. on any Working Day be deemed to be served on that day or otherwise shall be deemed served on the next following Working Day.

29.2 Either Party may change its address for service by serving a notice in accordance with these Conditions

30. TUPE

30.1 It is acknowledged by the Contractor and the Council that TUPE applies to the provision of the Services by the Contractor. In accordance with the provisions of TUPE the Transferring Employees shall become employees of the Contractor with effect from the Commencement Date on the same terms and conditions as those employees enjoyed with their former employer.

30.2 It is acknowledged by the Contractor and the Council that TUPE may apply upon expiry or termination of the Agreement for any reason. The Contractor shall within 5 working days of the Council's request, provide a list of employee details for all employees 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.

- 30.3 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:
- 30.3.1 all claims, costs, expenses, damages, compensation, fines and other liabilities resulting from a cause of action prior to the date of transfer; and
 - 30.3.2 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.
- 30.4 For the avoidance of doubt, breach of this Condition 30 shall be regarded as a serious and fundamental breach of the Agreement entitling the Council to immediately terminate the Agreement by written notice.

31 DISPUTE RESOLUTION

- 31.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this 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 [those persons identified in Condition 29 above.
- 31.2 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.
- 31.3 If the dispute cannot be resolved by the Parties pursuant to Clause 31.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 31.5 unless:
- (a) the Council considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Contractor does not agree to mediation.
- 31.4 The obligations of the Parties under this 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 this Agreement at all times.
- 31.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

- .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;
 - .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;
 - .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;
 - .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;
 - .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
- 31.6 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.

32. COSTS

- 32.1 The Parties to this Agreement shall pay their own costs and expenses incurred in relation to the negotiation preparation and execution of this Agreement

33. FURTHER ASSURANCES

- 33.1 Each party to this Agreement

33.1.1 undertakes with the others to do all things reasonably within its power which are necessary or desirable to give effect to the terms or spirit of this Agreement

33.1.2 shall and shall use their reasonable endeavours to procure that any third party shall execute and perform all such further documents acts and things as may be necessary to carry the provisions of this Agreement into full force and effect

34. VARIATION

- 34.1 No variation of this Agreement shall be valid or effective unless made in writing and signed by all the Parties to this Agreement by a duly authorised signatory

35. PARTNERSHIP

- 35.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties to this Agreement and no party shall have any authority to bind any other party in any way

36. ENFORCEABILITY

- 36.1 The illegality invalidity or unenforceability of any part of this Agreement shall not affect the legality validity or enforceability of the remainder and the illegal invalid or unenforceable provision(s) shall be deemed to be severed from the remainder of this Agreement

37. DATA PROTECTION

- 37.1 For the purposes of this **Condition 37**, the terms "Data Controller", "Data Processor", "Data Subject" "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the Data Protection Act 1998 ("the DPA").
- 37.2 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.
- 37.3 Notwithstanding the general obligation in Condition 37.2, where the Contractor is Processing Personal Data as a Data Processor for the Council the Contractor shall:-
- .1 Process the Personal Data only in accordance with instructions from the Council as set out in this DPS Agreement or as otherwise notified by the Council;
 - .2 comply with all applicable laws;
 - .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 DPS Agreement;
 - .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;
 - .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;

- .6 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Council;
 - .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; and
 - .8 co-operate with the Council to enable the Council to comply with any request under section 7 of the DPA.
- 37.4 notify the Council within five 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.
- 37.5 The provisions of this Condition 37 shall apply during the Term and indefinitely after its expiry.

38. WAIVER

- 38.1 Failure by either party at any time to enforce the provisions of the Contract or to require performance by the other party of any of the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part of it or the right to enforce any provision in accordance with its terms.

39. ENTIRE AGREEMENT

- 39.1 The Contract constitutes the entire agreement of the parties as to the subject matter hereof and supersedes all previous agreements and understandings (if any) between the parties with respect thereto.

40. INCONSISTENCY

- 40.1 In the case of any inconsistency between the provisions of the Specification and the provisions of these Conditions, the provisions of these Conditions shall prevail. If there are any ambiguities or discrepancies within these Conditions or the Specification the Contractor shall bring them to the attention of the Authorised Officer whose written clarification and instructions shall be issued to the Contractor and shall be final.

41. SEVERANCE

- 41.1 In the event of any provision of the Contract being or becoming legally ineffective or unenforceable either in its entirety or in part this shall be without prejudice to the validity of and shall not invalidate the remaining provisions of this agreement which shall remain in full force and effect.

42. LAW & JURISDICTION

- 42.1 The Contract shall be governed by and construed in accordance with the Laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

43. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 43.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the Parties to this Agreement do not intend that any Third Party should have any rights in respect of this Agreement by virtue of that Act.

44. BEST VALUE

- 44.1 The Council is subject to the duty of Best Value under the Local Government Act 1999. The Contractor shall assist and co-operate with the Council in this duty and in all other subsequent performance duties imposed by legislation on the Council.

45. ASSIGNMENT & SUB-CONTRACTING

- 45.1 The Council shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Contractor.
- 45.2 The Contractor shall not:
- 45.2.1 assign or charge the Contract or any part of it or the benefit or advantage of the Contract or any part of it;
 - 45.2.2 sub-contract the provision of the Service or any part of it to any person without the previous written consent of the Council, which consent shall be in the discretion of the Council and if given, shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees or agents in all respect, as if they were the acts, defaults or neglect of the Contractor.
- 45.3 In the event of a sub-contractor appointed under 45.2.2 above failing to perform entirely to the Contract Standard, the Council may in its absolute discretion require their removal from performance of the Contract. This right shall be without prejudice to any other remedies the Council may have against the Contractor or the sub-contractor.

46. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

- 46.1 The Council may terminate the Agreement by notice in writing with immediate effect where:

- 46.1.1 the Contractor undergoes a change of control, within the meaning of section 449 - 451 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Agreement; or
 - 46.1.2 the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
 - 46.1.3 the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
 - 46.1.4 where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended); or
 - 46.1.5 any similar event occurs under the law of any other jurisdiction.
- 46.2 The Contractor shall notify the Authorised Officer immediately when any change of control occurs. The Council may only exercise its right under Condition 46.1.1 within six months of:
- 46.2.1 being notified that a change of control has occurred; or
 - 46.2.2 where no notification has been made the date that the Council becomes aware of the change of control;
- but shall not be permitted to do so where an Approval was granted prior to the change of control of the Contractor.
- 46.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of the Mental Capacity Act 2005, the Council shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor's Representative with immediate effect.

IN WITNESS whereof the Parties have executed this Agreement as a Deed on the date set out at the beginning of this Deed.

EXECUTED as a Deed by)
 affixing the Common Seal of **THE**)
MAYOR AND BURGESSES OF)



THE LONDON BOROUGH OF)
BRENT in the presence of:)

Authorised Signatory

EXECUTED as a DEED by)
affixing THE COMMON SEAL of)
"CONTRACTOR NAME" in the)
presence of:-)

Member of the Committee:

Secretary:

Or

SIGNED as a DEED by)
"CONTRACTOR NAME" of the)
Committee and its Secretary or)
two Members of the Committee.)

) Signature: -----

) Member of the Committee: -----

) Signature: -----

Member of the Committee/Secretary:-----

In the presence of:

Witness name:

Address:

.....

**SCHEDULE 1
SPECIFICATION**



**SCHEDULE 2
CONTRACTOR'S METHOD STATEMENTS/TENDER SUBMISSION**

**SCHEDULE 3
PRICING SCHEDULE**