

## Response to Request for Information

Reference      FOI 000907  
Date            22 February 2017

### ***TMA Contracts and LOBO Loan Brokerage***

#### **Request:**

1. Please provide un-redacted copies of the tender specifications, assessment notes and awarded TMA contracts for 'Treasury Management Advice' (TMA) services, tendered by council between 2002-2015.

We can confirm that the department holds information that you have asked for however, please find attached redacted contract as the information contained in the un-redacted contract is exempt from disclosure under Section 43 of the Freedom of Information Act.

In respect of information relating identities and contact details of lender employees and also signatures of all involved, involved in this process, the Council considers that this meets the definition for personal data set out in Section 1(1) of the Data Protection Act 1998 ("DPA") as:

*"data which relate to a living individual who can be identified - (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual"*

The Council thus considers that the requested information is caught by the exemption to disclosure contained in Section 40 (2) of the Act and the related first condition of Section 40 (3).

To explain further, a disclosure made under the provisions of the Act is judged to be a disclosure to the wider world and here the Council must consider disclosure of personal information in line with the provisions of the DPA.

In this instance it is judged that the personal information relating to individuals involved is being processed by the Council for the purposes of loan arrangement and not for any wider disclosure purposes.

Individuals involved, with the exception of named senior Council officers would also have no reasonable expectation that their details would be disclosed to the world-at-large.

Any disclosure of this information would be judged in this instance to breach DPA principles, notably the first principle – that of fair and lawful processing and the second principle-that of processing for specified and not-incompatible purposes. The information has therefore been redacted.

Certain agreements also contain lender bank account details which have, been redacted.

The Council will not be making disclosure and is of the view that the disclosure of this information would be likely to prejudice the commercial interests of and individual lending organisations taking part in the process, exposing them to the danger of financial fraud and that Section 43 (2) of the Act is engaged, where disclosure would, or would be likely to prejudice the commercial interests of any person.

In applying this exemption the Council has balanced the public interest in withholding the information against the public interest in disclosure.

In the case of the above cited information, the Council considers that the public interest in withholding this information to protect the integrity of lending organisations financial security outweighs the benefits of demonstrating openness and transparency of process.

This includes the specifications for 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2017. We cannot provide assessment notes as these are confidential. The only other record of a contract the Council holds is for 1 November 2009 to 31 October 2012 which was extended to 31 December 2014. There is no copy of the contract held but the specification and the signed extension form are attached.

2. Additionally, please provide payment records, notes and receipts for TMA annual fees, and LOBO loan brokerage commission and/or applicable restructuring fees over this period.

Please see table below of an extract of the Council's general ledger showing the payments made for the Treasury Management Advice contract from 2004 to 2015/16. The archiving facility for the general ledger does not go as far back as 2002.

With regard to LOBO loan brokerage commission and/or applicable restructuring fees please refer to FOI 061563, link provided below:

<http://www.wolverhampton.gov.uk/CHttpHandler.ashx?id=12393&p=0>

3. Finally, please confirm (providing records) of each occasion Councils Treasury Management Advisor(s) sought and received formal approval from the council, to vary LOBO brokerage commission fees from the flat rate set out in the TMA contract and standard "terms of business."

Please refer to following link:

<http://www.wolverhampton.gov.uk/CHttpHandler.ashx?id=12393&p=0>

### Extract of general ledger for Treasury Management Advice contract – payments 2004/05 to 2015/16

Financial Year	Financial Week No.	Scheme Code	Detail Code	Description	Main Sub Description	Scheme Description 1	Document Reference	Trail	Feeder Code	Source Code	Actual	Invoice covered
												£
2004	7	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	BTT03607	6406 SECTOT TREASURY SERV	JRN	08	8,750.00	01/11/03 - 30/04/04
2004	32	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/90278248	ORN	07	8,750.00	01/05/04 - 31/10/04
2004	38	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	BTT03638	6732 SECTOR TREASURY SERV	JRN	08	7,500.00	01/11/04 - 30/04/05
												25,000.00
2005	11	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	BTT03611	7023 SECTOR TREASURY SERV	JRN	08	7,500.00	01/05/05 - 31/10/05
2005	35	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/90506221	ORN	07	7,875.00	01/11/05 - 30/04/06
												15,375.00
2006	8	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/90629764	ORN	07	7,875.00	01/05/06 - 31/10/06
2006	36	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/90758361	ORN	07	8,269.00	01/11/06 - 30/04/07
												16,144.00
2007	11	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/90909635	ORN	07	8,269.00	01/05/07 - 31/10/07
2007	38	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91059598	ORN	07	8,269.00	01/11/07 - 30/04/08
												16,538.00
2008	10	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91194816	ORN	07	8,682.50	01/05/08 - 31/10/08
2008	35	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91313961	ORN	07	9,116.50	01/11/08 - 30/04/09
												17,799.00
2009	12	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91450819	ORN	07	9,116.50	01/05/09 - 31/10/09
2009	33	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91573059	ORN	07	1,519.42	01/11/09 - 30/11/09
2009	36	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91595069	ORN	07	1,519.00	01/12/09 - 31/12/09
2009	48	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91643791	ORN	07	7,500.00	01/01/10 - 30/06/10
												19,654.92
2010	19	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91796241	ORN	07	7,500.00	01/07/10 - 31/12/10
2010	46	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FPT/91954387	ORN	07	7,777.50	01/01/11 - 30/06/11
												15,277.50
2011	20	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FCO/92137343	ORN	07	8,104.16	01/07/11 - 31/12/11
2011	47	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	FCO02346	FCO/92353373	ORN	07	8,274.34	01/01/12 - 30/06/12
												16,378.50
2012	19	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	FCO02436	FCO/92567637	ORN	07	8,104.16	01/07/12 - 31/12/12
2012	47	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FCO/92820884	ORN	07	8,322.97	01/01/13 - 30/06/13
												16,427.13
2013	19	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	NOORDER	FCO/93090053	ORN	07	8,322.97	01/07/14 - 31/12/14
2013	49	M140APS1	3600	Treasury Management .3	Management Charges	Advanced Payment Scheme	FCO02688	FCO/93476927	ORN	07	8,659.25	01/01/14 - 30/06/14
												16,982.22
<b>Total</b>											<b>175,576.27</b>	

Financial Year	Value Date	Cost Centre	Account Code	Cost Centre Description	Account Code Description	Order Number	Invoice Number	Trans Type	Actual	Invoice covered
										£
2014	09/07/2014	G10591	R4400	Treasury Management	Services - Professional Fees	16008420	93763550		8,489.50	01/07/14 - 31/12/14
2014	29/01/2015	G10591	R4400	Treasury Management	Services - Professional Fees	16019640	6002000107		16,000.00	01/01/15 - 31/12/15
										24,489.50
2015	01/01/2016	G10591	R4400	Treasury Management	Services - Professional Fees	16040237	6002002008		16,500.00	01/01/16 - 31/12/16
										16,500.00
<b>Total</b>										<b>40,989.50</b>

# Wolverhampton City Council



## **Contract for** Treasury Management Services

**BETWEEN**

**WOLVERHAMPTON CITY COUNCIL  
AND  
CAPITA TREASURY SOLUTIONS LIMITED**

Date: 8 December 2014

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COMMERCIAL - IN - CONFIDENCE

This Contract is entered into as of the first day of January 2015

**BETWEEN**

**WOLVERHAMPTON CITY COUNCIL** (Including its employees and agents) whose office is at Civic Centre, St Peter's Square, Wolverhampton, WV1 1RG (which is hereinafter called the "Council")

and

Capita Treasury Solutions Limited whose registered office is at 71 Victoria Street, Westminster, London, SW1H 0XA. Company Reg. No. 2652033 (hereinafter called the "Supplier")

**WHEREAS**

the Council requires the Supplier to carry out the following: **Treasury Management Services** (hereinafter called the "Services")

**NOW IT IS HEREBY AGREED** that

This Contract shall consist of the following parts and in the event of conflict between the documents forming this Contract they shall take precedence over each other in the order listed.

- (1) Annex 1 - General Conditions of Contract
- (2) Annex 2 - Schedule of Rates and Prices
- (3) Annex 3 - Specification
- (4) Annex 4 - Suppliers Response to Specification
- (5) Annex 5 - Key Performance Indicators
- (6) Annex 6 - Form of Quotation
- (7) Annex 7 - Supplier Details
- (8) Annex 8 - Clarifications

The Supplier shall carry out and complete the Services and the Council will pay to the Supplier such sums as shall become due in accordance with this Contract.

This Contract shall expire on 31 December 2017.

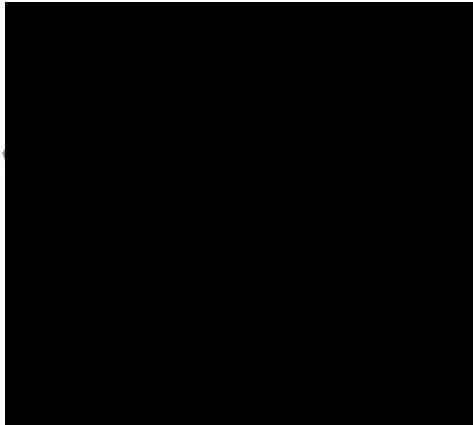
**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first above when written

**EXECUTED AS A DEED** (but not delivered until the date thereof) by affixing the Common Seal of **Wolverhampton City Council** in the presence of:

738/15

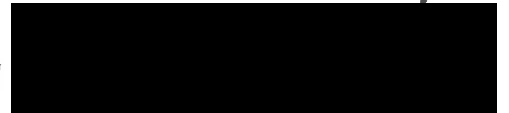
Signature:

Authorised Officer

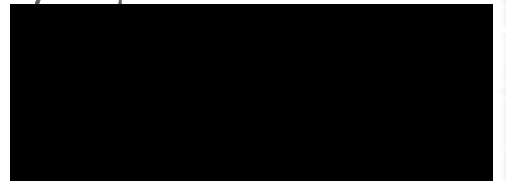


**EXECUTED AS A DEED**  
by Capita Treasury Solutions Limited

Director:



Director/Secretary:



# ANNEX 1 – GENERAL CONDITIONS OF CONTRACT

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These terms and conditions govern the Provider's provision of Services to the Council and are incorporated into the Contract.

## 1 Interpretation

1.1 In these Conditions, the following definitions apply:

**Acceptance Criteria:** any criteria with which any Deliverables must comply as set out in the Purchase Order or the Specification or evidenced by written agreement between the parties.

**Annex:** any of the following annexes (if used): Annex 2 – Schedule of Rates and Prices; Annex 3 – Specification; Annex 4 – Suppliers Response to Specification; Annex 5 – Key Performance Indicators; Annex 6 – Form of Tender; Annex 7 – Supplier Details; Annex 8 – Clarifications.

**Applicable Law:** the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services from time to time.

**Best Value Duty:** the duty on local authorities to provide best value and to provide services efficiently, effectively and economically and to strive for constant improvement of all services as set out in the Local Government Act of 1999 and the Local Government Act of 2000 and any similar duty.

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**Charges:** the charges for the Services referred to in Condition 13 and set out in the Purchase Order.

**Codes of Practice:** the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records Issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance Issued in relation to the Council's FOIA obligations, as amended, updated and replaced from time to time.

**Conditions:** these terms and conditions, including any Annexes.



**Confidential Information:** all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by the Council or its Representatives to the Provider or its Representatives, including any information which is marked confidential or private and any information relating to the Council's members, customers, clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property.

**Contract:** the contract between the Council and the Provider for the provision of the Services comprising the Purchase Order and these Conditions.

**Council:** Wolverhampton City Council whose office is at Civic Centre, St Peter's Square, Wolverhampton, WV1 1RG.

**Council Materials:** shall have the meaning given in Condition 4.1.4.

**Council Representative:** any individual named as such in the Purchase Order or such person or persons as notified to the Provider by the Council in writing from time to time.

**Data Protection Law:** the Data Protection Act 1998, all related and subordinate legislation and any guidance or codes of practice issued by the Information Commissioner.

**Deliverables:** all products of the Services (whether tangible or not), including Documents and data (and drafts of either) and the media on which they are recorded.

**Delivery Location:** the address specified by the Council in the Purchase Order where the Services are to be performed. Where no address is specified, the Services shall be performed at Wolverhampton City Council, Civic Centre, Wolverhampton, WV1 1RG.

**Document:** Includes any document in hard or electronic copy.

**Effective Date:** the date(s) on which the Services (or any part of the Services), transfer from the Authority to the Service Provider or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-Contractor.

**Employment Checks:** means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.

**Employment Liabilities:** all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Employment Liability Information:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**EIR:** 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.

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under the 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.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property Rights:** all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets).

**Public Body:** any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

**Purchase Order:** the written order from the Council for Services incorporating or attached to these Conditions or an order made through Agresso.

**Premises:** any premises owned, leased to, controlled or occupied by the Council or its Representatives which are made available for use by the Provider or its Representatives for the delivery or performance of the Services.

**Provider:** the person, firm or company supplying the services and to whom the Purchase Order is addressed.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Replacement Service Provider:** any third party supplier of Replacement Services appointed by the Council from time to time.

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those

services are provided by the Council Internally or by any Replacement Service Provider.

**Representatives:** employees, officers, agents, advisors, sub-contractors, suppliers or other representatives.

**Request for Information:** a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.

**Services:** the services provided or to be provided by the Provider under the Contract as set out in the Purchase Order and/or Specification including the Deliverables.

**Services Provider's Final Staff List:** the list of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Service Provider's Provisional Staff List:** the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-Contractor to the Council or any Replacement Service Provider.

**Specification:** any description of the Services (including any Deliverables to be produced) set out in Annex 4.

**Staffing Information:** In relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Transferring Employees:** employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE.

**TUPE:** Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and any successor legislation.

- Variation:** shall have the meaning given in Condition 5.1.
- 1.2 In these Conditions, the following rules of Interpretation apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2 a reference to a party includes its successors or permitted assigns;
  - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted;
  - 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.
- 1.3 In the event of any inconsistency or conflict between any Purchase Order and these Conditions, these Conditions shall prevail.
- 1.4 In the event of any inconsistency or conflict between any Annex and these Conditions, the Annex shall prevail.

## **2 Formation of Contract**

- 2.1 The Contract shall come into existence and take effect on the 1 January 2015 and shall remain in full force and effect until:
- 2.1.1 31 December 2017
  - 2.1.2 Or until either:
    - 2.1.2.1 the parties have discharged all their obligations under it (at which point it shall expire); or
    - 2.1.2.2 it is terminated in accordance with these Conditions.

(whichever occurs the earliest).

- 2.2 These Conditions apply to the supply of the Services to the exclusion of any other terms that the Provider may seek to impose or incorporate (including any standard trading terms of the Provider), or which are implied by trade, custom, practice or course of dealing.

## **2 Provider's warranties**

- 2.1 The Provider shall provide the Services specified in the Purchaser Order and/or the Specification in accordance with these Conditions.
- 2.2 The Provider warrants that:
- 2.2.1 it will meet any dates set out in the Purchase Order or Specification for the delivery of the Deliverables or the performance of the Services or (where no dates are so specified) then the Provider perform the Services (any delivery any Deliverables) within a reasonable time;

- 2.2.2 the design, construction and quality of Deliverables and the method and quality of performance of the Services will comply in all respects with all relevant requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided;
- 2.2.3 it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
- 2.2.4 it will not do or omit to do anything which may cause the Council to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs;
- 2.2.5 its Representatives will behave in a polite and courteous manner at all times when on the Premises;
- 2.2.6 the Services will conform as to their quantity, quality and description with the Purchase Order or Specification, including with all Acceptance Criteria;
- 2.2.7 the Services will be fit for any purpose and meet any standard or performance levels set out in the Purchase Order or Specification or which can reasonably be expected for Services of the type in question;
- 2.2.8 the Services will conform to any literature or description supplied by the Provider to the Council prior to the issue of the Purchase Order;
- 2.2.9 it will perform the Services with all reasonable care, skill and diligence and in accordance with best practice in the Provider's industry, profession or trade;
- 2.2.10 it will use personnel to provide the Services who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all of its obligations in accordance with the Contract;
- 2.2.11 it will use the best quality goods, tools, materials, standards and techniques in performing the Services;
- 2.2.12 its Representatives will comply with all of the Council's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Provider (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises; and
- 2.2.13 (without prejudice to the generality of the foregoing warranties) to the extent that Deliverables are in physical or tangible form, they will:
  - 2.2.13.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose;
  - 2.2.13.2 be of sound materials and workmanship;

- 2.2.13.3 be free from defects in design, materials and workmanship; and
- 2.2.13.4 be equal in all respects to the examples, samples, patterns or specifications provided or given by the Council.

2.2.14 its Representatives will comply with all of the Council's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Provider (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises.

### **3 Provider's general undertakings**

#### **3.1 The Provider undertakes to:**

- 3.1.1 provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Services;
- 3.1.2 co-operate with the Council and any third party nominated by the Council in all matters relating to the Contract;
- 3.1.3 comply with all reasonable instructions of the Council;
- 3.1.4 hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Provider ("Council Materials") in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- 3.1.5 promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the performance of the Services and leave the Premises in a clean and tidy condition, failing which the Council may dispose of them and make good the Premises at the expense of the Provider;
- 3.1.6 use all reasonable endeavours to transfer to the Council the benefit of any warranty or guarantee given by the manufacturer of any goods contained in the Deliverables of which the Provider is not the manufacturer;
- 3.1.7 notify the Council as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware; and
- 3.1.8 it will comply with the International Financial Reporting Standard for Small and Medium-sized Entities (SMEs) and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

#### **4 Variation of the Services**

- 4.1 The Council reserves the right on giving written notice to the Provider from time to time to require changes to the Services (including by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reason whatsoever. Such a change is hereinafter called "a Variation".
- 4.2 In the event of a Variation the Charges may also be varied. Such variation in the Charges shall be calculated by the Council and agreed in writing with the Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- 4.3 The Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

#### **5 Provider's personnel**

- 5.1 The Council reserves the right:
  - 5.1.1 to refuse to admit to the Premises and to require the Provider to replace with another suitably qualified person any Representative of the Provider whose admission would in the reasonable opinion of the Council be undesirable; and
  - 5.1.2 to request the replacement of any Representative of the Provider who in the Council's reasonable opinion is not suitably qualified or experienced to perform the Services.
- 5.2 Where any Representative of the Provider is named on the Purchase Order or in the Specification as fulfilling a specific role in connection with the performance of the Services, the Provider will use all reasonable endeavours to ensure that the named Representative continues to fulfil the specified role and will not replace him or her without the Council's written consent, such consent not to be unreasonably withheld.
- 5.3 If reasonably so requested by the Council and subject to compliance by both parties with Data Protection Law, the Provider shall promptly provide a list of the names and addresses of all persons who may at any time require admission to the Premises in connection with the performance of the Services, specifying the role in which each such person is concerned with the Provider and giving such other particulars as the Council may require.

#### **6 Testing and acceptance of Deliverables**

- 6.1 All Deliverables must meet any relevant Acceptance Criteria.
- 6.2 The Council may test Deliverables at any time during the period of 15 Business Days following notification by the Provider of completion of the Services (or



relevant part of the Services) and production at the Premises of the Deliverables.

- 6.3 If any Deliverables fail to meet their Acceptance Criteria the Council will notify the Provider accordingly specifying the non-conformity.
- 6.4 Where Deliverables fail to meet the Acceptance Criteria the Council will request the Provider to remedy the non-compliance at its own expense within 15 Business Days of the Council's notification under Condition 7.3, following which the Council shall have a further 15 Business Days in which to re-test the Deliverables for conformity with the Acceptance Criteria.
- 6.5 If any Deliverables fail to meet the Acceptance Criteria on re-testing under Condition 7.4, the Council may reject them and exercise its rights under Condition 9.

## **7 Risk and title**

- 7.1 Risk in Deliverables shall pass to the Council on acceptance under Condition 7.
- 7.2 Title to Deliverables shall pass to the Council on acceptance under Condition 7.

## **8 The Council's remedies**

### **8.1 If:**

- 8.1.1 the Provider fails to perform the Services by the date required under these Conditions; or
- 8.1.2 the Provider fails to comply with its warranties set out in Condition 3; or
- 8.1.3 Condition 7.5 applies

the Council may exercise any of the rights set out in Condition 9.2.

### **8.2 The rights referred to in Condition 9.1 are:**

- 8.2.1 to refuse to accept any subsequent performance of the Services which the Provider attempts to make;
- 8.2.2 to refuse to accept any delivery of Deliverables which the Provider attempts to make;
- 8.2.3 to reject any Deliverables (in whole or in part) whether or not title has passed and to return them to the Provider at the Provider's own risk and expense;
- 8.2.4 to recover from the Provider any costs incurred by the Council in having a third party provide substitute Services or in performing the Services itself;

- 8.2.5 where the Council has paid in advance for Services that have not been performed by the Provider, to have such sums refunded by the Provider immediately;
  - 8.2.6 to claim damages for any additional costs, loss or expenses incurred by the Council which are attributable to the Provider's failures set out in Condition 9.1;
  - 8.2.7 to terminate the Contract with Immediate effect by giving written notice to the Provider.
- 8.3 The rights set out in Condition 9.2 are cumulative and the exercise by the Council of any one of them shall not preclude it from exercising any other.
- 8.4 The Council's rights under this Condition 9 are in addition to its rights and remedies implied by statute and at common law.

## **9 The Council's obligations**

### **9.1 The Council will:**

- 9.1.1 provide the Provider with reasonable access to the Premises at reasonable times during Business Days for the purpose of providing the Services or delivering the Deliverables;
- 9.1.2 where appropriate, provide reasonable access to facilities on the Premises; and
- 9.1.3 provide such information as the Provider may reasonably request in connection with the provision of the Services provided that the Council (acting reasonably) considers such information necessary for the purpose of providing the Services.

## **10 TUPE**

- 11.1 The Provider acknowledges that the Council has made no assurance about the effect of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("TUPE") and has formed its own view on whether TUPE applies before submitting its tender to supply the Services. The Provider agrees that the price shall not be varied on the grounds that TUPE does or does not apply irrespective of the belief of the Council or the Provider prior to execution of the Contract.
- 11.2 No compensation or remuneration (including but not limited to any Employment Liabilities) shall be payable by the Council where the nature, extent or character or any obligations acquired by the Provider under the Contract as a result of the effects of TUPE may be different from that envisaged.

- 11.3 The Council does not accept any responsibility for and gives no warranty in respect of the TUPE Information that has been supplied to the Council by the present provider.
- 11.4 The Provider shall be liable for and indemnify and keep indemnified the Council against any Employment Liabilities arising from or as a consequence of:
- (i) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
  - (ii) any of the employees informing the Council they object to being employed by the Provider or Sub-Contractor; and
  - (i) any change in identity of the Transferring Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.
- 11.5 The Provider shall be liable for and indemnify and keep indemnified the Council against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
- 11.6 The Provider shall immediately on request by the Council provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Provider will give confirmation of that fact, and shall indemnify the Council against all Employment Liabilities resulting from any failure by it to comply with this obligation.

#### **Employment Exit Provisions**

- 11.7 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 11.8 The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with

any additional information required by the Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.

- 11.9 At least 14 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 11.10 The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for Informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 11.11 The Provider warrants that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (the TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
- 11.12 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Law.
- 11.13 The Council regards compliance with this paragraph as fundamental to the Agreement. In particular, failure to comply with paragraphs 11.8 and 11.9 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 11.13 shall not exceed an amount equivalent to the price that would be payable in the three month period following the Provider's failure to comply with paragraphs 11.8 or 11.9, as the case may be.
- 11.14 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Provider shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 11.15 In the six months prior to termination of this Agreement, the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the

total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.

11.16 The Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Service Provider against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

11.17 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

11.18 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 11.8 to clause 11.17, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

11.19 Despite clause 11.18, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## **11 Liability**

11.1 In this Condition 12, a reference to the Council's liability for something is a reference to any liability whatsoever which the Council might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or

expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Council's negligence or from negligence for which the Council would otherwise be liable.

11.2 The Council shall not be in breach of the Contract, and shall not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Provider's breach of the Contract.

11.3 Subject to Condition 12.5 the Council shall not have any liability for:

11.3.1 any indirect or consequential loss or damage;

11.3.2 any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;

11.3.3 any damage to goodwill or reputation;

11.3.4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Provider or its Representatives; or

11.3.5 any loss, damage, costs or expenses suffered or incurred by any third party.

11.4 Subject to Condition 12.5, the Council's total liability shall be limited to the Charges it has paid or is due to pay to the Provider under the Contract.

11.5 Nothing in these Conditions restricts the Council's liability for:

11.5.1 death or personal injury resulting from negligence for which it is responsible; or

11.5.2 its fraud (including fraudulent misrepresentation).

## **12 Charges and payment**

12.1 The Charges for the Services and the date or dates on which they are payable are set out in the Purchase Order or any Annex; and

12.1.1 (in the case of Deliverables) shall be inclusive of any costs of packaging, insurance and carriage;

12.1.2 (in the case of Services) shall include all costs and expenses of the Provider and its Representatives directly or indirectly incurred in connection with their performance; and

12.1.3 unless otherwise specified shall be inclusive of any amounts in respect of valued added tax chargeable from time to time (VAT).

12.2 Unless otherwise provided in the Purchase Order, the Provider may invoice the Charges at any time on or after whichever is the later of acceptance of the Deliverables or completion of the Services.

- 12.3 Invoices must include the Purchase Order number and sufficient supporting information to enable the Council to identify the Deliverables and Services for which payment is claimed.
- 12.4 Where any taxable supply for VAT purposes is made under the Contract by the Provider to the Council, the Provider shall provide a valid VAT invoice.
- 12.5 Where Charges for the Services are based on the cost of time and materials at rates set out in the Purchase Order, the Provider shall maintain and provide to the Council complete and accurate records of the time spent and materials used in providing them and attach such records to the relevant invoice.
- 12.6 Subject to compliance by the Provider with the foregoing provisions of this Condition 13, the Council shall pay the Charges as invoiced within 30 days of receipt of the invoice.
- 12.7 The Provider shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any amount in whole or in part. The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Provider against any amount payable by the Council to the Provider.

### **13 Intellectual property rights**

#### **13.1 The Provider warrants that:**

13.1.1 the Provider has all Intellectual Property Rights, permissions, licences and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and

13.1.2 in respect of the Deliverables, the Provider has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it has full and unrestricted rights to transfer full title to all such items to the Council.

13.2 Unless otherwise provided in the Specification, the Provider grants to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including all Deliverables.

13.3 The Provider shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Council in accordance with the Contract.

13.4 The Council reserves to itself or its licensors all the Council Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Provider any rights in the Council Materials other than a licence, for the

duration of the Contract, to use them to the extent necessary to enable the Provider to carry out its obligations under the Contract.

## **14 Indemnity**

14.1 The Provider shall indemnify, and shall keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by the Council as a result of or in connection with:

14.1.1 any claim made against the Council for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Deliverables or Services with the Contract;

14.1.2 any claim made against the Council arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Provider;

14.1.3 any claim made against the Council arising out of, or in connection with the negligence of the Provider or its Representatives whilst on, entering, or leaving the Premises;

14.1.4 any claim made against the Council for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Council's use of the Services;

14.1.5 all damage to the Council's property or the Premises caused by the Provider or its Representatives (including any damage or destruction to, corruption of, or loss of data held by the Council);

14.1.6 any breach of Data Protection Law by the Provider or its Representatives; and

14.1.7 any claim made against the Council by a third party resulting from, or arising out of any breach by the Provider of its obligations under Conditions 14 or 17.

14.2 The Provider shall not be liable to the Council for any losses, damage or injury to the extent that they are caused by or arise directly out of the act or omissions of the Council in breach of its obligations under the Contract.

## **15 Insurance**

15.1 For the duration of the Contract and for a period of 6 years thereafter, the Provider shall maintain in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under the Contract, including death or personal injury, or loss of or damage to property.



- 15.2 The insurance required under Condition 16.1 shall include as a minimum:
- 15.2.1 employer's liability insurance with a limit of indemnity of not less than [ten] million pounds [(£10,000,000)] per claim;
  - 15.2.2 public liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] per claim;
  - 15.2.3 professional indemnity insurance with a limit of not less than [two] million pounds [(£2,000,000)] per claim; and
- 15.3 The Provider shall, at the request of the Council, produce to the Council a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Provider has complied with its obligations under this Condition 16.
- 15.4 The Provider shall not do or permit anything, or make any omission, which might cause any insurance to be voided.
- 15.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities incurred in connection with the Contract.
- 15.6 The Provider shall inform the Council in writing whenever there is any change to the insurance referred to in this Condition 16 (including any change in the scope or level of cover or the identity of the insurer).

## **16 Confidentiality**

- 16.1 Subject to Condition 17.2, the Provider shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by the Council.
- 16.2 The Provider undertakes:
- 16.2.1 to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Provider's obligations under the Contract, and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this Condition 17.
  - 16.2.2 that the Provider and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract;
  - 16.2.3 that any person employed or engaged by the Provider in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Council;

16.2.4 to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Condition 17; and

16.2.5 that, without prejudice to the generality of the foregoing, neither the Provider nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.

16.3 The provisions of Condition 17 shall not apply to any information which:

16.3.1 is or becomes public other than by breach of this Condition 17 or

16.3.2 is in the possession of the Provider without restriction on disclosure before the date of receipt from the disclosing person; or

16.3.3 is independently developed by the Provider without access to the Confidential Information; or

16.3.4 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

## **17 Termination**

17.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Provider if:

17.1.1 the circumstances set out in Conditions 9.2.7 or 23.1 or 32 apply;

17.1.2 the Provider commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of receipt of written notice of the breach;

17.1.3 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

17.1.4 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

- 17.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
  - 17.1.6 the Provider (being an individual) is the subject of a bankruptcy petition order;
  - 17.1.7 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 17.1.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Provider (being a company);
  - 17.1.9 a floating charge holder over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 17.1.10 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
  - 17.1.11 the Provider becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);
  - 17.1.12 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 18.1.3 to Condition 18.1.11 (inclusive);
  - 17.1.13 the Provider suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
  - 17.1.14 the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 17.2 Without limiting its other rights or remedies, the Council may at any time terminate the Contract in whole or in part by giving the Provider one month's written notice, in which case the Council shall pay the Provider for any Services performed up until the date of termination, but shall not be liable for any anticipated profits or any other loss in respect of the termination.

## **18 Consequences of termination**

18.1 On expiry or termination of the Contract or any part of it for any reason the following shall apply:

18.1.1 where the Services are terminated, the Provider shall immediately deliver to the Council all Deliverables, whether or not then complete, and return all the Council Materials to the Council. If the Provider fails to do so, then the Council may, without limiting its other rights or remedies, enter the Provider's premises and take possession of the Deliverables and/or the Council Materials. Until they have been delivered or returned, the Provider shall be solely responsible for their safe-keeping and will not use them for any purpose; and

18.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

18.2 The following Conditions shall survive expiry or termination and shall continue in full force and effect: 1, 2.2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39 and any other Condition which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

## **19 Publicity**

19.1 The Provider shall not make any press announcements or publicise the existence or terms of the Contract without the Council's prior written consent and shall ensure the observance of the provisions of this Condition 20 by its Representatives.

19.2 The Council shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Provider.

## **20 Dispute resolution**

20.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:

20.1.1 the dispute shall first be referred, on the request of either party, to a senior manager within each of the parties; and

20.1.2 if the dispute cannot be resolved by the parties' senior managers within 10 Business Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation to be conducted in accordance with Condition 21.2.

20.2 The following provisions shall apply to any such reference to mediation:

- 20.2.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
- 20.2.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
- 20.2.3 to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.
- 20.3 If the parties are able to resolve the dispute through mediation under this Condition 21, the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.
- 20.4 The commencement of mediation will not prevent the parties commencing or continuing court proceedings.
- 20.5 Nothing in this Condition 21 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
- 20.6 The Provider shall continue to provide the Services and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Condition 21.

## **21 Conflict of Interest**

- 21.1 The Provider shall take all appropriate steps to ensure that neither it nor any of its Representatives is placed in a position where (in the reasonable opinion of the Council) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Provider or its Representatives and, on the other hand, such persons' duties owed to the Council under the provisions of the Contract.
- 21.2 The Provider must disclose to the Council full details of any actual or potential conflict of interest in writing and comply with any reasonable instructions of the Council in connection with their resolution.

## **22 Corruption**

- 22.1 The Provider undertakes to:

- 22.1.1 comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010;
  - 22.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - 22.1.3 comply with the Council's anti-corruption policies disclosed to the Provider from time to time;
  - 22.1.4 ensure that any of its Representatives associated with the supply of the Services comply with this clause 23; and
  - 22.1.5 Immediately notify the Council if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider.
- 22.2 For the purposes of clause 23.1, the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
- 22.3 The Council shall be entitled to terminate the Contract forthwith and to recover from the Provider the amount of any loss resulting from such termination if the Provider or a Provider's Representative:
- 22.3.1 offers or agrees to give any person working for or engaged by the Council or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Provider and the Council or any Public Body, including its award to the Provider and any of the rights and obligations contained within it;
  - 22.3.2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other Public Body by or for the Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before the Contract is entered into;
  - 22.3.3 breaches the undertaking set out in clause 23.1; or
  - 22.3.4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 22.4 For the purposes of Condition 23.1, "loss" shall include, but shall not be limited to:
- 22.4.1 the Council's costs in finding a replacement Provider;
  - 22.4.2 direct, indirect and consequential losses; or

22.4.3 any loss suffered by the Council as a result of a delay in its receipt of the Deliverables and/or Services.

## **23 Audit**

23.1 The Provider shall keep and maintain until six years after the Contract has come to an end, or for such longer period as may be specified by the Council in writing from time to time:

23.1.1 all Information relating to the Contract.

23.1.2 full and accurate records of the following:

23.1.2.1 the Services provided under the Contract;

23.1.2.2 all Charges paid by the Council; and

23.1.2.3 such other information as the Council specifies in writing from time to time.

23.2 The Provider shall on request afford the Council, the Council's Representatives or the Council's auditors such access to such information or records (including the information referred to in Conditions 24.1.1 and 24.1.2) as may (in the reasonable opinion of the Council) be required by the Council in order to comply with its legal obligations (including its obligations under FOIA and its obligations in connection with the Best Value Duty).

## **24 Discrimination**

24.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in the provision of the Services.

24.2 The Provider shall take all reasonable steps to secure the observance of Condition 25.1 by all of its Representatives employed in the performance of the Contract.

24.3 The Provider shall:

24.3.1 have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Council on a regular basis as agreed with the Council; and

24.3.2 actively endeavour to achieve a workforce representative of the ethnic diversity of the area.

## **25 Human rights**

- 25.1 The Provider shall (and shall use its reasonable endeavours to procure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 25.2 The Provider shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

## **26 Data Protection Law**

- 26.1 The Provider shall comply at all times with Data Protection Law and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause the Council to breach any of its obligations under Data Protection Law.
- 26.2 If the Provider, pursuant to its obligations under the Contract, processes Personal Data (as defined in the Data Protection Act 1998) on behalf of the Council, the Provider shall:
  - 26.2.1 process the Personal Data only in accordance with instructions from the Council;
  - 26.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under the Contract;
  - 26.2.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 26.2.4 notify the Council promptly if it becomes aware of any breach of any of its measures put in place under Condition 27.2;
  - 26.2.5 take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
  - 26.2.6 obtain prior written consent from the Council in order to transfer the Personal Data to any third party for the provision of the Services;
  - 26.2.7 ensure that any personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 27;
  - 26.2.8 ensure that none of those personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the other party;



26.2.9 notify the Council immediately if it receives:

26.2.9.1 a request from a Data Subject (as defined in the Data Protection Act 1998) to have access to that Data Subject's Personal Data; or

26.2.9.2 a complaint or request relating to the other party's obligations under Data Protection Law;

26.2.10 provide the Council with full co-operation and assistance in relation to any complaint or request made, including by providing the other party with full details of the complaint or request; and

26.2.11 not transmit or process Personal Data outside the European Economic Area without the prior written consent of the other party and, where the other party so consents to a transfer, to comply with:

26.2.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998; and

26.2.11.2 any reasonable instructions notified to it by the other party.

## **27 Best value**

27.1 The Provider shall:

27.1.1 not do anything which would cause the Council to be in breach of the Best Value Duty.

27.1.2 act at all times in a manner which is compatible with and corresponds with the Council's Best Value Duty.

27.1.3 in relation to its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

## **28 Freedom of information**

28.1 The Provider acknowledges that the Council is subject to the requirements of FOIA and EIR and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its obligations under FOIA and EIR. The Provider shall act in accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.

28.2 The Provider shall and shall procure that its Representatives shall:

28.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;

28.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or

such other period as the Council may specify) of the Council requesting that Information; and

28.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

28.3 The Council shall be responsible for determining (in its absolute discretion) whether any Information:

28.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

28.3.2 is to be disclosed in response to a Request for Information,

and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so in writing by the Council.

28.4 The Provider acknowledges that the Council may be obliged under the FOIA or EIR to disclose Information:

28.4.1 without consulting with the Provider, or

28.4.2 following consultation with the Provider and having taken its views into account.

28.5 Where Condition 29.4.2 applies the Council shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention as soon as practicable after any such disclosure.

## **29 Transfer of services**

29.1 Where the Council intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement provider, the Provider shall use all reasonable endeavours to ensure the seamless transition of the Services to the Council or a replacement provider and to ensure that the transition is effected with the minimum of disruption to the Council.

29.2 The Provider shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Council (acting reasonably) considers necessary.

## **30 Notice**

30.1 Any notice to be served on either of the parties hereto by the other shall be sent by pre-paid recorded delivery or first class post to the address of the

relevant party as detailed in the Contract or, such other address as notified by one party to the other in writing from time to time.

### **31 Severance**

- 31.1 If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Council it may be severed from the rest of the Contract which shall remain in full force and effect unless the Council in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event the Council shall be entitled to terminate the Contract by 10 Business Days' written notice to the Provider.

### **32 Waiver and accumulation of remedies**

- 32.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.
- 32.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under or in connection with the Contract. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.
- 32.3 The Council's rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

### **33 Variations**

- 33.1 Subject to Condition 5, neither the Council nor the Provider shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.

### **34 Assignment or sub-contracting**

- 34.1 The Provider shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without the Council's prior written consent.

- 34.2 The Provider shall not sub-contract the performance of the Services or any part of them without the Council's prior written consent and any such consent shall not relieve the Provider of any of its obligations under the Contract.
- 34.3 Where the Provider enters into a sub-contract with a third party In connection with the Contract, it shall cause a term to be included in such sub-contract that requires payment to be made of undisputed sums by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 34.4 The Council may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations, being:
- 34.4.1 a Minister of the Crown pursuant to any order under the Ministers of the Crown Act 1975;
- 34.4.2 any other local authority which has sufficient financial standing or financial resources to perform the obligations; or
- 34.4.3 any other public authority, and
- 34.5 Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.

### **35 Law and jurisdiction**

- 35.1 The Contract shall be construed and be subject to English law and the exclusive jurisdiction of the English Courts.

### **36 Rights of third parties**

- 36.1 No person other than the Council or the Provider shall have any rights under the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

### **37 Whistleblowing policy**

- 37.1 The Provider shall comply with the Council's whistleblowing procedure, which ensures that employees of the Provider are able to bring to the attention of the Council malpractice, fraud and breach of laws on the part of the Provider without fear of disciplinary and other retribution or discriminatory action. The Council's Whistleblowing Policy can be found on the following link: - [http://www2.wolverhampton.gov.uk/council/corporate/finance/corruption\\_fraud/policy.htm](http://www2.wolverhampton.gov.uk/council/corporate/finance/corruption_fraud/policy.htm)

**38 The Local Involvement Networks (Duty of Service-Providers to Allow Entry) Regulations 2008**

38.1 The Provider shall comply in all respects and at all times with The Local Involvement Networks (Duty of Services Providers to Allow Entry) Regulations 2008 in the provision of the Services under the Contract.

# ANNEX 3 – SPECIFICATION

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## **1 Wolverhampton City Council Strategy**

- 1.1 Wolverhampton City Council has a maximum budget of £50,000 for the treasury management contract for the contract term of 3 years.
- 1.2 Information relating to Wolverhampton City Council's Treasury Management Strategy can be found at the following:

<https://wolverhamptonintranet.moderngov.co.uk/Data/Cabinet/201402251700/Agenda/Item%2013%20-%20Treasury%20Management%20Strategy%20-.pdf>

- 1.3 The Treasury Management Annual Report 2013/14 and Quarter One Monitoring 2014/15 Report can be found at the following:

<https://wolverhamptonintranet.moderngov.co.uk/documents/s3219/Treasury%20Management%20-%20Annual%20Report%202013-14%20and%20Activity%20Monitoring%20Quarter%20One%202014-15.pdf>

- 1.4 The Statement of Accounts 2013/14 for Wolverhampton City Council can be found at the following:

<http://www.wolverhampton.gov.uk/article/3049/Corporate-finance>

## **2 Role of the Advisor**

- 2.1 The successful company is to attend at least two strategy meetings per year to review the Council's financial position having regard to its objectives, strategy, current financial circumstances, assets and liabilities.
- 2.2 The successful company will provide Interest rate forecasts and advise on the formulation of suitable borrowing and investment strategies utilising the strategic options available to it appropriate to the Council's financial objectives.
- 2.3 Regular updates on economic, regulatory and political changes which may impact on and require modification to the Council's borrowing and investment strategies shall be provided.
- 2.4 Forecasts of movements in Public Works Loan Board (PWLB) rates which affect the timing of borrowing shall be provided.
- 2.5 The successful company will advise on debt rescheduling, volatility and maturity profile analysis.
- 2.6 Advice on investment counterparty creditworthiness, including provision of prudent

parameters established in light of information from the UK's leading credit rating agencies, various other analysts as appropriate and other appropriate market intelligence in light of recent Audit Commission and Chartered Institute Public Finance and Accountancy (CIPFA) publications shall be provided to Wolverhampton City Council. Reports and analyses are to be provided weekly or when practicable. Details of any individual counterparty credit rating changes to be advised, as a matter of urgency, as they occur.

- 2.7 The successful company is to provide advice and assistance to structure an appropriate investment strategy.
- 2.8 At least one day's onsite training to treasury management staff and at least two places at training seminars for client staff per annum shall be required.
- 2.9 The successful company shall advise on the implementation and application within the Council of the CIPFA "Prudential Code for Capital Finance in Local Authorities" and other associated legislation, guidance, etc. Specifically regarding prudential indicators and benchmarking of performance.
- 2.10 The successful company shall provide template documents and advice on:
  - 2.10.1 treasury management strategy report
  - 2.10.2 annual review report
  - 2.10.3 treasury management policy statement
  - 2.10.4 treasury management practices
  - 2.10.5 investment strategy report
- 2.11 Advice on the Local Government accounting regime associated with treasury management activity e.g. financial instruments / Minimum Revenue Provision (MRP) / soft loans / impact on debt of Housing Revenue Account stock transfers, etc., shall be provided.

# ANNEX 5 – KEY PERFORMANCE INDICATORS

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## **1 Proposed Key Performance Indicators**

- 1.1 The Council is committed to continuous improvement and will utilise a suite of key performance indications (KPIs) to measure the progress of the Supplier over the duration of the contract. Performance against KPIs will be reviewed regularly by the parties, as set out in the Specification.
- 1.2 The Supplier will be required to provide information to demonstrate progress against KPIs. Success by reference to KPIs will be achieved by all parties working together to identify efficiencies in both process and working methods.
- 1.3 This will incorporate regular meetings of the Council and Supplier representatives to identify difficulties, review methods of working and improve process and efficiencies of working. A formal log must be kept of the positive decisions made and implemented.

**The Treasury Management Contract will be measured as follows:**

Response times to queries to be within 24 hours 90% of the time.



# ANNEX 6 – FORM OF QUOTATION

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See Overleaf

# H – FORM OF TENDER

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**Unconditional and Irrevocable Offer to Wolverhampton City Council**

**Re, the Invitation to Tender for Treasury Management Services**

**To: Wolverhampton City Council**

Having read carefully the Invitation to Tender and in view of you considering this tender, we, the undersigned;

1. Offer and undertake on the acceptance of this Tender (either wholly or in part) by the Council, to supply and deliver the services or materials described in the Tender Documents and comply with all of the requirements stated.
2. Offer to supply the Services specified as stated in the specification and pricing schedules.
3. We agree that this tender shall constitute an irrevocable, unconditional offer which will not be withdrawn and we understand that the Council is not bound to accept any tender it receives.
4. All of the information included within this tender submission is correct and up to date and would be in place for the duration of the contract if awarded.

<b>Date</b> 21/10/2014	<b>Signature</b> 
<b>Name or Title of Firm</b> Capita Asset Services	<b>Status or Authority of Signatory</b> Regional Director
<b>If the firm is not a limited company please name the proprietors</b>	
<b>Registered Office</b> 71 Victoria Street, Westminster, London, SW1H 0XA	
<b>Telephone No.</b> 0871 664 6830	<b>Email Address</b> richard.bason@capita.co.uk

- To be signed in full by the person tendering or, in the case of a firm or company, by a partner or authorised representative thereof respectively in their own name and on behalf of such firm or company.
- Please be advised that should you encounter difficulties pasting signatures into this document, please type the name of the person who is authorised to sign the Tender Document. This will be regularised during the contract execution stage.

# ANNEX 7 – SUPPLIER DETAILS

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**Supplier Name**

**Capita Treasury Solutions Limited**

**Contact Name**

**Richard Bason**

**Supplier Registered Address**

**71 Victoria Street, Westminster, London, SW1H 0XA**

**Company Registration Number**

**2652033**

**VAT Registration Number**

**GB618184140**

**Supplier Correspondence Address**

**71 Victoria Street, Westminster, London, SW1H 0XA and/or**

**40 Duke's Place, London, EC3A 7NH**

**Telephone**

**0871 664 6800**

**Fax**

**0871 664 6830**

**E-mail**

**richard.bason@capita.co.uk**

# ANNEX 8 – CLARIFICATIONS

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Message

**Sent Date:** 16/10/2014 11:48:38

**Thread:** 2

**Subject:** Further Information

**Body:** Below is a list for further information which was received yesterday:

- 1) Details of current investment position including counterparties invested with, maturity dates and rates of return.
- 2) Details of current debt position including maturity dates and interest rates of PWLB, LOBO and market loans.
- 3) Current treasury management strategy.
- 4) Current statement of accounts.

In reference to this request for further information the Council responds as follows:

- 1) This is covered in the attached spreadsheet showing the Council's position at 31/3/14.
- 2) This is covered in the attached spreadsheet showing the Council's position at 31/3/14.
- 3) This is covered in the specification via a link to the Council's webpage.
- 4) This is covered in the specification via a link to the Council's webpage.

Kind regards

## Section B: Contract Specification

### The Council requires the advisor:

1. To attend at least two strategy meetings per year to review the Council's financial position having regard to its objectives, strategy, current financial circumstances, assets and liabilities.
2. To provide interest rate forecasts and advise on the formulation of suitable borrowing and investment strategies utilising the strategic options available to it appropriate to the Council's financial objectives.
3. To provide regular updates on economic, regulatory and political changes which may impact on and require modification to the Council's borrowing and investment strategies.
4. To provide forecasts of movements in PWLB rates which affect the timing of borrowing.
5. To advise on debt rescheduling, volatility and maturity profile analysis.
6. To advise on investment counterparty creditworthiness, including provision of prudent parameters established in light of information from the UK's leading credit rating agencies, various other analysts as appropriate and other appropriate market intelligence in light of recent Audit Commission and CIPFA publications. Reports and analyses to be provided weekly or when practicable. Details of any individual counterparty credit rating changes to be advised, as a matter of urgency, as they occur.
7. To give advice and assistance to structure an appropriate investment strategy.
8. To provide at least one day's onsite training to treasury management staff and at least two places at training seminars for client staff per annum.
9. To advise on the implementation and application within the Council of the CIPFA "Prudential Code for Capital Finance in Local Authorities" and other associated legislation, guidance, etc.
10. To provide template documents and advice on:
  - treasury management strategy report
  - annual review report
  - treasury management policy statement
  - treasury management practices
  - investment strategy report
11. To advise on the Local Government accounting regime associated with treasury management activity e.g. financial instruments / MRP etc.

To: **Haley Macmichael**  
**Corporate Procurement**

From: Richard Bason  
Regional Director  
Sector Treasury Services Limited  
40 Dukes Place  
London  
EC3A 7NH

Contract for:- Treasury Management Services  
Period of Contract:- 1<sup>st</sup> January 2010 to 31<sup>st</sup> December 2012  
Re:- Contract Extension

Current Expiry Date

31/12/2012

Proposed Expiry Date

31/12/2014

\* I do / ~~do not~~ wish for the above contract to be extended until the proposed expiry date, with the original Terms and Conditions of Contract continuing to apply.

\* (Please delete as applicable)

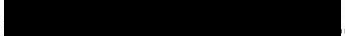
Please give further details if you do not wish for this contract to be extended:

Name: David Whelan

Company: Sector Treasury Services Ltd

Date: 5<sup>th</sup> November 2012

Signed: 

Tel. No.: 

Designation: Managing Director

**Definitions:**

“Agreement” means the Letter of Engagement, between Sector and the Client, incorporating these Sector Standard Terms of Business and any Schedules annexed hereto.

“Client” or “you” means the client named in the Letter of Engagement.

“Intellectual Property Rights” means any copyright, patent, registered design, trademark or other intellectual property right of whatever nature subsisting anywhere in the world.

“Party” means a party to this Agreement, as named in the Letter of Engagement.

“Sector”, “we” or “us” means Sector Treasury Services Limited.

“Sector Group” means Sector, any direct or indirect holding company and any subsidiaries of such holding company (as defined in sections 736 and 736A of the Companies Act 1985, as amended or in the Companies Act 2006, once in force).

Clause headings are for convenience only and do not affect the interpretation or construction of this Agreement. References to legislation, regulations, orders or rules means such legislation, regulations, orders or rules as amended from time to time, or any re-enactment or replacement legislation, regulations, orders or rules, from time to time.

**1. Services**

- 1.1. Sector agrees to perform the services as described in the attached Schedules and any additional services agreed pursuant to clause 14 (together, the “Services”). Activities outside the usual scope of the Services as detailed in the Schedules will be charged at daily rates as set out in clause 14.2.
- 1.2. Sector is entitled to subcontract any part of the Services to another member of the Sector Group or to third parties from time to time, as provided that Sector will, at all times, remain responsible for the provision of the Services.
- 1.3. In performing its obligations under this Agreement, Sector will use all reasonable care and skill to a standard normally expected of a professional service provider experienced in carrying out the Services.
- 1.4. This Agreement and all transactions between the Client and Sector are subject to any statutory and other rules, regulations and provisions applicable to Sector (“Applicable Regulations”). If there is any conflict between these Standard Terms of Business and any Applicable Regulations, the Applicable Regulations will prevail. Sector may refrain from doing anything which could or might, in our reasonable opinion, be contrary to any Applicable Regulations.

**2. Client’s warranties and undertakings**

- 2.1. The Client warrants and represents to Sector that all information supplied is complete and, accurate and will be provided promptly. Such information, includes but is not

limited to financial information, information on activities or proposed activities and events and any other information which may be relevant to the proper performance by Sector of its obligations under this Agreement. The Client also undertakes to provide Sector with any changes to its financial circumstances, changes in directors and signatories as per the Know Your Customer Rules (Client Identification) and to provide Sector with any supporting documentation of such changes

- 2.2. The Client hereby warrants that it has full legal power, capacity and authority, including all necessary permits and consents, to enter into and perform this Agreement. The Client is responsible for ensuring that it has the legal power, capacity and authority to carry out any actions resulting from the Services.

**3. Fees and Payment**

- 3.1. The Client will pay Sector the fees as set out in the Letter of Engagement. Such fees will be exclusive of value added tax (VAT). To the extent that VAT is properly chargeable on the Services supplied, the Client will pay such VAT as an addition to the payments otherwise due to Sector.
- 3.2. Payment terms are set out in the Letter of Engagement. Sector will have the right to charge interest at a rate of 3% per annum above the base rate of Sector’s main UK bank, from time to time, on any amount overdue but not paid, calculated on a daily basis from the due date until the date of payment in full (both before and after judgment).
- 3.3. Should any invoiced amount be disputed in good faith, the Client will inform Sector in writing within 5 days of receiving the invoice and will pay the undisputed balance of the invoice. The Parties will use all reasonable endeavours to resolve the dispute within 21 days of the date of Sector being informed of the dispute.
- 3.4. No payments made to any third Party by the Client will reduce or waive any of the fees as due under this Agreement.
- 3.5. The Client will not be entitled to set off any fees owed to Sector under this Agreement against any monies owed by Sector to the Client under any other agreement or arrangement with Sector or the Sector Group.

**4. Confidentiality and Freedom of Information**

- 4.1. All data and information, whether written or verbal, tangible or intangible, made available, disclosed, or otherwise made known by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) as a result of this Agreement (whether disclosed before, on or after the date of this Agreement) will be considered confidential (“Confidential Information”) and will be treated as the sole property of the Disclosing Party.
- 4.2. The Confidential Information will be used by the Receiving Party only for purposes of this Agreement. The Receiving Party agrees that it will not reveal, publish or otherwise disclose the Confidential Information from the Disclosing Party to any third party without the prior written consent of the Disclosing Party, except (i) to its employees, permitted subcontractors and professional advisers to the extent

necessary for the performance of this Agreement, provided that such persons are made aware of the confidentiality obligations set out herein, (ii) the extent required by any applicable law or regulation or requirement of any competent judicial, governmental or regulatory body or (iii) as otherwise provided in this clause 4.

4.3. All advice and information provided by Sector under this Agreement is provided solely and exclusively to the Client for the purposes of this Agreement, and will also be deemed "Confidential Information".

4.4. Clauses 4.1, 4.2 and 4.3 above will not apply to any Confidential Information which:

4.4.1. becomes publicly available other than as a result of a breach of this Agreement by the Receiving Party, its employees, agents or sub-contractors; or

4.4.2. was in the possession of or known by the Receiving Party prior to its receipt from the Disclosing Party; or

4.4.3. to have become available to the Receiving Party from a source other than the Disclosing Party, which source is not bound by any duty of confidentiality.

4.5. Sector acknowledges that the Client is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as amended (the "Information Regulations") and that the Client may be obliged under the Information Regulations to disclose information regardless of any representations made by Sector. Where a request for information is made in relation to information about Sector, the Client will nevertheless consult Sector before responding to such request for information.

4.6. The Client will as soon as practicable notify Sector in every case where its application of an exemption in relation to information about Sector has been referred to the Information Commissioner for a decision under the Information Regulations.

4.7. Sector may use the names and logos of the Client with a general description of its services, for limited marketing and referral purposes. No Confidential Information will be disclosed. The Client can request in writing if it does not want this to be the case.

## 5. Intellectual Property Rights

5.1. The Client acknowledges that Sector (and/or its licensor(s)) will retain ownership of all Intellectual Property Rights of whatever nature used or created by Sector in the performance of the Services. Sector hereby grants to the Client a non-transferable, non-exclusive, royalty-free licence in relation to the Intellectual Property Rights in any data, reports or other documents or records provided to the Client by Sector under this Agreement, for the Client's own use.

## 6. Indemnity

6.1. The Client will indemnify Sector and hold Sector harmless against any reasonable costs, losses, claims, demands, expenses and damages of whatever nature incurred by Sector arising out of the supply of information by the Client to Sector or any third-party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with this Agreement or the Services, except to the extent such Losses are determined to have resulted solely from the fraud or wilful default of Sector.

6.2. Save to the extent as expressly provided in clause 7, the provisions of this clause will be without prejudice to any and all other rights and remedies available to Sector under this Agreement or at common law.

## 7. Exclusion of Liability

7.1. Sector hereby expressly excludes liability for any loss of actual or anticipated revenues, savings, profits or goodwill, reputation or any indirect or consequential loss or damage of whatever nature and howsoever arising from the provision of the Services or any advice and information given in first instance to the Client under this Agreement.

7.2. Whilst Sector makes every effort to ensure that all the information it provides is accurate and complete, it does not guarantee the correctness or the due receipt of such information and will not be held responsible for any errors therein or omissions arising there from. All information supplied by Sector should only be used as a factor to assist in the making of a business decision and should not be used as a sole basis for any decision. The Client should not regard the advice or information as a substitute for the exercise by the Client of its own judgement.

7.3. Nothing in clause 7 is intended to exclude liability for death or personal injury resulting from the negligence caused by Sector, for fraud or any other liability which cannot be excluded or limited by law.

7.4. Subject always to clauses 7.1, 7.3 and 12, the aggregate liability of Sector arising out of or in connection with this Agreement (whether contractual or tortious liability, including negligence and non-fraudulent misrepresentation, breach of statutory duty, restitution or otherwise) will in no case exceed the annual fees payable by the Client under the Agreement in the year in which the event leading to a claim occurred.

7.5. During the term of the Agreement, Sector will maintain reasonable insurance to cover its obligations hereunder. Sector will provide the Client with a certificate of insurance upon request.

## 8. Term and Termination

The term of this Agreement is set out in the Letter of Engagement.

8.1. Either Party may terminate this Agreement;

8.1.1. if the other Party commits a material breach of this Agreement, (including any payment default) and, in the case of a breach capable of remedy, fails to remedy the same within



- 30 days after receipt of a written notice to do so; or
- 8.1.2. if it has reasonable grounds to believe that the other is experiencing financial difficulty or if the other Party passes a resolution or the Court makes an order that the other Party be wound up other than for a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the whole or a substantial part of any part thereof of the other Party or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court other than for the bona fide reconstruction or amalgamation to make a winding up order, or the other Party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or
- 8.1.3. in accordance with the provisions of clause 16.
- 8.2. Termination of this Agreement for whatever reason will be without prejudice to the rights, obligations and liabilities of either Party then accrued and due. For the avoidance of doubt this will include the fees incurred to the date of actual termination of the Agreement calculated pro-rata to the end of the month in which termination occurs.
- 9. Financial Services Authority (FSA)**
- 9.1. Sector is authorised and regulated by the Financial Services Authority (FSA) and is entered on the FSA register with registration number 150403. Sector is permitted to conduct certain designated business as defined in the FSA handbook. Further information may be obtained from the FSA's Register by visiting the FSA's website <http://www.fsa.gov.uk/register>. The FSA's current address is 25 The North Colonnade, Canary Wharf, London E14 5HS.
- 9.2. Sector has designated you as a "Professional Client" as defined under the Financial Services Authority ("FSA") client classification rules. You have the right to request a different classification which would increase the degree of regulatory protection that is afforded to you, however Sector is not obliged to agree to such request.
- 9.3. Sector's normal place of business is 40 Dukes Place, London, EC3A 7NH. Sector communicates with its clients via letter, e-mail, telephone, face-to-face meetings and the use of its website.
- 10. Disclosure of business relationships**
- 10.1. The Sector Group is involved in a wide range of investment business, banking and other services. In this regard, Sector is bound by the Statements of Principle issued by the Financial Services Authority ("FSA") under which, inter alia, it is required to ensure fair treatment to all its Clients and not unfairly place its interests above those of its Clients. A list of Sector's business relationships is maintained on Sector's website ([www.sector-group.com](http://www.sector-group.com)).
- 10.2. Sector is committed to assisting its Clients to achieve best value in their treasury activities. It therefore uses its reasonable endeavours to research borrowing and investment opportunities available in the market place and to bring those which offer best value to the notice of its Clients.
- 10.3. In relation to borrowing arrangements, Sector has developed non-exclusive business relationships with brokers and counterparties who may offer Sector referral fees, commission, etc. Sector receives referral commission from Tullett Prebon and ICAP when Lender Option Borrower Option (LOBOs) transactions are arranged via them. The amount of referral commission received can vary depending on the brokerage fee charged on the LOBO transaction. The amount received by Sector will be approximately 0.0165% of the transaction value for the first 4 years. Full details are available on request. Sector also receives an introduction fee of 5 basis points from Siemens in relation to LOBOs lent to Local Authorities. Any changes to the referral fees or commission Sector receives will be notified to you in advance of any advice being given in relation to a LOBO transaction.
- 10.4. Notwithstanding these arrangements, Sector remains committed to giving advice which is solely in the best interest of its Clients. We advise Clients to test the market for themselves when a borrowing or investment deal is to be arranged and to select the most appropriate solution for its treasury management objectives (whether this decision is based on price or any other factor important to the Client). Sector's usual advice is that the Client should select the cheapest, appropriate deal available to it (taking into account all relevant factors including fees), preferably via tender, but the ultimate choice of deal (and broker or counterparty) is entirely one for the Client.
- 10.5. Sector receives a referral fee from SunGard Global Execution Services Limited ("SGES") when Sector clients arrange transactions via SGES' STN Money Markets portal. The amount of the referral fee received will vary depending on the fee structure agreed between SGES and the funds which use the STN Money Markets portal. These fund fees can range from approximately 0.01% to 0.10%, of the value of the transaction processed through the STN Money Markets portal. Depending on the agreement between SGES and the relevant fund, these figures may differ. Sector receives a referral fee of 20% of these fund fees. Full details are available on request.
- 11. Basis of Dealings**
- 11.1. The Client authorises Sector in the course of our dealings with you, without specific reference to or further authority from you, to give you advice about any transaction which may have one or more of the features described in clause 15 below (conflicts of interest).
- 11.2. The Client will ensure that it obtains and complies with the terms of all authorisations, consents and approvals of any governmental or other regulatory body or authority which are necessary to enable it to use and accept the Service and/or execute any transaction.

**12. Creditworthiness**

12.1. Sector is not a credit rating agency. It is acknowledged that the provision of any advice and information to the Client under this Agreement concerning credit ratings is provided by independent leading credit rating agencies. Sector does not in any way warrant the creditworthiness of third parties including but not limited to the suitability of any financial institution, and hereby excludes any liability in respect thereof.

**13. Representations**

13.1. Save as expressly provided by this Agreement, any warranties, conditions, guarantees, representations, terms or undertakings, whether express or implied, by statute or otherwise, and whether oral or in writing, are hereby excluded to the fullest extent permitted by law.

**14. Variation and amendment**

14.1. Where there is any conflict or contradiction between the terms of the Sector Standard Terms of Business and the Letter of Engagement, the terms of the Letter of Engagement will take precedence.

14.2. The Parties agree that, from time to time, the Client may request Sector to carry out additional work, outside the scope of the specific Services described in the Schedules hereto ("Additional Services"). The Parties will agree in writing the scope and costs of the Additional Services (please see the Letter of Engagement for further details of Sector's charges).

14.3. This Agreement may only be varied or amended by written agreement signed by a duly authorised representative of each Party.

**15. Conflicts of interest**

15.1. The Client acknowledges that if and when Sector gives the Client advice we, or some other person connected with us including an employee or a member of the Sector Group may:

15.1.1. undertake similar services to those provided under this Agreement for other clients;

15.1.2. have an interest, relationship or arrangement that is material in relation to the investment, transaction or service concerned; or

15.1.3. receive and retain remuneration from any third party in consequence of performing its functions under this Agreement.

15.2. Under the rules of the FSA, Sector has in place arrangements, which may be updated from time to time, to manage conflicts of interest that arise between itself and its clients or between its clients.

15.3. Sector will deal with potential conflicts of interest in accordance with its Conflicts of Interest Policy which provides that it will identify and manage conflicts of interest to ensure fair treatment of all clients and ensure that it acts in the client's best interests.

15.4. If it is not possible to manage or avoid a potential conflict of interest then Sector may seek to disclose the general nature and/or sources of conflict to you before undertaking business for you. Sector will provide full details of the Conflicts of Interest Policy upon receipt of a written request from you.

**16. Force Majeure**

16.1. Neither Party will be liable to the other for a delay or failure to carry out any of its obligations under this Agreement to the extent to which this is caused by any event beyond the reasonable control of the relevant Party including, without limitation, strikes, labour disputes, natural disasters, war, riot, vandalism, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, failures of utility or telecommunications supply, accident, breakdown of plant or machinery, fire, flood and storm ("Force Majeure"). Notwithstanding the foregoing, nothing herein will excuse a delay or failure to comply with a payment obligation hereunder.

16.2. The Party whose performance has been delayed or prevented by Force Majeure will promptly notify the other Party and both parties will take all reasonable steps to overcome and mitigate the effects of Force Majeure. Should the Services not be resumed within 3 months of the notice being given, then either Party may terminate this Agreement by giving the other 21 days notice.

**17. Notice**

17.1. Any notice required by this Agreement is to be given by either Party in writing and sent or delivered to the relevant registered address (or such other address for notices as may be notified by the Party to the other Party in writing).

**18. Third Party Rights**

18.1. The Parties agree that no clause of this Agreement is intended expressly or by implication to purport to confer a benefit or right of action upon any third Party. The Parties intend that this Agreement will expressly exclude the Contract (Rights of Third Parties) Act 1999, including any subsequent or modifying legislation, to the fullest extent permissible by law.

**19. Data Protection**

19.1. Both parties shall comply at all times with the Data Protection Act 1998 ("DPA") and any regulations made under the DPA.

19.2. Sector acknowledges that to the extent that it retains or processes personal data ("Data") in the performance of this Agreement and the Services it will generally do so as a "data processor" as defined by the DPA and, in such capacity, undertakes that it shall only act on the instructions of the Client and in accordance with this Agreement in relation to the processing of any Data as part of the Services.

19.3. Sector agrees that it will ensure that it has and maintains reasonable safeguards for the security of the Data, including (without limiting the generality of the foregoing) appropriate technical and organisational security measures:

- 19.3.1. to prevent unlawful processing of the Data or processing of the Data which is not authorised by or necessary for the purposes of carrying out Sector's obligations under this Agreement; and
- 19.3.2. to prevent accidental loss or destruction of or damage to the Data.
- 19.4. The Client authorises Sector to use and disclose such Data as is necessary for the performance of this Agreement and/or the Services, to any person with legal, administrative or regulatory power over Sector in respect of the Services or to Sector's sub-contractors who are involved in carrying out the Services including companies which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use. Sector will take reasonable steps to require that any such company has put in place proper security measures to ensure at least the same level of protection of the Data as is required under the DPA.
- 20. Prevention of Money Laundering, etc.**
- 20.1. Sector has certain responsibilities under the anti-money laundering laws Sector reserves the right to carry out due diligence to verify the identity and address of clients and their sources of funds. pursuant to the Money Laundering Regulations 2003, any other relevant legislation and good industry practice. In such event, the client shall promptly provide all relevant documentation and information reasonable requested by Sector. The Client confirms that all information supplied will be accurate and agrees that Sector may make enquiries of any person or authority to establish or check certain facts.
- 21. Invalidity**
- 21.1. If any provisions herein are found to be invalid or unenforceable, it is the intent of the parties that they be replaced, modified or narrowed so that their original business purpose can be accomplished to the extent permitted by law, and that the remaining provisions will not in any way be affected or impaired thereby.
- 22. Assignment etc.**
- 22.1. Save for the provisions of clause 1.2 neither Party will assign or sub-contract any of its rights or obligations without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 23. Entire Agreement**
- 23.1. This Agreement supersedes all prior agreements, arrangements and undertakings between the Parties in relation to the Services and constitutes the entire Agreement between the Parties relating to the subject matter of this Agreement. The Parties each respectively acknowledge that in entering into this Agreement they have not relied on any representation, warranty, agreement or statement not expressly set out in this Agreement. Nothing in this Agreement shall constitute or imply a partnership, association, joint venture or other co-operative entity between the parties.
- 24. Survival**
- 24.1. The terms of this Agreement which by intent or meaning are intended to have effect beyond its termination or expiry (including, but not limited to, clauses 2, 3.2, 3.3, 3.4, 3.5, 3.6, 4, 5, 6, 7, 8.2, 9, 10, 11, 12, 13, 16, 24, 25 and 27), will survive the termination or expiry of this Agreement and continue to bind the Parties.
- 25. Non-solicitation**
- 25.1. During the term of this Agreement and for one (1) year thereafter, the Client will not, directly or indirectly, solicit or hire any employee or agent of Sector who is or has been involved in providing the Services.
- 26. Complaints**
- 26.1. Sector has internal procedures in place for handling complaints fairly and promptly. The Client may submit a complaint in writing to the Compliance Officer at Sector Treasury Services, 40 Dukes Place, London, EC3A 7NH or by phone 0871 664 6800. Sector will acknowledge all complaints in writing.
- 27. Governing Law and Jurisdiction**
- 27.1. This Agreement will be governed and construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the English Courts. All correspondence entered into shall be in English.

## Sector Treasury Services Limited

Registered in England no. 2652033  
Registered office: 71 Victoria Street, London SW1H 0XA  
Authorised and regulated by the Financial Services Authority (FSA) and entered on the FSA register with registration number 150403  
VAT No. 618184140