

**Extract from Agreement for the Provision of Certain Services of the Local Education Authority made between the Mayor and Burgesses of the London Borough of Southwark, (“the Council”), and WS Atkins Consultants Limited, (“the Contractor”), and dated 6 March 2001, (“the Contract”)**

The Contractor may be in breach of this Agreement as a result either of failure to achieve agreed performance targets and/or breach of specific Clauses or other provisions of this Agreement. The Table of "Hierarchy of Defaults" set out below which reflects the importance to the Council of different categories of breach, as follows:-

**Hierarchy of Defaults**

Category of Breach	Nature of Default
Category 1	Failure to achieve the Base Target for an individual KPI (as provided in Schedule 4);  Breach of any Clause or other provision of this Agreement which is expressed to be material.
Category 2	Failure to achieve the Base Target for an individual NPI (as provided in Schedule 4);  Breach of any Clause or other provision of this Agreement which is not expressed to be material.
Category 3	Failure to achieve any performance indicator (other than a KPI and NPI) set out in Schedule 1.

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Following a breach of this Agreement by the Contractor, the following process (the "**Rectification Process**") shall apply:-

the Council shall issue a Service Improvement Notice ("**SIN**") in relation to any breaches. The SIN shall:-

- state that such notice is a formal Service Improvement Notice; and
- set out reasonable details of the breach; and

- call upon the Contractor to produce a Service Improvement Plan ("**SIP**") in response to the SIN (within a reasonable period prescribed by the Council) setting out the Contractor's proposals to rectify the breach (if capable of remedy) and/or to achieve a required improvement in Service performance within a reasonable timescale;

the Contractor shall produce a SIP in response to the SIN, which shall contain the following particulars:-

- proposals by the Contractor to remedy the breach and/or improve the level of performance of the relevant Services; and
- target date(s) by which the remedy and/or improvement shall be achieved by the Contractor.

The Council and the Contractor undertake to negotiate in good faith to agree the terms of the SIP as soon as possible

if the breach specified in the SIN is not remedied and/or Service improved by the stated deadline, the Council may serve a Default Notice ("**Default Notice**") on the Contractor. The Default Notice shall:-

- state that such notice is a formal Default Notice; and
- give reasonable details of the breach; and
- state that such breach is a breach which, if it recurs or continues, may result in a termination of this Agreement;

if, following service of a Default Notice, the breach specified continues or 3 or more further Default Notices are served on the Contractor within a period of 12 months, the Council may serve a Warning Notice ("**1<sup>st</sup> Warning Notice**");

if, following service of a 1<sup>st</sup> Warning Notice, the breach(es) specified continue or recur more than once during the period of 12 months following the date of the 1<sup>st</sup> Warning Notice, the Council may issue a further Warning Notice ("**2<sup>nd</sup> Warning Notice**");

if, following service of the 2<sup>nd</sup> Warning Notice, the breach(es) specified continue or recur more than once during the period of 6 months following the date of the 2<sup>nd</sup> Warning Notice, the Council may serve a Final Notice ("**Final Notice**") on the Contractor stating that:

- the Notice is the Final Notice;
- the breach(es) specified has been the subject of two previous Warning Notices; and

- if the breach(es) continue or recur more than once within the 6 month period after the date of the Final Notice, the Council, (having first attempted to settle any dispute by negotiation and internal dispute resolution in accordance with Paragraphs 4 and 5 of the Dispute Resolution Procedure) may terminate this Agreement in whole or in respect of the 2nd Tranche of Services only (as specified in Clauses X and X of the Phased Services Timetable) with immediate effect by notice in writing.

The Rectification Process shall impact upon the various Categories of breach (referred to in Clause X) as follows:-

- in relation to Category 1 breaches, following issue of a SIN, the next applicable stage of the Rectification Process shall be the issue of a 2nd Warning Notice;
- in relation to Category 2 breaches, following issue of a SIN, the next applicable stage of the Rectification Process shall be the issue of a 1st Warning Notice;
- in relation to Category 1 breaches, following issue of a SIN, the next applicable stage of the Rectification Process shall be the issue of a Default Notice.

Having first attempted to settle any dispute by negotiation and internal dispute resolution in accordance with Paragraphs 4 and 5 of the Dispute Resolution Procedure, the Council may (in its reasonable discretion) terminate this Agreement in whole or in respect of the 2nd Tranche of Services only (as referred to in Clauses X and X) with immediate effect by notice in writing if at any time during the Contract Period there remain unresolved:-

- more than **10** Default Notices;
- more than **7** 1st Warning Notices;
- more than **3** 2nd Warning Notices.