



ISLINGTON

CONDITIONS OF CONTRACT

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SCHEDULE 1 TENDER DOCUMENTS

SCHEDULE 2 BOND & GUARANTEE

THIS AGREEMENT is made on the _____ day of _____ 2007

BETWEEN

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of the Town Hall, Upper Street, London N1 2UD (hereinafter called "**the Council**" of the one part)

and

(2) [_____] whose registered office is at [_____] (registered no [_____]) (hereinafter called "**the Supplier**" of the other part)

(hereinafter collectively called "**the Parties**" and independently called "**the Party**")

WHEREAS

- A. The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- B. The Council intends procuring various parking enforcement services (including but not limited to on street penalty charges, vehicle immobilisation and removal, storage and disposal services) and the Supplier intends acting on behalf of the Council to establish, render and manage the performance of the Services in accordance with the provisions of this Contract.
- C. The Parties intend that an objective of this Contract is for continuous improvement in the provision of the Services in the most economically efficient manner and in accordance with the Key Quality Performance Indicators provided for by the Contract which the Supplier will achieve in order to secure remuneration.

NOW THEREFORE it is agreed between the Parties as follows:

1. DEFINITIONS AND INTERPRETATION

In this Contract the following expressions shall (save where the context may otherwise require) have the following meanings:

"2000 Act"

Means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;

“Best Value”

Means the Council’s duty to ensure continuous improvement in the way in which its functions are exercised having regard to:

- (a) Economy, efficiency and effectiveness as that duty is defined in the Local Government Act 1999, all subsidiary legislation and Government guidance made thereunder and relevant Technical Releases of the Audit Commission; and
- (b) The Council’s independent objectives including (but not limited to) performance of equality, environmental welfare and regeneration; each of which shall be considered and assessed with regard to every element of the Services;

“Bond”

Means a bond to be given by a bank or reputable insurance company approved by the Council in the form set out in **Schedule 2**;

“Civil Enforcement Officer” (CEO)

Means contractor operative formerly known as ‘parking attendant’

“Commencement Date”

Means 1st September 2007 or such other alternative date as may be agreed between the Parties in writing;

“Confidential Information”

Means Information, data and material of any nature which either Party may receive or obtain in connection with the Contract and:

- (1) Which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); or
- (2) The disclosure of which would or would be likely to prejudice the commercial interests of either Party or any other person and the public interest in maintaining non disclosure would outweigh the public interest in disclosure; or
- (3) The disclosure of which by the Council would constitute a breach of confidence actionable by the Supplier or a third Party; or
- (4) Which constitutes a trade secret;

“Contract”

Means the agreement concluded between the Council and the Supplier comprising these Conditions and the Tender Documents;

“Contract Manager”

Shall include the person appointed as contract manager by the Supplier in accordance with **Condition 9** (Contract Manager) or (in the event of the Contract Manager’s temporary absence from work) that person’s deputy also appointed in accordance with **Condition 9** (Contract Manager);

“Contract Period”

Means the period referred to in **Condition 3** (Commencement and Contract Period);

“Contract Price”

Means the fixed sum to be paid to the Supplier for the delivery of the Services in accordance with the Tender Documents, subject only to increases in accordance with Condition 14.4 or as otherwise agreed between the Parties;

“Council Authorised Officer” (CAO)

Shall include the person or persons notified by the Council to the Supplier pursuant to **Condition 8**;

“Council’s Guidelines”

Shall include relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council (including but not limited to the Constitution of the Council) as set out or referred to in the Specification and the Tender Documents or being reasonably notified to the Supplier by the Council or the Authorised Officer from time to time, as any of the same may from time to time be reasonably amended by the Council and notified to the Supplier;

“Council’s Publication Scheme”

Shall include the publication scheme adopted by the Council pursuant to section 19 of the 2000 Act and as amended by the Council from time to time;

“Customer”

Shall include any person assessed by the Council as being eligible for the Service or any part thereof;

“Default Notice”

Means a notice served on the Supplier in accordance with **Condition 20**;

“Default”

Shall include any incident of performance of the Services by the Supplier which is not to the standard anticipated by the Council or not in accordance with any of the terms of the Contract or would permit the Council to issue a Default Notice;

“Directive”

Means the European Acquired Rights Directive 77/187;

“Environmental Information Regulations”

Means the Environmental Information Regulations 2004;

“Expert”

Means the person appointed by the mutual agreement of the Parties, or in accordance with **Condition 21**, the cost of whose appointment shall be equally borne by each Party subject to the provisions of **Condition 21**;

“External Audit”

Means the independent external audit of the Council’s accounts under the Audit Commission Act 1998 or under the Local Government Act 1999 in relation to Best Value Performance Plans;

“Force Majeure”

Shall include an event referred to in **Condition 33** of these Conditions;

“Guarantee”

Means a guarantee to be given by the Supplier’s ultimate holding company in the form set out in **Schedule 2**;

“Health and Safety Guidelines”

Means all rules, procedures and requirements concerning health and safety at work notified to the Supplier by the Council from time to time;

“Information”

Means information as defined in section 84 of the 2000 Act;

“Insurance”

Shall include the policies of insurance which the Supplier is obliged to take out and maintain under **Condition 25** (Insurance);

“Intellectual Property Rights”

Shall include the rights of ownership in respect of all manner of intellectual property rights (including, without limitation, patents, trade marks and service marks, copyright and design rights) and know-how as set out in **Condition 26** (Copyright and Intellectual Property);

“Key Quality Performance Indicators”

Shall include (where applicable) the indicators by which the Supplier’s levels of performance of the Services is to be measured as set out in the Tender Documents as amended from time to time by the agreement of the Parties whether following a Partnership Panel Review, a review required pursuant to the Race Relations Act 1976 (as amended) and other applicable legislation or otherwise;

“Lease”

Means the lease(s) of the Location(s), the text of which is contained in Schedule 1 which shall be entered into between the Parties in accordance with **Condition 5** prior to use of the Locations;

“Legislation”

Shall include all Acts of Parliament and statutory regulations, instruments or orders, court decisions or judgements having the force of law and codes of practice issued thereunder and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;

“Location”

Shall include any premises at which the Services are to be provided including any land and/or premises, which include 29-33 Old Street, London EC1 and Community Flat (Ground Floor), Lillingstone House, Hornsey Road, London N7 7LX, more particularly identified in the Specification, each of which shall be the subject of the Lease entered into between the Council and the Supplier in accordance with **Condition 5**;

“New Joiner(s)”

Shall include a person who is employed by the Supplier after the Transfer Date to undertake the Services;

“Partnership Panel Review”

Means a review carried out by the Council encompassing the requirements to challenge, compare, consult and compete under **Condition 18** (Partnership Panel Review);

“Partnership Panel Review Date”

Means in respect of each and every element of the Services (considered individually and as a whole) every quarter throughout the Contract Period or such other date(s) which the Council considers in its discretion to be appropriate to ensure the Key Quality Performance Indicators and Best Value are consistently achieved;

“Performance Standard”

Shall include the standard to which the relevant part of the Services is to be performed as set out in or inferred from the Specification;

“PIDA 1998”

Means the Public Interest Disclosure Act 1998;

“Prescribed Rate”

Means the rate of interest payable by either Party when in default of its payment obligations hereunder being 3% (three percent) above the base rate for the time being of the Co-operative Bank p.l.c.;

“Quality and Environmental Management Systems”

Shall include the system of operating and controlling the performance of the Services adopted by the Supplier under **Condition 11**;

“Regulations”

Means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Request for Information”

Shall have the meaning set out in section 8 of the 2000 Act or any apparent request for Information under the 2000 Act or the Environmental Information Regulations;

“RPIX”

Means the General Index of Retail Prices published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published from time to time by the Office of National Statistics or if such index shall cease to be published, such other retail prices index as may be published as its substitute or in the event there is no direct substitute, such index as the Parties agree produces as nearly as possible the same results;

“RPIX Adjustment”

Means an annual adjustment of the Contract Price in line with inflation, calculated as follows:

$$\text{Contract Price} \times \frac{\text{RPIX (2)} - \text{RPIX (1)}}{\text{RPIX (1)}}$$

when RPIX (2) is the RPIX as at the day of the current contract year (which is two months prior to commencement of the next following contract year) and RPIX (1) is the RPIX as at the day of the preceding Contract year (which is fourteen months and a day prior to the date upon which the RPI Adjustment is to take effect);

“Schedule”

Means a schedule to these Conditions;

“Service(s)”

Shall include any or all of the services as are more particularly described in the Specification to be provided by the Supplier pursuant to this Contract or such of them as may from time to time remain the subject of this Contract;

“Service Data”

Shall include any data and/or information howsoever stored which is compiled in relation to all or any of the Services or part thereof;

“Specification”

Means the specifications set out in the Tender Documents relating to the provision of the Services (including but not limited to the Key Quality Performance Indicators) as varied by the Council from time to time in accordance with **Condition 7** (Variation of Services);

“Tender Documents”

Shall include the documents contained herein and/or annexed hereto and contained in Schedule 1, including the following:
these Conditions of Contract,
the Specification (including the Key Quality Performance Indicators),
the Lease,
Pricing Submissions as completed by the Supplier, and
any other Tender Documentation;

“Transfer Date”

Means the Commencement Date or such other date as the Council will notify the Supplier;

“Transferring Employee(s)”

means an employee of any person (including the Council) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out the contract between the Council and the Supplier, a contract of employment with someone other than the Council;

“Variation”

Shall include a variation to the Contract made by notice by the Authorised Officer to the Supplier in accordance with **Condition 7** (Variation of Services);

“Warranties”

Shall include the warranties, representations, covenants and undertakings made and/or given by the Supplier under **Condition 24** (Supplier’s Warranties and Liabilities);

“Whistleblowing Policy and Guidelines”

Means the policy and guidelines issued and updated from time to time by the Council (which are available on its website) in relation to the issue of whistleblowing including the Council’s *‘Whistleblowing Policy for Council Contractors’* as amended from time to time;

“Working Day”

Means Monday to Friday excluding bank and public holidays.

Unless the context requires otherwise, words in the singular may include the plural and vice versa.

Where the Supplier is more than one person those persons shall be jointly and severally liable under the Contract.

Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.

Words importing the masculine gender shall include the feminine gender and vice versa.

The headings in this Contract are for ease of reference only and do not affect its interpretation or construction.

All stipulations of the Contract as to time shall be of the essence (except any stipulations as to the time of payment by the Council to the Supplier).

2. FORM OF CONTRACT

Sufficiency of Information

2.1 Subject to the Council's warranties contained in this Contract the Council does not warrant the accuracy of any representation or statement of fact or law given to the Supplier by the Council, its servants or agents at any time before the execution of this Contract and the Council shall not be liable to the Supplier for any loss or damage which the Supplier may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as the relevant representation, statement, information or advice was made or given fraudulently.

Copyright

2.2 Any Intellectual Property Rights in the Contract shall remain the property of the Council; the Supplier may obtain or make at its own expense further copies of the Contract exclusively for the use of the Supplier for the performance of the Services.

Standing Orders of the Council

2.3 The Contract shall be subject to the Council's Guidelines (including the Constitution of the Council) current from time to time, the contents of which the Supplier acknowledges it has had sight of and is fully aware of their contents.

3. CONTRACT PERIOD

3.1 The Contract Period shall be from the Commencement Date and subject to prior termination in accordance with the Conditions hereof shall continue until 31st August 2017.

3.2 Should the Council cease to be responsible for the provision of the Services, the Council shall have the right without incurring any liability to terminate the Contract by not less than 3 months' written notice to the Supplier to expire at any time thereafter.

4. THE SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall be subject to the Conditions and carry out and complete the Services in compliance with the Contract.

4.2 At all times, the Supplier shall provide the Services described in the Specification with due skill, care and diligence, with utmost good faith and in accordance with the Specification and any written instructions of the Authorised Officer.

- 4.3 The Supplier shall ensure that files, books and records are kept for a period of **six (6) years** after expiry of the Contract Period in respect of the provision of the Service to the extent:
 - 4.3.1 Required by the Conditions and the Specification and/or law;
 - 4.3.2 Required to record details of any and all monies collected on behalf of the Council; and
 - 4.3.3 Otherwise reasonably required ensuring the Service is provided in a proper and timely fashion.
- 4.4 The Supplier shall at all times during the provision of the Service allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:
 - 4.4.1 All work places used by the Supplier for the purposes of inspecting works being performed for the provision of the Service;
 - 4.4.2 All work places used by the Supplier for the purposes of inspecting records and documents in the possession, custody or control of the Supplier in connection with the provision of the Service;
 - 4.4.3 Any personnel or agent of the Supplier for the purposes of interviewing such persons in connection with the provision of the Service; and
 - 4.4.4 Technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.
- 4.5 The Supplier shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Contract.
- 4.6 The Supplier shall at all times comply with the Constitution of the Council referred to under **Condition** 2.3 and any relevant financial regulations.
- 4.7 If the Supplier or its personnel default in complying or fail to comply with this Condition, any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers (and any third parties employed by the Council) as a result of the default or failure, may be deducted from any sums due or to become due to the Supplier under this Contract or shall be recoverable by the Council from the Supplier as a debt.
- 4.8 The Supplier shall provide each year to the Authorised Officer a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.
- 4.9 The Supplier shall not advertise the fact that it is providing Services to the Council under this Contract other than with the written permission of the Council.
- 4.10 The Supplier shall at all times provide, maintain, replace (as necessary)

and insure all equipment (including software) used for the performances of the Services. In the event of failure to do as aforesaid, the Supplier will be liable for and will fully indemnify the Council against all liabilities, damages, costs, expenses, charges, losses, demands and proceedings arising as a consequence of failure to do as aforesaid.

- 4.11 The Supplier shall not in any way whatsoever be, act or hold itself out as an agent of the Council nor make representations or warranties on behalf of the Council and the Supplier undertakes to contract with the Council as principal and not as agent.
- 4.12 The Supplier shall procure the execution and delivery to the Council of the Bond and/or Guarantee as a condition precedent to any obligation on the Council to make any payments under this Contract.

5. PERFORMANCE OF SERVICES AND THE SPECIFICATION

- 5.1 The Supplier shall at all times during the Contract Period perform the Services comprehensively with due skill, care and diligence strictly in accordance and in compliance with the Contract, including but not limited to:
 - 5.1.1 The Specification and implementation and maintenance of the Quality and Environmental Management Systems;
 - 5.1.2 The Council's Guidelines in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Council and supplied to the Supplier;
 - 5.1.3 The instructions issued to the Supplier by any Authorised Officer under or in connection with the Contract;
 - 5.1.4 All relevant Legislation;
 - 5.1.5 In an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Customers and other occupiers of the Locations and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council.
- 5.2 The Supplier's performance shall be monitored by the Council and shall in particular be measured on the basis of the Key Quality Performance Indicators and on the level of compliance with the Specification.
- 5.3 Where Locations are provided by the Council to the Supplier to carry out the Services, they shall be used exclusively for the performance of the Services. On completion of the Contract Period or on earlier termination, the Location(s) shall be vacated and reinstated to a standard the same as their state when handed over to the Supplier.
- 5.4 The Parties agree that as a condition precedent prior to the occupation and/or use of any of the Locations, they shall enter into Leases for the

Locations which are owned by the Council in a form similar to that contained in Schedule 1.

6. MONITORING OF THE SERVICES

- 6.1 Notwithstanding the Parties' agreement to meet on the Partnership Panel Reviews Dates, the Parties shall meet on dates to be confirmed by the Council at premises to be agreed between them throughout the Contract Period in order to agree upon any issues which are outstanding and/or require review and to ensure total compliance with by the Supplier with any monitoring arrangements or monitoring exercise that may be reasonably instigated or required by the Council.
- 6.2 The Supplier shall keep and maintain such necessary data and information and shall provide such assistance as the Council may reasonably require to enable the Council to complete all official returns, including (where applicable) but without limitation (provided the nature of such data and information and the format for the same has been agreed by the Parties):
- 6.2.1 Returns to the Department of Health and the Department of Social Security;
 - 6.2.2 Returns to the Chartered Institute of Public Finance and Accountancy;
 - 6.2.3 Information required by the Audit Commission;
 - 6.2.4 Information required for the purposes of compliance with any External Audit, Partnership Panel Review, Best Value performance plans or other inspection; and
 - 6.2.5 Information required in order to ensure compliance with the Race Relations Act 1976 (as amended), other applicable legislation and generally to ensure conformity with obligations contained in **Condition 23** (Unlawful Discrimination and Equal Opportunities).
- 6.3 The Supplier shall provide such data and information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.
- 6.4 The Supplier shall at all times during the currency of the Contract allow the Authorised Officer and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Authorised Officer access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Supplier for the purposes of monitoring and inspecting work being performed pursuant to the provision of the Services and any or all records and documents in the possession, custody or control of the Supplier in connection with the provision of the Services.

7. VARIATION OF THE SERVICE

- 7.1 The Council may from time to time require changes to the Specification and accordingly the Authorised Officer may, upon giving seven days' written notice thereof to the Supplier, issue instructions to the Supplier to do all or any of the following:
 - 7.1.2 To reduce or increase the volume or frequency of any part of the Service permanently or during such time or for such period as the Authorised Officer may determine;
 - 7.1.3 To perform the Service or any part thereof in such a manner as the Authorised Officer may reasonably require, provided that a requirement to perform the Service in accordance with the Specification shall not be a Variation;
 - 7.1.4 To provide such services additional to the Service, (including at additional locations), as the Authorised Officer may reasonably require, provided that such additional services shall be the same type or similar to the Services referred to in the Specification; and
 - 7.1.5.1 To vary temporarily or permanently the Services or the Specification or any part thereof.

No Variation pursuant to this Condition shall vitiate the Contract.

- 7.2.1.1 The value of all Variations shall be ascertained by the Authorised Officer after consultation with the Supplier in accordance with the following principles:
 - 7.2.2 Where services are of similar character and executed under similar conditions to Services priced in the pricing documents the Variation shall be valued at such rates and prices contained therein as may be applicable;
 - 7.2.2 Where the Variation involves work that is not the same as or of similar character to or not executed under similar conditions to the Service, the rates and prices in the pricing documents shall be used as the basis for valuing such Variation in so far as may be reasonable and otherwise a fair valuation shall be made by the Authorised Officer.
- 7.3 In the event of any dispute as to the value of any Variation or additional work or as to whether any Variation or additional work should give rise to any increase or decrease in the Contract Price, the decision may be dealt with in accordance with the provisions of **Condition 21** (Disputes).

8. THE COUNCIL'S AUTHORISED OFFICER

- 8.1 The Council shall notify the Supplier of the person(s) appointed to be the Councils Authorised Officer(s) (and of any variation of such nominee(s)).
- 8.2 The function of the Council Authorised Officer(s) shall be to liaise with and give instructions to the Supplier and its personnel in relation to all matters concerning the performance by the Supplier of its obligations under the Contract and to determine any matters or issue any notices as may be the function of the Council Authorised Officer(s) under this Contract.

8.3 The Council Authorised Officer(s) shall have power on behalf of the Council to issue instructions and directions on any matter relating to the performance of the Services and exercise the functions and powers of the Council under this Contract and the Supplier shall observe and comply with all such instructions or directions, which the Authorised Officer shall use reasonable endeavours to confirm in writing.

9. CONTRACT MANAGER

9.1 The Supplier shall ensure that at all times during the Contract Period there shall be one member of the Supplier's personnel who has been and remains appointed as the Contract Manager with authority to represent the Supplier for all purposes, the identity and contract details of whom shall be notified to the Council not less than 14 days prior to the Commencement Date.

9.2 The Contract Manager shall be appointed subject to his identity having the written approval of the Council and his being available all times throughout the Contract Period.

9.3 The Contract Manager will follow and comply with any instructions or directions given or issued by the Authorised Officer in connection with performance of the Services.

10. THE SUPPLIER'S PERSONNEL

10.1 The Supplier shall employ sufficient suitably qualified personnel to ensure that the Services are provided in all respects to the Specification throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise.

10.2 Without prejudice to the generality of **Condition 5** (Performance of Services and the Specification) the Supplier shall perform the Services in accordance with the arrangements relating to personnel stated in the Specification.

10.3 The Supplier shall notify the Authorised Officer of any material amendments to the personnel arrangements during the Contract Period whether or not they fall within the provisions of **Condition 10.2** above.

10.4 The Supplier shall employ or engage in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work, which they are to perform.

10.5 The Supplier shall, for the purposes of enabling the Council and the Authorised Officer to satisfy themselves as to the Supplier's compliance with this **Condition 10** maintain at all times accurate and up-to-date records of all personnel in the Supplier's employ who are and who are likely to have any connection with the performance of the Services including employee attendance records and shall afford the Council and the Authorised Officer full access to these records upon reasonable notice in writing by the Authorised Officer.

- 10.6 The Authorised Officer shall, on giving notice together with reasons to the Contract Manager or the relevant Assistant Contract Manager, have the power to require the Supplier, (but not unreasonably or vexatiously), to remove from the provision of the Services any individual member of the Supplier's personnel or of its sub-Suppliers including the Contract Manager or an Assistant Contract Manager.
- 10.7 The Council shall under no circumstances be liable either to the Supplier or to its personnel for any cost, expense, liability, loss or damage occasioned by removal under **Condition 10** and subject as aforesaid the Supplier shall fully indemnify the Council in respect of any claim made by the personnel.
- 10.8 For the avoidance of doubt, the Supplier shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the Commencement Date and fully indemnifies the Council against any liability arising as a consequence thereof.
- 10.9 In carrying out the Services, the Supplier shall take all reasonable steps to minimise any nuisance or annoyance to the Customer.
- 10.10 With regard to police checks of personnel, the Supplier undertakes as follows:
- 10.10.1 To ensure that all of the Supplier's Personnel are police checked in accordance with the Legislation (including but not limited to the Care Standards Act 2000) and the Codes of Practice for Registered Persons and other Recipients of Disclosure Information under section 122 of the Police Act 1997;
- 10.10.2 Police checks carried out via the Supplier will only be accepted upon written confirmation from the Criminal Records Bureau (CRB) that the Supplier is registered with this service for the purposes of initiating police checks;
- 10.10.3 Where the Supplier asks the Council to process police checks, the Supplier must do so via the Council's Designated Officer; and
- 10.10.4 Police checks in connection with the Service provided under this Contract must be initiated to obtain the highest level of disclosure available from the CRB (including the Enhanced Certificate of Disclosure) in respect of each prospective employee, volunteer or other persons who may work with, give support to, or otherwise have substantial contact with Customers who are the subject of this Contract.
- 10.11 The Supplier will ensure that all Supplier's Personnel have a clear commitment to abide by the London Child Protection Committee (LCPC) procedures when dealing with matters affecting the welfare of young people.

- 10.12 The Supplier will provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.
- 10.13 The Supplier shall adhere to and comply with any guidelines and/or codes of practice issued by the Council when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children.

11. QUALITY AND ENVIRONMENTAL MANAGEMENT SYSTEMS

- 11.1 The Supplier shall as from the Commencement Date institute and throughout the Contract Period maintain in relation to its performance of the Services a system of quality assurance, improvement planning and operation and an environmental management system designed to ensure that the Services are carried out in accordance with the Specification.
- 11.2 The Quality and Environmental Management Systems shall be operated by the Contract Manager on behalf of the Supplier and shall include (without prejudice to the generality of the foregoing):
- 11.2.1 The keeping of records in order to comply with obligations under this Contract;
- 11.2.2 Carrying out frequent checks and reconciliation in compliance with the Specification;
- 11.2.3 Reporting to the Council on the extent to which the Supplier is achieving the Specification; and
- 11.2.4 Making suggestions to the Council as to how the Services could be improved, and in particular taking into account views expressed by residents, Customers and other occupiers of Locations.
- 11.3 The Supplier shall achieve conformity with the Quality and Environmental Management Systems.
- 11.4 From time to time the Council or an authorised third party may audit the Quality and Environmental Management Systems. In the event of any reasonable written recommendation concerning the modification of the Quality and Environmental Management Systems being made by the Authorised Officer from time to time, such recommendation shall, as soon as reasonably practicable, be incorporated and implemented by the Supplier.

12. COMPLAINTS

- 12.1 The Supplier shall comply with its own complaints procedure, notice of which shall have been given to the Council and will comply with the Council's complaints procedure whenever a complaint is made by any

third party directly to the Council as the same may be amended and notified to the Supplier from time to time.

- 12.2 The Supplier shall keep a record in a form approved by the Authorised Officer, of any complaints received (whether received orally or in writing, and whether from members of the Council, Customers, members of the public or others) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times.
- 12.3 The Supplier shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

13. CONTINUOUS IMPROVEMENT AND PERFORMANCE REVIEW

- 13.1 The Authorised Officer shall at its discretion convene regular meetings (“**Continuous Improvement Meetings**”) to promote jointly with the Supplier continuous improvement in the delivery of the Services provided under the Contract.
- 13.2 Working jointly at Continuous Improvement Meetings (to be chaired by the Authorised Officer and the Contract Manager on a rotational basis) the Authorised Officer and Contract Manager shall scrutinise and review all aspects of the activities and performance of the Contract and develop and bring forward agreed proposals for achieving such continuous improvements or for preventing failures in the provision of the Services.
- 13.3 The Parties will agree and record the changes to be introduced and assign organisational responsibilities for delivering such changes and specify a time scale for both the implementation of any operational improvements and for achievement of such improvements.

14. CERTIFICATES AND PAYMENTS

- 14.1 In consideration of the provision of the Services by the Supplier, the Council shall pay the Supplier sums due within thirty (30) days of receipt of an invoice for Services previously rendered in accordance with this Contract. The Council shall only make payments against VAT invoices correctly submitted for Services properly performed in accordance with the Contract. Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the said period, interest shall be payable on the sums due at the Prescribed Rate calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.2 The element of the Contract Price due relating to the unit rates for work executed shall be requested by the Supplier by means of an application for payment and shall relate only to those Services performed in the

preceding calendar month.

- 14.3 Such applications for payment shall comprehensively detail the Services for which payment is requested and the Supplier shall supply such additional information as the Council requires to verify the accuracy of such application. The Council will use such means as it considers appropriate to verify the application for payment including but not limited to enquiries with third parties.
- 14.4 Where applicable, the Contract Price shall be adjusted annually 12 months after the Commencement Date as follows:
- 14.4.1 By adding the RPIX Adjustment to or subtracting the RPIX Adjustment from (as appropriate) the previous calculation of the Contract Price relating specifically to fuel and other materials agreed by the Council; and
- 14.4.2 By adding the [] Adjustment to or subcontracting the [] Adjustment from (as appropriate) the previous calculation of the Contract Price relating specifically to salaries of staff employed by the Supplier exclusively to perform the Services for this Contract,

In each case, the resulting figure shall become effective as the Contract Price upon the relevant anniversary of the Commencement Date.

15. RECOVERY OF MONIES ON BEHALF OF THE COUNCIL

The Supplier will collect payment on behalf of the Council (where applicable) and be responsible for the security and handling of any transactions or funds, but shall not bank any monies, other than directly into an account nominated by the Council or to transfer cash and cheque payments to the Council's collection service unless otherwise stated in the Specification.

16. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE

- 16.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Supplier to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Contract or any other contract with the Council.
- 16.2 If the Supplier is unable or fails to provide the Services or any part thereof in accordance with the requirements of this Condition, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred as a consequence thereof may be deducted from any sums due or to become due to the Supplier under the Contract or shall be recoverable from the Supplier by the Council as a debt.

- 16.3 Where the Authorised Officer considers that an overpayment has been made to the Supplier or that any other sum is due to the Council from the Supplier under the terms of this Contract due to:
- 16.3.1 An error in any account which has been subject to certification for payment;
 - 16.3.2 An error in any invoice; or
 - 16.3.3 Arising from any other cause,
- He or she shall serve a notice on the Supplier indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Supplier.
- 16.4 If the Supplier is of the opinion that the Council has either failed to make a payment due under this Contract or made a payment in error, then the Supplier shall within not more than 28 days of such payment either being due or made in error as the case may be give to the Council written notice specifying the said error or failure made, the sum due to the Supplier (or the Council, as the case may be) to correct such error or failure and information as to the unpaid Services undertaken by the Supplier to which it is of the opinion that such non-payment or incorrect payment has been made. In the event such sum is properly due to the Supplier, the Council shall pay to the Supplier such sum in accordance with this Contract within 14 days of receipt of such written notice.

17. VALUE ADDED TAX

All payments made by either Party to the other Party under the terms of this Contract shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which payment is consideration and in so far as such payments are to be made under this Contract such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

18. PARTNERSHIP PANEL REVIEW

- 18.1 At any time within three months before any Partnership Panel Review Date the Council may require the Supplier to assist in the Partnership Panel Review in relation to all or any part of the Services which may include subcontracted elements of the Services.
- 18.2 The Partnership Panel Review shall consist of an exercise undertaken by both Parties on the basis of an objective comparison to determine whether the Council is achieving the Key Quality Performance Indicators and Best Value in the delivery of such element of the Services by the Supplier. Such exercise shall be carried out by:

- 18.2.1 Assessing the competitiveness of the Supplier's performance of the Services by reference to the performance of the same or similar services by or for other local authorities by commercial and other businesses (including organisations in the voluntary sector);
- 18.2.2 Assessing the Supplier's success in meeting all of the Key Quality Performance Indicators and Best Value standards which apply to the Services; and
- 18.2.3 Assessing the Supplier's progress towards meeting any relevant Key Quality Performance Indicators and Best Value performance targets (including any Key Quality Performance Indicators and Best Value standards which have been specified but do not yet apply).
- 18.3 The manner of any Partnership Panel Review and the nature of comparative material to be researched (including the way in which such research is obtained) shall be identified by the Council and the timing of any Partnership Panel Review shall be at the discretion of the Council. Neither the manner nor the timing of any such Partnership Panel Review shall be unreasonably ascertained.
- 18.4 Following the conclusion of a Partnership Panel Review, the Parties shall agree whether the Services are being performed by the Supplier to standards and prices acceptable to the Council and whether any adjustment needs to be made to the Contract Price or to secure an improvement to the Services to achieve the Key Quality Performance Indicators and Best Value. In the event of failure to agree as aforesaid, the matter shall be referred to an Expert in accordance with **Condition 21** (Dispute Resolution). Within one month of the conclusion of the Partnership Panel Review both Parties shall review the detail of the Supplier's records and accounts in relation to the performance of the Services.
- 18.5 Where any Partnership Panel Review results in any adjustment to the Contract Price, the adjustment shall be determined in accordance with the provisions of **Condition 7** (Variation of Services).
- 18.6 Where any Partnership Panel Review results in any adjustments to delivery of the Services or adjustment to the payments to be made under **Condition 14** (Certificates and Payment), any such adjustments shall take effect immediately (and if relevant, on a retrospective basis).
- 18.7 Where a Partnership Panel Review results in the appointment of a new sub-supplier, the change in identity of the relevant sub-supplier shall take place within 12 weeks of the relevant Partnership Panel Review Date or within a time-scale approved by the Authorised Officer.
- 18.8 The Parties agree that any Partnership Panel Review shall be carried out in good faith and that each Party shall act reasonably in relation to any Partnership Panel Review.

18.9 The Council shall be entitled (but without any obligation whatsoever) following an adverse Partnership Panel Review by both Parties carried out in accordance with this **Condition** 18 to give written notice to terminate the Contract six months after any Partnership Panel Review Date.

19. USE OF SUBSTITUTE SUPPLIER

19.1 The Authorised Officer may engage a substitute Supplier in accordance with this Condition if:

19.1.1 The Supplier fails to undertake any of the Services in accordance with the performance indicators stipulated in the Tender Documents;

19.1.2 In the reasonable opinion of the Authorised Officer the Supplier has failed to allocate sufficient resources to perform any of the Services.

19.2 Where the Authorised Officer pursuant to **Condition** 19.1 decides to engage a substitute Supplier he shall notify the Supplier in respect of the Supplier's failure under **Condition** 19.1. above and raise an Order to a substitute Supplier of his choice to carry out the relevant work until the Supplier is able reasonably to satisfy the Authorised Officer of its ability to carry out that work in accordance with the Specification.

19.3 Where the Authorised Officer has served notice on the Supplier in accordance with **Condition** 19.2 he may in respect of the relevant Services forthwith recover from the Supplier any costs, damages or expenses incurred by the Council by reason of the default of the Supplier to comply with the requirements referred to in this **Condition** 19 together with any costs or expenses incurred by the Council in excess of the sums that would have been paid by the Council to the Supplier under the terms of this Contract.

20. DEFAULTS

20.1 If at any time after the Commencement Date:

20.1.1 The Council (or its Authorised Officer) determines that the Services or any part of them have not been carried out in accordance with the Contract; or

20.1.2 The Supplier has failed to comply with any requirement made by the Council (or its Authorised Officer) within the terms of the Contract; or

20.1.3 The Council (or its Authorised Officer) deems that Supplier has adversely affected the image or reputation of the Council; or

20.1.4 The Supplier is in breach of any part of this Contract then without prejudice to any other right or remedy available to the Council, the Council or its Authorised Officer may issue Default Notices and deduct sums of money in accordance with the procedures set out below.

- 20.2 Any or all of the following procedures may be used upon issue of notice in writing to the Supplier and the Authorised Officer shall have sole and entire discretion as to which is most appropriate:
- 20.2.1 The Council may make such deduction from the payment due to the Supplier as the Authorised Officer shall reasonably calculate as compensation to the Council in respect of the Supplier's failure;
- 20.2.2 Without terminating the Contract, the Council may itself provide or procure the provision of any part of the Service until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Supplier is able to perform the Contract to a standard acceptable to the Council;
- 20.2.3 Without terminating the whole Contract, the Council may determine that part of the Service shall no longer be provided by the Supplier and itself provide or procure a third party to provide that part of the Service;
- 20.2.4 Without terminating the Contract, the Council may require the Supplier to remedy the default within a specified timescale at the discretion of the Council; and
- 20.2.5 The Council may terminate the whole of the Contract, in accordance with **Condition 28** (Termination).
- 20.3 Any expenses incurred which are in addition to the cost of the relevant part of the Services arising as consequence of suspension of the Services or procuring a third party to do so shall be recovered from the Supplier in accordance with these Conditions.

21. DISPUTE RESOLUTION AND EXPERT DETERMINATION

- 21.1 Authorised representatives of each of the Council and the Supplier agree to discuss and attempt to resolve any dispute or difference between themselves relating to this Contract prior to the appointment of an Expert.
- 21.2 If any dispute is incapable of resolution between the Parties, the Council and the Supplier shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Supplier shall use all reasonable endeavours to procure the prompt determination of the reference.
- 21.3 The Expert shall be deemed to act as an expert and not as an arbitrator.
- 21.4 The costs of the Expert appointed under this **Condition 21** shall be equally apportioned between the Parties or as may otherwise be directed by the Expert.
- 21.5 If the Parties are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Parties with the intent that by

agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven days.

- 21.6 Nothing in this Contract shall prevent either the Council or the Supplier at any time from seeking any interim or interlocutory relief from the Court.
- 21.7 Either Party may, within 90 days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.
- 21.8 Without prejudice to **Condition 7** (Variation of Services), until the time that a dispute between the Supplier and the Council is resolved the Supplier shall continue to perform the Services and be paid by the Council in accordance with this Contract.

22. HEALTH AND SAFETY

22.1 The Supplier shall in performing the Services ensure that its personnel and any sub-Suppliers, Council Personnel or any other person acting on behalf of the Supplier comply with all statutory and other legal requirements in relation to the safety and health of its employees, of sub-Suppliers, of any other persons in or near the Locations and of the members of the public. The Supplier shall in particular comply with all Legislation in the field of health and safety at work and in performance of the Services and generally perform the Services in accordance with the Supplier's health and safety policy statements and the Supplier's health and safety codes of practice and/or the Health and Safety Guidelines (where applicable). In the event of any inconsistency between the Supplier's health and safety policy statements and codes of practice and the Health and Safety Guidelines, the Health and Safety Guidelines shall prevail.

22.2 For the guidance of the Supplier the regulatory framework requiring compliance by the Supplier includes but is not limited to:

The Road Traffic Regulations Act 1984;
The Road Traffic Act 1991;
The Traffic Management Act 2004;
The Health and Safety at Work Etc. Act 1974;
The Control of Substances Hazardous to Health Regulations 2002;
The Occupiers' Liability Acts 1957 and 1984;
The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
The Health and Safety (First Aid) Regulations 1981;
The Workplace (Health, Safety and Welfare) Regulations 1992;
The Management of Health and Safety at Work Regulations 1999;
The Personal Protective Equipment at Work Regulations 1992;
The Provision and Use of Work Equipment Regulations 1998;
The Health and Safety (Display Screen Equipment) Regulations 1992;
The Health and Safety Information for Employees Regulations 1989;
Manual Handling Operations Regulations 1992;
The Electricity at Work Regulations 1989;

The Noise at Work Regulations 1989;
Health and Safety (Safety, Signs and Signals) Regulations 1996;
The Race Relations Act 1976;
The Race Relations (Amendment) Act 2000.

- 22.3 The Authorised Officer shall be empowered to suspend the provision of the Services in the event of non-compliance by the Supplier with the health and safety requirements of the Contract. The Supplier shall not resume provision of the Services until the Authorised Officer is satisfied that the non-compliance has been rectified.
- 22.4 No payment will be made for any part of the Services omitted as result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Authorised Officer requires the Supplier to take to remedy the breach of the health and safety requirement.
- 22.5 The Supplier shall:
- 22.5.1 Keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Council in writing of any changes made; and
- 22.5.2 Comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Supplier's health and safety procedures or the Health and Safety Guidelines (where applicable).

23. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES

In the performance of the Services the Supplier shall comply and shall ensure that its employees, agents and sub-suppliers comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Legislation (including the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976, the Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 1995) as well as statutory and other official guidance and codes of practice.

- 23.1 The Supplier acknowledges that the Council has a general duty under the Race Relations (Amendment) Act 2000 ("the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good race relations in carrying out their functions.
- 23.2 The Supplier shall be considered to have the same obligations as the Council under the Act when providing the Services under this Contract. The Supplier shall comply with the general duty under the Act as set out in **Condition 23.2** above and any Codes of Practice issued by the Commission for Racial Equality including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Supplier

shall be considered to be in breach of this Condition in the event of any non-compliance with the Act and any Codes of Practice.

- 23.3 The Supplier shall adopt the Council's own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Supplier) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of performing the Services, discriminate on the grounds of race directly, indirectly or by victimisation.
- 23.4 The Supplier shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Commission of Racial Equality and/or any third party against the Council for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Condition by the Supplier.
- 23.5 The Supplier shall, at the request of the Authorised Officer, provide for the Council a suitable breakdown of the workforce by race and grade as the Authorised Officer may reasonably require in order to be satisfied as to the Supplier's compliance with these **Conditions** 23.2 to 23.4.
- 23.6 The Supplier shall monitor the representation within the workforce of employees of different racial groups (meaning groups of persons defined by reference to colour, race, nationality, ethnic or national origins) and further undertakes to report to the Council the results of such monitoring at the Council's request. If it appears to the Supplier or the Council that a particular racial group is under-represented in the workforce as a whole or in a particular area of work in the workforce, the Supplier shall take such action as the Council may consider to be reasonably necessary to remedy the said lack of representation and encourage members of particular racial groups to apply for jobs or take up training opportunities, wherever possible.
- 23.7 The Supplier shall inform the Authorised Officer as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Supplier under Race Relations legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Authorised Officer with such further information and documentation as may be required in relation thereto.

24. SUPPLIER'S WARRANTIES AND LIABILITIES

- 24.1 The Supplier from the date hereof and throughout the Contract Period warrants, represents and undertakes to the Council as follows:
- 24.1.1 It has in all respects complied with every requirement in the Tender Documents (where applicable);
- 24.1.2 It has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract including the Specification

and these Conditions and it is not contracting with the Council in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council except those contained in the Invitation to Tender (if applicable) and this Contract;

- 24.1.3 All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Supplier in connection with or arising out of the Tender are true, complete and accurate in all respects;
- 24.1.4 It has full power and authority to enter into the Contract and thereafter to perform the Services;
- 24.1.5 It is of sound financial standing and the Supplier is not aware of any circumstances (other than such circumstances as expressly disclosed in writing by the Supplier to the Council) which may adversely affect any financial standing in the future;
- 24.1.6 It has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and other resources available to it in order to carry out the Service in accordance with the Specification;
- 24.1.7 It has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services; and
- 24.1.8 It will perform all of the Services in accordance with the Specification with due skill, care and diligence and within the times stated in the Specification, which times shall be of the essence.
- 24.2 The Supplier shall be liable for and shall fully and promptly indemnify and hold harmless the Council, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with the Supplier's obligations under the Contract in respect of:
 - 24.2.1 Any claims, demands or proceedings brought against the Council by any third party by reason either directly or indirectly of any default or breach by the Supplier of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;
 - 24.2.2 Any fraudulent or negligent act or omission by the Supplier (including, without limitation, any misappropriation of monies properly due to the Council);

- 24.2.3 Any liability of the Council to pay compensation to a Customer arising out of the Supplier's default in respect of repairs or failure to perform the Services in accordance with the Contract; and
- 24.2.4 Any failure by the Supplier to perform the Services in accordance with all and any terms of the Contract (including but not limited to the Specification).
- 24.3 The Supplier's liability to the Council under **Condition** 24.2 shall be without prejudice to any other right or remedy available to the Council and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever the Bond or the Guarantee as appropriate.
- 24.4 Except as provided by this Contract, the Council shall not under any circumstances be liable to the Supplier whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, in the course of or in connection with the provision by the Supplier of the Services or the access to or use of the Council's premises or facilities by the Supplier or the Supplier's personnel.
- 24.5 **Condition** 24.4 shall not apply in relation to:
- 24.5.1 Any failure by the Council to make proper payment to the Supplier in accordance with the terms of the Contract; and
- 24.5.2 Any deliberate or negligent act or omission of the Council or any of its employees giving rise to death or personal injury.

25. INSURANCE

- 25.1 The Supplier shall at all times maintain in force such employer's liability, public liability and product liability policies of insurance with reputable insurers or underwriters approved by the Council which shall fully insure and indemnify the Supplier against its liability under this Contract in the sum, in respect of employer's liability at least £5,000,000 and in respect of public liability and product liability at least £10,000,000, in respect of any one occurrence or series of occurrences arising out of one event.
- 25.2 The Supplier shall further insure against any expense, liability, loss, claim or proceedings in respect of any damage whatever to property (real or personal) in so far as such damage arises out of, in the course of, or by reason of, the performance of the Services and is due to the negligence, omission or default of the Supplier or its employees in the sum of at least £10,000,000 in respect of any one occurrence or series of occurrences arising out of one event and shall cause any sub-Supplier to maintain such level of insurance as the Council shall agree.

- 25.3 The Supplier shall during the currency of this Contract be responsible for contents insurance liability in respect of the depot and any other premises occupied for the purposes of the Contract.
- 25.4 The Supplier shall throughout the Contract Period and for a period of 12 years thereafter maintain with an insurance company approved by the Council professional indemnity insurance in respect of the Supplier's obligations to provide specified Services with due skill, care and diligence for a sum of not less than £5,000,000 in respect of any one incident.
- 25.5 The Supplier shall before the Commencement Date and annually thereafter and at such times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this **Condition 25**.
- 25.6 In the event that the Supplier fails to comply with any of these requirements the Council shall be entitled to effect such insurance itself and recover the proper and reasonable costs of so doing from the Supplier together with an administrative charge equal to ten per centum (10%) of the total cost of obtaining such insurance (subject to a maximum administrative charge of £500) and interest on the total outstanding amount at four per centum (4%) above the base rate of the Co-operative Bank plc in force from time to time.

26. COPYRIGHT AND INTELLECTUAL PROPERTY

- 26.1 Subject to **Condition 26.2** the Intellectual Property Rights in this Contract and all documents, records, data, or other information produced by the Supplier as part of the Services shall belong exclusively to the Council and the Supplier shall not make or distribute to a third party any copies of this Contract or the documents, records, data or other information produced by it without the written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold.
- 26.2 The Supplier shall be entitled to make copies of the Contract where such copies are required to enable it to perform the Services.
- 26.3 Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Services by the Supplier shall belong to the Council and the Supplier agrees that it shall execute or cause to be executed (by personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.
- 26.4 The Supplier shall indemnify the Council against any claims, liabilities, costs, losses, expenses, proceedings and damages arising out of any infringement or alleged infringement of any third party Intellectual Property Rights in connection with the provision of the Services.
- 26.5 Subject to **Condition 26.6**, the Supplier shall notify the Council of and conduct any litigation arising from (including all negotiations in connection

with) any claims, demands and actions in respect of any infringement or alleged infringement of any Intellectual Property Rights. The Council shall at the request of the Supplier, afford the Supplier all reasonable assistance for the purpose of contesting any such claims, demands and actions. The Supplier shall reimburse the Council for all costs and expenses (including, but not limited to legal costs and disbursements on a full indemnity basis) incurred in so doing.

- 26.6 If so requested by the Council, the Supplier shall either:
 - 26.6.1 Take all such steps as may be necessary to avoid the infringement or the alleged infringement of any Intellectual Property Rights; or
 - 26.6.2 Procure such licence as may be necessary to continue the carrying out of the Services without infringement, on terms which are reasonably acceptable to the Council.
- 26.7 The Supplier shall act as the bailee of any Service Data which may at any time be in the Supplier's possession or under its control and shall store such Service Data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as Service Data relating to each of the Services and the Supplier shall at all times comply with the Data Protection Act 1998 and the Computer Misuse Act 1990 and shall give the Authorised Officer (and/or persons nominated by him) right of access to premises used by the Supplier to monitor performance of the Services and compliance with the Legislation.

27. CONFIDENTIALITY AND PUBLICITY

Confidentiality

- 27.1 Subject to **Conditions** 27.3, 27.6 and 27.8, each Party undertakes to the other Party as follows:
 - 27.1.1 To treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly both during the Contract Period and following expiry or termination of the Contract;
 - 27.1.2 Not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract; and
 - 27.1.3 Not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with this Contract.
- 27.2 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party in breach of **Condition** 27.1 above and only use such Confidential Information in connection with the performance of the Contract.
- 27.3 **Condition** 27.1 shall not apply to any disclosure of Confidential Information:

- 27.3.1 Which a Party can demonstrate has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;
- 27.3.2 Which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;
- 27.3.3 Which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 27.3.4 Which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 27.3.5 To enable a determination to be made under the Dispute Resolution Procedure referred to under **Condition 21**;
- 27.3.6 By either Party to any department, office or agency of the Government;
- 27.3.7 Which is for the purpose of:
- (i) The examination and certification of the Council's or the Supplier's accounts (including any External Audit of the accounts); or
 - (ii) Any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has utilised its resources;
- 27.3.8 Which is independently developed without access to the Confidential Information;
- 27.3.9 By the Council to any third party insofar as this may be necessary to the performance or provision by that party of any services or works whatsoever for or to the Council;
- 27.3.10 By the Council to Homes for Islington Limited relating to Council residential or non residential properties and further disclosure by Homes for Islington Limited insofar as this is reasonably necessary for the proper discharge of the Council's functions which have been or may be delegated by the Council to Homes for Islington Limited; or
- 27.3.11 By the Council or Homes for Islington Limited in service monitoring reports to the Council's Executive or other member body or to Homes for Islington Limited board, sub-boards or committees.
- 27.4 The Supplier shall not make use of this Contract or other information issued or provided by the Council in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Council.
- 27.5 When the Supplier, in carrying out its obligations under this Contract, is provided with Confidential Information or other information relating to

users or potential customers of the Services the Supplier shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Supplier has sought and obtained the prior written consent of that person or the Council.

- 27.6 At the request of the Council, the Supplier shall facilitate the Council's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that the Council is required to provide information to a person as a result of a request made to it under such Code or regulations, the Supplier shall provide such information relating to the Contract, the Services or itself to enable the Council to adhere to the requirements of the Code or regulations.
- 27.7 Nothing in this **Condition** 27 shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 27.8 The Supplier acknowledges to the Council that nothing in this **Condition** 27 shall fetter or affect the Council's obligations under the Data Protection Act 1998, the 2000 Act or the Environmental Information Regulations.
- Publicity**
- 27.9 Subject to **Condition** 27.11, the Supplier shall not and shall procure that any member of the Supplier's personnel or sub-contractor shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Council's prior written approval as to its contents and manner and timing of its presentation and publication.
- 27.10 The Supplier shall not and shall procure that any member of the Supplier's personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.
- 27.11 Either Party may make a public statement or announcement concerning the completion of this Contract if required by:
- 27.11.1 Law; or
- 27.11.2 Any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law **PROVIDED THAT** any such statement does not contravene the duty of confidentiality contained in **Condition** 27.1
- 27.12 Subject to the provisions of **Condition** 27.1 the Council reserves the right

to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

28. TERMINATION

- 28.1 The Council shall be entitled upon the happening of any of the following events to terminate the Contract ("Termination"), without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect:
- a) The Supplier commits a breach of any term of the Contract which breach is capable of being remedied and the Supplier has failed to remedy the said breach within 14 days after issue of a written request from the Council that the Supplier should do so;
 - b) Any material breach by the Supplier of any of its obligations under the Contract;
 - c) The Supplier suffering an execution to be levied on his goods;
 - d) If the Supplier consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
 - e) If the Supplier consists of a body corporate, the Supplier having a receiver or manager or administrator or provisional liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition;
 - f) If the Supplier has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
 - g) The Supplier has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;
 - h) The Supplier is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state;
 - i) If the Authorised Officer shall certify in writing to the Council that in his opinion the Supplier has abandoned the Contract;
 - j) If the Authorised Officer shall certify in writing to the Council that the Supplier without reasonable excuse has failed to commence the Service on the Commencement Date or has suspended the performance of the Service or a substantial part thereof for seven days after receiving from the Authorised Officer written notice to proceed;
 - k) The Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation

to the obtaining or execution of the Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf, (whether with or without the knowledge of the Supplier);

- l) If in relation to any contract with the Council, the Supplier or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Legislation.

28.2 Upon such Termination and in addition to such consequences as are set out in these Conditions of Contract:

- a) The Supplier shall forthwith cease to perform the Service;
- b) The Supplier shall fully and promptly indemnify the Council in respect of the cost of causing to be performed the Service or any part thereof as would have been performed by the Supplier during the remainder of the Contract period to the extent that such cost exceeds such sums as would have been lawfully payable to the Supplier for performing the Service. The Council shall be at liberty to have the Service or any part thereof performed by any persons (whether or not servants of the Council), as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Service or part thereof performed;
- c) The Council shall cease to be under any obligation to make further payments to the Supplier and shall be entitled to retain any payments which may have fallen due to the Supplier before termination until the costs, losses and/or damages resulting from or arising out of the Termination of the Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Supplier, the Council shall pay the Supplier such sums forthwith and in any event within 10 (ten) Working Days of the calculation being agreed between the Parties;
- d) The Council shall be entitled to repossess any of its premises, materials, equipment or other goods loaned or hired to the Supplier and to exercise lien over any of the materials, equipment or other goods belonging to the Supplier for any sum due hereunder or otherwise due from the Supplier to the Council;
- e) The Council shall be entitled to employ and pay other persons to perform and complete the Service or any part thereof;
- f) The Council shall be entitled to deduct, retain or set off from any sum or sums which would but for paragraph c) of this Condition have been due from the Council to the Supplier under this Contract or any other Contract or be entitled to recover the same from the Supplier as a debt, any loss or damage to the Council resulting from or arising out of the termination of the contract. Such loss or damage shall include reasonable cost to the Council of the time spent by its officers in terminating the contract and in making alternative arrangements for the provision of the Service or any part thereof;
- g) When the total costs, losses and/or damages resulting from or arising out of the Termination of the Supplier's employment have been calculated and

deducted insofar as is practicable from any sum or sums which would but for paragraph c) of this Condition have been due to the Supplier, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Supplier any balance shown as due to the Supplier.

28.3 Notwithstanding anything to the contrary contained herein, the Council may terminate this Contract by giving either:

28.3.1 30 days' notice in writing to the Supplier in the event any grant from Central Government or a recognised third party to fund the Services is withdrawn, reduced or delayed; or

28.3.2 Not less than 6 calendar months' notice in writing to the Supplier (at the Council's discretion),

In each case without the Council having any liability or incurring any penalty whatsoever for any loss of profits, earnings, costs or expenses howsoever incurred by the Supplier as a consequence of termination of the Contract.

28.4 The rights of the Council under this **Condition** 28 are in addition to and without prejudice to any other rights the Council may have whether against the Supplier directly or pursuant to any guarantee or indemnity.

28.5 The Supplier may terminate this Contract by serving notice on the Council at least sixty (60) days prior to termination of the Contract if any sums remain unpaid for thirty (30) days after receipt by the Council of an invoice for Services previously rendered in accordance with this Contract and the Supplier has given the Council prior written notice stating sum(s) remaining unpaid and its intention to terminate the Contract and such sum(s) remain unpaid for thirty (30) days following service of the notice. Provided Always that the Supplier shall not exercise this right of termination where the sum(s) outstanding is/are the subject of a genuine dispute.

29. ASSIGNMENT AND SUB-CONTRACTING

29.1 The Council shall with the Supplier's consent (not to be unreasonably withheld or delayed) be entitled to assign the benefit of the Contract or any part thereof and shall give reasonable written notice of any such assignment to the Supplier.

29.2 The Supplier shall not:

29.2.1 Assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;

29.2.2 Sub-contract the provisions of the Services or any part thereof

To any person without the previous written consent of the Authorised Officer which consent shall be at the absolute discretion of the Authorised

Officer. This shall not relieve the Supplier from any liability or obligation under the Contract, and the Supplier shall be responsible for the acts, defaults or neglect of any sub-Suppliers, its employees and agents in all respects as if they were the acts, defaults or neglect of the Supplier itself.

30. NOTICES

Notices under this Contract shall be given by sending them by pre-paid registered post, fax (with a confirmatory copy by post) or personal delivery to the other Party at its address set out in the description of the Parties or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received 48 hours after sending (as evidenced by the sender's receipt), notices sent by fax shall be deemed to have been received on the first working day after sending (as shown by the timed print out on or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

31. PREVENTION OF CORRUPTION

31.1 Neither the Supplier nor any sub-contractor nor any other person employed by the Supplier or acting on the Supplier's behalf shall commit and the Supplier warrants, represents and undertakes that in entering this Contract, neither the Supplier nor any such person has committed any of the following (hereinafter referred to as "Prohibited Acts"):

31.1.1 Offer, give or agree to give to the Council, any related party or any other person any gift or consideration of any kind as an inducement or reward:

31.1.1.1 For doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or

31.1.1.2 For showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;

31.1.2 Enter into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Supplier (or anyone acting on its behalf or to its knowledge) unless before such contract is made, particulars of any such commission and the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Council;

31.1.3 Commit any offence under the Prevention of Corruption Acts 1889 to 1916, or Section 117(2) of the Local Government Act 1972 or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

31.1.4 Defraud or attempt to defraud or conspire to defraud the Council.

- 31.2 If the Supplier (or the Supplier's Personnel or anyone acting on its behalf or to its knowledge) commits any of the Prohibited Acts with or without the knowledge of the Supplier, in relation to this Contract then the Council shall be entitled to:
- 31.2.1 Terminate this Contract by notice in writing having immediate effect upon which the provisions of Clause 28 shall apply; and/or
- 31.2.2 Require the Supplier to procure the termination of any Subcontract or agency agreement if the Prohibited Act is that of the Supplier's subcontractor or agent; and/or
- 31.2.3 Require the Supplier to dismiss an employee of the Supplier, if the Prohibited Act is committed by the employee acting independently of the Supplier; and/or
- 31.2.4 Recover from the Supplier any loss sustained in consequence of any breach of Clause 31.1 by the Supplier.
- 31.3 The Supplier shall promptly inform the Council of the occurrence of any Prohibited Act of which it becomes aware.
- 31.4 Any termination notice given pursuant to Clause 31.2.1 shall specify:
- 31.4.1 The nature of the Prohibited Act;
- 31.4.2 The identity of the party whom the Council believes has committed the Prohibited Act; and
- 31.4.3 The date on which the Contract will terminate.

32. GRATUITIES TIPS AND CHARGES

The Supplier shall not whether itself or by any of the Supplier's Personnel engaged in the provision of the Services solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges approved by the Council.

33. ENTIRE AGREEMENT AND SURVIVAL OF PROVISIONS

- 33.1 This Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the Parties relating to the Services. Unless otherwise stated herein, this Contract applies in place of and prevails over any other terms, conditions and prior representations, whether contained in correspondence or implied by custom or law. Nothing in this Contract shall limit or otherwise exclude liability for fraudulent statements or misrepresentations made by either Party.

33.2 The rights and obligations which expressly or by their nature are intended to survive the expiry or termination of this Contract shall so survive and bind the Parties and their legal representatives, successors and assigns.

34 THE SUPPLIER'S WHISTLEBLOWING OBLIGATIONS

34.1 The Supplier hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular (but without limitation) the Supplier agrees:

34.1.1 To accept and adopt the Council's Whistleblowing Policy for Suppliers as a procedure for the purposes of s.43C(2) of PIDA and the Supplier agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;

34.1.2 That to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Supplier agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Contractor's employees and agents and to any sub-contractors.

34.2 Without limiting the generality of Condition 34.1, the Supplier agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Works/Services/Supplies, which give rise to a reasonable belief that one or more of the following matters (referred to in this Condition as "instances of malpractice") has occurred, is occurring or is likely to occur:

34.2.1 A criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);

34.2.2 A breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);

34.2.3 Miscarriage of justice;

34.2.4 Danger to health and safety;

34.2.5 Damage to the environment;

34.2.6 Any other matter designated as malpractice in the Whistleblower Policy and Guidelines;

34.2.7 Concealment of any of the above

34.3 Without limiting the generality of Condition 34.1, in the event that any employee, agent or sub-contractor of the Supplier should make a report to the Council (or to any other person authorised by law) pursuant to this Condition, the Supplier warrants that it shall use its best endeavours to

ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.

34.4 The Supplier agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Supplier to report, within a reasonable time, any instances of malpractice in accordance with this Condition, the Whistleblowing Policy and Guidelines and/or PIDA 1998.

34.5 Where the Supplier acting reasonably and in good faith makes a report pursuant to this Condition, and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report the Council accepts such liability as the Supplier may incur as a direct consequence of such report.

35. WAIVER

35.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the other Party of any of the provisions of the Contract shall not:

35.1.1 Constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of the Contract; nor

35.1.2 Affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

36 FORCE MAJEURE

36.1 If a Force Majeure event arises on or following the date of this Contract (irrespective of the fact that this Contract may then be conditional) which directly causes the Supplier to be materially unable to comply with any of its obligations hereunder, the Supplier and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Supplier is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of **Condition 28** (Termination). Failure by the Supplier to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

36.2 The events which are to be classified as Force Majeure events shall include each of the following:

- a) War, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
- b) Nuclear, chemical or biological contamination of the Supplier's property arising from any of the events at (a) above;

- c) Riot, flood or earthquake;
- d) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
- e) Any circumstances beyond the reasonable control of either of the Parties.

37. FREEDOM OF INFORMATION

- 37.1 The Supplier acknowledges that the Council is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Council (at the Supplier's expense) to comply with its obligations imposed under those provisions.
- 37.2 The Supplier shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 37.3 Subject to **Condition** 37.6, the Supplier shall and shall procure that its sub-contractors shall:
- 37.3.1 Transfer any Request for Information received by the Supplier or its sub-contractors to the Council promptly and, in any event, within two Working Days of its receipt;
 - 37.3.2 Provide the Council with a copy of all Information in its possession or power in the form and within the time scale that the Council requires including such information as the Council may require in order to comply with the Council's Publication Scheme;
 - 37.3.3 Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request Information within the time for compliance prescribed by section 10 of the 2000 Act;
 - 37.3.4 Do not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Council.
- 37.4 Subject to **Condition** 37.6, the Council shall be responsible for determining, in its absolute discretion, whether:
- 37.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
 - 37.4.2 Any Information is to be disclosed in response to a Request for Information.

- 37.5 The Supplier acknowledges that the Council may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
- 37.5.1 Without consulting the Supplier; or
- 37.5.2 Following consultation with the Supplier and having taken its views into account.
- 37.6 Where the 2000 Act applies to the Supplier (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Supplier shall:
- 37.6.1 Comply with the 2000 Act and any associated Legislation and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
- 37.6.3 Where the Supplier receives a Request for Information from a third Party under the 2000 Act which relates to the Council and / or this Contract:
- 37.6.3.1 Inform the Council about the Request For Information and the nature of the Information being sought as soon as reasonably possible;
- 37.6.3.2 Consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request For Information;
- 37.6.3.3 Consult with the Council prior to the disclosure of any such Information; and
- 37.6.3.4 Keep the Council informed about the Supplier's progress in dealing with any Request For Information and where requested by the Council, provide the Council with copies of any correspondence and documents relating to the Request For Information.
- 37.7 The Supplier shall indemnify the Council against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Council as a result of any breach of this **Condition 37** by the Supplier, the Supplier's personnel, sub-contractors or agents.
- 37.8 The Supplier acknowledges that the definition of Confidential Information is indicative only and that the Council may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.
- 38. TUPE**
- 38.1 The Supplier accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the Directive and the Regulations and has considered the application or

otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.

The Council and the Supplier agree that the transfer of the Services (where applicable) to be effected by this Contract is governed by the Directive and the Regulations and accordingly:

- 38.1.1 The Council shall use reasonable endeavours to request that the existing provider of services similar to the Services transfers, on the Transfer Date, the contract of employment for each of the Transferring Employees to the Supplier (save insofar as such contracts relate to any occupational pension schemes);
- 38.1.2 On termination of the Contract for whatever reason or expiry of the Contract Period, the Supplier shall discharge all wages salaries and honoraria (excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance); and
- 38.1.3 Subject to the Data Protection Act 1998, the Council shall provide to the Supplier such information as may be reasonably required to comply with the Regulations, including without limitation:
 - (a) The number of personnel, including supervisory and administrative personnel employed by the Council in the provision of the Service;
 - (b) The terms and conditions of employment of those personnel; and
 - (c) Any other information in relation to those personnel as may properly be required by the Supplier under this Condition.
- 38.2 The Supplier shall at its own cost undertake all liability for and shall fully indemnify the Council against:
 - 38.2.1 All losses, claims, damages and costs which may be brought against the Council as a consequence of the Supplier's failure to consider fully the application of the Directive and Regulations to this Contract and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting of this Contract; and
 - 38.2.2 All reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date by all or any of the Transferring Employees as a result of their employment with the Supplier.
- 38.3 The Supplier warrants that the pension arrangements that it will make for the Transferring Employees are the same as or better than those the Transferring Employees had as employees of the Council. The Supplier shall indemnify the Council against any breach of this warranty or any claims brought by any of the Transferring Employees and arising from the

Supplier's failure to provide pension benefits which are the same as or better than those the Transferring Employees had as employees of the Council.

- 38.4 On the termination of the Contract for whatever reason or on the expiry of the Contract Period, the Supplier shall supply within seven (7) days of demand by the Council all such information as the Council shall consider to be required as a result of the Directive and the Regulations, including without limitation:
 - 38.4.1 The number of personnel, including supervisory and administrative personnel, employed by the Supplier and any sub-Supplier employed in the provision of the Service;
 - 38.4.2 The terms and conditions of employment of those personnel; and
 - 38.4.3 Any other information in relation to those personnel as may properly be required by the Council under this Condition.

The Supplier shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information.

- 38.5 Prior to the termination of this Contract (or any part of this Contract) for whatever reason, the Supplier shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected employees pursuant to Directive Article 6 and Regulation 10 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising at the end of the Contract Period or on any earlier termination of the Contract (or any part of the Contract) for whatever reason. The Supplier shall indemnify and hold harmless the Council against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of the Supplier to comply with the requirements of this Condition.
- 38.6 If at the termination of the Contract for whatever reason (apart from cause for termination being a result of a material breach of the Contract by the Supplier) the Services cease to be provided by the Supplier and are neither taken back in-house nor transferred to a third party supplier, then the Supplier shall use its best endeavours to re-deploy employees previously engaged in the performance of the Contract. If having taken all such steps the Supplier dismisses exclusively on the grounds of redundancy any of the employees previously employed by the Council in the provision of the Services, the Council shall (subject to the Supplier consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Supplier that amount of an employee's redundancy payments which have been properly incurred and are

exclusively attributable to that employee's period of employment with the Council.

38.7 In addition to the provisions contained in **Condition** 38.6 above, the Parties agree that if during the Contract Period staffing levels are reduced exclusively as a consequence of redundancy of employees, the Council shall (subject to the Supplier consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Supplier such amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment by the Council. The Supplier accepts liability for all redundancy payments pertaining to the length of service of the relevant employee with the Supplier.

38.8 The Supplier shall ensure that New Joiners are offered terms and conditions of employment which are, overall, no less favourable than those of Transferring Employees and in doing so the Supplier shall comply with the provisions of any code of practice issued by the Government in relation to New Joiners. The Supplier shall indemnify the Council against any claim by a New Joiner or a former New Joiner which may arise out of the failure on the part of the Supplier to comply with the requirements of this Condition.

38.9 The Supplier shall undertake to include in any sub-contract specific provisions which provide equivalent obligations upon each sub-Supplier to those accepted by the Supplier under this Contract and which provide for enforcement by:

- (a) Transferring Employees; and/or
- (b) New Joiners; and/or
- (c) The Council

Directly against the sub-Supplier and preserving their rights under the Contracts (Rights of Third Parties) Act 1999. Copies of all sub-contracts (un-priced) shall be provided to the Council upon sub-contract award. The Supplier shall indemnify and hold harmless the Council against all claims, whatsoever and howsoever arising, which may at any time arise out of the failure on the part of the Supplier to comply with the requirements of this Condition.

39. DATA PROTECTION

39.1 The Supplier shall comply with its obligations, whether as data controller, data processor or otherwise under the Data Protection Act 1998 and shall promptly provide the Council with such information (including but not limited to a copy of the Supplier's registration under that Act) as the Council may reasonably require to satisfy itself of the Supplier's compliance.

- 39.2 The Supplier and any sub-contractor shall only undertake processing of Personal Data (as defined) reasonably required in connection with the provision of the Services.
- 39.3 The Supplier shall not disclose Personal Data to any third parties other than:
- 39.3.1 To its employees and authorised sub-suppliers to whom such disclosure is reasonably necessary in order for the Supplier to carry out the Services; and
- 39.3.2 To the extent required under a court order provided that disclosure under **Condition** 39.3.1 is made subject to written terms substantially the same as and no less stringent than the terms contained in this **Condition** 39 and that the Supplier shall promptly inform the Council in writing of any disclosure of Personal Data it or a sub-contractor is required to make under **Condition** 39.3.
- 39.4 Without prejudice to the generality of **Condition** 39.1, where the Council is data controller for any Personal Data processed by the Supplier as part of the Services, the Supplier (as data processor) shall:
- 39.4.1 Act only on instructions from the Council, as data controller; and
- 39.4.2 Take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and accidental loss or destruction of or damage to Personal Data and, on request supply written particulars of the measures taken, to the Council.
- 39.5 The Supplier shall indemnify and keep indemnified the Council against all actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the Council in respect of any breach by the Supplier (and/or any act or omission of any sub-contractor) of its obligations under this **Condition** 39.
- 39.6 The Supplier shall, where necessary make such application for an amendment of its registration under the Data Protection Act 1998 and take such other steps as may be practicable to afford the Council access to Personal Information and other information which is reasonably required by the Council for the purposes of its statutory duties or in connection with its rights and obligations under this Contract.
- 39.7 Each Party undertakes to the other Party that it will not knowingly place the other Party in breach of that other Party's obligations under the Data Protection Act 1998.
- 39.8 Each Party shall comply with its obligations under the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations thereunder.

40. LAW AND JURISDICTION

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

41. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless expressly stated nothing in this Contract or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Contract.

IN WITNESS whereof this Contract has been executed by each of the Parties as a deed in accordance with their respective constitutions on the day and year above written

For and on behalf of
**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF ISLINGTON**

.....

.....

For and on behalf of
[]

SCHEDULE 1

TENDER DOCUMENTS

SCHEDULE 2

PERFORMANCE BOND

THIS BOND is made as a deed on the day of 2007

BETWEEN

(1) [] whose registered office is situated at []
(hereinafter called "**the Supplier**"); and

(2) [] whose registered office is situated at []
(hereinafter called "**the Surety**")

IN FAVOUR OF

The Mayor and Burgesses of the London Borough of Islington of the Town Hall, Upper Street, London N1 2UD (hereinafter called "**the Council**"),

(hereinafter collectively called "**the Parties**")

WHEREAS

- (1) By a contract entered into on the day of 2007 between the Council and the Supplier (hereinafter called "**the Contract**") the Supplier has contracted with the Council to provide decriminalised traffic and parking enforcement services (described herein as "**the Services**") in accordance with the terms of the said Contract.
- (2) The Surety has agreed with the Supplier to guarantee in favour of the Council performance of the obligations of the Supplier under the Contract upon the terms and conditions of this Performance Bond subject to the limitation set out in Clause 5 below.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES as follows:

1. The Surety guarantees to the Council that in the event of any breach of the Contract by the Supplier or on the termination of the Contract or the Supplier's employment thereunder by reason of any act, omission, breach or default of the Supplier or the insolvency of the Supplier (hereinafter called an "Event of Default") the Surety shall, subject to the provisions of this Performance Bond, satisfy and discharge all damages, claims, costs, losses, expenses, liabilities, losses of profit and losses of use sustained by the Council as established and ascertained in accordance with the Contract.
2. The maximum aggregate liability of the Surety and the Supplier under this Performance Bond shall not exceed the sum of £[] or 10% (ten

percent) of the total aggregate contract value, whichever shall be the greater, and the Parties hereto agree the liability of the Surety and the Supplier hereunder shall be joint and several and the liability of the Surety shall be co-extensive with the liability of the Supplier under the Contract.

3. The Supplier and the Surety shall not be released and/or discharged from the obligations contained in this Performance Bond in the event of either or any of the following:
 - (a) Any change in the nature or extent of the Services being or being due to be performed under the Contract as a consequence of any such change being agreed by the Supplier;
 - (b) Any alteration to the terms, conditions and/or other provisions of the Contract;
 - (c) Any allowance of time, forbearance, indulgence, relaxation or other concession granted by the Council to the Supplier under the Contract in respect of its obligations thereunder; or
 - (c) Any compromise or settlement of any dispute between the Council and the Supplier (but so that the Council shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement in so far as the Supplier shall have complied with such terms).
4. The Surety's obligations and liabilities under this Performance Bond shall continue notwithstanding any disclaimer of the Contract by a liquidator, receiver or administrator appointed to the Supplier and the Contract shall for the purposes of this Performance Bond be deemed to continue notwithstanding any such disclaimer.
5. If an Event of Default shall occur, the Council may and shall at any time before the Expiry Date (as defined in Clause 6) give notice in writing to the Supplier and the Surety specifying the nature of the Event of Default and making a claim under the terms of this Performance Bond, which claim shall be paid for in full by the Surety to the Council within 5 (five) working days of receipt thereof.
6. This Performance Bond shall remain in full force and effect until not less than twenty four months after the expiry of the Contract Period or, in the event that the Contract is extended pursuant to the Conditions thereof, twenty four months after the expiry of such extension period ("the Expiry Date") on which date the obligations of the Surety under this Performance Bond shall be released and discharged absolutely save in respect of any Event of Default which has occurred and in respect of which a claim in writing containing particulars of such Event of Default has been made upon the Surety before such date.
7. The Performance Bond shall be governed by and construed in accordance with English Law and the English Courts shall have jurisdiction over any dispute or difference which may arise between the parties hereto out of or in connection with this Performance Bond.
8. The Parties hereto intend this Performance Bond to take effect as a Deed.

IN WITNESS whereof the Parties hereto have executed this Performance Bond as a Deed by causing their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL OF

[]

was hereunto affixed in the presence of

.....

DIRECTOR

.....

DIRECTOR/SECRETARY

THE COMMON SEAL OF

[]

was hereunto affixed in the presence of

.....

DIRECTOR

.....

DIRECTOR/SECRETARY

of any such failure to carry out, observe or perform on the part of the Supplier under the Contract (including (but not limited to) any additional costs, losses and expenses incurred by the Council as a consequence of having to procure the relevant services, supplies and/or works from a third party).

Without prejudice and in addition to its rights under Clause 3.1 below, the Council may at its sole discretion in the event of the failure for any reason of the Supplier to carry out and/or complete its obligations in accordance with the Contract require the Guarantor to carry out and complete the same or to procure the carrying out and completion of the said obligations and the Guarantor shall be bound by the terms of the Contract as though it were a party to the same.

The Council will not be bound first to make demand on or enforce any rights against the Supplier or any other guarantor or other person before enforcing this Guarantee Provided that the Guarantor shall have no greater liability under this Guarantee than it would have had if the Guarantor had been named as Supplier under the Contract.

3. The Guarantor shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:
 - 3.1 Any alteration to the nature or extent of the terms of the Contract;
 - 3.2 Any allowance of time, forbearance, indulgence or other concession granted to the Supplier under the Contract or any other compromise or settlement of any dispute between the Council and the Supplier (but so that the Council shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Supplier shall have complied with such terms);
 - 3.3 The liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of the Supplier or the Guarantor;
 - 3.4 Any other act, omission, matter or thing which but for this provision might operate to discharge, release or otherwise exonerate the Guarantor from this Guarantee.
4. This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, warranties, representations and conditions now or hereafter to be carried out or performed by the Supplier under the Contract shall have been satisfied and performed in full and is in addition to and not in substitution for any other security which the Council may at any time hold for the performance of such obligations. Where in the reasonable opinion of the Council the Supplier has failed to carry out, observe or perform all or any of the obligations, duties, undertakings, covenants, warranties, representations and conditions on the part of the Supplier contained in the Contract and the Supplier has failed to rectify such failure in accordance with the Contract this Guarantee may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Supplier.

- 5. Insofar as any sums are payable (whether contingently or otherwise) by the Supplier to the Council under the terms of the Contract then the Guarantor shall not exercise any right of set-off or counterclaim against the Supplier or any other person or prove in competition with the Council in respect of any payment by the Guarantor hereunder and in case the Guarantor receives any sums from the Supplier or any other person in respect of any payment of the Guarantor hereunder the Guarantor shall hold such monies in trust for the Council so long as any sums are payable (whether contingently or otherwise) under this Guarantee.
- 6. The Guarantor will not, without the prior written consent of the Council hold any security from the Supplier or any other person in respect of the Guarantor's liability hereunder or in respect of any liabilities or other obligations of the Supplier to the Guarantor. The Guarantor will hold any security held by it in breach of this provision in trust for the Council.
- 7. This Guarantee is in addition to and not in substitution for any present and future guarantee, lien or other security held by the Council. The Council's rights under this Guarantee are in addition to and not exclusive of those provided by law.
- 8. If any provision of this Guarantee is held by any competent authority to be invalid, unlawful or unenforceable in whole or in part the validity, lawfulness and enforceability of the other provisions of this Guarantee and the remainder of the provisions in question shall not be affected thereby.
- 9. This Guarantee shall be governed by and construed in accordance with the laws of England and the Guarantor submits to the exclusive jurisdiction of the English Courts.

IN WITNESS WHEREOF the Guarantor has executed this Guarantee as a deed the day and year first above written

EXECUTED as a **DEED**
by [**GUARANTOR**]
by affixing its common seal in the presence of

Director

Director/Secretary