

The Royal Borough of Kensington and Chelsea	Partnership Contract for Recycling, Waste Collection, Street Cleansing and Related Services
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**PARTNERSHIP CONTRACT FOR RECYCLING WASTE COLLECTION,
STREET CLEANSING AND RELATED SERVICES**

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1. DEFINITIONS

1.1 In this Contract the following words and phrases shall where the context so admits have the following meaning:-

"Additional Services" means those services required by the Authorised Officer under Clause 27

"Agreed Staff" means the number of staff offered by the Contractor in its Operational Plan and approved by the Council for assignment to the Services

"Approved Indices"

	Approved Indices
69% of the Contract Price	1. Average <i>percentage value</i> * derived from the published NJC settlement for local government
13% of the Contract Price	2. Department for Business Enterprise and Regulatory Reform Monthly Bulletin of Indices (Price Adjustment formulae for Construction Contracts) Civil Engineering Formula – 1990 series, Index No 2 Plant and Road Vehicles
4% of the Contract Price	3. Department for Business Enterprise and Regulatory Reform Monthly Bulletin of Indices (Price Adjustment formulae for Construction Contracts) Civil Engineering Formula – 1990 series, Index 10 Derv Fuel
14% of the Contract Price	4. National Statistics – Monthly Digest of Statistics – Index 18.3 Retail Price Index - All items

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* From the 1st April 2009 Review Date, the formula for determining the average *percentage value* specified in Approved Index 1 is as follows:

The annual percentage change in the arithmetic mean of all the consolidated spinal column points 4 to 49 of the Greater London Provincial Council Inner London Pay Spine ("the Pay Spine").

In the event that a spinal column point is deleted or added to the Pay Spine prior to any Review Date or during any year to which the approved index applies the percentage change between years will be calculated using the arithmetic mean of only those spinal column points that are common to both the years being compared, excluding spinal column points 2 and 3. In any subsequent year, provided no further spinal column points have been deleted or added to the Pay Spine prior to any Review Date or during any year to which the approved index applies, the percentage change between years will be calculated using the arithmetic mean of all the spinal column points common to both years, excluding spinal column points 2 and 3.

"Authorised Officer"

means the Director for Waste Management, Culture, and Leisure for the time being of the Council or the successor in title to that post in the event of a change in the organisation of the Council

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"Best Value Duty"	means the duty imposed on the Council by section 3 of the 1999 Act in relation to, inter alia, the Services
"Bond"	means a bond in the form attached to the ITN forming part of the Contract Documentation
"Change in Law "	<p>means the coming into effect after the Commencement Date of any Directive, Statute, Statutory Instrument, Regulation or bye-law other than one which has been published:</p> <ul style="list-style-type: none"> (i) in a draft bill as part of a Governmental Departmental Consultation Paper; (ii) in a Bill or white paper; (iii) in a draft statutory instrument; (iv) as a proposal in the Official Journal of the European Union; (v) as any applicable judgement of a relevant court of law which changes a binding precedent; (vi) as any Guidance (that is any ministerial guidance, circular or best practice note with which the Contractor is legally bound to comply)
"Charter"	means the Partnership Charter signed by both parties
"Commencement Date"	means the date specified in Clause 3.1 hereof
"Commercial Waste Agreement"	means an arrangement for commercial waste collections between the occupier of commercial premises and the Council under Section 45 (1)(b) of the Environmental Protection Act 1990
"Contract Year"	means a 12 month period. The first

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	Contract Year is a period of 12 months from the Commencement Date
"Contract / Contract Documents/Contract Documentation"	means the Charter, these terms and conditions, the Specifications the Operational Plan and Pricing Submission and the Leases
"Contract Period"	means the period specified in Clause 3 hereof
"Contract Price"	means the annual sum tendered by the Contractor for the Services and described in the Pricing Submission payable per calendar month in accordance with Clause 23 hereof
"Contractor"	means SITA UK Ltd
"Council Premises/Premises"	means any of the Council Premises where the Services are to be provided or from which the Services are to be provided and where the context so admits, the Demised Premises
"Data"	means data as defined in the Data Protection Act 1998
"Day"	means the period from midnight to midnight
"Demised Premises"	means those premises made available to the Contractor under Clause 19 for the performance of the services
"Form of Offer/Bid Undertaking/Pricing Submission"	means the document attached to the ITN forming part of the Contract Documentation
"General Change in Law"	a Change in Law which is not a Specific Change in Law

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"Generally Accepted Accounting Principles"

means the principles contained in the Financial Accounting Standards Board (FASB) Statements of Financial Standards as published from time to time

"Good Industry Practice"

means that degree of skill and care prudence and foresight and operating practice which would reasonably be expected from time to time of a skilled and experienced contractor engaged in the same type of undertaking as the Contractor under the same or similar circumstances

"Health and Safety Obligation(s)"

means any obligation imposed on the Contractor by law or compliance with Good Industry Practice or the Contract Documents in respect of Health and Safety at Work etc.

"Income"

means payments made by the Council under Clause 23

"Invitation to Negotiate/ITN"

means the document distributed to organisations bidding for the contract

"Instructing Officer"

means the individual or individuals appointed by the Authorised Officer in accordance with Clause 7 hereof

"Lease(s)"

means the Lease(s) relating to the Demised Premises granted by the Council to the Contractor

"Maintenance Plan"

means the 4 year plan to be prepared by or on behalf of the Contractor, for any works for the maintenance or repair of the Demised Premises, including the renewal or replacement of plant or equipment where applicable, during each four year period for the duration of the Contract which shall be updated not later than thirty (30) Working Days

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prior to the commencement of each year of the Contract

"Maintenance Programme" means the programme referred to in Clause 20.6 to be submitted to the Council's Authorised Officer by the Contractor

"Maintenance Works" means any works of maintenance or repair of the Demised Premises that are necessary to ensure that the Demised Premises are maintained in accordance with the Specifications and the Council's requirements generally (including, without limitation, and where applicable the renewal or replacement of any plant and equipment) throughout the Contract Period

"Notified List" means the list of vehicles, plant and equipment attached to the ITN and which the Contractor shall purchase at the price specified by the Council

"Operating Expenditure" means direct cost of staff, consumables, sub-contracted and bought in services together with depreciation of fixed assets, as agreed at the Commencement Date

"Operational Plan" means a document setting out the method of organising the tasks to the standards laid down in the Contract Documents

"Parent Company Guarantee" means a guarantee in the form attached to the ITN forming part of the Contract Documentation

"Personal data" means personal data as defined in the Data Protection Act 1998

"Processing" means in relation to data or personal data processing as defined in the Data Protection Act 1998

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“Prohibited Act”

means:

- a) offering giving or agreeing to any servant of the Council any gift or consideration of any kind as an inducement or reward:
 - i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining performance of this Contract or any other contract with the Council; or
 - ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
- b) entering 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 Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; or
- c) committing any offence:
 - i) under the Prevention of Corruption Acts 1889-1916; or
 - ii) under Legislation creating offences in respect of fraudulent acts; or

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iii)at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

d) defrauding or attempting to defraud or conspiring to defraud the Council

"Qualifying change of law" means a Specific Change of Law

"Reconciliation Statement" means a statement containing the following information;

a) income received by the Contractor during the Contract Year

b) operating expenditure incurred by the Contractor during the Contract Year

in a format matching the format of the Open Book Account agreed between the parties as provided in clause 40

"Regulations" means all rules or regulations having force of law

"Review Date" means the date defined in Clause 23

"Specifications" means the documents at the appendix which describe the Services required by the Council

"Service" means the service required by the Council under the Contract Documents

"Specific Change of law" means any change of law which specifically affects the Service or any part thereof or imposes a general statutory obligation on the Council to its staff or the public generally that may lawfully and properly be

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discharged by the Contractor under the terms of the Contract

"TUPE Regulations"

means the Transfer of Undertakings Protection of Employment Regulations 1981 and/or the European Acquired Rights Directive 77/187

"Week"

means, for the purpose of defining a payment period, seven consecutive days, starting on Monday and ending on the following Sunday

2. INTERPRETATION

- 2.1 Words importing one gender shall include the other gender.
- 2.2 Words in the singular shall include the plural and vice versa.
- 2.3 Words importing individuals shall be treated as importing corporations, partnerships and any organisation having legal capacity and vice versa.
- 2.4 Headings are for ease of reference only and shall not affect the construction of the Contract or be deemed to be part of this Contract.
- 2.5 References to personnel staff and managers of the Contractor shall include references to all persons engaged by the Contractor in the performance of the Services and shall (if the context so permits) include references to the personnel and managers of any sub-contractor of the Contractor.
- 2.6 References to any enactment, order, regulation or other similar instrument shall be construed as a reference to such enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order regulation or instrument.
- 2.7 In the event of any conflict between any provision of this Contract and any documents referred to in this Contract the terms of this Contract shall prevail.

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3. COMMENCEMENT AND DURATION

- 3.1 This Contract shall commence on the first day of April 2005 and shall continue in force until 31st March 2021 (the Expiry Date) or until varied or reviewed or determined in accordance with the provisions hereunder.

4. REVIEW OF CONTRACT TERMS

- 4.1 The terms of this Contract may be reviewed prior to the expiry of the fourth, seventh and twelfth year (the Review Dates). The Review shall take no longer than two months and be completed at least 1 month prior to the Review Date. Either party may request a review under this provision.
- 4.2 The purpose of the review shall be to consider whether any modifications to the terms of the Contract are necessary taking into account:
- 4.2.1 objective comparative data as to the quality and standard of service, performance, delivery and price with the provision of the same or similar services;
 - 4.2.2 any changes relating to minimum insurance levels required by the Council under Clause 16 or availability of such levels of insurance at commercially reasonable rates; or a General Change in Law; or Council policy;
 - 4.2.3 Contract Documents
- Each party shall bear their own costs in participating in the review.
- 4.3 Either party may refuse any resulting modification where these are outside of their legal capacity, breach any relevant law or guidance or good industry practice, or are not in accordance with spirit of partnership as defined in the Charter.
- 4.4 Any agreed changes shall be recorded in writing. Where agreement cannot be reached in respect of a review the dispute procedures in the Contract shall apply.
- 4.5 The Council may without further obligation terminate this Contract at the end of the 8th year by 12 months prior written notice.

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5. ENTIRE AGREEMENT

- 5.1 This Contract constitutes the entire understanding and agreement between the parties relating to the subject matter of this Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, documents, negotiations or understandings with respect hereto. If any ambiguity arises in the interpretation of the Contract Documents and that ambiguity cannot reasonably be resolved using the mechanisms described in clause 2 of the Contract Terms, the letters listed in the Schedule of Correspondence may be used, where reasonable, to assist in resolution of the matter

6. OBLIGATIONS PRIOR TO COMMENCEMENT DATE

- 6.1 As soon as reasonably practicable and in any event (unless otherwise agreed by the parties) prior to the Commencement Date the Contractor shall:
- 6.1.1 procure the execution and delivery to the Council of a Bond and/or Parent Company Guarantee in the form and in the terms specified by the Council in accordance with Clause 48 hereof;
 - 6.1.2 submit confirmation of all insurance policies as are required in Clause 16 hereof; and
 - 6.1.3 execute this Contract and the Leases under seal and deliver it to the Council together with the Bond and/or Parent Company Guarantee
- 6.2 The Council and the Contractor shall:
- 6.2.1 comply with such other obligations as are necessary for the Services to commence; and
 - 6.2.2 provide to the other all other information and documents which they are required to provide in accordance with the Contract Documentation and have agreed the contents of the open book account in accordance with Clause 40 and mechanisms for apportionment of any shared savings where relevant.

7. THE AUTHORISED OFFICER

- 7.1 The Council shall appoint an Authorised Officer who may exercise the rights and powers conferred by this Contract upon the Council.

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- 7.2 The Authorised Officer may notify the Contractor that the Council has nominated certain officers as Instructing Officers. An Instructing Officer shall be entitled to instruct the Contractor to carry out work which is part of the Services.
- 7.3 The Authorised Officer and/or Instructing Officers shall be entitled to monitor the performance of the Services by the Contractor and shall have the power to intervene in the case of any Contractor failure.
- 7.4 The Council's Authorised Officer and/or Instructing Officers shall at all times act in the spirit of partnership as defined in the Charter.

8. THE CONTRACT MANAGER

- 8.1 The Contractor shall appoint an individual to act as the Contract Manager.
- 8.2 The Contract Manager may exercise the functions, rights and powers conferred by this Contract upon the Contractor.
- 8.3 The Contract Manager shall at all times act in the spirit of partnership as defined in the Charter.

9. SERVICE CHANGE

- 9.1 The Council shall be entitled to propose changes in the Service in accordance with this Clause.
- 9.2 If the Council requires a change in Service, it must notify the Contractor (normally at the Partnership Board) of the change in service setting out the change in Service required in sufficient detail to enable the Contractor to calculate and provide a change in costs estimate ("the Estimate") and requiring the Contractor to provide the Council with the Estimate within twenty eight (28) days of receipt of the Council's notification.
- 9.3 As soon as practicable and in any event within twenty eight (28) days after having received notification from the Council, the Contractor shall deliver to the Council the Estimate. The Estimate shall include the opinion of the Contractor on:
- 9.3.1 whether relief from compliance with obligations is required during the implementation of the change in Service;
 - 9.3.2 any impact on the provision of the Service;

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- 9.3.3 any amendment required to Contract Documents as a result of the change in Service;
 - 9.3.4 any change in Contractor Costs (from the Open Book) that may result from the change in Service; and
 - 9.3.5 any loss of revenue that may result from the change in Service.
- 9.4 As soon as practicable after the Council receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate, including providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs; demonstrating that any expenditure to be incurred or avoided has been measured in a cost effective manner.
- 9.5 If the Contractor does not intend to use its own resources to implement any change in Service it shall comply with good industry practice with the objective of ensuring that it obtains best value for money when procuring any work, services, supplies, materials or equipment required in relation to the change in Service.
- 9.6 If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with Clause 25 (Dispute Resolution).
- 9.7 As soon as practicable after the contents of the estimate have been agreed or otherwise determined pursuant to Clause 25 (Dispute Resolution), the Council shall:
- 9.7.1 confirm in writing the Estimate (as modified); or
 - 9.7.2 withdraw the proposed change in Service
- 9.8 If the Council does not confirm in writing the Estimate (as modified) within 30 days of the contents of the Estimate having been agreed in accordance with Clause 9.4 above or determined pursuant to Clause 9.6 above, then the Council change proposed shall be deemed to have been withdrawn.
- 9.9 If the Contractor wishes to propose a change in Service, it must notify the Council (normally at the Partnership Board). The Contractor must:
- 9.9.1 set out the proposed change in Service in sufficient detail to enable to Council to evaluate it in full;

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- 9.9.2 specify the Contractor's reasons for proposing the change in Service;
 - 9.9.3 request the Council to consult with the Contractor with a view to deciding whether to agree to the change in Service and, if so, what consequential changes the Council requires as a result;
 - 9.9.4 indicate any implications of the change in Service;
 - 9.9.5 indicate, in particular, whether a variation to the Contract Price is proposed (and, if so, give a detailed cost estimate of such proposed change); and
 - 9.9.6 indicate if there are any dates by which a decision by the Council is critical.
- 9.10 The Council shall evaluate the Contractor's proposed change in Service in good faith, taking into account all relevant issues, including whether:
- 9.10.1 a change in the Contract Price will occur;
 - 9.10.2 the change affects the quality of the Service or the likelihood of successful delivery of the Service;
 - 9.10.3 the change will interfere with the relationship of the Council with third parties;
 - 9.10.4 the financial strength of the Contractor is sufficient to perform the changed Service; and
 - 9.10.5 the change materially affects the risks or costs to which the Council is exposed.
- 9.11 As soon as practicable after being notified of a change proposal, the parties shall meet and discuss the matter referred to in it. During their discussions the Council may propose modifications or accept or reject the Contractor's proposal.
- 9.12 If the Council accepts the Contractor's change proposal (with or without modification), the relevant change in Service shall be implemented within twenty eight (28) days of the Council's acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any amendments to the Contract Documents which are necessary to give effect to the change in Service.
- 9.13 If the Council rejects the Contractor's change proposal, it shall give its reasons for such a rejection.

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- 9.14 Unless the Council's acceptance specifically agrees to an increase in the Contract Price, there shall be no increase in the Contract Price as a result of a change in Service proposed by the Contractor.
- 9.15 If the change in Service proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease, there shall be a decrease in the Contract Price.
- 9.16 The Council cannot reject a change in Service which is required in order to conform to a Change in Law. The costs of introducing a change in Service resulting from a Qualifying Change in Law shall be dealt with in accordance with Clause 10.1 (Legislative change risk) and to the extent not dealt with shall be borne by the Contractor.

10. LEGISLATIVE CHANGE RISK

- 10.1 If a Qualifying Change in Law occurs or is shortly to occur, then either party may notify the other normally at a Partnership Board Meeting to express an opinion on its likely effects, giving details of its opinion of:

- 10.1.1 any necessary change in Service;
- 10.1.2 whether any changes are required to the terms of the Contract Documents to deal with the Qualifying Change in Law;
- 10.1.3 whether relief from compliance with any contract obligation is required during implementation of any relevant Qualifying Change in Law;
- 10.1.4 any loss of income that may or will result from the relevant Qualifying Change in Law;
- 10.1.5 any estimated change in the costs of the Contract (as identified in the Open Book Account) that directly result from the Qualifying Change in Law; and
- 10.1.6 any expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Contract Period

in each case giving in full detail any proposed procedure for implementing the change in Service occasioned, confirming to the other their opinion as to which party has responsibility for the costs of implementation, and any resulting variation to the Contract Price shall be dealt with in accordance with Clause 10.2 below.

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- 10.2 As soon as practicable after receipt of any notification from either party under Clause 10.1 above, the parties shall discuss and agree the issues referred to in Clause 10.1 above and any ways in which the Contractor can mitigate the effect of the qualifying Change of Law, including:
- 10.2.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
 - 10.2.2 demonstrating how any expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
 - 10.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses, including similar businesses in which the shareholders or their affiliates carry on business; and
 - 10.2.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in either party's opinion has resulted or is required under Clause 10.1.5 and/or 10.1.6 above.
- 10.3 It is agreed by the parties that subject to Clause 4 above and 10.3.1 below the Contractor shall bear the entire risk of any General Change in Law for the duration of the Contract and notwithstanding any other provision in the Contract any Specific Change in Law whether or not it is foreseen that comes into legal effect or which is published prior to or during the first 4 years of this Contract.
- 10.3.1 An order made by Transport for London under sections 295 and 420 of the Greater London Authority Act 1999 extending road user congestion charging (the Congestion Charge) to cover all or any part of the Council's area shall be treated as a Qualifying Change of law under this clause 10 at any time after the Commencement Date.

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11. STAFF

- 11.1 The Contractor is responsible for engaging in the performance of the Services sufficient persons of sufficient abilities, skills, knowledge, training, qualifications and experience for the proper performance of the Services and for ensuring that sufficient reserve staff are available to provide the Service at all times.
- 11.2 The Contractor shall ensure that all employees involved in providing the Services, whether employees of the Contractor, its sub-contractors, or agents, shall be at all times properly and sufficiently trained and instructed in the task or tasks the employee has to perform and the need to maintain the highest standards of courtesy and consideration to the public to promote and enhance the Council's image and reputation.
- 11.3 The Contractor shall provide a means of identification to its staff, sub-contractors and agents in the form approved by the Council's Authorised Officer, and shall require its staff to wear and keep visible such identification at all times whilst performing the Services. Entry to Council Premises may be refused if the correct identification is not reasonably displayed and in this event, the Contractor shall be fully responsible for resolving delays or difficulties in the provision of the Services which thereby arise.
- 11.4 The Authorised Officer may acting reasonably require the exclusion of any of the Contractor's employees, sub-contractors or agents from the Service.

12. TUPE

- 12.1 It is agreed by the parties that the terms of the European Acquired Rights Directive 77/187 and/or the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("The TUPE Regulations") as amended apply to this Contract and may also apply upon termination of this Contract, and the Contractor shall be deemed to have satisfied itself concerning its liabilities thereunder and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or effecting its tender.
- 12.2 At any time within the period of twenty four (24) months prior to the expiration of or following notice of termination of this Contract the Contractor shall provide upon request by the Council such information as may be reasonably required to comply with the

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TUPE Regulations for disclosure to third parties intending to submit Tenders or otherwise offering to enter into any subsequent contract for the provision of the Service.

- 12.3 The information to be provided in accordance with Clause 12.2 may include but shall not be limited to:
 - 12.3.1 number of staff, including supervisory and administrative staff, employed by the Contractor and any sub-Contractor employed in the provision of the Service;
 - 12.3.2 the terms and conditions of employment of those staff including pay and allowances, hours of work, holiday and leave entitlement, pension entitlement etc ; and
 - 12.3.3 any other information in relation to those staff as may reasonably be required by the Council under this Clause.
- 12.4 In the event that the Council seeks the information described in Clause 12.3 in connection with the re-tendering or other re-provision of the Service the Council shall be entitled to pass any information supplied to it by the Contractor to other persons selected to tender or otherwise provide the Service provided that it shall only do so on condition that such other persons undertake to use the information supplied only for the purposes of submitting a tender or otherwise providing the Services.
- 12.5 The Contractor shall, if requested by the Council, provide the information in Clause 12.3 above in relation to employees of its Contractors, Sub-Contractors and agents where such employees are engaged in the provision of the Service.
- 12.6 The Contractor shall co-operate, and where relevant do its utmost to procure the co-operation of its Contractors, Sub-Contractors and agents, so as to secure the proper and efficient transfer of any relevant employees.
- 12.7 The Contractor undertakes not to change personnel or service delivery structure or rates of staff remuneration, including but not limited to changes to preclude or promote the application of the TUPE Regulations upon termination or expiry of the Contract during the last twelve months of the Contract, other than for bona fide economic or operational reasons related to delivery of the Service under the Contract.
- 12.8 The Contractor shall indemnify and keep indemnified the Council against all losses, costs, demands, charges, proceedings, damages,

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expenses and all other liabilities whatsoever in respect of any claim made by or on behalf of any person involved in the Service (whether or not transferred from the employment of the Contractor) and which claim arises from a breach of the Contractors obligations under this Clause 12.

12.9 The Contractor shall arrange for the establishment of a pension scheme and offer membership of such scheme, which must be broadly comparable with their existing occupational pension entitlement, to transferee employees.

12.10 Without prejudice to any other provision in this Clause 12 the Contractor shall fully co-operate with and assist the Council in complying with sections 100 and 101 of the Local Government Act 2003 (staff transfer matters general/pensions) and any direction or guidance issued thereunder in so far as they are applicable to this Contract.

13. HEALTH & SAFETY

13.1 Without prejudice to the generality of Clause 14 the Contractor shall be responsible for observance by itself, its employees, agents and sub-contractors of its Health and Safety Obligations

13.2 If at any time the Authorised Officer reasonably considers that the Contractor's Health and Safety Obligations are not being complied with s/he shall be entitled to instruct the Contractor to take specific steps to secure such compliance and/or to comply with advice or requirements of the relevant Health and Safety enforcement authority or a proper officer thereof.

14. COMPLIANCE WITH LAW

14.1 The Contractor shall ascertain and at all times provide the service in accordance with all relevant Acts of Parliament, any Statutory Instrument, Regulation or Order made under any Act of Parliament or legislative body of the European Union or any regulations or Bye-law of any Local Authority, or any statutory undertaking which has any jurisdiction with regard to the Service.

15. QUALITY OF SERVICE

15.1 The Contractor shall provide the Service in complete accordance with its obligations contained in the Contract Documents.

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15.2 In providing the Service the Contractor shall:

- 15.2.1 provide the Service in accordance with Good Industry Practice;
- 15.2.2 adopt and utilise such quality control process as detailed in the Operational Plan/Specification for its performance of the Services; and
- 15.2.3 ensure that any goods, equipment, materials, facilities, and workmanship employed or supplied in undertaking the Service are in accordance with the Contract Documents and are otherwise appropriate to the Service being performed.

16. INSURANCE

16.1 From the Commencement of the Contract the Contractor shall maintain and ensure that its sub-contractors maintain with a reputable insurance company previously notified in writing to the Council the following minimum insurance arrangements:

- 16.1.1 employer's liability - £10m (to comply with statutory requirements);
- 16.1.2 public liability - £5m (in respect of any one act or occurrence or series of acts or occurrences in any one year); and
- 16.1.3 vehicle, plant and equipment insurance to comply with statutory requirements and any other insurances as is in accordance with Good Industry Practice for the Services undertaken by the Contractor.

16.2 Upon request by the Council the Contractor shall produce a copy of the policies affecting the insurance referred to in Clause 16.1 together with documentary evidence that such insurances are properly maintained.

16.3 Both the Contractor and its sub-contractors shall, ensure that all policies required under Clause 16.1 wherever possible shall include the Council as co-insured for its separate interest and that the policies are endorsed to prevent any exercise of rights of subrogation against the Council, its other contractors and its or their staff. The Council shall be entitled to the proceeds of such insurance policies to the extent of the Contractor's liability in respect of the risks covered by such insurance.

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- 16.4 The Council shall be entitled to notify the Contractor in writing that in its opinion any such policy of insurance does not provide sufficient cover to comply with this Clause and to require the Contractor to provide such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and maintain such insurance as the Council shall reasonably require in breach of which the Council itself may call such insurance to be effected. Where such breach does occur, the Contractor shall pay to the Council as a debt such sum as the Council shall certify as being the cost to the Council in effecting such insurance.
- 16.5 The Contractor shall ensure that each and any policy of insurance required under this Clause 16:
- 16.5.1 provides that a notice of claim to the insurer by the Council shall, in the absence of manifest error, be accepted by the Insurer as a valid notification of claim; and
- 16.5.2 contains provisions which require the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the policy to the Council.

17. CONTRACTOR'S INDEMNITY

- 17.1 The Contractor shall accept full responsibility for and shall release, and indemnify on demand the Council and its staff, contractors, and agents from and against all liability for:
- 17.1.1 death or personal injury;
- 17.1.2 loss or damage to property (including property belonging to the Council for which it is responsible);
- 17.1.3 breach of statutory duty and
- 17.1.4 all actions, claims, demands, costs, charges, losses and expenses (including legal expenses on an indemnity basis)
- which may arise out of or in consequence of the performance or non performance by the Contractor of its obligations under the Contract or the presence of the Contractor in any premises belonging to the Council, a sub-contractor or any of their employees or agents.
- 17.2 Where liabilities arise to the Council through the Contractor's and/or its sub-contractors' negligence and the Contractor and/or its sub-contractors and its or their staff have merely contributed by their negligence to such a claim, the Council will only rely on this

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indemnity to the extent of the Contractor's or its sub-contractors' contributory negligence.

18. COUNCIL'S LIABILITY

- 18.1 The Council represents that it has used reasonable endeavours to ensure that the information provided by the Council comprises all such information of which the Council is aware and which the Council in its reasonable opinion regards as relevant or material to the Services and the Contractor acknowledges and confirms that it has conducted its own analysis and review of such information.
- 18.2 The Contractor shall not be responsible or be obliged to indemnify the Council for any injury, loss, damage, cost, and expense to the extent that it is caused by the negligence of the Council and any of its employees, agents, or contractors or by breach of the Council of its obligations under this Contract.
- 18.3 The Council shall in no circumstances be liable to the Contractor for any direct, consequential, economic or financial loss or additional cost of any kind whatsoever that the Contractor may sustain or incur in consequence of meeting any of its obligations under the Contract Documents.

19. LAND

- 19.1 The Council shall grant the Contractor and the Contractor shall accept the Leases for the premises made available to the Contractor by the Council in connection with performance of the Services.
- 19.2 The Council's agreement to its grant of the Lease(s) are subject to and in all respects conditional on the Contractors agreement pursuant to Section 38(4) of the Landlord and Tenant Act 1954 to the exclusion of the provisions of Sections 24-28 of the Landlord and Tenant Act 1954.
- 19.3 The term of the Leases relating to the Demised Premises shall commence on the Commencement Date.
- 19.4 The Contractor agrees to and hereby grants irrevocably to the Council a licence to enter and use the Demised Premises for the provision and management of its services either concurrently with the Contractor and/or to carry out any other monitoring or other functions of the Council whether authorised by this Contract or in

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accordance with its statutory responsibilities.

- 19.5 If this Contract is terminated for any reason (whether in whole or in part), the relevant Lease shall automatically cease and determine with effect from the date of termination.
- 19.6 Prior to the Expiry Date the Council may, by written notice to the Contractor, require the Contractor forthwith on receipt and, in any event, within ten (10) Working Days of receipt at the Council's option, either:
 - 19.6.1 to assign, with effect from the Expiry Date, its unencumbered interest in the Lease (and consent to any variation in the terms of the Lease if required), to such assignee as shall be notified by the Council to the Contractor by delivering to the Council within ten (10) Working Days and the Contractor shall agree; or
 - 19.6.2 to surrender its interest, with effect from the Expiry Date, in the Leases or any one of them by delivering to the Council, within ten (10) Working Days a duly executed deed of surrender in such form as the Council and the Contractor shall agree (each acting reasonably) together with all relevant title deeds, releases or discharges.
- 19.7 To avoid doubt, the Contractor shall not be entitled to any compensation in respect of any variation of the terms of a Lease or the unexpired part of its interest as tenant under a Head Lease on assignment or surrender or automatic determination in accordance with this Clause.
- 19.8 The Contractor shall procure that:
 - 19.8.1 the carrying out of the Services at the Demised Premises by or on behalf of the Contractor shall be carried out in a manner which does not breach any provisions of the Title Deeds for the Demised Premises; and
 - 19.8.2 there shall be no action, or omission to act, which shall give rise to a right for any person to obtain title to the Demised Premises or any part of them (save in accordance with the terms of this Contract and of the relevant Head Lease).
- 19.9 The title to the Demised Premises having been deduced to the Contractor's solicitors prior to the Commencement Date, the Contractor shall raise no objection, requisition or enquiry in respect of the same.

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20. CONDITION OF DEMISED PREMISES

- 20.1 The condition of the Demised Premises shall be the sole responsibility of the Contractor and accordingly (without prejudice to any other obligation of the Contractor under this Contract), the Contractor shall be deemed to have:
- 20.1.1 satisfied itself as to the condition of the Demised Premises to which it will acquire rights to use or otherwise be responsible for, and the nature and extent of the risks assumed under this Contract;
 - 20.1.2 satisfied itself as to the adequacy of the means and rights of access to and through Council Premises the Demised Premises and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Demised Premises);
 - 20.1.3 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Council) with access to or use of, or rights in respect of, the Demised Premises with particular regard to the owners of any adjacent land to the Demised Premises;
 - 20.1.4 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - 20.1.5 gathered all information necessary to perform its obligations under this Contract and other obligations assumed.
- 20.2 To avoid doubt the Contractor accepts full responsibility for all matters referred to in Clause 20.1 and the Contractor shall:
- 20.2.1 not be entitled to make any claim against the Council in respect of the Demised Premises save as expressly provided under the Contract;
 - 20.2.2 be responsible for, and hold the Council harmless from, cleaning up and otherwise dealing with the Demised Premises so that it shall at all times comply with its obligations under this Contract including (without limitation) complying with, at its own costs, any applicable legislation and any consents, orders, notices, or directions of any regulatory body (whether made against the Council or the Contractor); and

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- 20.2.3 accept entire responsibility (including any financial or other consequences which result whether directly or indirectly) for the ascertainment of and dealing with the condition of the Demised Premises.
- 20.3 Save as expressly provided in this Contract, the Contractor shall in no circumstances be entitled to any additional payment for its encounter of and/or dealing with such physical conditions or other circumstances described in Clause 20.1-20.2 above whether foreseen or otherwise.
- 20.4 The Contractor shall ensure on a continuing basis that the maintenance and operating procedures set out in the Contractor's Operational Plan are and remain sufficient to ensure that:
- 20.4.1 the Demised Premises are kept in good order (subject to fair wear and tear) as further specified in each Lease and in the Maintenance Specification;
 - 20.4.2 the Contractor can continuously deliver the Services in accordance with and at the times required by this Contract and the Specifications; and
 - 20.4.3 the Demised Premises are handed back to the Council on the Expiry Date in a condition complying with the requirements of this Clause 20.
- 20.5 If the Council reasonably believes that the Contractor is in breach of its obligations under Clause 20.4 then it may carry out or procure the carrying out of a survey of the Demised Premises or such part of it as is believed to be non-compliant to assess whether the Demised Premises have been and are being maintained by the Contractor in accordance with its obligations under Clause 20.4. This right may be exercised at any time.
- 20.6 The Council shall notify the Contractor in writing a minimum of five (5) working days in advance of the date it wishes to carry out a survey as provided for in Clause 20.5 above. The Council shall consider any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least two (2) working days prior to the notified date and the Contractor is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.
- 20.7 When carrying out any survey, the Council shall use reasonable endeavours to minimise any disruption caused to the provision of

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the Services by the Contractor. The cost of the survey, except where Clause 20.8 applies, shall be borne by the Council. The Contractor shall give the Council (free of charge) any reasonable assistance required by the Council from time to time during the carrying out of any survey.

- 20.8 If a survey shows that the Contractor has not complied or is not complying with its obligations under Clause 20.4 the Council shall:
- 20.8.1 notify the Contractor of the standard that the condition of the building should be in to comply with its obligations under Clause 20.4;
 - 20.8.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
 - 20.8.3 be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Council in relation to the survey.
- 20.9 The Contractor shall at its own cost carry out such rectification or maintenance work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.
- 20.10 In the event of any failure by the Contractor to comply with Clause 20.9 the Council shall be entitled on prior notice to carry out or procure such rectification and/or maintenance work and recover the costs of doing so from the Contractor.
- 20.11 Subject to Clause 20.17 the Contractor shall undertake Planned Preventative Maintenance of the Demised Premises in accordance with a Maintenance Programme which has been approved by the Council.
- 20.12 Each Maintenance Programme shall contain the following information (the "Programmed Maintenance Information"):
- 20.12.1 details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of works; and
 - 20.12.2 details of any effect of the Programmed Maintenance on the delivery of any and all of the Services.
- 20.13 No later than four weeks prior to the Commencement Date the Contractor shall submit to the Council's Authorised Officer a

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Maintenance Programme for the period from the Commencement Date to the expiry of the first Contract Year.

- 20.14 Not later than three (3) months prior to each subsequent anniversary of the Commencement Date the Contractor shall submit to the Council's Authorised Officer a Maintenance Programme for the next succeeding Contract Year.
- 20.15 No later than fifteen (15) Working Days prior to the commencement of any Contract Month, the Contractor may submit to the Council's Authorised Officer a revision to the Maintenance Programme for the Contract Year in which the relevant Month falls showing the effect of the proposed changes to the Programmed Maintenance Information. If the Council's Authorised Officer does not raise comments on such proposed revision, the Maintenance Programme as revised shall become the Maintenance Programme in respect of that Contract Month.
- 20.16 Where the Council's Authorised Officer raises comments in respect of any Programmed Maintenance periods and/or hours of work shown in a Maintenance Programme, s/he shall indicate whether, and if so when, the Programmed Maintenance can be re-scheduled and the Contractor shall amend the relevant Maintenance Programme accordingly.
- 20.17 The Contractor shall not carry out any Programmed Maintenance save in accordance with a Maintenance Programme to which no objection has been made or, where comment has been raised in respect of the Programmed Maintenance periods and/or time, the Maintenance Programme has been amended pursuant to Clause 20.16.
- 20.18 If the need arises for Day to Day Maintenance Works (excluding any works of a de minimis nature in respect of which the parties have agreed this Clause shall not apply), which are not scheduled to be carried out as part of the Programmed Maintenance ("Unprogrammed Maintenance Works"), the Contractor may carry out such Unprogrammed Maintenance Works provided that the Contractor shall notify the Council's Authorised Officer as soon as reasonably possible (and in any event within two (2) Working Days of the occurrence) of the extent of the necessary Unprogrammed Maintenance Works and the reasons for them. The Contractor shall take all reasonable steps to minimise the duration of such Unprogrammed Maintenance Works.

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- 20.19 The Contractor shall deliver to the Council's Authorised Officer not less than thirty (30) working days prior to the commencement of each Contract Year the latest version of a 4 Year Maintenance Plan.

21. VEHICLES, PLANT AND EQUIPMENT

- 21.1 Unless otherwise agreed between the parties or expressly detailed in the Specifications the Contractor shall provide, and replace and maintain in proper repair and condition (so that they are capable of being used for the relevant activity they are designed for) all vehicles plant and equipment necessary for the performance of the Services.
- 21.2 The Contractor shall make its own arrangements for insurance, security and housekeeping of all vehicles plant and equipment used in the performance of the Service.
- 21.3 The Council shall be entitled to carry out or procure the carrying out of surveys of all or any of the vehicles, plant and equipment to assess their condition and whether or not they have been maintained by the Contractor in accordance with its obligations under the Specification and this Contract and may require the Contractor to carry out any rectification work arising and reimburse the Council the cost of such surveys.
- 21.4 The Contractor agrees to buy the items listed in the Notified List at the price specified by the Council and these shall be made available to the Contractor by the Council immediately on payment being received by the Council.
- 21.5 At anytime up to 6 months prior to the expiry or termination of this Contract the Council may serve a notice on the Contractor asserting that the Council wishes to acquire all or any of the vehicles, plant and equipment owned or hired by the Contractor and used in connection with the Service for their fair market value (plus VAT if applicable) as at the expiry or termination date. The aggregate fair market value to be paid for such items shall be agreed between the parties within twenty one (21) days of the date of the notice, and in the event of a failure to agree the price within such time the price shall be fixed in accordance with Clause 21.6.
- 21.6 If the aggregate fair market value of the items on the Council's notice is not agreed between the parties it shall be determined by a valuer nominated by the parties, or in the event of a failure to agree such nomination within seven (7) days of such nomination

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being made, by appointment of a surveyor recommended by CEDR (who shall act as an expert) and whose decision shall be final and binding on the parties.

- 21.7 Upon payment by the Council of the sums agreed or determined for the items in question, the Contractor shall pass title to such items to the Council and forthwith deliver such items to the Council or such other persons as the Council determines.
- 21.8 The Contractor will as far as it is legally able assign to the Council the benefit of any guarantees, conditions and warranties which are given in relation to the items purchased by the Council and give such assistance as the Council may reasonably require in enforcing such guarantees conditions and warranties.
- 21.9 The Council makes no representations and gives no warranties as to the quality, fitness, condition state or description of any item made sold or otherwise made available to the Contractor under this Clause 21.
- 21.10 The Contractor shall use its best endeavours to ensure that any lease or similar agreements entered into for any of the vehicles, plant and equipment used in connection with the Services will, in the event of lease default or intended lease termination or within 12 months of the termination of this Contract, oblige the lessor to give notice to and accept instructions from the Council as if it were the lessee.
- 21.11 The Contractor shall produce such evidence as the Authorised Officer may reasonably require from time to time demonstrating its compliance with Clause 21.10.

22. CO-OPERATION WITH OTHERS

- 22.1 The Contractor shall co-operate with the Council's other contractors and those other contractors' sub-contractors, and all statutory undertakers, officers, auditors of the Council, and residents of and businesses operating in the Royal Borough of Kensington and Chelsea so as to ensure as far as practicable that all services provided to the Council are co-ordinated and facilitated.

23. CHARGES AND PAYMENT

- 23.1 The Contract Price shall (subject to the provisions of the Contract which provide for a variation or review thereof) be as stated in the

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Pricing Schedule and shall be deemed to include all costs of providing the Services howsoever incurred or arising, except as provided for under this Contract. Except where provided for under the Contract the Contractor shall not be entitled to an increase in charges based on unforeseen circumstances or contingencies howsoever arising.

- 23.2 The Contract Price shall be payable from the Commencement Date.
- 23.3 The Contract Price shall be paid in Pounds Sterling to the Contractor in accordance with these terms by means of electronic transfer of funds.
- 23.4 The Contract Price shall apply without adjustment under this Clause 23 from the Commencement Date and thereafter shall be reviewed on the first anniversary thereof and again after each subsequent anniversary of the Commencement Date ("the Review Date"). The Contract Price shall be varied at each Review Date by calculating the percentage variation in costs that follows by applying the Approved Indices to the percentages of the Contract Price specified in the Definitions
1. in relation to 55% of the Contract Price, if Approved Index 1 is known at the Review Date, that index shall be applied; if Approved Index 1 is not known at the Review Date, Approved Index 4 shall be applied until Approved Index 1 is known whereupon the application of Approved Index 1 shall be backdated to the Review Date
 2. in relation to the remainder of the Contract Price the Approved Indices published on the 31st January immediately preceding the Review Date shall be applied

The variation in Contract Price shall take effect from the Review Date for the ensuing period of twelve months or in the final year part of such period as shall remain from the review date until the expiration of the Contract.

- 23.5 If the basis of computation of the Approved Index Formulas shall change so that it shall no longer be an appropriate index it shall be substituted with an alternative index as agreed between the parties.
- 23.6 The Contract Price shall accrue from day to day and shall be payable by 12 equal monthly instalments in arrears in accordance with this Clause 23.

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- 23.7 Within ten (10) Working Days of the end of each month the Contractor shall provide the Council with a correct valid VAT invoice which shall give in detail (and where necessary showing calculations) particulars of the Contract Price payable for the immediately preceding calendar month and showing:-
- 23.7.1 a simple breakdown of the charges ;
 - 23.7.2 the services provided during the period covered by the invoice; and
 - 23.7.3 the total figure payable by the Council.
- 23.8 Following receipt by the Council of the invoice referred to in Clause 23.7 above the Council shall within thirty (30) working days pay to the Contractor all such sums referred to in the invoice less any amount that is disputed.
- 23.9 In the event that any entitlement of the Contractor to any amount is disputed the Council shall notify the Contractor in writing within 14 days of receipt by it of the relevant invoice and the reasons why the amount is disputed. For the avoidance of doubt the Council may withhold payment of any amount disputed.
- 23.10 Within seven (7) Working Days following receipt by the Contractor of any notice served by the Council pursuant to Clause 23.9 the Contractor shall respond by notifying the Council as to whether or not it agrees with the statements made in or the supporting evidence supplied with that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Council shall be entitled to retain on a permanent basis any amounts withheld pursuant to Clause 23.9 and to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor.
- 23.11 If the Contractor responds pursuant to Clause 23.10 that it does not agree with all or any of the statements made in any notice served by the Council pursuant to Clause 23.9 the matter or matters in question shall be determined under Clause 25 (Settlement of Disputes).
- 23.12 In addition to the sums due to the Contractor for the performance of the Services the Council shall pay to the Contractor such Value Added Tax (if any) as may be properly chargeable by the Contractor in connection with the provision of the Services provided that Council shall have received from the Contractor a

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proper tax invoice in respect thereof complying with the provisions of any Value Added Tax regulations from time to time in force.

- 23.13 Without prejudice to the Council's rights under Clause 23.9 above in the event that the Council fails to make payment in accordance with Clause 23.8 above of a sum demanded on a correct or agreed invoice or such sum as may be determined in accordance with Clause 23.11 above as being due to the Contractor, the Council shall pay to the Contractor interest at the rate of 2% per day for each complete day that the invoice or amount remains unpaid. It is agreed between the parties that the rate of interest described herein provides the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

24. BEST VALUE AND SERVICE IMPROVEMENT

- 24.1 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist the Council in discharging its Best Value Duty in relation to the Service. Either party may propose alternative methods for the improvement of the economy, efficiency and environmental aspects of the Service or the introduction of or change in any information technology in use to support the provision of the Services and the parties will co-operate to evaluate and if appropriate introduce such proposals under Clause 9 of the Contract.

25. SETTLEMENT OF DISPUTES

- 25.1 Unless the Contract has already been terminated the Contractor must in every case continue with the provision of the Service.
- 25.2 If there is a dispute or difference concerning the interpretation or operation of this Contract then either Party may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.
- 25.3 If after fourteen (14) Days (or such longer period as both parties may agree) of the date of the notice referred to in Clause 25.2 the dispute has not been resolved then either party may notify the other that it wishes the dispute to be referred to a meeting of the

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Partnership Board to resolve or, if both parties agree, to such senior representatives as either party may nominate, negotiating on the basis of good faith.

- 25.4 If after twenty eight (28) Days (or such longer period as both parties may agree) of the date of the notice referred to in Clause 25.2 the dispute has not been resolved then either party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Dispute Resolution ('CEDR') Model Mediation Procedure 8th Edition (October 2002) (the 'Model Procedure') or such later edition as may be in force from time to time.
- 25.5 If the parties cannot agree on the identity of the Mediator then either party may request CEDR to appoint one.
- 25.6 The Model Procedure shall be amended so that:
- 25.6.1 either party may make a written statement of its case to the Mediator prior to the commencement of the mediation, subject to the proviso that any such statement shall be provided to the Mediator not less than 10 Working Days before the mediation is to commence (or such other period as may be agreed by the Mediator); and
- 25.6.2 the Mediator shall be instructed to provide either party with a written report of the result of the mediation within 10 Working days of the conclusion of the mediation.
- 25.7 Both parties must use their best endeavours to ensure that the mediation starts within twenty (20) Working Days of the appointment of the Mediator: and pay the Mediator's fee in equal shares.
- 25.8 Any agreement reached as a result of mediation shall be binding on both parties but if the dispute has not been settled by mediation within ten (10) Working Days of the mediation starting then either party may commence litigation proceedings (but not before then).
- 25.9 Neither party shall be precluded by this Clause 25 from taking such steps in relation to court proceedings as either party may deem necessary or desirable to protect their respective positions, although this shall normally be limited to issuing or otherwise pursuing proceedings to prevent limitation periods from expiring and applying for interim relief.

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26. EVIDENCE IN CONNECTION WITH LEGAL PROCEEDINGS

- 26.1 If required to do so by the Authorised Officer the Contractor shall provide to the Authorised Officer any relevant information and reasonable assistance in connection with any legal proceedings in which the Council may have an interest or may become involved or any disciplinary hearing internal to the Council and shall give evidence in such proceedings or hearings arising out of or in connection with the provision of the Services.
- 26.2 Any information or assistance provided by the Contractor in accordance with this Clause 26 shall be provided free of charge to the Council unless the subject of the proceedings or hearing arose prior to the commencement date of this Contract.

27. EMERGENCIES

- 27.1 The Contractor shall provide such Additional Services at any time and at any place and in such manner as the Authorised Officer may specify to enable the Council to respond to or deal with or to carry out its functions in relation to a situation which in the opinion of the Authorised Officer is a possible, potential or actual emergency or disaster provided that such services shall be similar to the Services provided hereunder.
- 27.2 Where the Contractor provides Additional Services under this Clause 27 those Additional Services shall be treated as a change under Clause 9.

28. DEFAULTS

- 28.1 If the Contractor fails to complete the Services in accordance with its obligations under the Contract, which adversely affects the performance of the Service, the Authorised Officer shall have power acting reasonably and in accordance with the spirit of the Charter:
- 28.1.1 to require the Contractor to repeat the Services not performed in accordance with the Contract at no cost to the Council; or
 - 28.1.2 to withhold payment for those Services not performed satisfactorily in accordance the Contract; or
 - 28.1.3 to withhold payment and make arrangements for the Council to provide and perform by its own or the staff of another contractor the work and deduct the extra cost

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incurred by the Council in so doing from any payment due to the Contractor.

- 28.2 For the avoidance of doubt the rights and remedies referred to in this Clause 28 are without prejudice to any other right or remedy the Council may have under this Contract or in law nor shall they relieve the Contractor of any obligations under the Contract in respect of the Services

29. EXPIRY OF CONTRACT

- 29.1 At all times the Contractor shall use its best endeavours and take all reasonable steps to co-operate fully with the Council and any successor Contractor providing all information reasonably required by the Council prior to expiry, removing such vehicles, plant and equipment from the Council's Demised Premises, and transferring all of its rights, title and interest in any vehicle, plant and equipment to the Council or any successor Contractor in accordance with the Contract Documents.

30. TERMINATION FOR CAUSE

- 30.1 Without prejudice to the exercise of any alternative or additional remedy or of any accrued rights the Council shall be entitled forthwith upon the occurrence of any of the following events to terminate this Contract:
- 30.1.1 the Contractor becoming bankrupt, or making a composition or arrangement with its creditors, or having a proposal in respect of its company for voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 1986;
 - 30.1.2 the appointment of an administrative receiver over the assets of the Contractor;
 - 30.1.3 the Contractor having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
 - 30.1.4 the Contractor having a provisional liquidator, or receiver or manager of its business or undertaking duly appointed other than a receiver or manager appointed pursuant to section 18 of the Charities Act 1993;
 - 30.1.5 the Contractor having an administrative receiver, as defined by the Insolvency Act 1986 appointed;

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- 30.1.6 the Contractor being in circumstances which entitle a creditor to appoint, or have appointed a receiver, a manager or administrative receiver, or which would entitle the Court to make a winding-up order;
 - 30.1.7 there is a change in Control of the Contractor or any company which is a Holding company (direct or indirect) of such holding company unless the Council has approved the same in writing such approval to be withheld at the sole discretion of the Council;
 - 30.1.8 the Contractor has committed a substantial breach of the Contract;
 - 30.1.9 discovery of a material misrepresentation by the Contractor during the tendering process;
 - 30.1.10 purported assignment or the creation of an interest in the Contract in breach of Clause 42 of this Contract; or
 - 30.1.11 the Contractor has committed any Prohibited Act.
- 30.2.1 If the Contractor has committed persistent minor breaches of Contract whether or not defaults have been levied under Clause 28 the Council may serve a notice on the Contractor:
- (i) specifying that it is a formal warning notice;
 - (ii) giving reasonable details of the breach or breaches ; and
 - (iii) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.
- 30.2.2 If, following service of such a warning notice, the breach specified has continued beyond 30 days after the date of service of the notice, or recurred within that time then the Council may serve another on the Contractor:
- (i) specifying that it is a final warning notice;
 - (ii) stating that the breach specified has been the subject of a warning notice served within the twelve month period prior to the date of service of the final warning notice; and
 - (iii) stating that if such failure continues or recurs within the six month period after the date of service of the final warning notice, the Contract may be terminated forthwith.
- 30.2.3 A warning notice may not be served in respect of any breach respect of which a separate warning notice has already been

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served until a period of 6 months has elapsed since the date of service of the previous warning notice or final warning notice.

- 30.3 Upon such termination, in addition to such consequences as are set out in other conditions:
- 30.3.1 the Contractor shall be deemed to be in breach of this Contract;
 - 30.3.2 the Contractor shall forthwith cease to perform any of the Services;
 - 30.3.3 the Contractor shall be liable forthwith to compensate the Council for any loss or damages it has sustained in consequence of any antecedent breaches of Contract by the Contractor;
 - 30.3.4 the Contractor shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such services as would have been performed by the Contractor during the remainder of the Contract Period to the extent that such costs exceed such sums as would have been lawfully payable to the Contractor for performing such services (such costs to include all costs of closing up this Contract and entering into a new Contract with replacement Contractors). The Council shall be at liberty to have such services performed by any persons (whether or not servants of the Council) as the Council shall in its sole discretion think fit;
 - 30.3.5 the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under or arising from the Contract or to deduct there from any sum due from the Contract;
 - 30.3.6 the Council shall have the power to deduct from any monies owing to the Contractor such sums as are due to the Council or may thereafter become due to the Council under this or any other Contract between the parties;
 - 30.3.7 the Contractor shall forthwith vacate any Council land or premises; and
 - 30.3.8 the Contractor shall forthwith release and handover to the Council if demanded any vehicle, plant or equipment used in connection with the Service whether or not a fair market

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value has been agreed under Clause 21.5 or determined under Clause 21.6.

- 30.4 Upon termination of this Contract it is hereby agreed that Clauses 12.8, 16, 17, 18, 31, 34, 35, 36, 39, 53, and 54.3 of this Contract shall continue in force and effect and be enforceable by the Council. For the avoidance of doubt the rights of the Council under this condition are in addition to any other rights or remedies that the Council may have pursuant to any parent company guarantee or performance bond.

31. RIGHT OF SET OFF

- 31.1 The Council shall notwithstanding anything contained in this Contract be entitled to deduct from or set-off against any monies due from him to the Contractor (including any retention monies) under this Contract or any other Contract between the Contractor and the Council.
- 31.2 The Council shall give to the Contractor notice of any such deduction or set-off and such notice shall specify:
- 31.2.1 the amount proposed to be withheld and the ground for withholding payment; or
 - 31.2.2 if there is more than one ground, each ground and the amount attributable to it.

32. FORCE MAJEURE

- 32.1 In the event of an Act of God or Force Majeure (which shall be limited to acts of government, fire, tempest, acts of war and related matters which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Services, the duty of the Contractor to perform the Services so affected shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of any part of the Service not yet performed shall be held to the credit of the Council and returned to the Council.
- 32.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, change of law, change in currency, failure to provide adequate premises, equipment, materials,

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consumables and/or staff or similar matters are not to be considered as events of Force Majeure or Acts of God.

- 32.3 If the period of suspension under sub-Clause 32.1 above lasts for longer than three (3) months, either party may serve upon the other one (1) month's written notice of termination of the Contract. Unless the Services have been resumed before the expiration of such notice, the Contract shall terminate in accordance with such notice.
- 32.4 Upon termination of the Contract it is hereby agreed that Clauses 12.8, 16, 17, 18, 31, 34, 35, 36, 39, 53, and 54.3 of this Contract shall continue in full force and effect.

33. INFORMATION SYSTEMS

- 33.1 The parties will co-operate in facilitating the most economic and efficient use of any computer equipment agreed to be used or shared in connection with the Service.
- 33.2 In respect of any computer equipment supplied by the Contractor, the Contractor shall be responsible at its own cost for:
- 33.2.1 ensuring that any such computer equipment is at all times throughout the Contract Period sufficient to enable the Contractor to comply with its obligations under the Contract;
 - 33.2.2 ensuring that, to the extent required for the proper performance of the Contractor's obligations under the Contract such computer equipment is rendered compatible with and is in all respects capable of interfacing with the Council's relevant computer system and, if necessary, with any computer system used by any other existing Contractor of the Council's;
 - 33.2.3 ensuring that comprehensive security copies of any computerised Council data are updated in respect of each working day at the conclusion of such working day and stored in a secure off-site location in the Contractor's possession or under its control such as to permit the Contractor (or in the event of the Contractor's default, the Council or an alternative Contractor) to initiate and operate alternative processing arrangements including (without limitation) in the event of the partial or total failure of the Contractor's computer system;

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- 33.2.4 ensuring that at all times during the Contract Period adequate disaster recovery arrangements are in place for the event of the total or partial failure of the Contractor's computer equipment; such arrangements shall enable the Contractor to continue without interruption to comply with its ongoing obligations under this Contract.
- 33.3 Where permissible the Council shall free of charge provide, either in hard copy or in computerised form (as appropriate), the Contract or such Council data and information in the possession or under the control of the Council as is stored on the Council's computer system; and the Contractor may reasonably require in order for it to provide the Service; and the Contractor is not obliged itself to procure or to provide pursuant to the provisions of the Contract. The Council's provision of such data or information shall be subject to the following conditions:
- 33.3.1 that such data shall remain the property of the Council;
 - 33.3.2 the Contractor operating all hardware and software in accordance with all agreed procedures;
 - 33.3.3 the Contractor complying with all relevant legislation;
 - 33.3.4 in the event of any data corruption, the Contractor being responsible for the correction of such data and indemnifying the Council in respect of any costs incurred from such corruption;
 - 33.3.5 the Contractor ensuring that such data is maintained to a level of accuracy approved by the Authorised Officer;
 - 33.3.6 that the data is made available to the Authorised Officer as required to enable the Authorised Officer to ensure that the data is accurate and up to date; and
 - 33.3.7 the data and systems being available for the Council's internal or external audit on a regular and ad-hoc basis and that any recommendations of such audit will be implemented in agreement with the Authorised Officer.
- 33.4 No significant change or upgrade to the software or computer systems used by the Contractor shall be made by the Contractor without the prior agreement of the Council.

34. DATA PROTECTION

- 34.1 The Contractor hereby confirms that in performance of this Contract it will process Personal Data as defined in Section 1 of the

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Data Protection Act 1998 ("the Act") and shall comply with its obligations under the Act and all statutory re-enactments or modifications thereof, any regulations, rules, orders and codes of practice made pursuant thereto and any guidelines issued by the Data Protection Commissioner.

- 34.2 The Contractor covenants and confirms that all Data obtained and used in connection with this Service shall:
- 34.2.1 as between the Council and the Contractor be the property of the Council;
 - 34.2.2 be used for the sole purpose of undertaking the Contractor's obligations under this Contract;
 - 34.2.3 upon expiration or early determination of this Contract shall be returned to the Council;
 - 34.2.4 shall neither be copied nor retained by the Contractor upon expiration or early termination of this Contract except as required by law or under this Contract;
 - 34.2.5 shall be kept secure and shall be treated as confidential information as provided by Clause 35 of this Contract; and
 - 34.2.6 shall be kept and collated by the Contractor solely for the purposes of enabling the Contractor to perform the Services as required by the Contract and for no other purpose.
- 34.3 The Contractor shall implement and maintain appropriate technical and organisational measures so as to prevent the destruction, damage, loss or alteration of the Data or the unauthorised or unlawful processing of the Data as agreed with the Council and the Contractor shall provide the Council with such information as it may require to satisfy itself that the Contractor is complying with such obligations including but not limited to a copy of its registration under the Act and shall permit any authorised representative of the Council to have access to any site at which Data is stored to monitor the implementation, operation or existence of such procedures.
- 34.4 For the avoidance of doubt and without prejudice to the generality of this Clause 34 where the Contractor is a Data Processor as defined in the Act it shall comply with the seventh Data Protection Principle as if it were the Data Controller in respect of the Data concerned and shall only act in relation to such data in accordance with this Contract or with instructions given by the Council under this Contract.

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- 34.5 The Contractor shall ensure that any contract with any sub-contractor authorised in accordance with these provisions contains like provisions to those contained in this Clause.
- 34.6 If any Data is lost or destroyed, damaged or altered without the consent of the Council other than as a result of the negligence or default of the Council the Contractor shall forthwith at its own expense restore such Data or reimburse the costs incurred by the Council in restoring such Data.
- 34.7 The Contractor shall ensure that it does nothing which places the Council in breach of the Council's obligations under the Act and shall establish systems satisfactory to the Council to ensure compliance with such obligations. For this purpose the Contractor acknowledges the terms of the Council's registration under the Act, a copy of which registration is available for inspection by the Contractor on reasonable notice at the Town Hall.

35. CONFIDENTIALITY

- 35.1 Each party hereto shall keep confidential the terms of this Contract and all information supplied to it or its representatives or advisers under this Contract or in connection with the negotiation of this Contract and shall not disclose any such terms or information to any third party or to any of its employees or representatives and the Contractor shall enter into a confidentiality agreement with the Council should this be required by the Council.
- 35.2 Provided always that this obligation shall not relate to any such information which;
- 35.2.1 comes into the public domain or is subsequently disclosed to the public (otherwise than through default of either party) or;
 - 35.2.2 is required to be disclosed by law; or
 - 35.2.3 was already in possession of the party (without restrictions as to its use on the date of receipt)
- 35.3 The obligations in this Clause 35 shall survive the expiration or termination (for what ever reason) of this Contact and shall continue without limit in point of time.

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36. PUBLICITY

- 36.1 The Contractor shall not by himself, his servants, agents or sub-contractors communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract without the prior approval of the Council.

37. ADVERTISING

- 37.1 No advertisement of any description will be allowed on the land, premises, equipment, materials or consumables utilised in the performance of the Services without the prior written consent of the Authorised Officer which shall not be unreasonably withheld. Any advertisement which is placed on the Demised Premises with consent shall be promptly removed at the end of the Contract Period. If required by the Authorised Officer the Contractor shall cause any or all premises equipment materials or consumables utilised in the performance of the Services to bear such advertisements, devices or insignia as the Authorised Officer may from time to time notify in writing.

38. COPYRIGHT AND INTELLECTUAL PROPERTY

- 38.1 Subject to Clause 38.2 the Intellectual Property Rights in this Contract and all documents, records, data, or other information produced by the Contractor as part of the Services shall belong exclusively to the Council and the Contractor shall not make or distribute to a third party any copies of this Contract or the documents, records, data, or other information produced therein without the written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold.
- 38.2 The Contractor shall be entitled to make copies of the Contract where such copies are required to enable it to perform the Services.
- 38.3 The Contractor shall not in connection with the performance of the Services use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.
- 38.4 Any and all Intellectual Property Rights developed under this Contract or arising from the provisions of the services by the Contractor shall belong to the Council and the Contractor agrees

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that it shall execute or cause to be executed (by staff if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.

39. AUDIT ACCESS

- 39.1 The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Council and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to the Services, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

40. OPEN BOOK ACCOUNTING

- 40.1 Payments made to the Contractor under this Clause 40 shall appear as Income on a separate profit and loss account ("the Open Book Account") which shall be established and maintained by the Contractor under this Contract.
- 40.2 The contents of the Open Book Account shall be agreed between the parties prior to the Commencement Date and shall contain details of the Contractor's Operating Expenditure and Income estimated as arising annually over the lifetime of this Contract.
- 40.3 The Open Book Account shall be prepared in accordance with the Generally Accepted Accounting Principles, with the exception of the following:
- 40.3.1 The Contractor shall not be entitled to charge to the Open Book expenditure relating to head office expenses, except as agreed at the Commencement Date.
- 40.3.2 The Contractor shall not be entitled to charge any costs relating to the purchase of assets, equipment and working capital except as agreed at the Commencement Date. This shall not apply to the depreciation charge for assets and equipment used on the Contract, provided that such costs are in accordance with the Generally Accepted Accounting Procedures.
- 40.4 The Contractor shall separately identify in the Open Book:
- 40.4.1 payments made by the Council under Clause 23;
- 40.4.2 income arising from amendments to the Specification as evidenced by agreement under Clause 9; and

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40.4.3 any other Income derived from the services.

- 40.5 The Contractor shall provide to the Council's Authorised Officer reasonable access to both its financial system and records and provide such additional information as the Council may reasonably require in order that the officers concerned may verify the completeness, accuracy and validity of transactions recorded in the Open Book or the Reconciliation Statement.
- 40.6 The Contractor shall supply to the Council details of actual Operating Expenditure and Income under the Open Book Account on a quarterly basis.
- 40.7 The Contractor shall submit a Reconciliation Statement (accompanied by a certificate as to its accuracy) once per Contract Year within twenty eight (28) days following the end of each Contract Year.
- 40.8 Within thirty (30) days of its receipt the Council shall signify whether or not it accepts the Reconciliation Statement as an accurate statement of the Open Book as certified by the Contractor. If the Council disputes any item or makes a request for further information under the provisions of Clause 40.5 it shall provide the Contractor with details within those thirty (30) days otherwise the Reconciliation Statement shall be deemed accepted by the parties.
- 40.9 If the parties cannot agree the content of the Open Book or the Reconciliation Statement then the dispute shall be determined in accordance with Clause 25 (Settlement of Disputes).

41. EQUAL OPPORTUNITIES

- 41.1 The Contractor shall comply with and not unlawfully discriminate within the meaning and scope of all legislation which may be in force from time to time relating to gender, race, religion, marital status, sexual orientation, age and disability.
- 41.2 The Contractor shall do all such things as from time to time may be reasonably required by the Council from time to time to facilitate compliance by the Council with section 71 of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 having regard to the need to eliminate unlawful racial discrimination and positively to promote equality of opportunity and good relations between persons of different racial groups

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- 41.3 The Contractor shall take all reasonable steps to secure that its staff, agents and all sub-contractors employed in connection with the Service do not unlawfully discriminate as set out in this Clause.

42. ASSIGNMENT AND SUB-CONTRACTING

- 42.1 The Contractor shall not assign nor create any third party interest in the Contract without the prior written consent of the Council, which consent the Council shall be absolutely entitled to withhold.
- 42.2 The Contractor may only sub-contract the performance of this contract or any part thereof with the prior written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold, and shall cease to so sub-contract if the Authorised Officer in writing withdraws his consent. Such consent (if given) shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor or its agents, servants or employees in all respects as if they were the acts, defaults or neglect of the Contractor or its agents, servants or employees, notwithstanding that the Council may require as a condition of giving any consent to sub-contract a direct warranty and undertaking from the sub-contractor concerning the provision of the Services and compliance with the Contract in all respects.
- 42.3 The Council reserves the right to impose such conditions as it sees fit in giving any consent pursuant to this Clause 42. Such conditions may include payment to the Council of such reasonable administrative and legal costs as may be incurred.

43. SERVICE OF NOTICES

- 43.1 All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post, or by hand, leaving the same at:

If to the Contractor: The Company Secretary
 SITA UK Ltd
 SITA House
 Grenfell Road
 Maidenhead
 Berkshire
 SL6 0AS

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If to the Council: The Town Clerk
Kensington Town Hall
Hornton Street
LONDON
W8 7NX

- 43.2 Where any information or documentation is to be provided or submitted to the Authorised Officer or the Contract Manager it shall be provided or submitted by sending the same by first class post, or by hand, leaving the same at:

If to the Contract Manager: The Contract Manager
SITA UK Ltd
37 Pembroke Road
LONDON
W8 6PW

If to the Authorised Officer: The Director for Waste Management,
Culture, and Leisure
Council Offices
37 Pembroke Road
LONDON
W8 6PW

(copied in each case to the Council and the Contractor).

- 43.3 Either party to this Contract (and either representative) may change its nominated address by prior notice to the other party.
- 43.4 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Working Days after mailing. Notices delivered by hand shall be effective upon delivery.

44. WAIVER

- 44.1 The failure delay or forbearance of either party to insist upon strict performance of any provision of this Contract, or the failure delay or forbearance of either party to exercise in whole or in part any right, power, or remedy shall not constitute a waiver thereof, nor shall any waiver of any breach constitute a waiver of any subsequent breach of the same or any other term.
- 44.2 A waiver of any default shall not constitute a waiver of any subsequent Default.

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- 44.3 No waiver shall be effective as such unless it is expressly stated to be a waiver and is communicated to the other party in writing.

45. SEVERABILITY

- 45.1 If one or more of the provisions of this Contract are to any extent invalid or unenforceable under any applicable law, the remainder of this Contract shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law. The invalid provision shall be deemed replaced by that legally valid provision which most closely approximates the economic intent of the invalid provision.

46. THIRD PARTY RIGHTS

- 46.1 Save as expressly provided in this Contract it is not intended that any party who is not a party to this Contract shall have the right to enforce any of the obligations rights or provisions contained in this Contract and any rights under the Contracts (Rights of Third Parties) Act 1999 are hereby expressly excluded.

47. LAW AND JURISDICTION

- 47.1 This Contract shall be considered as a contract made in England and according to English Law, and shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.
- 47.2 This Contract is binding on the authority and its successors and assignees and the contractor and the contractor's successors and permitted assignees.

48. PERFORMANCE BOND WITH PARENT CO-GUARANTEE

- 48.1 If required by the Council the Contractor shall at its own expense enter into a bond the terms of which shall be approved by the Council with a good and sufficient surety approved by the Council or the guarantee of a Bank or Insurance Company approved by the Council who shall be jointly and severally bound with the Contractor in the sum of 10% of the total value of the Contract throughout its duration for the due performance by the Contractor of its obligations under this Contract and for the payment by the Contractor to the Council of all sums due hereunder in the terms of

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a Bond. The Contractor shall ensure that such bond remains in force throughout the Contract Period.

48.2 If the Contractor is a subsidiary company within the meaning of section 736 of the Companies Act 1985, then, if required by the Council, it shall also provide a Parent Company Guarantee by its ultimate holding company or companies (as defined by the said section 736) to secure the performance by the Contractor of its obligations to the Council.

48.3 The form of the Parent Company Guarantee entered shall be that specified by the Council.

49. REMEDIES CUMULATIVE

49.1 Any remedy or right conferred upon any party for breach of any Clause shall be in addition to and without prejudice to all other rights and remedies available to it.

50. COUNCIL'S FUNCTIONS

50.1 Nothing in the Contract shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a Waste Collection Authority under the Environmental Protection Act 1990.

51. CHANGE OF CURRENCY

51.1 If more than one currency or currency unit are at the same time recognised by the Bank of England as being the lawful currency of the United Kingdom then any reference in the Contract Documents to and any obligations arising under the Contract Documents in pounds sterling must be translated into or paid in the currency or currency unit designated by the Council.

51.2 If a change in currency occurs in the United Kingdom the Contract Documents must be amended to the extent that the Council (acting reasonably) considers is necessary to reflect the change in currency and to put the Council in the same position that they would have been in if no change in currency had occurred.

51.3 For the avoidance of doubt the Contractor is responsible and bears the entire risk of ensuring that all equipment, machinery and materials (whether manual or electronic) used in connection with

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the Services are compatible with (and are able to convert historical financial data) should a change in currency occur.

52. ENVIRONMENTAL PROTECTION

- 52.1 The Contractor shall in providing the Service observe good environmental practice and shall comply with any relevant statutes, codes of practice, industry guidance, the Council's Environmental Policy and any amendments or modifications thereof.
- 52.2 The Contractor shall ensure in its performance of the Service that it uses where ever possible working methods, equipment, materials and consumables which minimise environmental damage.

53. FREEDOM OF INFORMATION

- 53.1 The parties confirm that disclosures required by the Freedom of Information Act 2000, shall be classed as a disclosure required by law under Clause 35.2 so that the obligations of confidentiality do not apply.
- 53.2 The Contractor shall co-operate and assist the Council with disclosures under the Freedom of Information Act 2000 as if it were under identical duties and the Council shall have the right to determine the manner, timing and terms under which such disclosure shall be made, save that nothing in this Clause shall impose an obligation on either party to disclose information which it would be precluded from providing under the said Act.

54. HUMAN RIGHTS

- 54.1 The Contractor acknowledges that it is unlawful to exercise functions deemed to be of a public nature which are incompatible with those rights contained in the European Convention of Human Rights Act 1998.
- 54.2 In providing the Service the Contractor shall throughout the Contract Period and at its own cost be subject to the same duty in respect of a Convention Right in the same way as if it were the Council.
- 54.3 The Contractor shall release and keep the Council indemnified on demand against all proceedings, claim, demands, and all other liabilities whatsoever which may arise out of or are connected with a claim or action brought by any person against the Council under the Act arising out of or connected with the Contractors

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performance of the Service except that the Contractor shall be under no obligation to indemnify the Council in respect of any actions or claims made against the Council under the Act that arise directly as a result of prior instructions given by the Council.

DATED 2005

THE MAYOR AND BURGESSES OF
THE ROYAL BOROUGH OF
KENSINGTON AND CHELSEA

- and -

SITA UK Ltd

A G R E E M E N T

relating to the Partnership Contract for Recycling, Waste Collection,
Street Cleansing and Related Services

Director of Law and Administration
The Town Hall
Hornton Street
LONDON
W8 7NX

Our Ref: SM/10030829

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