

Service PPP Contract

THE ROYAL
BOROUGH OF



KENSINGTON
AND CHELSEA

PARTNERING CONTRACT FOR THE PROVISION OF] SERVICES AT
[LOCATION]

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1. DEFINITIONS

1.1 In this Contract and the Schedules and Annexes hereto the following words and phrases shall where the context so admits have the following meanings:

“Additional Services”	means those Services required by the Authorised Officer under clause 18
“Agreed Staff”	means the number of staff offered by the Contractor in its Method Statement and approved by the Council for assignment to the Services
“Approved Indexes”	means the [<i>to be agreed</i>]
“Authorised Officer”	means the Director of [] for the time being of the Council or the successor in title to that post in the event of a change in organisation of the Council
“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 ITT forming part of the Contract Documents

“Change in Law”	<p>means the coming into effect after the Commencement Date of any Directive, Statute, Statutory Instrument, Regulation or by-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 or (iv) published as a proposal in the Official European Journal (v) any applicable judgement of a relevant court of law which changes a binding precedent (vi) any Guidance (that is any ministerial guidance, circular or best practice note with which the Contractor is legally bound to comply)
“Charter”	means the Partnering Charter signed by both parties
“Commencement Date/Service Commencement Date”	means the date specified in clause [] hereof
“Contract/Contract Documents/ Contract Documentation”	means the Charter these terms the Specification at appendix [], the Contractor's Method Statement/the Pricing Schedule and all Schedules and Appendices thereto
“Contract Period”	means the period specified in clause 3 hereof

“Contract Price”	means the annual sum tendered by the Contractor for the Services payable per calendar month in accordance with clause 3 hereof
“Contract Year”	means a 12-month period. The first Contract Year is a period of 12 months from the Commencement Date
“Contractor”	means []
“Council Premises”	means any of the Councils Premises described in the Specification where the Services are to be provided or from which the Services are to be provided
“Data”	means data as defined in the Data Protection Act 1998
“Day”	means the period from midnight to midnight
“Emergency”	an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case on a scale preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services
“Expiry Date”	means as stated in clause 3 except where the Council exercises its right to terminate the contract whether in whole or in part under clause 33

“Form of Bid Undertaking/ Pricing Submission”	means the Contractor’s Bid forming part of the Contract Documentation
“General Change in law”	means a Change in the Law which is not a Specific Change in the Law
“Good Industry Practice”	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any sub-contractor (as the case may be) under the same of similar circumstances
“Health and Safety Obligations”	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.
“Instructing Officer”	means the individual or individuals appointed by the Authorised Officer in accordance with clause 5 hereof
“Invitation to Tender (ITT)”	means the document distributed to organisations bidding for the Contract
“Key Performance Indicators/KPIs”	[<i>to be agreed</i>]

“Intellectual Property Rights”	means any and all patents, trademarks, service marks, design rights, copyright, database rights, know-how, trade or business names, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world with all or any goodwill, other similar rights and obligations relating or attached thereto
“Method Statement”	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 and forming part of the Contract Documents
“Personal Data”	means personal data as defined in the Data Protection Act 1998
“Physical Assets”	<p>means all physical assets and rights to enable the Council or a successor contractor to operate in accordance with this Contract, including:</p> <ul style="list-style-type: none"> <li data-bbox="821 1612 1324 1713">a) any equipment, plant materials and consumables; <li data-bbox="821 1758 1441 1904">b) any books and records (including operating and maintenance manuals, health and safety manuals and other know how); <li data-bbox="821 1948 1356 1991">c) any spare parts, tools and other assets

(together with any warranties in respect of assets being transferred);

“Processing”

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

“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 or performance of this Contract or any other contract with the Council;
 - (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:
 - under the Prevention of Corruption Acts 1889-1916; or
 - (i) under Legislation creating offences in respect of fraudulent acts; or
 - (ii) 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

“Prescribed Rate”

means two percent (2%) above the base rate from time to time of Lloyds Bank plc

“Regulations”

means all rules or regulations having force of law

“Relief Event”

means any of the following:

- a) fire, explosion, lightning storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake, riot and civil commotion;
- b) failure by any statutory undertaker, utility company, local authority (other than the Council) or other like body to carry out works or provide services;
- c) undertaking of any work by the Council in

accordance with its obligations under the Contract Documentation or in order to discharge its statutory functions in respect of the Councils Premises that materially affect the Contractor's ability to provide the Service;

unless any of the events listed in paragraph (a) to (c) inclusive arises (directly or indirectly) as a result of any default or wilful act of the Contractor or any of its sub-contractors

“Relevant Employees”

means the employees which are the subject of the Relevant Transfer

“Relevant Transfer”

means a Relevant Transfer for the purposes of TUPE

“Review Date”

means the date defined in clause 30

“Service”

means the service required by the Council under this Contract

“Specific Change of law”

means any change of law which specifically affects the Service or any part thereof

“Specification/Service Specification”

means the document which describes the Service outputs required by the Council

“Sub-Contractor”

means any person providing to the Contractor works or services or supplies of goods materials or equipment under or in connection with these Contract terms

“TUPE Regulations”

means the Transfer of Undertakings Protection of Employment Regulations 1981 and/or the

“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 References to clauses, Schedules and Annexes shall be deemed to be references to Schedules and Annexes to this Contract and references to sub clauses shall be deemed to be references to sub clauses of the clause in which the reference appears.
- 2.8 In the event of any conflict between any provision of this Contract and any documents referred to in this Contract these terms shall prevail.

2.9 The words of this contract shall bear their natural meaning and no term shall be construed contra proferentem.

2.10 All warranties, representations, undertakings indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

3. COMMENCEMENT AND DURATION

3.1 This Contract shall commence on the first day of [] 200[] [the Service Commencement Date] and shall continue in force until [] 20[] [the Expiry Date] or until varied or reviewed or determined in accordance with the provisions hereunder

3.2 The Council may without further obligation terminate this Contract at the end of its [] year by 12 months prior written notice.

3.3 The Council may, (without further obligation) and without terminating the Contract as a whole terminate the Contract in respect of that part of the Services provided at the [] at any time by giving 12 months prior written notice.

3.4 Insert provisions for contract extension if required.

4. PRE-SERVICE COMMENCEMENT OBLIGATIONS

4.1 As soon as reasonably practicable and in any event (unless otherwise agreed by the parties) not less than 21 days prior to the Service Commencement Date the Contractor shall:

4.2 procure the execution and delivery to the Council of the Bond (and if the Contractor is a subsidiary company the Parent Company Guarantee) in the form and in the terms specified by the Council in accordance with clause 51 hereof

4.3 submit confirmation of all insurance policies as are required in clause 21 hereof

4.3.1 Execute this Contract under seal and deliver it to the Council together with the Bond and or Parent Company Guarantee [other documents]

and the parties shall:

comply with such other obligations as are necessary for the Services to commence

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 and mechanisms for apportionment of any shared savings where relevant.

5. THE AUTHORISED OFFICER

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

5.2 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.

5.3 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.

5.4 The Council's Authorised Officer and/or Instructing Officers shall at all times act in the spirit of partnership as defined in the Charter.

6. THE CONTRACT MANAGER

6.1 The Contractor shall appoint an individual to act as the Contract Manager.

6.2 The Contract Manager may exercise the functions, rights and powers conferred by this Contract upon the Contractor.

6.3 The Contract Manager shall at all times act in the spirit of partnership as defined in the Charter.

7. CONTRACT REVIEW MEETINGS

7.1 The Authorised Officer and the Contract Manager shall hold review meetings normally at monthly intervals and at any other times as reasonably required by the Council to review the Contractor's performance of the Contract and to examine areas of improving service quality, reducing costs and raise any other matter that may affect the parties' rights and obligations under the Contract.

7.2 The terms of this Contract may be reviewed prior to the expiry of the [], [] and [] year (the Review Dates). The Review shall take no longer than 2 months and be completed at least 1 month prior to the Review date. Either party may request a review under this provision.

7.3 The purpose of the review shall be to consider whether any modifications to the terms of the Contract are necessary taking into account.

7.4 Objective comparative data as to the quality and standard of service, performance, delivery and price with the provision of the same or similar services.

7.5 Any improvements can be made to the Contract based on the parties' experiences in managing and complying with the Contract Documents and any Qualifying Change in Law and raise any other matters that may affect the parties' rights and obligations under the Contract;

7.5.1 Each party shall bear their own costs in participating in the review;

7.5.2 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 clause [].

Any agreed changes under this clause [] shall be recorded in writing and implemented using the change control procedures under clause 8 and clause 9 as applicable. Where agreement cannot be reached in respect of a review the dispute procedures in the Contract shall apply.

8. CHANGE CONTROL

8.1 Where the Council or the Contractor see a need for a change to the Services, then either party may at any time request a change and propose an amendment to the Services in accordance with the procedures set out in this clause 8 below.

8.2 If the Council requires a change in Service, it must notify the Contractor 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 require the Contractor to provide the Council within [28] days of receipt of the Council's notification with the Estimate.

8.3 As soon as practicable and in any event within [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:

8.3.1 whether relief from compliance with any obligation is required during the implementation of the change in Service:

8.3.1.1 any impact on the provision of the Service;

8.3.1.2 any amendment required to Contract Documents as a result of the change in Service;

8.3.1.3 any change in Contractor costs (from the Open Book) and or loss of revenue that result from the change in Service.

- 8.4 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 how any expenditure to be incurred or avoided has been measured in a cost effective manner.
- 8.5 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.
- 8.6 If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with the clause 15 (Dispute Resolution).
- 8.7 As soon as practicable after the contents of the estimate have been agreed or otherwise determined pursuant to clause 15 (Dispute Resolution), the Council shall:
- 8.7.1 confirm in writing the estimate (as modified); or
 - 8.7.2 withdraw the change in Service
- 8.8 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 8.4 above or determined pursuant to clause 8.6 above, then the Council change proposed shall be deemed to have been withdrawn
- 8.9 If the Contractor wishes to suggest a change in Service, it must Contractor must:

- 8.9.1 set out the proposed change in Service in sufficient detail to enable to Council to evaluate it in full;
 - 8.9.2 specify the Contractors' reasons for proposing the change in Service;
 - 8.9.3 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;
 - 8.9.4 indicate any implications of the change in Service;
 - 8.9.5 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
 - 8.9.6 indicate if there are any dates by which a decision by the Council is critical
- 8.10 The Council shall evaluate the Contractor's proposed change in Service in good faith, taking into account all relevant issues, including whether:
- 8.10.1 a change in the Contract Price will occur;
 - 8.10.2 the change affects the quality of the Service or the likelihood of successful delivery of the Service;
 - 8.10.3 the change will interfere with the relationship of the Council with third parties;
 - 8.10.4 the financial strength of the Contractor is sufficient to perform the changed Service;
 - 8.10.5 the change materially affects the risks or costs to which the Council is exposed.

- 8.11 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.
- 8.12 If the Council accepts the Contractor's change proposal (with or without modification), the relevant change in Service shall be implemented within 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 documents to amend to Contract Documents which are necessary to give effect to the change in Service.
- 8.13 If the Council rejects the Contractor's change proposal, it shall give its reasons for such a rejection.
- 8.14 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.
- 8.15 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. LEGISLATIVE CHANGE RISK

- 9.1 If a Qualifying Change in Law occurs or is shortly to occur, then either party may notify the other using the review procedure described in clause 7.2 to express an opinion on its likely effects, giving details of its opinion of:
- 9.2 any necessary change in Service;
- 9.3 whether any changes are required to the terms of the Contract Documents to deal with the Qualifying Change in Law;

- 9.4 whether relief from compliance with obligations is required during implementation of any relevant Qualifying Change in Law;
- 9.5 any estimated change in the costs of the Contract (as identified in the Open Book Account and or loss of income that directly result from the Qualifying Change in Law;
- 9.6 any expenditure that its 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 the proposed procedure for implementing the change in Service. Responsibility for the costs of implementation (and any resulting variation to the Contract Price) shall be dealt with in accordance with clause 9.7.

- 9.7 As soon as practicable after receipt of any notification from either party under clause 9.1 above, the parties shall discuss and agree the issues referred to in clause 9.1 above and any ways in which the Contractor can mitigate the effect of the Qualifying Change of Law, including:
 - 9.8 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;
 - 9.9 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;
 - 9.10 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
 - 9.11 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 its opinion has resulted or is required under clause 9.1 above.

9.12 It is agreed by the parties that 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 3 years of this Contract.

10. RELIEF EVENTS

10.1 Occurrence

10.2 If and to the extent that a Relief Event adversely and materially affects the ability of the Contractor to perform any of its obligations under this Contract then the Contractor shall be entitled to apply for relief from any of its obligations under this Contract.

10.3 Relief

To obtain relief, the Contractor must:

10.4 as soon as practicable, and in any event within fourteen (14) Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Council a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

10.5 within five (5) Working Days of receipt by the Council of the notice referred to in clause 10.4, give full details of the relief claimed; and

10.6 demonstrate to the reasonable satisfaction of the Council that:

10.6.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken;

10.6.2 the Relief Event directly caused the delay to the Service Commencement Date or the need for relief from other obligations under this Contract;

10.6.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor or the Sub-Contractor acting in accordance with Good Industry Practice; and

10.6.4 the Contractor is using its best endeavours to perform its obligations under this Contract.

10.7 Consequences

In the event that the Contractor has complied with its obligations under clause 10.3, then:

10.8 the Service so affected shall be suspended by such time and to such an extent as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

10.9 the Council shall not be entitled to exercise its rights of termination under clause 33 and subject to clauses 10.10, 10.11 and 10.12 below shall give other such relief as has been requested by the Contractor.

10.10 Information

In the event that information required by clause 10.3 is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

10.11 Notify

The Contractor shall notify the Council if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is

new or renders information previously submitted materially inaccurate or misleading.

10.12 Disputes

If the parties cannot agree the extent of the relief required, or the Council disagrees that a Relief Event has occurred the matter shall be resolved in accordance with clause 15 (Dispute Procedure).

11. PARTNERING PRINCIPLES

The parties acknowledge and accept that a co-operative and open relationship is needed for the achievement of the parties objectives under the Contract and in recognition of this the Council and the Contractor have agreed to sign the Charter

12. PERFORMANCE MONITORING AND KPIS

12.1 Contractor Monitoring

The Contractor shall monitor and report on its performance in the delivery of the Services in accordance with the Specification.

12.2 Council Monitoring

The Council may elect, at its own cost, to undertake its own performance monitoring of the Services at any stage during the Contract for any purpose including in order to ensure that the Services are being provided in accordance with this Contract. The Contractor will use its reasonable endeavours to assist the Council in such an exercise. The Council shall be entitled to notify the Contractor of the outcome of its performance monitoring exercise, and the Contractor shall have due regard to the Council's comments in relation to the future provision of the Services

12.3 KPIS

The payments received by the Contractor depends on his achievement

against the Key Performance Indicators except to the extent that failure to do so arises from the Councils breach of contract or a Force Majeure or a Relief Event and is without prejudice to the Councils rights under clause 32 (defaults)

13. BEST VALUE AND SERVICE IMPROVEMENT

13.1 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.

13.2 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 3 any benchmarking and/or market testing exercises shall be carried out as required by and in accordance with Good Industry Practice.

14. OPEN BOOK ACCOUNTS

14.1 Payments made to the Contractor under this clause 14 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.

14.2 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 relating to the Service with an analysis showing the costs of staff, consumables, sub-contracted and bought in services together with depreciation of fixed assets, as agreed at the Commencement Date

- 14.3 The Open Book Account shall be prepared in accordance with the Generally Accepted Accounting Principles, with the exception of the following:
- 14.4 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.
- 14.5 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
- 14.6 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
- 14.7 The Contractor shall supply to the Council details of actual Operating Expenditure and Income under the Open Book Account on a monthly basis for the first 6 months of the Contract and thereafter at the end of each quarter year

15. SETTLEMENT OF DISPUTES

- 15.1 Unless the Contract has already been terminated the Contractor must in every case continue with the provision of the Service.
- 15.2 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.

15.3 If after 28 Days (or such longer period as both parties may agree) of the date of the notice referred to in clause 15.2 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 their Senior Representatives to resolve, negotiating on the basis of good faith.

15.4 If after 28 Days (or such longer period as both parties may agree) of the date of the notice referred to in clause 15.3 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.

If the parties cannot agree on the identity of the Mediator then either party may request CEDR to appoint one.

15.5 The Model Procedure shall be amended so that:

either party may make a written statement of its case to the Mediator prior to the commencement of the mediation. This is 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);

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.

15.6 Both parties must:

use their best endeavours to ensure that the mediation starts within 20 Working Days of the appointment of the Mediator; and

pay the Mediator's fee in equal shares.

15.7 Any agreement reached as a result of mediation shall be binding on both parties but if the dispute has not been settled by mediation with [10] Working Days of the mediation starting then either party may commence litigation proceedings (but not before then).

15.8 Neither party shall be precluded by this clause 15 from taking such steps in relation to court proceedings as we or you (as case may be) may deem necessary or desirable to protect our respective positions. This shall normally be limited to issuing or otherwise pursuing proceedings to prevent limitation periods from expiring and applying for interim relief.

16. THE SERVICES

16.1 The Contractor shall provide the Service in complete accordance with its obligations contained in the Contract Documents and in a manner consistent with the Council discharging its statutory duties and powers to provide [].

16.2 In providing the Service the Contractor shall:

16.3 conform to any and all codes of practice performance ratings and quality standards that are specified in the Contract Documents or that relate to the nature of the Services being performed

16.4 Provided the Service with all the skill and care and diligence to be expected of a competent provider of Services of a similar kind to the Services concerned

16.5 Adopt and utilise such quality control process as detailed in the (Programme of Work/Specification) for its performance of the Services

16.6 Ensure that any goods, equipment, materials, facilities, and workmanship supplied or employed in undertaking the Service are in accordance with the Contract Documents and otherwise appropriate to the Service being performed.

16.7 (subject to any express provision of this Contract to the contrary) it will not without the prior written consent of the Council such consent not to be unreasonably withheld or delayed (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract.

17. HAZARDOUS SUBSTANCES

17.1 Storage

The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all relevant legislation and Good Industry Practice and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Council of all such materials being used or stored at the Councils Premises and shall comply with any other reasonable requirement of the Council in respect thereof.

17.2 COSHH Register

The Contractor shall maintain a COSHH register in relation to the Councils Premises it occupies and shall ensure that a copy of the register is held at the Contractor's registered office and that a copy is given to the Council.

18. EMERGENCIES

18.1 Council may instruct

If an Emergency arises during the Contract Period which cannot be dealt with by performance of the Services, the Council may instruct the Contractor to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Council to

ensure that the Emergency is dealt with and normal operation of the Facility resumes as soon as is reasonably practicable.

- 18.2 The cost of any additional or alternative services provided by the Contractor under clause 18.1 (to the extent that these services lead to more damage than the anticipated costs of wear and tear) shall be borne by the Council in accordance with clause 8.

19. CONTRACTOR'S INDEMNITY

- 19.1 The Contractor shall accept full responsibility for and shall release, and indemnify on demand the Council, its staff, its agents and other contractors against all liability for:

19.2 death and personal injury

19.3 loss or damage to property (including property belonging to the Council for which it is responsible)

19.4 breach of statutory duty

19.5 all actions, claims, demands, costs, charges, losses or 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 on the Councils property of the Contractor, a sub-contractor or any of their employees or agents.

Where liabilities arise to the Council through the Contractor 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 indemnity to the extent of the Contractor's or its sub-contractors' contributory negligence.

20. COUNCIL'S LIABILITY

- 20.1 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 the information provided.
- 20.2 The Council shall in no circumstances be liable to the Contractor for any direct, consequential, economic or financial loss or lost profit or income opportunity of any kind whatsoever which the Contractor sustains or incurs in consequence of the occurrence of a Relief Event, the condition of the Councils Premises, the accuracy, completeness or fitness for purpose of any information disclosed or made available to the Contractor by the Council or a third party in relation to the obligations undertaken by the Contractor under the Contract Documents or by any failure of the Contractor to generate the anticipated level of remuneration under this Contract.

21. INSURANCE

- 21.1 For the duration of this 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:

Employer's Liability - £10m (to comply with statutory requirements)

Public Liability - £5m (in respect of any one act or occurrence or series of acts or occurrences in any one year)

Any other insurances as is in accordance with Good Industry Practice for the Services undertaken by the Contractor

Upon request by the Council the Contractor shall produce a copy of the policies affecting the insurance referred to in this clause 21 together

with documentary evidence that such insurances are properly maintained.

- 21.2 Both the Contractor and its sub-contractors shall, ensure that all policies required under this clause 21 [name of Council as co-insured or have the interest of the Council noted thereon and contain an Indemnity to Principal provision] 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.
- 21.3 The policy of public liability insurance shall include a breach of warranty/severability provision and shall include a clause in which the insurer accepts that the terms of the insurance shall apply to the Council and the Contract and their respective agents, servants, officers, employees and contractors as if a separate policy of insurance has been issued to each of them.
- 21.4 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, together with the sum equal to 10% of the cost of such insurance as a contribution towards the Council's administrative costs and overheads.
- 21.5 The Contractor shall ensure that each and any policy of insurance required under this clause 21:

21.5.1 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;

21.5.2 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

22. STAFF

22.1 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

22.2 The Contractor shall ensure that all employees involved in providing the Services shall be at all times properly and sufficiently trained and instructed in the following:

22.2.1 the task or tasks the employee has to perform;

22.2.2 all relevant provisions of the Contract;

22.2.3 all relevant procedures and standards agreed between the parties from time to time;

22.2.4 all relevant laws, regulations, rules and procedures affecting the provision of the Services; and

22.2.5 the need to maintain the highest standards of courtesy and consideration to the public to promote and enhance the Council's image and reputation.

22.3 The Contractor shall provide a means of identification to its staff 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.

22.4 Conduct of Staff

Whilst engaged at the Councils Premises the Contractor shall comply with the Councils Policies relating to the conduct of staff (including those in respect of security arrangements) as disclosed to the Contractor and may be made and enforced by the Council from time to time acting reasonably and shall ensure that its Sub-Contractors do likewise. The Council shall notify the Contractor of any proposed change to the Policies as soon as practicable and such change shall take effect as an Council change in accordance with clause 8 the Contractor shall take and/or procure appropriate disciplinary action against any person employed by the Contractor and/or its Sub-Contractors who transgresses any such rules, regulations and requirements (which may at the discretion of the Council include the removal from the provision of the Services of any such person).

22.5 Contractor's Employees

Other than as expressly provided in this Contract, the Contractor shall be entirely responsible for the employment and conditions of service of the Contractor's employees and shall procure that any Sub-Contractor of the Contractor is likewise responsible for its employees.

22.6 Council's Employees

The Council shall be entirely responsible for the employment and conditions of service of its own employees.

22.7 Removal from the Councils Premises

The Contractor shall comply with and/or procure compliance with any notice issued by the Council from time to time requiring the removal from the Councils Premises of any person employed thereon who in the opinion of the Council (which it shall be required to explain and disclose to the Contractor) is not acceptable on the grounds of security is a breach of contract or other reasonable grounds and that such

persons shall not be employed again upon the Services without the written consent of the Council. Where the Contractor wishes to dispute any such notice, the relevant individual shall not attend the Councils Premises pending the outcome of the dispute.

22.8 Staff Training and Records

Subject to any restrictions imposed by Legislation, the Contractor shall procure that the Council's Authorised Officer shall at all reasonable times have access to all material details in respect of all employees of the Contractor and its Sub-Contractors engaged in the provision of the Services including numbers and categories of staff employed to perform the Services, including details of qualifications in respect of each such employee and details of training undertaken by the employee.

22.9 Criminal Records Bureau [WHERE RELEVANT]

22.9.1 Pursuant to the Criminal Justice and Court Services Act 2000 and Care Standards Act 2000 the Contractor shall carry out checks with the Criminal Records Bureau (CRB) on all staff or volunteers engaged in the to provide the Service who will access to children or vulnerable adults (Vulnerable Service Users). Where staff or volunteers are likely to have a regular face-to-face contact with Vulnerable Service Users an enhanced level disclosure must be obtained. For all other posts, a standard disclosure shall be obtained.

22.9.2 The Contractor shall also carry out all reasonable checks to ensure that individuals are not restricted or prohibited from working with vulnerable adults or otherwise unsuitable work on the Service. This shall include obtaining from the person a signed and dated declaration regarding any previous criminal convictions and informing the person that failure to declare convictions may result in dismissal.

- 22.9.3 Once the Contractor has completed the CRB checks the Contractor shall send confirmation of all CRB checks to the Council's Director of Personnel and General Services (The Appointed Person) at [Address].
- 22.9.4 If at any time the Contractor becomes aware of anything that may affect the suitability of the individual to perform the work required, the Contractor shall, prior to the individual being used on the Service or as soon as possible thereafter, notify the Appointed Person.
- 22.9.5 The costs of registering with the CRB and applying for disclosure certificates from the CRB shall be the responsibility of the Contractor.
- 22.9.6 The Contractor shall conduct a CRB re-check after 3 years of the last CRB check.

23. SECURITY

- 23.1 The Contractor shall be responsible for the security of the Councils Premises and without limitation shall ensure that premises are correctly locked, alarmed and CCTV or other camera or the like where installed are functioning and that all other security devices are activated prior to vacating the premises each day.
- 23.2 The Contractor shall take all reasonable measures by the display of notices or other appropriate means to ensure that all persons employed on any work or Services in connection with the Contract have notice that any relevant Council Policy dealing with security applies to them.
- 23.3 The Contractor shall co-operate with any investigation relating to security which is carried out by or on behalf of the Council and:
- 23.4 shall use its reasonable endeavours to make its employees (and Sub-Contractors' employees) identified by the Council available to be interviewed by the Council for the purposes of the investigation; and

- 23.5 shall, subject to any legal restriction on their disclosure, provide copies of all documents, records or other material of any kind which may reasonably be required by the Council for the purposes of the investigation. The Council shall have the right to retain copies of any such material for use in connection with the investigation.
- 23.6 The Council shall, insofar as is practical, inform the Contractor of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Sub-Contractor or their property.
- 23.7 The Contractor shall comply with the Council's reasonable reporting requirements relating to infectious and notifiable diseases.

24. TUPE

- 24.1 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 himself all necessary information as to risks, contingencies and all other circumstances influencing or effecting his tender.
- 24.2 At any time during or up to 2 years after the expiration or termination of this Contract the Contractor shall provide upon request by the Council such information as may be reasonably required to comply with the 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.
- 24.3 The information to be provided in accordance with clause 24.2 may include but shall not be limited to:

- 24.4 number of staff, including supervisory and administrative staff, employed by the Contractor and any sub-Contractor employed in the provision of the Service;
- 24.5 the terms and conditions of employment of those staff; and
- 24.6 any other information in relation to those staff as may reasonably be required by the Council under this clause or generally to comply with its statutory obligations.
- 24.7 In the event that the Council seeks the information described in clause 23.3 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 only use the information supplied for the purposes of submitting a tender or otherwise providing the Services.
- 24.8 The Contractor shall, if requested by the Council, provide the information in clause 24.3 above in relation to employees of its Contractors, Sub-Contractors where such employees are engaged in the provision of the Service.
- 24.9 The Contractor shall co-operate, and where relevant do its utmost to procure the co-operation of its Contractors, Sub-Contractors, so as to secure the proper and efficient transfer of any relevant employees.
- 24.10 The Contractor undertakes not to change personnel or their remuneration or service delivery structure during the last twenty-four months of the Contract other than for bona fide economic or operational reasons related to delivery of the Service under the Contract, including but not limited to changes to preclude or promote the application of the TUPE Regulations upon termination or expiry of the Contract.

24.11 The Contractor shall indemnify and keep indemnified the Council against all losses, costs, demands, charges, proceedings, damages, expenses and all other liabilities whatsoever in respect of any claim made by or on behalf of any person involved in the previous provision of the Service (whether or not transferred from the employment of the Contractor) and which claim arises from that person's previous involvement in the Services whether as an employee of the Contractor or any Sub-Contractor of the Contractor or a previous provider of the Service.

24.12 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.

24.13 Without Prejudice to any other provision in this clause 24 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.

25. USE OF PREMISES

25.1 Licence

The Contractor agrees to and hereby grants irrevocably to the Council a licence to enter and use the Council's Premises for the provision and management of its services either concurrently with the Contractor and to carry out any other monitoring or other functions of the Council whether authorised by this Contract or in accordance with its statutory responsibilities. [FORM OF OCCUPATION LICENCE OR LEASE NEEDS TO BE AGREED – CONSULT WITH COUNCIL'S VALUERS AS NECESSARY]

25.2 Early Termination

If this Contract is terminated for any reason (whether in whole or in part), the relevant licence shall automatically cease and determine with effect from the date of termination.

26. ASSETS (EQUIPMENT, MATERIALS AND PLANT)

26.1 Unless otherwise agreed or expressly detailed in the Contract Documents the Contractor shall where applicable provide replace and maintain in proper repair and condition all of the Physical Assets (so that they are capable of being used for the relevant activity they are designed for).

26.2 Where applicable the Contractor shall ensure that all Physical Assets are maintained, stored and insured fully in accordance with the manufacturers instructions and Good Industry Practice and shall at all times be safe to use.

26.3 The Contractor agrees to buy items listed in Schedule [](The Existing Equipment) at fair market value and on payment these shall be made available to the Contractor prior to the commencement of the Service.
[IF APPLICABLE]

26.4 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 26.

27. HEALTH & SAFETY

27.1 Without prejudice to the generality of clause 28 the Contractor shall be responsible for observance by itself, its employees, agents and sub-contractors of its Health and Safety Obligations

27.2 If at any time the Authorised Officer reasonably considers that the Contractors Health and Safety Obligations are not being complied with s/he shall be entitled to instruct the Contractor (a) to take specified

steps to secure such compliance or (b) to comply with advice or requirements of the relevant Health and Safety enforcement authority or a proper officer thereof.

28. COMPLIANCE WITH THE LAW

28.1 The Contractor shall provide the Services at all times in complete accordance with the Contract and 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 Council, or any statutory undertaking which has any jurisdiction with regard to the Service or with whose systems the same are or will be connected and with any notices served under any such Act, Instrument, Order, Regulation or Bye-law and compliance with the aforementioned is deemed to be included in the Contract Price.

29. CO-OPERATION WITH OTHERS

29.1 The Contractor shall co-operate with:

29.2 other contractors and those other contractors' sub-contractors;

29.3 all statutory undertakers, officers, auditors of the Council, and residents of 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.

30. CHARGES AND PAYMENT

30.1 Contract Price

30.2 The Contract Price shall consist of an annual sum payable by the Council to the Contractor together with the benefit of any incentive scheme(s) agreed between the parties. [*to be agreed*]

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

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

30.4 The Contract Price shall accrue from day to day and be payable monthly in arrears from the Commencement Date.

30.5 Within 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 months and showing:

30.5.1 a simple breakdown of charges;

30.5.2 the services provided during the period covered by the invoice; and

30.5.3 the total figure paid by the Council.

30.5.4 Following receipt by the Council of the invoice referred to in clause 30.5.3 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.

30.5.5 Council Notice

In the event that any entitlement of the Contractor to any amount is disputed the Council will 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.

30.5.6 Contractor Notice

Within 7 working days following receipt by the Contractor of any such notice served by the Council pursuant to clause 30.5.5 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:

30.5.6.1 to retain on a permanent basis any amounts withheld pursuant to clause 30.5.5; and

30.5.6.2 to reclaim from the Contractor the amount of any overpayment which may have been made to the Contractor.

30.5.7 Dispute

If the Contractor responds pursuant to clause 30.5.6 that it does not agree with all or any of the statements made in any notice served by the Council pursuant to clause 30.5.5 the matter or matters in question shall be determined under clause 15 dispute procedure.

30.6 The Contract Price may not be varied at any time otherwise than in accordance with this clause 30 or clause 30.8 below.

30.7 The Contract Price shall be paid in Pounds Sterling to the Contractor in accordance with the terms and conditions of this Contract normally by means of electronic transfer of funds.

30.8 **Review of Contract Price [Indexation]**

30.9 The Contract Price shall be reviewed on the first anniversary of the Commencement Date and after each subsequent anniversary of the Commencement Date ("the Review Date") and shall be varied by a percentage equivalent to any percentage increase shown in the

Approved Index(es) published for the month immediately preceding the Review Date and such increase shall take effect from the Review Date for the ensuing period of twelve months or in the final year part such period as shall remain from the review date until the expiration of the Contract.

30.10 VAT Payment

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

30.12 Late Payment

30.13 Without prejudice to the Council's rights under clause 30.5.5 above and generally in the event that the Council fails to make payment in accordance with clause 30.2 above of a sum demanded on a correct or agreed invoice or such sum as may be determined in accordance with clause 15 above as being due to the Contractor, the Council shall pay to the Contractor interest at the Prescribed Rate 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.

31. EVIDENCE IN CONNECTION WITH LEGAL PROCEEDINGS

31.1 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 or regulatory proceedings (including Local Government Ombudsman investigations and enquiries) 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. The Contractor shall immediately on becoming aware of the same notify the Authorised Officer of any accident, damage or breach of any statutory provision relating to or connected in any way with the provision of the services.

31.2 Any information or assistance provided by the Contractor in accordance with this clause 31 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.

32. DEFAULTS

32.1 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:

32.2 to require the Contractor to repeat the Services not performed in accordance with the Contract at no cost to the Council; or

32.3 to withhold payment for those Services not performed in accordance with the Contract

32.4 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 incurred by the Council in so doing from any payment due to the Contract

32.5 For the avoidance of doubt the rights and remedies referred to in this clause 32 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.

32.6 Duty to Co-operate

During the final twelve (12) months of the Contract Period or during the period of any notice of termination of this Contract (whether in whole or in part) and for a period of [six (6)] months thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any new Contractor of such services the same or similar to the Services ("New Contractor"), and for the purposes of this clause 32 the meaning of the term "co-operate" shall not include any duty or obligation to disclose any information that is otherwise restricted hereunder but shall include:

32.7 liaising with the Council and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Council or to such New Contractor;

32.8 allowing any such New Contractor access (at reasonable times and on reasonable notice) to the Facility but not so as to interfere with or impede the provision of the Services; and

32.9 providing to the Council and/or to any New Contractor all and any information concerning the Site and the Services which is required for their performance.

32.10 Transfer of Responsibility

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New Contractor or to the Council, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make difficult such transfer.

32.11 Treatment of Physical Assets at Expiry Date

On or before a date falling no later than twelve (12) months prior to the Expiry Date, the Council shall notify the Contractor in writing whether it

wishes:

- 32.12 to retender the provision of the Services; or
- 32.13 the Contractor to transfer all of its rights, title and interest in and to the Physical Assets to the Council; or
- 32.14 If the Council wishes to retender the provision of the Services, then:
 - 32.15 the retendering shall be carried out on the basis that the Council will contract with a successor contractor to provide the new service on and from the Expiry Date; and
 - 32.16 the Contractor shall do all necessary acts (including entering into any contracts) to ensure that the successor contractor obtains all of its rights, title and interest to and in the Physical Assets with effect on and from the Expiry Date; and
 - 32.17 the Council will bear all costs of any retendering of this Contract on expiry.

33. TERMINATION FOR CAUSE

- 33.1 Without prejudice to the exercise of any alternative or additional remedy or of any accrued rights the Council shall be entitled to forthwith upon the happening of any of the following events to terminate this Contract:
 - 33.2 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;
 - 33.3 the appointment of an administrative receiver over the assets of the Contractor

- 33.4 the Contractor having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up past
- 33.5 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;
- 33.6 the Contractor having an administrative receiver, as defined by the Insolvency Act 1986 appointed;
- 33.7 the Contractor being in circumstances which entitle the creditor to appoint, or have appointed a receiver, a manager or administrative receiver, or which entitles the Court to make a winding-up order;
- 33.8 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.
- 33.9 the Contractor has committed a substantial breach of the Contract, or
- 33.10 persistent minor breaches of the Contract by the Contractor as evidenced by defaults levied under clause 32 (Defaults).
- 33.11 discovery of a material misrepresentation by the Contractor during the tendering process
- 33.12 purported assignment or the creation of an interest in the Contract in breach of clause 43 of this Contract
- 33.13 the Contractor has committed any Prohibited Act
- 33.14 Upon such termination, in addition to such consequences as are set out in other conditions:
- 33.15 The Contractor shall be deemed to be in breach of this Contract;
- 33.16 The Contractor shall forthwith cease to perform any of the Services;

- 33.17 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;
- 33.18 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;
- 33.19 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;
- 33.20 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;
- 33.21 The Contractor shall forthwith vacate any Council land or Premises;
- 33.22 The Contractor shall forthwith release and hand over to the Council any and all Council property, including but not limited to equipment, supplies, records and work in progress, whether the form of documents, plans, calculations, drawings, computer data or other material in any medium.
- 33.23 Upon termination of this Contract it is hereby agreed that clauses 19, 21, 24.8, 31, 34, 38, 39, 54 and 55 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.

34. RIGHT OF SET-OFF

34.1 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

34.2 The Council shall give to the Contractor notice of any such deduction or set-off and such notice shall specify:

34.3 the amount proposed to be withheld and the ground for withholding payment; or

34.4 if there is more than one ground, each ground and the amount attributable to it.

35. FORCE MAJEURE

35.1 In the event of an Act of God or Force Majeure (which shall be limited to war, civil war, armed conflict, nuclear, chemical or biological contamination, pressure waves caused by devices travelling at supersonic speeds 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 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

- 35.2 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, consumables and/or staff or similar matters are not to be considered as events of Force Majeure or Acts of God.
- 35.3 If the period of suspension under sub-clause 35.1 above lasts for longer than (three months), either party may serve upon the other (one months) 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.
- 35.4 Upon termination of the Contract it is hereby agreed that clauses 19, 21, 24.8, 31, 34, 38, 39, 54 and 55 of this Contract shall continue in full force and effect.

36. INFORMATION SYSTEMS

- 36.1 In the event of the Contractor making use of any computer system in connection with the Service, the Contractor shall at its own cost and subject to the Council's satisfaction:
- 36.2 ensure that any such computer system is at all times throughout the Contract Period sufficient to enable the Contractor to comply with its obligations under the Contract;
- 36.3 ensure that, to the extent required for the proper performance of the Contractor's obligations under the Contract such computer system 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;
- 36.4 ensure that comprehensive security copies of any computerised Council data are:

36.4.1 updated in respect of each working day at the conclusion of such working day; and

36.4.2 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;

36.5 ensure 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 system which arrangements shall enable the Contractor to continue without interruption to comply with its ongoing obligations under this Contract; and

36.6 The Council shall free of charge provide, either in hard copy or in computerised form (as appropriate), the Contract with such Council data and information in the possession or under the control of The Council as:

36.7 is stored on The Council's computer system; and

36.8 the Contractor may reasonably require in order for it to provide the Service; and

36.9 the Contractor is not obliged itself to procure or to provide pursuant to the provisions of the contract

Subject to the following conditions:

36.9.1 that such data shall remain the property of the Council;

36.9.2 the Contractor operating all hardware and software in accordance with all agreed procedures;

- 36.9.3 the Contractor complying with all relevant legislation;
- 36.9.4 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;
- 36.9.5 the Contractor ensuring that such data is maintained to a level of accuracy approved by the Authorised Officer;
- 36.9.6 that the data is made available to the Authorised Officer [*on a regular specified basis*] or otherwise as required to enable the Authorised Officer to ensure that the data is accurate and up to date; and
- 36.9.7 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.

36.10 No significant change or upgrade to the software or computer systems used by the Contractor will be made by the Contractor without the prior written agreement of the Council.

37. DATA PROTECTION

- 37.1 The Contractor shall comply with its obligations under the Data Protection Act 1998 and any guidelines issued by the Data Protection Commissioner in so far as performance of the Services gives rise to such obligations,
- 37.2 The Contractor covenants and confirms that all Data obtained and used in connection with this Service shall:
- 37.3 as between the Council and the Contractor be the property of the Council

- 37.4 be used for the sole purpose of undertaking the Contractor's obligations under this Contract
- 37.5 upon expiration or early determination of this Contract shall be returned to the Council
- 37.6 shall not be copied and retained by the Contractor upon expiration or early termination of this Contract except as required by law or under this Contract
- 37.7 shall be kept secure and shall be treated as confidential information as provided by clause 38 of this Contract
- 37.8 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.
- 37.9 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.
- 37.10 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
- 37.11 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

38. CONFIDENTIALITY

- 38.1 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.

38.2 Provided always that this obligation shall not relate to any such information which;

38.3 comes into the public domain or is subsequently disclosed to the public (otherwise than through default of either party) or

38.4 is required to be disclosed by law or

38.5 was already in possession of the party (without restrictions as to its use on the date of receipt)

38.6 The obligations in this clause 38 shall survive the expiration or termination (or what ever reason) of this Contact and shall continue without limit in point of time.

39. PUBLICITY

39.1 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

40. ADVERTISING

40.1 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 Council's 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. In these circumstances, the Authorised Officer may compensate the Contractor for the additional costs involved.

41. COPYRIGHT AND INTELLECTUAL PROPERTY

41.1 Subject to clause 41.2 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 it without the written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold.

41.2 The Contractor shall be entitled to make copies of the Contract where such copies are required to enable it to perform the Services.

41.3 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.

41.4 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 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.

42. AUDIT ACCESS

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.

43. ASSIGNMENT AND SUB-CONTRACTING

43.1 The Contractor shall not assign nor create any interest in this Contract without the prior written consent of the Council, which consent the Council shall be absolutely entitled to withhold

43.2 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.

43.3 The Council reserves the right to impose such conditions as it sees fit in giving any consent pursuant to this clause 43. Such conditions may include payment to the Council of such reasonable administrative and legal costs as may be incurred.

44. EQUAL OPPORTUNITIES

44.1 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.

- 44.2 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 to positively promote equality of opportunity and good relations between persons of different racial groups.
- 44.3 Where in connection with this Contract, the Contractor, its employees, agents or subcontractors are required to carry out work on the Council's Premises or alongside the Council's employees on any other premises, the Contractor shall comply [with the Council's own employment policy and codes of practice relating to racial discrimination and equal opportunities, copies of which are annexed to this []].
- 44.4 The Contractor shall monitor the representation among the Contractor's employees engaged in the provision of the Services of persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body), having regard to the Council's procedures for monitoring representation among its own employees.
- 44.5 Where it appears to the Contractor in relation to particular work of its employees, either that the employees include no members of group are under-represented amongst employees doing that work compared to their representation in the employees as a whole or in the population from which employees staff are normally recruited, undertake the following action as may be appropriate and reasonably practicable:
- 44.5.1 The placing and use of jobs advertisements to reach members of such racial groups and to encourage their applications;
- 44.5.2 The use of employment agencies and careers offices in areas where members of such racial groups live and work;

- 44.5.3 The promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such racial groups; and
- 44.5.4 The provision of appropriate training and the encouragement of members of the Contractors staff from such racial groups to apply for promotion or transfer to do work in those areas where such racial groups are under-represented.
- 44.6 The Contractor shall twelve (12) months from the Commencement Date and [annually] thereafter submit a report statement to the Council demonstrating its compliance with this clause 44.
- 44.7 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 44.

45. ENTIRE AGREEMENT

- 45.1 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.

46. SERVICE OF NOTICES

- 46.1 All instructions, applications and notices to be made or given under this Contract shall be made in writing and shall be served by sending the same by recorded delivery post to or delivering the same to the parties' registered offices or last known principal business addresses and if so, posted shall be deemed to have been served two days after the date when posted and shall not be validly given unless so served.

47. WAIVER

- 47.1 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.
- 47.2 A waiver of any default shall not constitute a waiver of any subsequent Default.
- 47.3 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.

48. SEVERABILITY

- 48.1 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.

49. THIRD PARTY RIGHTS

- 49.1 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

50. LAW AND JURISDICTION

50.1 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.

50.2 This Contract is binding on the Council and its successors and assignees and the contractor and the contractor's successors and permitted assignees.

51. PERFORMANCE BOND WITH PARENT CO-GUARANTEE

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

51.2 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.

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

52. REMEDIES CUMULATIVE

52.1 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.

53. ENVIRONMENT PROTECTION

53.1 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.

53.2 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.

54. FREEDOM OF INFORMATION

54.1 The Council is subject to the Freedom of Information Act 2000 and therefore shall incur additional legal obligations in relation to the public disclosure of information.

54.2 The parties confirm that disclosures required by the Freedom of Information Act 2000, shall be classed as a disclosure required by law under clause 38.4 so that the obligations of confidentiality do not apply.

54.3 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 proving under the said Act.

55. HUMAN RIGHTS

55.1 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.

- 55.2 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.
- 55.3 The Contractor shall release and keep the Council indemnified on demand against all proceedings, claims 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 whether arising out of or connected with the Contractors performance of the Service.
- 55.4 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.

56. CONTRACT EXECUTION

This Contract may be executed by the parties on separate counterparts but shall not be effective until each party has executed at least one counterpart.

Each counterpart shall constitute the original of this Contract but all of the Counterparts shall together constitute one and the same instrument.

DATED _____ 20 _____

THE
THE ROYAL BOROUGH OF
KENSINGTON AND CHELSEA

- and -

A G R E E M E N T

relating to

Director of Legal Services
The Town Hall
Hornton Street
LONDON
W8 7NX

Our Ref:

Tel: 020 7361

