



***PARTNERSHIP AGREEMENT
BETWEEN THE ROYAL BOROUGH
OF KINGSTON UPON THAMES
AND***

[Insert name of Partner]

FOR

[Insert name of service]

Model Conditions

NB Each partnership agreement will need to be updated to meet the needs of the specific contract. Please refer to 7.1, 11.2, 24.2, 25.1, 49 and Schedule A before sending.

Every contract which does not exceed £300,000 shall be in writing and signed by the Chief Executive, appropriate Director, Chief Officer or Head of Service or sealed with the Common Seal of the Council.

Every contract which exceeds £300,000 in value or amount shall be in writing and shall be sealed with the Common Seal of the Council.

NB

If you are procuring ICT, you will need to add the following unamended OGC Model ICT Contract Clauses: 28.11 and 28.12 (Contractor Personnel – Staffing Security); 40 (Authority Data); 41 (Protection of Personal Data); 42 (Freedom of Information); 43 (Confidentiality); 48 (Security Requirements); 45.2 (Warranties); and Schedule 2.5 (Security Requirements and Plan).

Information is a key asset, and its proper use is fundamental to the delivery of public services. From July 2008, the Data Handling Procedures in Government Report requires that standard contract clauses on information assurance will be incorporated into contracts.

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THE PARTNERSHIP

1. PREAMBLE

- 1.1. This partnership agreement has been entered into by the Royal Borough of Kingston upon Thames of (address) (“the Council”) and (.....) whose registered office is at (.....) and whose registered number is (.....) (“the Contractor”).

Both parties agree to a way of working and business relationship which shall be co-operative and non-confrontational in manner whilst being robust and fair and taking into account both parties’ business objectives.

- 1.2. The underlying principles that govern this arrangement are:

- Work together in a spirit of partnership, sharing commitment and common objectives
- Foster open and honest communication and trust
- Deliver high quality services that demonstrate best value for local communities
- Behave ethically in our business delivery
- Work together to seek investment opportunities to enhance services
- Be innovative and imaginative in developing service improvements
- Identify and solve problems to achieve solutions, not impose penalties
- Focus on outcomes, adopting a flexible approach to service improvements
- Share the risks and the benefits
- Be aware of and accept our respective responsibilities
- Ensure that the Council’s policies, aims and objectives are adhered to in providing services

- 1.3. The partnership arrangements to which the parties subscribe shall be seen in the context of the following:

- The Council’s obligation under the Local Government Act 1999 to secure continuous improvement of services having regard to economy, efficiency and effectiveness

- To focus on output of service delivery for the benefit of the residents of Kingston
- The service is a fundamental element of the Council's Improvement Programme
- The Council's objective of developing new relationships with its service providers as stated in the Council's Contractor Charter

1.4. The term "partnership" in the context of this agreement is defined as a close working relationship based on the following:

- Shared objectives and goals to meet the needs of residents and stakeholders
- An amicable, non confrontational relationship based on trust, openness and honesty
- A recognition that the parties will work together sharing resources to drive forward service review and improvement
- A commitment to share the benefits arising from efficiency, improvement and change
- Sharing information openly whilst retaining 'business' confidentiality
- A positive approach to resolution of dispute and disagreement without the need to resort to formal sanctions
- An acceptance that the partnership arrangement shall be underpinned by a formal contract in law

1.5. In order to realise the aims and objectives of the partnership, the partners agree to:

- Be committed to and equitable in all dealings related to the partnership and to be truthful and open in such dealings
- At all times be mindful that the services are provided for the benefit of residents and stakeholders
- Work closely together and with the involvement of local groups
- Adopt a positive attitude to change and innovation
- Be flexible in approach and adapt to local and national changes brought about by external factors

- Comply with relevant legislation, guidelines, codes of conduct and industry standards
- Work together to ensure a smooth commencement and eventual termination of the partnership

1.6. For the avoidance of doubt, the partnership constituting this agreement is not a trading or non-trading legal entity under the Partnership Acts, the Companies Acts or subject to any VAT or other tax implications.

The mechanism to ensure that the requirements of 1.5 are met shall be by the constitution of a Partnership Board.

2. THE ROLE OF THE PARTNERSHIP BOARD

2.1. The parties shall, by mutual agreement, constitute a Partnership Board which shall comprise as a minimum:

- The Council's Authorised Officer plus two other senior officers of the Council with responsibility for the Services
- Two Members of the Council including the Executive Portfolio holder with responsibility for the services
- Two representatives from the Contractor
- Other persons shall be co-opted or invited to attend meetings of the Partnership Board as agreed by the Board

2.2. The Partnership Board shall meet quarterly although it is recognised that monthly meetings may be appropriate in the first six months of the contract term.

2.3. The Partnership Board shall have the following responsibilities:

- A general overview of the contract and strategic management of the development of the Services
- Review regularly operational and financial performance
- Plan for future levels of service delivery
- Identify and prioritise areas of improvement
- Identify and approve areas of service investment
- Encourage and promote education in protecting the environment

- Identify benchmarks against which performance is monitored and revise the minimum service level requirement
- 2.4. Both parties shall be responsible for providing the Partnership Board with timely operational and financial information to enable it to properly carry out its responsibilities. This will take the form of comprehensive and accurate performance data indicators as agreed by the parties and financial and budgetary information based on open book accounting principles.

3. THE ROLE OF THE COUNCIL'S OFFICERS

- 3.1. The functions, rights and powers conferred by the Contract upon the Council shall be exercised by officers appointed for those purposes and having specific authority within the role which they perform.
- 3.2. The Authorised Officer shall have all the rights and powers conferred on the Council and, in consultation with the Contractor, may vary any part of the Conditions or the Specification on behalf of the Council. Any such Variations shall use the mechanism laid down in Condition 16.
- 3.3. The Authorised Officer may nominate representative(s) to be responsible for a particular part of the Service or a particular type of work. Such officers shall not have any power to vary any part of the Conditions but shall, in consultation with the Contractor, have the power to vary the Specification, the Schedules, or any other relevant documentation for that part of the Service or type of work for which they are made responsible. Any such Variations shall use the mechanism laid down in Condition 16.
- 3.4. The Authorised Officer's representatives shall not have any power to vary any part of the Conditions nor relax any standard laid down in the Contract but shall have power to instruct the Contractor to carry out work which is part of the Service. Any instructions shall be issued in accordance with Conditions 5 and 34 and shall relate to services which assist the Authorised Officer or his representative in its performance of the service to the Council.
- 3.5. The Authorised Officer or his representative(s) shall be entitled to monitor the performance of the Service by the Contractor and shall have the power to intervene in the case of any Contractor failure.
- 3.6. If any clarification of the powers and duties of individual officers is required by the Contractor then this shall be sought in writing from the Authorised Officer. The Contractor shall accept the authority of the officers to the extent that it has been delegated to them by the Authorised Officer.

4. THE ROLE OF THE CONTRACTOR'S MANAGERS

- 4.1. The Contractor shall appoint a Contract Manager who will have overall responsibility for the requirements of the contract and its delivery. The Contract Manager shall be a senior employee of the Contractor with commensurate powers and duties to effectively ensure delivery of the services and effective operation of the partnering arrangements.
- 4.2. The Contract Manager may nominate representative(s) to be responsible for a particular part of the Service or a particular type of work.
- 4.3. The Contract Manager or his representative(s) shall be entitled to monitor the performance of the Services and shall have the power to intervene in the case of any failure in the delivery of the Services, and shall have the power to instigate corrective action to ensure that the Services are delivered to the Contract Standard.

5. PROGRESS MEETINGS OF CLIENT AND CONTRACTOR

- 5.1. Meetings between the Partners, represented by the Authorised Officer and the Contract Manager or their deputies responsible for day to day operational matters, shall take place on a weekly basis.
- 5.2. Such meetings shall consider operational matters and the effectiveness of the Service Schedule and any changes thereto considered appropriate for reasons of operational efficiency or attaining the required quality standards.
- 5.3. The meeting shall also consider budgetary matters, including, but not limited to, monies spent to date compared to budget, any variation and action required.
- 5.4. Formal meetings between the Authorised Officer and the Contract Manager, which may include their deputies, shall take place on at least a monthly basis. The purpose of such meetings shall be to review, inter alia, performance and service delivery and to monitor service expenditure.
- 5.5. The Contractor shall ensure that appropriate members of staff attend those meetings as are reasonably required by the Authorised Officer in relation to the performance of the Service. Records of these meetings shall be kept and shall form part of the records of the Contract. Should the most appropriate member of the Contractor's staff be unable to attend the meeting, then a suitable replacement of equivalent status shall be fully briefed and shall attend on its behalf.
- 5.6. From time to time the Authorised Officer may require other representatives from external bodies to attend these meetings, the detail of which shall be advised to the Contractor at least seven days in advance of the meeting.
- 5.7. An annual meeting shall take place to review the past year's operation and performance of the Contract. This shall be termed the Annual Review, the purpose of which will be to jointly identify and programme the implementation of

technical, operational and organisational improvements to the service. The recommendations of the meeting will be submitted to the Partnership Board for consideration.

- 5.8. The Contractor may be required to attend meetings of the Executive, Overview Panel and/or Neighbourhood Committees as appropriate, and appropriate notice shall be given. The Contractor would be expected to ensure the appropriate senior management attend to answer/explain questions on the Service.

PERFORMANCE

6. SERVICE SCHEDULE

- 6.1. At the commencement of the Contract, the Partners shall agree and formulate a Service Schedule. The document will contain the following:
- The location of where the services are to be performed
 - The day(s) on which the service will be performed
 - The method of operation
- 6.2. The partners recognise that the Service Schedule will be subject to variation during the currency of the Contract as a result of the review of service delivery.
- 6.3. Review shall take into account operational efficiencies, technical advancement and the increase or decrease in the requirement for Services as agreed by the parties in writing.
- 6.4. Any variations resulting from service shall make reference to the Service Schedule and the Service Schedule shall be amended accordingly.

7. MONITORING PERFORMANCE

- 7.1. It is the Partners' intentions that the Services should be delivered in a spirit of partnership. Accordingly, the Partners shall agree a default methodology that will operate in the event of a failure of performance by either party. presentation Indicators shall be agreed within three months of the commencement of the Contract. These will be used to define how performance and service quality will be measured and the remedies to be applied in the event of service failures. (As a minimum **[insert appropriate service scale]**).
- 7.2. The partners will identify and agree opportunities to benchmark the Services against other comparable public and private sector service providers. The parties shall jointly participate in benchmarking exercises and shall provide all

necessary information to support such exercises in a timely and comprehensive manner.

- 7.3. The Contractor is required to self-monitor performance of the Services. Inspection/Activity reports on service standards achieved, Health and Safety compliance and equalities monitoring will be submitted to the Council on a regular (monthly) basis.
- 7.4. Where particular areas of concern arise, inspections shall be carried out jointly by the partners.
- 7.5. The Council reserves the right to carry out inspections independently and without prior notice.
- 7.6. The partners shall conduct surveys, no less frequently than once per year, of user satisfaction with the Service in terms. The partners shall review the results of such surveys and identify the options changes to the quality of the Service as appropriate. The outcome of such surveys will be reported to the Partnership Board.
- 7.7. During the Contract Period the Contractor shall provide the Service (and any modifications thereof authorised under these Conditions) in a proper, skilful and workmanlike manner, to the Contract Standard and to the entire satisfaction of the Authorised Officer.
- 7.8. The Contractor shall at all times during the Contract Period allow the Authorised Officer, and such persons as may be nominated from time to time by the Authorised Officer, access to all locations where the Service is being provided for the purpose of inspecting work.
- 7.9. The Contractor shall in no circumstances during the Contract Period use any premises of the Council to perform, either on its own behalf, or on behalf of any person other than the Council, any work other than the Service, unless authorised to do so, in writing, by the Authorised Officer.

8. NON PERFORMANCE

- 8.1. Where the Contractor fails to perform the Service in accordance with the provisions of the Contract and/or Specification, then the Council, shall be entitled to give the Contractor written notice setting out failure to perform and requiring the Contractor to take the necessary steps to either rectify the failure within a reasonable time period and/or prevent the failure from occurring in the future.
- 8.2. Should the Contractor fail to rectify the failure in accordance with the notice issued in the circumstances in 8.1, then the Authorised Officer, or his deputies, may request of the Contractor an explanation as to the reason why the said notice has not been complied. No further action will take place if the explanation is reasonable and satisfactory, or if a firm undertaking to rectify the work according to the notice is given.

- 8.3. If the aforesaid explanation is deemed to be unsatisfactory, then the Council may, if appropriate, apply such sanctions applicable to such a failure, taking account of the loss suffered by the Council, including but not limited to financial sanctions, by withholding monies due to the Contractor related to those elements of the Service it has failed to perform and/or a reduction representing the additional cost incurred by the Council in investigating and rectifying the reduction in value of the Service to the Council. The Contractor will be informed prior to the Council invoking any action.

9. CUSTOMER RELATIONSHIP

CONSULTATION

- 9.1. Service Users/Residents shall be informed and consulted by the partners as follows:
- Publication of standards and performance targets
 - Monitoring standards and publicising the results
 - Informing of any changes in service delivery/standard
 - Providing opportunities for residents to comment on the Services through short questionnaires/surveys
 - Publishing ways of how problems are redressed
 - Meeting regularly with residents' associations, local interest groups and businesses to discuss service delivery and suggestions for improvements
 - Conducting resident surveys as detailed in Condition 7.6

ACCESS AND COMPLAINTS

- 9.2. The Council has a strategy of ensuring that its communication and interaction with its customers are carried out in the most effective manner and to a "single point of contact". The Contractor shall be required to provide similar such facilities or systems which integrate with the Council's.
- 9.3. The Contractor shall record and maintain details of all enquiries, requests for Services and complaints about the Services provided under this Contract.
- 9.4. The Contractor shall make available to the Council on a regular basis (monthly) a summary report detailing all customer enquiries and complaints received, categorised by Services and showing the status of the complaint, time received, action required for rectification and time of rectification.

- 9.5. A complaint shall mean any expression of dissatisfaction however minor with any part of the Services provided by the Contractor made by or on behalf of a recipient of the Services.
- 9.6. The Contractor shall also have a written complaints procedure agreed with the Authorised Officer detailing ways of receiving and dealing with complaints, the time scale within which they shall be investigated and any remedial action carried out, and how the procedure will be promoted to Service recipients.
- 9.7. The Contractor shall record sufficient detail in the register to enable the Council to ascertain:
- The nature of the complaint
 - The name of the person making the complaint
 - The date and time when it was received
 - The action taken to remedy the complaint
 - The date and time when the remedy was completed
 - The name of the Contractor's employees involved in the action complained of and its remedy
- 9.8. The Contractor shall provide suitable and appropriately trained staff to receive, record and initiate remedial action in response to complaints and/or enquiries received whether by telephone, electronically or by correspondence during normal office hours.
- 9.9. The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner and in accordance with the agreed complaints procedure.
- 9.10. The Contractor shall deal with all complaints in the first instance. The Contractor shall, however, include in its complaints procedure reference to any Council procedures in that where that person expresses dissatisfaction with the manner in which the Contractor has dealt with the complaint or its failure to resolve it, they may refer the matter to the Council to be considered under the Council's complaints procedure. In such cases the Contractor shall pass copies of all relevant records regarding the complaint to the Council.

IMPROVEMENT

10. SERVICE IMPROVEMENT AND BEST VALUE

- 10.1. The Partners acknowledge that the Council has a duty under the Local Government Act 1999 to regularly review the Service for the purpose of increasing efficiency, effectiveness and economy (Best Value).
- 10.2. The Contractor hereby agrees to assist the Council as it may reasonably require with any such review including:
 - Actively promoting, supporting and assisting the Council in preparing the annual Performance Plan and Improvement Programme as it applies to the Services
 - Complying with requests for information, data or other assistance made by the authority in pursuance of its Improvement Programme and adopting changes to the Service identified as achieving such purpose. The Contractor hereby agrees to implement any necessary modification to the Service by variation of the Contract
 - Complying with all requests by the Council to procure the attendance of specific employees at any meetings of the Council at which the Contract is to be discussed
- 10.3. The Council shall at all times act reasonably in making requests of the Contractor in connection with the performance, satisfaction and discharge of the Council's Best Value duty.
- 10.4. The Partners shall, in each Contract Year, develop proposals to improve the provision and/or performance of the Services (the proposals to be considered at the Annual Review and approved by the Partnership Board) having specific regard to:
 - Technical, operational and organisational improvements and efficiencies in the provision of the Services
 - Any changes in legislation and duties imposed upon the Council
 - The Council's budgetary proposals
 - The requirements on the Council in relation to the contents of the Council's Performance Plan in relation to the Services for that Contract Year
 - The results of any customer satisfaction survey
- 10.5. The Partners shall implement a benchmarking exercise as an objective comparison of the quality, performance and delivery of the Services, with the provision of the same or similar services by a comparator group (which could include other local authorities and industry).

- 10.6. Any benchmarking exercise shall be carried out in good faith with the Partners acting reasonably in relation to any such benchmarking exercise.
- 10.7. The Contractor will comply with requests to provide data for the benchmarking exercises including data for costs and performance.
- 10.8. The Partners shall act in a spirit of partnership in jointly identifying and implementing service improvements in accordance with this Condition and shall agree a methodology of sharing any benefits arising therefrom.

OPERATIONAL

11. HUMAN RESOURCES

- 11.1. The Contractor shall at all times during the Contract Period assign to the Service staff whom the Contractor holds out as having sufficient skill and expertise for the proper performance of the Service.
- 11.2. Whilst allocated to the performance of the Service, all staff:
 - Shall maintain strict discipline and good order and shall not engage in behaviour of activities which could be contrary to or detrimental to the interests of the Partnership
 - Shall be effective and efficient workers, competent in their particular profession or skill
 - Shall abide by the standards, rules and regulations established by the Partnership for its staff
 - Shall comply with all relevant legislation relating to the provision of the Service
 - Shall be advised of the need for controlling hazardous substances in the workplace as required by the *Control of Substances Hazardous to Health Regulations 1988 (COSHH)*. [(amend as required)]
 - Shall maintain the highest standards of courtesy and consideration to residents and users of the service
 - Shall be advised of the need to recognise situations which may involve any actual or potential danger of personal injury to any person and, where possible without personal risk, to make safe such situations and forthwith to report such situations to the Authorised Officer or in the event of an emergency the appropriate officer of the Council's staff

- 11.3. The Partners agree to commit to joint development of staff engaged in the provision of the Services which shall encompass but not be limited to:
- Joint induction
Communications/consultation
Health & Safety
- 11.4. The Partners shall inform all relevant trade unions of the Contract and its Commencement Date.
- 11.5. Notwithstanding the provisions of the above, the Council reserves the right to act where, in the opinion of the Council, the Contractor has insufficient and/or untrained staff available to discharge the Contractor's obligations under the Contract. The Council shall inform the Contractor and if the Contractor does not respond to the reasonable satisfaction of the Council then the Council shall be entitled to make alternative arrangements for the Service and to recover the full cost of doing so from the Contractor.
- 11.6. Should the circumstances described in 11.5 prevail, the Council may either:
- Hire staff from an alternative contractor and/or agency and charge the full cost of this to the Contractor
 - Commence any other arrangements necessary to ensure that the full management and operation of the Service is provided, and charge the full cost of this to the Contractor
- 11.7. The Council reserves the right to require removal from the Service of any individual used by the Contractor who, in the opinion of the Authorised Officer:
- Is not fully trained or competent to undertake the duties required
 - Is or is deemed to be guilty of misconduct or negligence
 - Is acting in a manner which is detrimental to the Council's interests
 - Is not medically fit to perform the Service or provides a risk to the health of those with whom that person may come into contact during work on the Contract
- 11.8. Provided always that the Council will not exercise its right to require removal without giving prior notification to the Contractor and taking account of the Contractor's representations other than in cases of fraud or misappropriation.
- 11.9. The Council shall in no circumstances be liable to the Contractor for any claim in respect of any such removal.
- 11.10. The right contained within this Condition shall not be exercised arbitrarily, vexatiously or capriciously by the Authorised Officer.

12. CONTROL AND SUPERVISION OF CONTRACTOR'S EMPLOYEES

- 12.1. The Contract Manager shall be empowered to act on behalf of the Contractor for all purposes connected with the administration and management of the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.
- 12.2. The identity, address and telephone numbers of the person appointed as the Contract Manager and any persons empowered to act on his behalf or any person authorised to act for any period as deputy for the Contract Manager shall be made in writing to the Authorised Officer.
- 12.3. The Contractor shall notify the Authorised Officer in writing of any subsequent appointment within one week of that appointment.
- 12.4. The Partners shall ensure that the Contract Manager, or a competent deputy, duly authorised by the Contractor to act on its behalf, and the duly appointed Authorised Officer of the Council or his deputies shall be available to one another at all times.
- 12.5. The Contractor shall provide a sufficient number of supervisory employees to ensure that the Contractor's employees engaged in and about the provision of the Service are at all times adequately supervised and properly perform their duties to the Contract Standard.
- 12.6. The Contractor's employees engaged in the provision of the Service shall be under the control and direction of the Contractor's own supervisory staff, but must comply with all instructions given to them by the Authorised Officer in any matter in which Health and Safety is involved.
- 12.7. The Contractor shall ensure that its employees observe the security of all secured areas of the Council's premises and the Contractor shall provide and shall ensure that its employees wear at all times, when engaged on provision of the Service such identification (including photographic identification) as may be agreed by the Partners.
- 12.8. When requested to do so, or when communicating with other persons as a representative of the Contractor in the performance of the Service, any employee, representative, or agent of the Contractor shall disclose his identity and shall not attempt to avoid so doing.
- 12.9. The Contractor shall maintain current and accurate records of all (permanent full time and part time) employees who are engaged and provide the Service. These records shall include employee attendance and shall differentiate between those engaged as operatives, agency/temporary staff and those exercising supervisory duties. These records shall be open for inspection to the Partners at all reasonable times.

- 12.10. The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions, or levies of any kind, relating to or arising out of the employment of any person employed by the Contractor and shall fully and promptly indemnify the Council in respect thereof.

13. VETTING OF STAFF AND IDENTIFICATION

- 13.1. The Contractor will be required to undertake rigorous pre-employment vetting of prospective employees engaged on work for the Council, undertaking identity checks, obtaining appropriate and satisfactory references from their previous employers, confirming qualifications where appropriate to their employment, and undertaking CRB checks as necessary.
- 13.2. The Contractor recognises that performance of the Contract may require some employees to work on duties involving children or vulnerable adults, towards whom the Council owes a special duty of care. The Contractor will be required to obtain information concerning all such employees to facilitate a Criminal Record Bureau Disclosure for criminal convictions (eg name, address, date of birth, place of birth, National Insurance No.), and conduct the required checks to the satisfaction of the Council. The Contractor will ensure that all such employees have given their written permission (through completion of a standard application form) for such a check to be made and that they are aware that any spent convictions will be disclosed on such a check. The Council will check to ensure that the Contractor has conducted the required police checks to its satisfaction. The Council will make the decision as to whether, following disclosure of conviction, the employment of individual employees should be terminated and where appropriate will discuss the options, in the strictest confidence, with the Contract Manager.
- 13.3. The Council will carry out criminal record checks, as required, for smaller contractors whose size may not warrant registration as a registered body to undertake the checks, and the Council will make a charge for this service.
- 13.4. Any person whom the Authorised Officer deems to be unsuitable, either as a result of the check or by virtue of a lack of co-operation in facilitating the check, shall immediately be removed in accordance with Condition 11. The right contained within this Condition shall not be exercised arbitrarily, vexatiously or capriciously by the Authorised Officer.
- 13.5. The Contractor shall not be entitled to access any police report obtained by the Council nor make detailed inquiry as to the reason for the Authorised Officer's decision.

DRESS/UNIFORM AND IDENTIFICATION

- 13.6. Where the nature or the place of any duties upon which the Contractor's employees are engaged in the provision of the Service make the wearing of any special or protective clothing or footwear necessary or appropriate, the Contractor shall provide and shall require its employees to wear such clothing or footwear. Such special or protective clothing or footwear shall be maintained

and replaced as necessary by the Contractor. All Contractor staff will be required to carry out, and produce when required by the Authorised Officer, an agreed form of identification.

14. VEHICLES, EQUIPMENT, MATERIALS AND CONSUMABLES

- 14.1. The Contractor shall at all times during the Contract Period provide and maintain sufficient vehicles, equipment, materials and consumables as are required for the proper and efficient performance of the Service.
- 14.2. The Contractor, shall at its own expense, put, keep and maintain all vehicles and equipment in proper repair and condition, in order that it is able to perform the Service throughout the life of the Contract and comply with all relevant statutory requirements.
- 14.3. The Contractor shall make its own arrangements for insurance, security and house keeping of any items of equipment, vehicles, materials and consumables used in the performance of the Service and kept on Council Premises.
- 14.4. The Contractor shall replace all vehicles and equipment used in the provision of the Services as necessary. The Partners shall agree the type and specification of replacement vehicles and equipment taking into account service improvement requirements and technical developments.
- 14.5. The Contractor shall at all times permit the Authorised Officer access to all vehicles and equipment employed for the purposes of this contract. The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put any vehicle or item of equipment into such condition as is required by Condition 14.2 above and the Contractor shall forthwith upon receipt of such notice cause all necessary works to be carried out to comply with such notice. In the event of the Contractor failing so to carry out such works, the Council shall be at liberty to have such works carried out and the Contractor shall pay to the Council such sums as the Authorised Officer shall certify to have been the cost of executing such works.
- 14.6. The Contractor shall ensure that it has an adequate level of vehicles and equipment available to it at all times as lack of suitable equipment will not be considered as a reason for non-performance of the requirements of the contract.
- 14.7. The Contractor shall ensure that any ICT facilities utilised in the performance of the Service:
 - Are compatible with those operated by the Council
 - Allow access for on-line enquiries

15. USE OF COUNCIL PREMISES

- 15.1. The Contractor may be required to perform services on Council Premises. The Contractor shall ensure that its employees are adequately supervised whilst on Council Premises.
- 15.2. The Partners will treat any property or equipment respectively owned and used in the performance or in connection with the Contract with due care and attention.
- 15.3. In the event that the Council or Contractor is able to demonstrate that any damage (accidental or deliberate) as mentioned in Clause 15.2 above has occurred the party so affected shall be entitled to recover the reasonable costs of repair or reparation from the other.
- 15.4. Where the use of Council Premises is provided to the Contractor for the proper provision of the Service, the use of Council Premises shall be regulated by an occupancy agreement (licence) entered into by the Council and the Contractor prior to the Commencement Date. Such an agreement will exclude the provisions of *Sections 24 to 28* inclusive of the *Landlord and Tenant Act 1954*. The Contractor shall at all times observe and perform all of its obligations as under agreement. Any breach by the Contractor of any provision of the agreement shall be deemed to be a breach of this contract.
- 15.5. The Contractor shall, unless agreed in writing by the Authorised Officer, use the facilities and services only in connection with the provision of the Service and shall ensure that the Contractor's employees use Council Premises for the purposes of the Service.
- 15.6. The licensing or permitting of the use of Council Premises and services is personal to the Contractor and the Contractor's employees and shall cease at the end of the Contract Period or upon the termination of the Contract, or at such earlier time as may be specified by the Council by notice in writing to the Contractor. They must not be used by any third party or agency unless agreed in writing by the Authorised Officer.
- 15.7. The Contractor shall ensure that adequate arrangements exist to safeguard Council Premises. Where the Contractor's staff are the only staff present on Council Premises, then they shall have temporary responsibility for ensuring the security of the premises.
- 15.8. The Contractor shall adhere to any arrangements for entry and use of Council Premises (for example, the provision of security passes) as may be agreed or stated in any occupancy agreement.
- 15.9. The parties agree that there is no intervention on the part of the Council to create a tenancy of whatever nature in favour of the Contractor or its employees and that no such tenancy has or shall come into being and the Council retains the right at any time to use any premises owned or occupied by the Council.

16. VARIATIONS

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- 16.1. Where either Party wishes to or is required to significantly change the requirements of the services, they shall provide reasonable notice to the other Party in accordance with Condition 16.6 below. For the avoidance of doubt, such changes will include any legislative changes to the Services of which either or both Parties become aware.
- 16.2. If, as a result, a variation to the Services is agreed then the Authorised Officer shall issue a Variation Order containing details of the agreed variation which may require the Contractor to do (or as appropriate refrain from doing) all or any of the following:
- To omit and/or to cease to perform any part of the Service for such period or periods as the Authorised Officer may direct and release the Contractor from any liabilities arising from such a change
 - To perform such additional services other than the Service as the Authorised Officer may reasonably require provided that such additional services are within the scope of the Service being performed under the Contract
 - To change or cease to use the Council Premises in accordance with Condition 15 and to release the Contractor from any liabilities for a reasonable period, which arise as a result of such a change
- 16.3. The requirement set out in 16.2 shall be either permanent or temporary.
- 16.4. Where the Contract is to be so varied the Council and the Contractor shall agree a fair and reasonable adjustment to the charges payable to the Contractor prior to issue of the Variation Order. In respect of additional services, the Contractor shall be reimbursed any additional costs at the then current rates of charge until a fixed price has been agreed.
- 16.5. The valuation of modifications pursuant to this Condition shall reasonably be agreed by the Partners. Agreement shall be made with reference to the Service Specification and the Council's Improvement Programme and in accordance with the following provisions:
- Where work is omitted from the Contract the rates and prices, if appropriate, contained in the Contractor's Schedule of Prices shall determine the ascertainment of the value of the work omitted
 - Where work is of a similar character to, and is executed under similar conditions as work under the Contract, the rates and prices for the work contained in the Contractor's Schedule of Prices shall determine the ascertainment of the value of the work
- 16.6. Reasonable notice shall be deemed to have been given if it is either;

- One month's notice of changes to the Specification which will result in more or less employees being required by the Contractor or significantly more costs being incurred by the Contractor, or

- Ten working days' notice in any other case

16.7. If considered necessary or appropriate the Partners shall prepare a detailed price estimate of the cost of any proposed Variation, including a substantiation of how the costing has been calculated.

16.8. For the avoidance of doubt, no increase or additional payment shall be made in respect of a Variation or additional work if there is a compensating reduction or reorganisation of any part of the Service.

17. TEMPORARY SUSPENSION OF SERVICE

17.1. The Authorised Officer shall have the right to suspend the Service or part thereof.

17.2. In the event of suspension for any reason other than that caused by the Contractor or Force Majeure (See Condition 40), the Contractor shall be entitled to any payment for work which would normally be performed during this period.

18. EMERGENCY SERVICE

18.1. The Contractor shall maintain sufficient staff to deal with any additional demands required caused by incidents of an emergency nature which may arise during the Contract Period.

18.2. Where emergencies occur which may affect the performance of the Service during the Contract Period, for example, break-ins and minor fire damage at the Contractor's Premises, the Services must be maintained and shall be maintained without additional cost to the Council.

18.3. In the event of an emergency causing severe equipment failure the Authorised Officer may require the Contractor to deploy additional resources or to provide additional services of a similar nature to those provided under the Contract. Any such deployment or additional services shall be treated as a Variation in accordance with Clause 34 of these Conditions.

19. SUBSTITUTED PERFORMANCE

19.1. Subject to written notice in accordance with Condition 35 the Authorised Officer may make arrangements for the Council to provide and perform, by its own or the staff of another Contractor, such part of the Service which the Contractor fails to perform or performs deficiently, until such time as the Contractor can demonstrate to the Council that it is able properly to perform the Service in full.

19.2. In this event the Council shall be permitted to use all or any part of the Contractor's equipment which was allocated to the performance of the Service, to assist in the performance of those parts of the Service which the Contractor

has failed to perform or has performed deficiently. The reasonable additional costs incurred by the Council in performing the substituted service (together with the Council's administrative costs and overheads) of remedying the breach of contract shall be payable by the Contractor to the Council on demand as a debt.

- 19.3. The operation of this Condition shall not relieve the Contractor of any obligations under the Contract in respect of the Service as a whole, nor restrict the Council's right to terminate the Contract.

20. AGENCY

- 20.1. Neither party shall hold itself out as being the servant or agent of the other for any purpose.
- 20.2. Neither party shall hold itself out as being authorised to enter into any Contract on behalf of the other or in any other way to bind the party to the performance, Variation, release or discharge of any obligation.

21. ASSIGNMENT AND SUB-CONTRACTORS

- 21.1. The Partnership shall, by agreement, be entitled to assign the benefit of this Contract or any part of it to any other statutory body.
- 21.2. No part of the Services shall be subcontracted unless formally agreed by the Parties. The Parties shall develop an agreed joint protocol for the appointment and vetting of sub-contractors. Notwithstanding such consent, the Contractor shall not be relieved from any liabilities or obligations under the Contract and shall be responsible for the acts, omissions and breaches of any sub-Contractor as fully as if they were the Contractor's own and shall ensure that the sub-Contractor is familiar with the Contract and will perform the Service fully in conformity with the Contract.

22. ADVERTISING

- 22.1. The Partners shall agree the design and form of livery and any advertisement that shall appear on the vehicles, equipment and documentation utilised in the performance of the Service. The form of advertising shall reflect and reinforce the partnership approach of the Contract.

FINANCIAL

23. OPEN BOOK ACCOUNTING

23.1. The Contract shall operate an open book principle. The purpose of the approach is:

- To enable the contractor to recover operating costs
- To enable a flexible and proper use of the budget provision
- To identify and confirm that value for money is being achieved
- To identify any surpluses above the operating costs (which shall be utilised to fund future service enhancements or be shared equally between the partners)

23.2. For the purposes of the open book accounting principles, the elements that make up operational costs shall be agreed between the parties but shall, as a minimum, include the following elements:

Salaries/wages

Salary On cost (National Insurance, pension contribution)

Training

Management Cost

Vehicles and plant

Fleet Maintenance

Fuel

Depreciation/Interest charges

Equipment/uniforms

Communications

Contribution to Depot operating costs

Insurance

Other ancillary costs

Contractor Profit

This list is not exhaustive and will be subject to annual review.

23.3. In addition to its quarterly meetings, the Partnership Board will meet in November of each year to take account of the Council's budget process in reviewing each cost component of the service and the impact on the following year's costs. The Partnership Board will take into account the four-year service development plan and the Council's budgetary position in its consideration of the financing of the Service. Other factors to be considered shall be the impact of legislation, variations to Services identified by customer surveys and technological enhancements.

23.4. Rates and prices contained in the Contractor's Schedule of Rates and submission of tendered prices or Bill of Quantities, where appropriate, shall remain fixed until the first anniversary date of the commencement of the Contract. Thereafter the Contractor may request that these rates shall be

reviewed on each anniversary date ("the Review Date") following the commencement of the percentage increase or reduction (if any) shown by the Retail Prices Index (all items excluding mortgage interest repayments)(RPIX)" (ref. H14) issued by the Employment Gazette as published by the Office for National Statistics, or any government department upon which duties in connection with the compilation and maintenance of such Index shall have devolved or other appropriate Index as stated in the Schedule(s). The index applied will be those most recently published for the twelve month period applicable to the review date. The increase or reduction shall become effective on the relevant Review Date and on each subsequent Review Date a similar computation shall be applied.

- 23.5. If the basis of computation of the above mentioned indices shall change, any official reconciliation between the two bases of computation published by the Department of the Office of National Standards (or any government department upon which duties in connection with the compilation and maintenance of the Index have developed) shall be binding upon the parties and shall be applied in adjusting the application of the Index hereto.
- 23.6. In the absence of such official reconciliation, such adjustments shall be made to the figures of the relevant indices as to make it correspond as nearly as possible to the previous method of computation, and such adjustment figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published), following agreement between both parties.
- 23.7. The Contractor's tendered rates shall apply from the Commencement Date until the first review date. Thereafter, the rates shall be increased in accordance with the terms of this clause, on an annual basis.

24. PAYMENTS

METHOD OF VALUATION

- 24.1. The Council shall pay any monies owing and due to the Contractor for the proper provision of the Service in the manner as set out below.
- 24.2. For the **[insert service and vary wording as required]** the Council will make annually 12 equal payments (monthly) to the Contractor based on the Contractor's tendered annual price for these elements of the service.

25. STATEMENT

- 25.1. For the **[insert service and vary wording as required]** the Contractor shall submit to the Authorised Officer a statement account in respect of work forming that part of the Service which has been completed by the Contractor during the previous period. The amounts payable shall be governed by the Contractor's Schedule of Rates submitted for these elements of the Service.
- 25.2. The Contractor shall account to the Council for any Value Added Tax properly chargeable on the supply by the Contractor of the Service.

- 25.3. The Contractor will maintain accounts and up to date financial records of all costs and expenditure (as set out in 23.2). Such records will be open to inspection by the Council's Officers at all times.
- 25.4. The Contractor will provide monthly Expenditure Statements setting out all operational costs associated with the provision of the service. A reconciliation statement of all Expenditure and Payments made by the Council will be provided each quarter identifying any surpluses/deficits. Such Statements will be reported to the Partnership Board.
- 25.5. At the end of each operating year, the Contractor will provide audited accounts to the Council identifying any surpluses/deficits. These will be reported to the Partnership Board who will then determine how such surpluses are utilised.
- 25.6. For the avoidance of doubt, the parties accept that changes will take place during the Contract Period in respect of matters such as the precise format of the Statement account, the officers to whom it should be submitted, and any supporting documentation required to be provided by the Contractor. These changes will be subject to agreement between the Partners.

26. CERTIFICATION AND PAYMENT

- 26.1. Upon receipt of the Statement from the Contractor, the Authorised Officer shall determine whether the Service during the Statement period was performed properly.
- 26.2. The Council shall pay the sum due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.
- 26.3. No payment issued by an Authorised Officer in accordance with the provisions of this Condition shall be conclusive evidence that the Contractor has performed all or any of its obligations strictly in accordance with the Contract and, for the avoidance of doubt, it is hereby declared and agreed that adjustments may be made by the Authorised Officer in later payments in order to correct errors or omissions contained in earlier payments. Any decision taken by the Authorised Officer in pursuance of this Condition shall be agreed with the Contractor prior to the deduction being made.
- 26.4. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

27. VALUE ADDED TAX

- 27.1. Sums payable to the Contractor pursuant to this Contract are exclusive of Value Added Tax ("VAT").
- 27.2. The Council shall pay to the Contractor in the manner hereinafter set out any VAT properly chargeable on the supply by the Contractor of the Service at the appropriate rate.
- 27.3. The Statement shall include any necessary tax invoices in respect of the payment of VAT.
- 27.4. If the Council objects to any part of such invoice and such objection cannot be resolved by agreement between the parties, the Council may require the Contractor to refer to the Commissioners of Customs and Excise (hereinafter referred to as "the Commissioners") any dispute, difference or question in relation to any of the matters specified in Section 83 of the Value Added Tax Act 1994 (hereinafter called "the Act").
- 27.5. If the Contractor refers the matter to the Commissioners (whether or not under 47.4 of this Clause) and the Council is dissatisfied with their decision on the matter, the Contractor shall at the Council's request refer the matter to a Value Added Tax Tribunal by way of appeal under Section 83 of the Act, whether or not the Contractor is so dissatisfied. Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under Section 83 of the Act, the Council shall pay an equivalent sum to the Contractor.
- 27.6. The Council shall further reimburse the Contractor any costs or expenses reasonably and properly incurred in making the reference (less any costs awarded to the Contractor by the Tribunal).
- 27.7. Upon the final adjudication by the Commissioners or, in the event of a reference to a Tribunal, the Council shall pay the amount of the VAT adjudged due to the Contractor. Should the amounts already paid by the Council either by way of payment of VAT or by way of reimbursement of any money required to be deposited by the Contractor with the Commissioners under 47.5, exceed the VAT adjudged to be due, the Contractor shall forthwith repay such excess to the Council.

28. INSURANCE

- 28.1. The Contractor shall maintain the following insurances:
 - Third party (public liability) insurance with cover in accordance with Schedule A, in respect of any one act or occurrence or series of acts or occurrences in any one year
 - Insurance in respect of personal injury or death of any person arising under a contract of service with the Contractor and arising out of an incident occurring during the course of such person's employment shall be by a

policy of Employer's Liability Insurance complying with the Employer's Liability (Compulsory Insurance) Act 1969 and the European Community 3rd Motor Directive 1994

- 28.2. The Contractor shall, where appropriate, name the Council as co-insured on any relevant policies, and shall ensure that its or their underwriters/insurers endorse the policies to prevent any exercise of rights of subrogation against the Council, its other Contractors and its or their staff.
- 28.3. The Contractor shall when required by the Council produce evidence satisfactory to the Council of its compliance with the insurance obligations contained in this clause by production of the current policies or such other documents as the Council shall stipulate.
- 28.4. The Council shall be entitled to notify the Contractor in writing that in its opinion any such policy of insurance or self-insurance arrangement does not provide sufficient cover to comply with this Clause and to require the Contractor to provide such insurance as will so comply.
- 28.5. The Council reserves the right to require the Contractor to include a suitable business interruption (loss of profits) policy to afford protection to the Contractor against losses caused to it by any enforced suspension of Contract.
- 28.6. The Council shall indemnify and keep indemnified the Contractor and insure with a reputable insurance company, or self-insure, against the injury to, or death of, any persons, or loss of, or damage to, any property which may arise out of the Act, default, or negligence of the Council, its employees and agents and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatever in respect thereof or in relation thereto.
- 28.7. The limit of indemnity or amount of insurance cover required will be reviewed at the discretion of the Council and any increase in the minimum level will be subject to the test of reasonableness.
- 28.8. The Contractor shall indemnify and keep indemnified the Council from and against any and all loss or damage or civil liability suffered and legal fees and costs reasonably incurred as a result of a breach of this agreement by the Contractor including any act neglect or default of the Contractor's employees sub-contractors or agents resulting from such a breach.
- 28.9. For the purpose of this clause a successful claim shall be one where a court of final authority has determined that the claim is successful and awarded damages in respect thereof or the Contractor and the Council have agreed to pay a sum of money to any third party by way of damages.
- 28.10. In order to recover under any indemnity given by the Contractor in the Contract the Council shall send the Contractor details of each aim of every claim in writing accompanied by relevant data as soon as is reasonably practicable.

29. LIABILITY OF CONTRACTOR

- 29.1. If the Contractor fails to provide the Service or any part thereof with due diligence or in a proper, skilful and workmanlike manner, or to the Contract Standard and to the entire satisfaction of the Authorised Officer, the Council may itself provide or may employ and pay other persons to provide the Service or any part thereof, and all the costs incurred may be deducted from any sums due or to become due to the Contractor under the Contract or shall be recoverable from the Contractor by the Council as a debt. The rights of the Council under this Condition shall be without prejudice to its rights under Condition 45 below.

30. LIABILITY OF COUNCIL

- 30.1. The Council shall be liable to the Contractor and vice versa for any loss or damage to the Council's or the Contractor's property which is caused by the wilful or negligent acts of the Council or Contractor or its respective staff during the course of their respective employment but not in any other way whatsoever provided always that such liability does not extend to loss arising out of theft.
- 30.2. Any information given to the Contractor in the Contract Documents, Bills of Quantities/Schedules of Rates and/or any plan, drawing, report, database, file or similar information in the Specification, is only given as a guide. The Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which may have reasonably influenced or affected the Contractor's tender. No claim against the Council shall be allowed whether in contract, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

31. AUDITORS' ACCESS

- 31.1. The Contractor shall maintain records, in accordance with good industry practice, of all work carried out for the Council. These records shall be made available for inspection on demand during normal office hours by the Authorised Officer and/or the Council's internal and/or external auditors as and when they shall require.
- 31.2. At no cost to the Council the Contractor shall provide the Authorised Officer, the Council's internal and/or external auditors with full and free access on demand during normal business hours to all correspondence, documentation and files created in performance of the Service and shall provide such explanations and further information as may be deemed necessary for their purposes. The Contractor shall co-operate fully and assist the Council's auditors with any enquiries and investigations relating to such records and shall also co-operate fully in any subsequent action against any employee or third party suspected of fraud or dishonesty directly or indirectly in relation to the performance of the Service.

- 31.3. The Council shall give reasonable notice to the extent that it is able of any requests for information and access.
- 31.4. Relevant information shall be provided for the purposes of enabling the Council to carry out periodic assessments of the Contractor's performance under this Contract and to enable the Council to meet its statutory and internal accounting obligations.

32. IMPLEMENTATION OF SINGLE EUROPEAN CURRENCY EUROPEAN MONETARY UNION

CONTINUITY OF CONTRACTS IN THE EVENT OF STERLING ENTRY INTO EUROPEAN MONETARY UNION

- 32.1. The parties confirm and agree that the implementation of European Economic and Monetary Union in the United Kingdom shall not of itself give rise to a termination of this Agreement, or have the effect of altering any term, or of discharging or excusing performance under this Agreement, or give to a party the right to unilaterally alter or terminate this Agreement.
- 32.2. The parties confirm and agree that any increased costs arising generally from, or associated with, implementation of European Economic Monetary Union in the United Kingdom will be borne by each other, and shall not be passed on to the other party.
- If, as a result of the implementation of European Economic Monetary Union in the United Kingdom, Sterling ceases to be the lawful currency of England and is replaced by a European Single Currency, or Sterling and a European Single Currency are at the same time recognised by the Bank of England as the lawful currency of England, then:-
 - Each and any amount that would otherwise have been payable by either party under this Agreement in Sterling shall be paid in the European Single Currency, and the amounts so payable shall be such amount of the European Single Currency as is equal to the amount of Sterling translated at the Exchange Rate; and
 - Any money owing under this Agreement shall be translated into the European Single Currency at the Exchange Rate; and
 - All references to amounts in Sterling shall be translated into the European Single Currency at the Exchange Rate; and
 - The Exchange Rate means the rate of exchange recognised by the European Central Bank for the conversion of Sterling into the European Single Currency for the purposes of implementation of European Economic Monetary Union in the United Kingdom.

LEGAL

33. OBSERVANCE OF STATUTORY REQUIREMENTS

- 33.1. The Parties shall comply with all relevant legal provisions; whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Bylaws, Directives or the like, to be observed and performed in connection with the Service provided under the Contract. The Partners' compliance shall include but shall not be limited to the Human Rights Act 1998, Data Protection Act 1998, Freedom of Information Act 2000, all legislation relating to eliminating discrimination on grounds of race, gender, marital status, transgender, disability, religion or belief, sexual orientation and age. and promotion of equal opportunities with regard to race, gender and disability in public functions whenever relevant and in proportion to its relevance. The relevant Acts to be considered are: Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995, the Disability Discrimination Act 2005, the Sex Discrimination Act 1975, the Sex Discrimination (Gender Reassignment) Regulations 1999, the Equal Pay Act 1970, the Equality Act 2006 (the Gender Duty), the Employment Equality (Religion or Belief) Regulations 2003 (updated in Part II Equality Act 2006), the Employment Equality (Sexual Orientation) Regulations 2003, The Equality Act (Sexual Orientation) Regulations 2007, the Employment Equality (Age) Regulations, 2006, and the Civil Partnership Act 2004 and all relevant Supporting Codes of Practice.

34. APPLICABLE LAW

- 34.1. This Contract and all its provisions shall be considered as a contract made in the United Kingdom and shall be construed in accordance with English Law. Each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Contract or the performance of the Service.
- 34.2. This Contract is binding on both partners.

35. INTERPRETATION OF CONTRACT

SUFFICIENCY OF INFORMATION

- 35.1. The Contractor shall be deemed to have satisfied itself before the signing hereof as to the accuracy and sufficiency of the rates and prices stated by it in its tender- response which shall (except in so far as it is otherwise provided in the Contract) be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably have influenced or affected its tender.
- 35.2. Except as otherwise expressly provided, all elements of the Contract are to be taken as mutually explanatory of one another. Any perceived ambiguities or discrepancies shall be referred in the first instance to the Authorised Officer who

following discussion with the Contractor shall thereupon issue to the Contractor appropriate instructions in writing, which the Contractor shall carry out and be bound by.

- 35.3. In the event of any inconsistency between these Conditions and any other documents forming part of the Contract, these Conditions shall prevail.
- 35.4. In these Conditions:
- The use of the word tender shall not preclude performance based requirements and /or proposals
 - The masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa
 - Headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract
 - References to Conditions, Schedules and Appendices are unless otherwise provided, references to Conditions, Schedules and Appendices within the Contract
- 35.5. “Act of Parliament” or any Order, Regulation, Statute, Statutory Instrument, Code of Practice, Bylaw, Directive or the like, whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it.
- 35.6. This Contract constitutes the entire understanding and agreement relating to the subject matter of the Contract and, save as expressly referred to or incorporated by reference, supersedes all prior negotiations, submissions, or understandings with respect to this subject matter.
- 35.7. Copyright in the documents comprising the Contract shall vest in the Council but the Contractor may obtain or make at its own expense any further copies required solely for use by it in performing the Contract.

36. NOTICES

- 36.1. No notice served upon the Council shall be valid or effective unless it is sent by Recorded Delivery post, electronic mail or facsimile transmission to the Authorised Officer or delivered by hand to the Authorised Officer.
- 36.2. Any notice served upon the Contractor shall be valid and effective if it is sent by Recorded Delivery post, electronic mail or facsimile transmission or delivered by hand to the Registered Office, principal place of business, or the Contractor Premises from which the Services are performed; or is delivered by hand to a partner, director, or the Contract Manager.

37. WAIVER

- 37.1. Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Contractor of any such provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Council to enforce any provision in accordance with its terms.

38. FORBEARANCE

- 38.1. No forbearance, indulgence or relaxation on the part of the Council, the Authorised Officer or his representative, shown or granted to the Contractor in respect of its obligations under this Contract, shall in any way affect, restrict or diminish the rights and powers of the Council or the Authorised Officer under the Contract, or operate as, or be deemed, a waiver of any breach of contract.

39. CONFIDENTIALITY

- 39.1. The Partners shall not during the Contract Period or at any time thereafter, other than for their own purposes, make use of or disclose to any person (except as may be required by law), any information contained in any material provided or prepared by the Partners pursuant to the Contract, all of which information shall be deemed to be confidential.
- 39.2. The Partners shall not dispose nor part with possession of any material provided by the Council or prepared by the Contractor pursuant to the Contract other than by the agreement of both parties.
- 39.3. The Partners shall ensure the compliance of their employees with the provisions of this Condition.
- 39.4. The Council shall treat as confidential the Terms and Conditions of this Contract and all confidential information obtained from the Contractor which is identified by the Contractor as confidential or proprietary information and the Council shall not disclose such confidential information to any third party other than in circumstances where the Council is complying with its legal obligations without the express written permission of the Contractor and shall otherwise protect it as it would if it were the Council's confidential information.
- 39.5. These obligations of confidentiality shall not apply to information which:
- Can be shown to be in the public domain before release to the receiving party; or
 - Becomes public knowledge other than by an act of default of the receiving party; or

- Is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- Is independently developed by the receiving party without access to the confidential information; or
- Is received by the receiving party from a third party who has lawfully acquired or developed it and who is under no obligation restricting its disclosure
- Is subject to disclosure by virtue of the Freedom of Information Act 2000

40. FORCE MAJEURE

- 40.1. In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not reasonably prevent) which causes the cessation of or substantial interference with the reasonable performance of the Service, the duty of the Contractor to perform the Service 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.
- 40.2. For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters, which a prudent and diligent Contractor could reasonably have avoided with the application of foresight, are not to be considered as events of Force Majeure or Acts of God.
- 40.3. If the period of suspension under this Condition lasts for longer than three months, either party may serve upon the other three months written notice of termination of the Contract. Unless the Service has been resumed before the expiration of such notice, the Contract shall terminate in accordance with such notice.
- 40.4. Upon termination of the Contract it is hereby agreed that except where otherwise stated Condition 28 (Insurance) and Condition 45 (Termination) shall continue in full force and effect for a period of six years following the date of termination.

41. ASSISTANCE IN LEGAL PROCEEDINGS

- 41.1. If requested to do so by the Authorised Officer, the Contractor shall provide to the Council any relevant information (including but not limited to documentation and statements from staff) in connection with any legal inquiry, arbitration, or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of the provision of the

Service or the Contractor's presence on Council Premises, and the Contractor shall give evidence in such inquiries, arbitrations, proceedings or hearings.

- 41.2. Where the Contractor or any of its staff become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Service, it shall notify the Authorised Officer immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to investigate the matter fully.
- 41.3. Such information provided or reasonable assistance rendered pursuant to the obligation in this Condition shall be at no cost to the Council.

42. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

- 42.1. The Council and the Contractor shall not knowingly in connection with the performance of the Service, 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 third party Intellectual Property Rights including but not limited to Patent or Copyright.

43. INTELLECTUAL PROPERTY RIGHTS

Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Service by the Contractor shall belong to the Council and the Contractor agrees that it shall execute without delay or cause to be executed (by its staff if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.

INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 43.1. The Contractor hereby indemnifies the Council against all liabilities, losses, demands, damages, costs, claims, expenses suffered by the Council as a result of any infringement or alleged infringement of any copyright, patent, trade secret or other intellectual property right of any third party arising from or out of the provision of the Service to the Council. The Contractor shall in its discretion, at its own cost either compromise or defend any such claim and shall pay all damages and costs finally awarded.
- 43.2. The Contractor shall promptly notify the Council if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right.
- 43.3. The Council hereby indemnifies the Contractor against all liabilities, losses, demands, damages, costs, claims, expenses suffered by the Contractor as a result of any infringement or alleged infringement or any copyright, patent, trade secret or other intellectual property right of any third party arising from the use of software provided directly or indirectly by the Council.

- 43.4. The Council shall promptly notify the Contractor if any claim or demand is made or action brought against the Council to which Clause 43.5 may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Council hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.
- 43.5. The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council to which Clause 43.5 may apply or any claim or demand made or action brought against the Contractor to which 43.3 may apply. The Contractor shall reimburse the Council for all reasonable costs and expenses incurred in so doing.
- 43.6. The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Contractor to which Clause 43.3 may apply or any claim or demand brought against the Contractor to which Clause 43.3 may apply.

44. DISPUTE RESOLUTION

- 44.1. If any dispute shall arise between the parties either party shall notify the other in writing as soon as is reasonably practical that a formal dispute has occurred. In the event of such a dispute each party shall appoint a designated representative to meet to attempt to resolve the dispute. The representatives shall meet as often as is necessary in order to gather and exchange all relevant information with respect to the matter in issue. In the event that the designated representatives cannot reach agreement within 10 working days they shall escalate their disagreement to the senior levels of management within their respective organisations for resolution within a further 10 working days.
- 44.2. If the Parties remain unable to resolve the dispute within 10 working days the Parties shall attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (“the Model Procedure”). Either party may notify the other of the decision to seek mediation if the parties remain unable to resolve the dispute within 10 working days by a written notice in accordance with Clause 36 of this Agreement. The Mediator shall be appointed by the Chief Executive from time to time of CEDR.
- 44.3. If there is any point on the conduct of mediation (including the nomination of the Mediator) upon which the parties cannot agree within 10 working days from the date of the notice, CEDR will, at the request of any party, decide that point for the parties, having consulted with them.
- 44.4. The Mediator shall within 10 working days of receipt of the mediation notice, require the parties to submit their respective arguments in writing, as well as copies of any other documents upon which they wish to rely. The parties shall submit their summaries and documentation not less than 10 working days prior to the commencement date of the mediation.

- 44.5. Neither party may terminate the mediation until each party has made its opening presentation, and the Mediator has met each party separately for at least 1 hour.
- 44.6. The Mediator shall act impartially. Any documents used in the mediation that were not confidential before the mediation will not be confidential after it. The mediation shall be confidential, and neither the Mediator nor any person involved in the mediation (whether the Mediator, a party or a person representing or assisting a party) may, without the consent of the parties, use or disclose to any outside party anything said during the mediation, or any information concerning or obtained in the course of the mediation.
- 44.7. Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation and that mediation has terminated.
- 44.8. If the parties have not settled the dispute by mediation within 30 working days from when the mediation was instituted, the dispute shall be referred to, and finally resolved by the Courts of England and Wales.

45. TERMINATION

- 45.1. Without prejudice to any other rights and remedies it may possess the Council shall be entitled upon the happening of any of the following events to terminate the Contract by six months notice in writing, such events being:
- Persistent breaches of the Contract by the Contractor
 - The Contractor having consistently failed to perform a substantial part of the Service or having committed any other material breach of contract
 - The Contractor having failed to comply with the requirement to undertake rigorous pre-employment vetting of prospective employees engaged on work for the Council as detailed in condition 13.1.
 - The mutual agreement of the Council and Contractor that the partnering arrangements and the spirit in which they are carried out have substantially failed
- 45.2. The Council shall be entitled forthwith to terminate the Contract by notice in writing where in relation to the Contractor it consists of a body corporate and or its parent company are subject to:
- A winding-up order
 - Or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding-up
 - Or having an application made for the appointment of an administrator, administrative receiver or receiver

- Or an administrator, administrative receiver or receiver having been appointed, over the whole or any part of its business and/or assets
- Or having a provisional liquidator, receiver or manager of the whole or any part of its business appointed
- Or having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge

45.3. Upon such termination including the expiry of the period of notice served in Condition 45.1 above, in addition to such consequences as are set out in the other provisions of this Contract then:

- The Contractor shall be deemed to be in breach of the Contract (at the commencement of the period of notice where served)
- The Contractor shall forthwith cease to perform any part of the Service
- The Contractor shall be liable for any antecedent breaches of contract by the Contractor
- The Contractor shall fully and promptly indemnify and compensate the Council in respect of the reasonable cost of causing to be performed the Service as would have been performed by the Contractor during the remainder of the Contract Period, to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing such Services (such reasonable costs to include all costs of closing out this Contract and entering into new contract(s) with replacement Contractor(s)). 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

45.4. The Council shall have the power to deduct from any monies properly due 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.

45.5. The Contractor shall forthwith vacate any Council Premises.

45.6. The Contractor shall forthwith release and hand over to the Council any and all Council property, including but not limited to equipment, supplies, vehicles, records and work-in-progress, whether in the form of documents, plans, calculations, drawings, computer data or other material in any medium.

45.7. Following the termination of the Contract the transition to a successor or successors shall be arranged between the Council and the Contractor with both parties using reasonable endeavours to ensure the smooth transfer of the Service so as to avoid any interruption of the Service or of the same or similar services by the successor(s).

46. SEVERANCE

- 46.1. If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall not in any way impair or affect any other provision all of which shall remain in full force and effect.

47. BRIBERY AND CORRUPTION

- 47.1. The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss or damage resulting from such cancellation if:
- The Contractor shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other contract with the Council, or
 - The like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor), or
 - In relation to any contract with the Council, the Contractor or person employed by it or acting on its behalf shall
 - Have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
 - Have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

48. INFORMATION ON RE-TENDERING

- 48.1. If requested to do so by the Authorised Officer, the Contractor shall forthwith provide to the Council at his own cost any and all relevant information other than that information which is commercially confidential, to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Service. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended if it is deemed that these regulations shall apply.

49. EUROPEAN ACQUIRED RIGHTS DIRECTIVE 77/187 AND THE TRANSFER UNDERTAKINGS (EMPLOYMENT PROTECTION) REGULATIONS

- 49.1. The Council considers that the European Acquired Rights Directive 77/187 and the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) apply to this Contract and that, based upon legislation current at the date hereof, the Council is of the view that TUPE would apply upon re-tendering of the Contract.
- 49.2. Where, in the opinion of the Council, the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply in respect of the award of the Contract then for the purpose of those Regulations the undertaking concerned, or any relevant part of the undertaking, shall transfer to the Contractor on the commencement of the Contract, and the Contractor shall comply with the requirements of those Regulations in respect of those employees who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Contractor; and shall indemnify the Council against any claim made against the Council at any time by any person currently or previously employed by the Council or the Contractor for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Council) resulting from any act or omission of the Contractor on or after the commencement of the Contract, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Council arising or accruing before the commencement of the Contract.
- 49.3. Consequences of TUPE Applying
- (i) Within 21 days of being so requested by the Council, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Council to issue tender documents for the future provision of the services.
 - (ii) Where, in the opinion of the Council, the Transfer of Undertakings (Protection of Employment) Regulations 1981 are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Clause 49.3(i) shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under said Regulations, including but not limited to:
 - a. The number of employees who would be transferred, but with no obligation on the Contractor to specify their names
 - b. In respect of each of those employees their age, sex, salary, length of service, hours of work, overtime hours and rates, and any other factors affecting redundancy entitlement and any outstanding claims arising from their employment
 - c. The general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or

leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits

- (iii) The Council shall, except and insofar as it may be under a duty of disclosure under the Freedom of Information Act 2000, take all necessary precautions to ensure that the information referred to in Clause 49.3(ii) is given only to service providers who have qualified to tender for the future provision of the services. The Council shall require that such service providers shall treat the information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Council; and that they shall not use it for any other purpose.
- (iv) The Contractor shall indemnify the Council against any claim made against the Council at any time by any person in respect of any liability incurred by the Council arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Clause 49.3(ii).
- (v) The Contractor shall not at any time during the Contract, including any extension of the original Contract period, move any persons in his employment into the undertaking, or relevant part of an undertaking, which provides the services and who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Contract; or make any substantial change in the terms and conditions of employment of those employees referred to in Clause 49.3(ii) which is inconsistent with the Contractor's established employment and remuneration policies.
- (vi) Where, in the opinion of the Council, the Contractor is in breach of its obligations under Clause 49.3(v) the Council shall have the right to make representations to the Contractor against the change or proposed change; to give notice to the Contractor requiring him to remedy the breach within 30 days; and if the Contractor has not remedied such breach to the satisfaction of the Council by the end of the period of 30 days, to terminate the Contract and exercise its rights under Clause 45.
- (vii) The Contractor shall allow access to any site where the services are being performed, in the presence of an authorised representative of the Council, to any person representing any service provider whom the Council has selected to tender for the future provision of the services. Where such site is the Contractor's premises the Council shall give the Contractor 14 days notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- (viii) The Contractor shall co-operate fully with the Council during any handover arising from the completion or earlier termination (without

prejudice to the provisions of Clause 45 of the Contract. This co-operation, during the setting up operations period of the new contractor, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries, and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

COUNCIL POLICIES

50. HEALTH AND SAFETY

- 50.1. The Parties shall at all times comply with the relevant requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, the Electricity at Work Act 1989, and of any other relevant legal provisions pertaining to the health and safety of the contractor's staff, the Council's employees, members of the public and others who may be affected by its performance of the Service.
- 50.2. The Parties shall agree a Health and Safety Policy appropriate to the Contract which shall have regard to the Council's Safety Policy, a copy of which is attached at Appendix A. The Parties shall nominate persons to be responsible for the health and safety matters as required by the said Act.
- 50.3. The Authorised Officer or the Council's Health and Safety Advisor shall notify the Contractor of any failure by the Contractor to comply with health and safety matters, and where appropriate shall allow the Contractor a reasonable period to rectify such failure. In the event of further non-compliance by the Contractor the Authorised Officer shall be empowered to suspend provision of the Service. The Contractor shall not resume provision of the Service until the Authorised Officer is satisfied that the non-compliance has been rectified. In respect of any such period of suspension the default provisions set out in these Conditions shall apply.
- 50.4. The Parties shall ensure that staff are fully conversant with its health and safety policy and that they take all such precautions as are necessary to protect the health and safety of the Parties' staff and the public. The Parties shall ensure that staff are properly trained and instructed with regard to fire risks and fire precautions.

51. EQUALITY AND DIVERSITY

- 51.1. The Parties shall not unlawfully discriminate on the basis of race, age, gender, transgender, marital status, religion or belief, sexual orientation and disability in the recruitment and employment of employees or in providing goods, facilities or the delivery of services (except age at present.) The parties shall also pay due regard to promoting equal opportunities, in respect of these functions, where services are public functions that are relevant to the equalities duties. The Council has specific duties under equality legislation, some of these duties may apply to contractors where they are carrying out functions of a public nature.
- 51.2. The Parties shall agree an Equality and Diversity Policy, appropriate to the Contract which shall have regard to the Council's Equality and Diversity Policy Statement. A copy of the Council's Statement is attached at Appendix B. The Parties shall nominate persons responsible for equality and diversity matters and shall ensure that all employees are fully conversant with and comply with the requirements of the Equality and Diversity Policy.
- 51.3. The Authorised Officer shall notify the Contractor in the event of non-compliance with equality and diversity matters and where appropriate shall allow the Contractor a reasonable period to rectify such failure. In the event of continued non-compliance the Authorised Officer shall be empowered to suspend the provision of the Service. The Contractor shall not resume provision of the service until the Authorised Officer is satisfied that the non-compliance has been rectified.
- 51.4. In respect of any such period of suspension, the default provisions set out in these Conditions shall apply.
- 51.5. If any court or tribunal or regulatory authority should make any finding of unlawful discrimination against the Contractor, then the Contractor shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Council may require the Contractor to provide full details of the steps taken to prevent such reoccurrence.
- 51.6. The Partner's Equality and Diversity Policy shall be set out in any instructions circulated to those members of staff concerned with recruitment, training and promotion and it shall also be set out in recruitment advertisements and other relevant literature and to those members of staff concerned with providing goods, facilities and services.

52. ENVIRONMENTAL POLICY

- 52.1. The Parties shall at all times comply with the relevant requirements of the Environmental Protection Act 1990 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to the protection of the environment, water protection and disposal of waste.
- 52.2. The Parties shall agree and develop an Environmental Policy appropriate to the Contract, which shall have regard to the Council's Environmental Policy. A copy

of the Council's Statement is attached at Appendix C. The Parties shall nominate persons responsible for environmental protection matters and shall ensure that all employees are fully conversant with and comply with the requirements of the said Act in the course of performance of the Contract.

- 52.3. The Authorised Officer shall notify the Contractor in the event of non-compliance with environmental protection matters, and where appropriate shall allow the Contractor a reasonable period to rectify such non-compliance. In the event of continued non-compliance the Authorised Officer shall be empowered to suspend provision of the Service. The Contractor shall not resume provision of the Service until the Authorised Officer is satisfied that the non-compliance has been rectified. In respect of any such period of suspension, the default provisions set out in these Conditions shall apply.

53. DATA PROTECTION AND DATA SECURITY

- 53.1. The Parties shall each comply with their respective obligations under the Data Protection Act 1999 and other applicable statutory provisions or provisions of any European Directive in respect of appropriate records.
- 53.2. The Contractor will be required to abide by the current Data Security policies of the Council regarding control of access, update and back up of data.
- 53.3. Copies of Council systems and data will be kept at a secure off-site storage location. The storage media will be accessible only to authorised staff of the Partners.
- 53.4. The Partner's data or information will not be provided to another party or any data destroyed or deleted unless agreed in writing by the Partners. On termination of the Contract, howsoever arising, the data will not be destroyed but secured.

54. FREEDOM OF INFORMATION

- 54.1. Definitions:

- "FOIA" means the Freedom of Information Act 2000 together with any amendments, regulations and codes of practice made pursuant to the Freedom of Information Act 2000
- "Information" means all records and information obtained, collected or held by the Contractor in relation to or created pursuant to this Agreement (including this Agreement.)
- "Request for Information" means a request for information as described in Section 8 of FOIA

- 54.2. The Contractor understands and acknowledges that the Council is subject to the requirements of the FOIA and agrees to assist and cooperate with the Council to enable it to comply with its Information disclosure obligations under FOIA.
- 54.3. The Contractor shall provide the Council with a copy of all Information required to comply with any Request for Information and such Information shall be provided within 10 days of a request from the Authority (or such other period as the Council shall specify) and in such form as the Authority may specify.
- 54.4. The Council shall not disclose information forwarded to it by a contractor which the contractor has reasonably designated as confidential. Confidential includes technical or trade secrets and the confidential aspects of tenders.
- 54.5. Notwithstanding Clauses 54.3 and 54.4 above, the Council shall be responsible for determining whether Information is exempt from disclosure under FOIA and for determining, in its absolute discretion, the Information to be disclosed in response to a Request for Information.
- 54.6. The Contractor understands and acknowledges that the Council may be obliged under FOIA to disclose Information without consulting or obtaining consent from the Contractor.
- 54.7. If the Council at the Contractor's request seeks to rely upon a FOIA exemption, the Contractor shall indemnify the Council for any costs, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner. The Contractor shall also indemnify the Council and hold it harmless from and against all liability, costs, claims, actions, losses, damages and expenses whatsoever, arising directly or indirectly as a result of any decision by the Information Commissioner that information which the Contractor may regard as being confidential shall be disclosed under the FOIA 2000 or other appropriate legislation or codes of practice.
- 54.8. The Council shall not be liable for any loss, damage, harm or other detriment, however caused, arising from any disclosure made pursuant to a Request for Information.
- 54.9. The Council may, pursuant to a Request for Information, disclose all information and documentation, in whatever form, as necessary to respond to that Request for Information.
- 54.10. The Contractor shall notify any sub-contractor of the provisions of this clause and any sub contract shall have to contain like terms as this Clause. The Contractor shall fully indemnify the Council for any failure to comply with this requirement.
- 54.11. The Council and the Contractor shall bear their own respective costs in relation to any disclosure under FOIA.

- 54.12. The provisions of this Clause shall take precedence over any clause or condition requiring the Council to hold information in confidence.

55. WHISTLEBLOWING

- 55.1. The Contractor/Supplier will adopt and promote the 'Whistleblowing' policy of the Royal Borough of Kingston upon Thames.
- 55.2. The Contractor/Supplier will inform its staff, including agency workers and sub-contractors, who may have a concern about wrongdoing at work i.e. activities that harm clients of the Council, colleagues working for the Council or the Council itself, that those concerns should be reported to the named persons within the Council's whistleblowing policy. (Wrongdoing covers issues such as criminal offence, a failure to comply with a legal obligation, a miscarriage of justice endangering the health or safety of an individual, damages to the environment or the deliberate concealment of information tending to show one of these matters.
- 55.3. The Contractor/Supplier will comply with the Public Interest Disclosure Act 1988 and shall have a policy in place to encourage workers to raise concerns about wrongdoing within the Supplier and to protect them from victimisation or discrimination.

ANNEX 1

DEFINITIONS AND INTERPRETATIONS

In these Conditions, except where the context otherwise requires, the following expressions shall have the meaning hereby ascribed to them:

1. "Council" means the Mayor and Burgesses of the Royal Borough of Kingston upon Thames (and any successor or person or Body Corporate).
2. "Contractor" means (insert Contractor's name) (and any successor body corporate).
3. "Partners or Parties" shall mean The Royal Borough of Kingston upon Thames and (insert Contractor's name) as jointly engaged in the provision of the Services.
4. "Partnership" means the relationship that the Council and the Contractor have entered into and which shall govern the way the services are provided. It would be in accordance with the Council's Contractor Charter principles.
5. "Contract" means the Agreement entered into between the Council and the Contractor embodying these Conditions, the Specification, the Contractor's Tender (and the Council's acceptance thereof), Plans and any other documents relevant to this agreement as listed in the Schedule(s).
6. "The Contract Standard" means such standard as complies in each and every respect with all relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract, the standard is to be to the entire satisfaction of the Authorised Officer.
7. "Conditions" means the Conditions of Partnership including the Schedule(s).
8. "Appendices" means the Appendices hereto.
9. "Schedules" means the Schedules hereto.
10. "Service" means the whole of the work to be executed by the Contractor in accordance with the Contract.
11. "Specification" means the description of the Service referred to in the Specification of Requirements of this document and any modification or Variation thereof or addition thereto as may from time to time be furnished or approved in writing by the Authorised Officer.
12. "Variation" means a Variation to the Service made by notice given by the Authorised Officer to the Contractor in accordance with Clause 16.
13. "Authorised Officer" means the Officer named in Schedule A.

14. "Contract Manager" means the representative of the Contractor appointed pursuant to Condition 28 below.
15. "Commencement Date" means the date as set out in the Particulars of Contract (Schedule A).
16. "Contract Period" means a period set out in the Particulars of Contract (Schedule A).
17. "Review Dates" means the anniversaries of the Commencement Date at which the Contractor commenced the Service(s).
18. "Month" means a calendar month; "week" means 7 consecutive days starting on a Monday and ending on the following Sunday midnight; "day" means the period from midnight to midnight.
19. Reference to time shall be construed, during the period of summer time, to be British Summer Time and otherwise to be Greenwich Mean Time.
20. "Schedules of Prices" where applicable means the Schedule of Prices on which the Contractor's tender was based and incorporates the principles of measurement set out therein.
21. "Statement" means the statement provided by the Contractor to the Authorised Officer, detailing the value of Services performed during the relevant period (usually a month).
22. "Council Premises" means any property owned or leased or otherwise in the possession of the Council consisting of offices, buildings and land, which are used by the Contractor, whether exclusively or together with the Council, for the performance of the Service.
23. "Contractor Premises" means any property owned or leased or otherwise in the possession of the Contractor consisting of offices, buildings, etc., which are used by the Contractor for the proper performance of the Service.
24. References to "staff" shall be construed as including all employees, sub-contract employees and other persons who provide services in accordance with the contract.
25. Reference to "supervisory staff" shall be construed as including all staff performing a supervisory or managerial function.
26. "Intellectual Property Rights" means all copyright, patents or patent rights, registered and unregistered design rights, trade marks, service marks and all other intellectual or industrial property rights wherever in the world enforceable.
27. "Applicable Legislation" means any Legislation at any time relating to the Services or any lawful requirement or demand of any relevant authority, of any regulatory authority, or body or self-regulating or other organisation exercising supervisory authority or control pursuant to Legislation which has jurisdiction with regard to the Services or to matters dependent upon or affected by the Services.
28. "Legislation" means any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) Interpretation Act 1978, any exercise of the Royal Prerogative and any

enforceable community right within the meaning of Section 2 European Communities Act 1972 and any other law or statute of any other country in which the Services are provided and any standard or principle of behaviour, rule, regulation or code of practice or guidance laid down or required by any regulatory authority or body or self-regulatory or other organisation exercising supervisory authority or control of the Contractor or the Council pursuant to legislation or otherwise and any other regulation, decision or authorisation having the force of law of any body having jurisdiction in relation to the business of the Contractor or the Council or with whose decisions it is customary (except in any case where the Council informs the Contractor that it does not wish to follow such decision or decisions) in the relevant jurisdiction for those affected by such decisions to comply and “Legislative” shall be construed accordingly.

PARTICULARS OF CONTRACT

CONTRACT PERIOD:	The Contract Period will be from (insert date) until (insert date) (inclusive) with the option to extend up to (insert date) at the Council's discretion, giving six months notice in writing.
COMMENCEMENT DATE:	(insert date)
CONTRACT DOCUMENTS:	Conditions of Contract Specification of Requirements Appendices Schedule of Prices Instructions for Tendering Form of Tender Deed of Guarantee and Form of Bond – Examples Certificate against Collusive Tendering
AUTHORISED OFFICER:	The Contracts Manager (insert name and address of authorised officer)
PAYMENT DETAILS:	Payment to be made within 30 days of Receipt of a valid invoice, submitted monthly in arrears
PERIOD FOR SUBMISSION OF STATEMENTS	Monthly (Calendar)
PERIOD OF WRITTEN NOTICE:	06 Months
INSURANCE:	Professional Indemnity Insurance Employers' Liability Public Liability £ insert relevant £ amounts as agreed with the £ Council's insurance advisor)
ALCATEL CLAUSE	To be inserted in ITT (Instructions for Tendering) "In accordance with the Alcatel judgement (the Case – 81/98) of the European Court of Justice and Regulation 32 of The Public Contracts Regulations 2006, there will be a 10 day standstill period between communicating the award decision to all tenderers and entering into a contract. The award notice shall contain the criteria for the award of the contract, the name of the successful tenderer and where practicable, the score obtained by the unsuccessful and successful tenderers. If by the end of the second working day of the 'standstill

period' the Council receives a written request for the reasons why it was unsuccessful, the Council shall inform a tenderer of the characteristics and relative advantages of the successful tender. If there is any legal challenge during the period, the Council will wait to see if interim measures are granted before proceeding and if they are they will wait until the outcome of the legal proceedings before concluding the contract."

Royal Borough of Kingston upon Thames
Health and Safety Policy, Organisation and Arrangements

Health and Safety at Work etc. Act 1974 Section 2 (3)

Management of Health and Safety at Work Regulations 1999 Regulation 5

Overall Statement of Policy

It is the policy of the Royal Borough of Kingston upon Thames to ensure, so far as is reasonably practicable, the health, safety and welfare of all our employees and others who may be affected by our activities or services. In order to achieve this it is our policy to provide safe equipment and systems of work and adequate information, instruction, training and supervision, as may be needed for this purpose. RBK will ensure that health and safety issues are addressed within every aspect of Council activity and will provide adequate resources to ensure this Policy can be implemented effectively.

RBK will also ensure that Council Members are given the opportunity to be briefed on the legal requirements applicable to the Council in respect of health and safety, in order that the policy decisions made by Members can take full account of these obligations and the individual responsibilities imposed on Council Members.

Where the Borough intends to engage contractors to undertake work, or provide services on its behalf, or on its premises, reasonable enquiries will be made to establish the competence of the contractor to undertake the work safely and without risks to health. The health and safety performance of such contractors will be kept under review in order to ensure adequate standards are maintained.

RBK will consult with employees on health and safety matters through the Health and Safety Committee, with trade union appointed safety representatives and other employee representatives, with a view to actively involving staff in the effective implementation of this policy.

The health and safety performance of the Council and this Policy will be reviewed at least annually by the *Chief Executive* and the Corporate Development Team and at any other time when there are significant changes in the activities of the management structure of the Council.

The sections below detail the organisation and responsibilities of directors, managers and staff within the Council, for implementing the above Policy and give details of the general health and safety arrangements and standards to which the Council operates. The Policy is supplemented by local arrangement documents for each directorate.

Signed



Chief Executive
January 2006

ORGANISATION

SPECIFIC RESPONSIBILITIES OF INDIVIDUAL DIRECTORS AND MANAGERS

The following directors and managers have specific health and safety responsibilities in addition to those applicable to all managers and directors listed below.

CHIEF EXECUTIVE

- The Chief Executive has overall responsibility for health and safety matters within the Council. The Chief Executive is also responsible for general oversight of the Council's health and safety management programme and, in consultation with the Head of Personnel, monitoring its effective implementation. The Chief Executive is also responsible for chairing the Council's Health and Safety Committee.

DIRECTOR OF FINANCE

The Director of Finance is responsible for:

- Ensuring the budgetary planning process takes adequate account of the need to resource health and safety requirements in accordance with RBK Policy
- Ensuring that Financial Regulations which require the acceptance of tenders for contract works fully take account of the adequate resourcing of health and safety
- Receiving advice as part of the budget process from the Occupational Health and Safety Manager on any prospective changes to health and safety legislation, which may have significant cost implications for the Borough, so that these can be incorporated in the relevant resourcing plan for the Borough

THE HEAD OF HUMAN RESOURCES

The Head of Human Resources is responsible for arranging the provision of competent health, safety and medical advice to the Council, in accordance with Regulation 7 of the Management of Health and Safety at Work Regulations 1999 and for the planning and co-ordination of the RBK's Health and Safety Management Programme. The Head of Human Resources has responsibility for and authority to issue guidance and detailed statements of policy to ensure that the Health and Safety Policy is effectively implemented.

The Head of Human Resources is also responsible for:

- Ensuring that the employee selection and recruitment process takes adequate account of the competence, ability and medical suitability of employees selected, in order to ensure that neither the employees, nor others, are put at risk
- Ensuring, in conjunction with the relevant directors or line managers and the Occupational Health and Safety Manager, that in any organisational or management change, an adequate assessment is undertaken of the implications for health and safety management and that the planning of the change incorporates adequate arrangements for managing health and safety

- Providing an annual report to the Corporate Development Team on health and safety management in the Council
- Ensuring, through the Head of Strategic Services, and other relevant Client Officers that there are adequate arrangements in place for the assessment of the competence of prospective contractors intended to be used by the Borough
- Co-ordinating the arrangements for consultation with trade union appointed safety representatives, employee representatives and the operation of the RBK Health and Safety Committee
- Ensuring that, during the recruitment process, account is taken of the medical suitability of prospective employees for their intended employment
- Ensuring that there are adequate arrangements for the health and safety training of employees, both at induction and in relation to specific job or work needs
- Ensuring that the employee performance management system adequately takes account of the health and safety performance of managers and staff
- Ensuring that human resource management practices relating to working hours, employment of children and young persons, and arrangements for pregnant employees meet statutory requirements
- Providing a written report to the Corporate Development Team on health and safety matters at six monthly intervals, indicating performance and progress of the Council and any significant health and safety issues which remain outstanding

THE DIRECTOR OF LEARNING & CHILDREN'S SERVICES

The Director of Learning & Children's Services has specific responsibilities for Community Schools, Community Special Schools and residential homes where children are cared for including:

- Ensuring that there are adequate arrangements for maintaining the fabric of school buildings (and residential buildings) in a safe condition in accordance with the Authority's scheme for delegating responsibilities and finance to school governors
- Ensuring that Headteachers and Governors of schools are provided with adequate briefings and training on their health and safety responsibilities
- Making arrangements to ensure the standards of health and safety management within schools are monitored and, where serious deficiencies are identified, an action plan is developed by the headteacher and governors for corrective action to be taken within a specified timescale and giving a direction to this effect under Section 39 (3) of the School Standards and Framework Act 1998

- The Director of Learning & Children's Services will make available briefings and guidance on their Health and Safety responsibilities to Headteachers and Governors of Community, Voluntary Aided and Foundation Schools

In exceptional circumstances a warning notice (under Section 15 of the School Standards and Framework Act 1998) may be issued to the governing body of a Community, Voluntary Aided or Foundation School where the Authority is satisfied that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise)

THE HEAD OF STRATEGIC SERVICES

The Head of Strategic Services together with the Head of Human Resources is responsible for:

- Maintaining and keeping under review an approved list of contractors for which he is the Client Officer, consisting only of contractors who have satisfied a preliminary assessment for competence and resourcing in relation to health and safety, for the type of work in which they are, or are likely to be, involved
- Ensuring that in contracting out the supply of goods or services, adequate advice is given to Client Officers to ensure that consideration is given to the competence and resourcing of the prospective contractors and adequate arrangements are made in relation to risk assessment and other statutory duties under health and safety and consumer protection legislation
- Ensuring that contracts for the supply of goods and services developed within his area of responsibility include adequate specification of arrangements for health and safety arrangements for effective and competent monitoring of the health and safety standards achieved by the contractor during the period of the contract
- Obtaining the advice of the Occupational Health and Safety Manager on relevant standards of health and safety to be applied in relation to specific contracts and in relation to assessment arrangements for prospective contractors
- Monitoring the health and safety performance of the Borough's Building Professional Services consultants and ensuring that where such monitoring indicates inadequate standards corrective action is taken
- Ensuring that there are adequate procedures for effective data backup and recovery in order to ensure the integrity of any statutory and employee records kept for health and safety purposes, in addition to other business critical information

THE OCCUPATIONAL HEALTH & SAFETY MANAGER

The Occupational Health and Safety Manager is responsible to the Head of Human Resources for:

- Providing day to day advice and guidance to managers in the Council on occupational health, safety and fire precaution matters

- Undertaking periodic audits of the health and safety standards being maintained within RBK and advising relevant managers of any necessary actions which are identified as necessary as a result of such audits
- Advising managers on the appropriate response to any new health and safety legislation in consultation with the Health and Safety Consultant
- Developing and co-ordinating the issue of health and safety guidance and standards for use within the Council
- Providing for all RBK liaison with health and safety enforcement authorities
- The investigation of serious accidents incidents or work related health conditions and undertaking the relevant statutory reporting of such incidents to the HSE
- Advising the Chief Executive and the Head of Human Resources of any serious health and safety issues that arise and require corporate attention, or changes to corporate policy
- Managing, under the professional direction of the consultant Occupational Health Physicians, the pre-employment screening of prospective new staff and, where required, the medical assessment of existing staff
- Advising the Head of Human Resources of the health and safety requirements associated with new or revised personnel procedures and strategies
- Drafting a report for the Head of Human Resources on health and safety matters at six monthly intervals at least, indicating performance and progress of the Borough and any significant health and safety issues which remain outstanding
- The Occupational Health & Safety Manager will be supported by a consultancy appointed to provide detailed assistance in safety and occupational health matters and to provide assistance on the development of policies and procedures

DIRECTOR OF COMMUNITY SERVICES

- The Director of Community Services is responsible for ensuring that, where partnership agreements exist with other organisations for the provision of care services, there are adequate arrangements for the health and safety of RBK staff and others who may be affected by the agreement

THE HEAD OF HOUSING

The Head of Housing is responsible to the Director of Community Services for:

- Ensuring that there are adequate arrangements for maintaining the housing stock of the Borough so as to minimise risks to tenants, Council employees and the general public
- Ensuring that there are adequate arrangements for gas safety and other statutory inspections to be undertaken and records kept in accordance with statutory requirements

- Ensuring that work undertaken on the housing stock is planned and organised in a manner that minimises the risks to tenants and other members of the public who may be affected thereby
- Ensuring that Council tenants are kept informed of the presence of asbestos known to exist within the structure of their homes and the necessary precautions to avoid disturbing it

GENERAL RESPONSIBILITIES OF DIRECTORS AND MANAGERS

All directors and managers have a general responsibility for ensuring that activities under their control are managed in a way which ensures high standards of health and safety.

All directors are also responsible for preparing a written Directorate organisation and arrangements statement, in support of this, which defines the local responsibilities and procedures which apply within that Directorate. Such organisation and arrangements statements must be consistent with the overall Policy of the Council and the procedures and standards contained in the RBK Health and Safety Handbook.

Governors and headteachers are responsible for ensuring that such local organisation and arrangement statements exist within their schools.

In addition, directors and managers have the following particular responsibilities in relation to their area of responsibility or control:

- To ensure that RBK procedures relating to health and safety management are applied and employees receive appropriate information, instruction, training and supervision to enable them to work safely
- To ensure that health and safety standards are monitored in a systematic way and where deficiencies are identified they are promptly rectified
- To incorporate into any resourcing plan developed, adequate allowance for meeting health and safety obligations
- To consult with trade union appointed safety representatives and other employee representatives, as appropriate, or as required by Borough Policy
- To ensure that a sufficient number of employees are nominated and trained to undertake risk assessments in their directorate, in relation to general health and safety risks and the particular assessments required in relation to manual handling, display screen equipment, substances hazardous to health and personal protective equipment
- To ensure that risk assessments are undertaken and revised where necessary, in accordance with the overall Council arrangements, and that the relevant actions identified are promptly implemented
- Maintaining and keeping under review an approved list of contractors for use by their Directorate, consisting only of contractors who have satisfied a preliminary assessment

for competence and resourcing in relation to health and safety, for the type of work in which they are, or are likely to be, involved

- Ensuring that in contracting out the supply of goods or services, adequate consideration is given to the competence and resourcing of the prospective contractors and adequate arrangements are made in relation to risk assessment and other statutory duties under health and safety and consumer protection legislation
- Ensuring that computer and similar equipment together with associated software which is to be installed either in Borough premises, or for the use of employees working from home, complies with the necessary health safety and ergonomic standards
- Ensuring adequate arrangements exist to ensure that suppliers, from whom the Council purchases plant and materials, supply relevant health and safety information (including relevant material data sheets) as part of the supply contract
- Ensuring that, where plant or materials are purchased from outside the EC, the Council does not undertake the responsibilities of an importer in respect of health and safety requirements unless adequate arrangements have been made to ensure that EC product safety legislation and material labelling requirements can be met

GENERAL RESPONSIBILITIES OF EMPLOYEES

All employees have the following responsibilities:

- To act with due regard to the health and safety of themselves and others who may be affected by what they do, or fail to do, whilst they are at work, or on Council premises
- To comply with Council instructions and procedures relating to health and safety and making full and proper use of any protective or safety equipment provided
- To report to their supervisor or manager any serious danger to health or safety, or defects in plant structures, or equipment, or safety procedures that come to their notice and which they cannot immediately rectify
- To report to their supervisor or manager any incidents which have led, or might have led, to injury or damage
- To only use plant equipment or substances in accordance with information instruction and training provided by the Council

No manager or employee of the Council is authorised to initiate, or continue, any process, operation, or activity, which places employees, or others, in danger, or is in breach of statutory obligations with respect to health and safety.

HEALTH AND SAFETY ARRANGEMENTS

Standards & Guidance

General

All health and safety information, including risk assessments, RBK standards and guidance are contained in the Health & Safety Handbook. This can be found on the RBK intranet.

Community, Community Special and Voluntary Controlled Schools

Mandatory common standards and guidance for Schools are contained in the RBK Health and Safety Handbook for Schools. The requirement for Headteachers and Governing Bodies of Schools to implement the relevant aspects of this policy and the applicable standards contained in the handbook is to be regarded as a direction of the LEA by virtue of Section 39(3) of the School Standards and Framework Act 1998.

Where internal guidance does not cover a specific issue, the RBK will adopt the practices or standards recommended in Health and Safety Executive publications or relevant British or European Standards.

Competent Professional Health & Safety Support and Assistance

The Occupational Health and Safety Manager is responsible for the co-ordination of RBK's Health and Safety arrangements and will be the immediate source of advice to managers on day to day health and safety matters. The Council retains Quadriga Health & Safety Ltd, as Health Safety Consultants to support and advise the Council and support the Occupational Health and Safety Manager in this role and to provide other assistance as requested.

Joint Working Partnerships with other Organisations

Where RBK has entered into formal joint working partnerships there are separate arrangements to clarify the individual areas of responsibility for health and safety. In the case of South West London & St George's Mental Health Services Trust, the Council remains the employer of staff who are on *secondment* to the Trust. The Trust is responsible for the day to day health and safety arrangements for Council employees and will ensure, so far as is reasonable practicable, the health, safety and welfare of all staff working for the Trust. A copy of the Policy statement can be found in the Trust's Health & Safety Manual.

Agency Staff

The Council will share with Eden Brown and other employment agencies, the Health and Safety information relevant to all posts including risk assessments and control measures in place. The Agency is expected to ensure that relevant information is passed to prospective workers.

Risk Assessments

Risk assessments required for work involving display screen equipment, manual handling operations, substances hazardous to health and general risk assessments are undertaken by managers or nominated staff trained in the particular type of risk assessment required. Where new types of work are proposed, the manager responsible for the work must ensure an adequate risk assessment is undertaken before the work is started, seeking advice from the Occupational Health and Safety Manager, as necessary. Where an employee notifies her line manager of pregnancy, a particular risk assessment will be carried out either by the line manager or by the Occupational Health Service. The employee will be informed as to any specific precautions which need to be taken to avoid placing the employee or her unborn child at risk. Managers will also assess any risks to young persons (those under 18 years) in

the workplace and identify any specific precautions. Risk assessments for fire safety and asbestos are carried out in each establishment by professional services consultants and a copy of the findings is stored locally.

Accidents, Dangerous Occurrences and Ill Health Reporting

Accidents to employees, or others, on RBK premises, or affected by RBK operations, must be reported to the relevant line manager and the Occupational Health and Safety Manager following the procedure in the RBK Health and Safety Handbook. The same procedure covers cases of occupational ill health or dangerous occurrences.

Training

All new employees will receive relevant instruction and induction training on health, safety and welfare matters from their manager or supervisor. Specific health and safety training will be provided for employees, as appropriate to the work being undertaken. Line managers are responsible for identifying the training needs of individual staff within their area of control and ensuring that the relevant training takes place and is recorded. In order to assist managers in discharging this obligation the Head of Human Resources will arrange general health and safety induction training for all employees and specific management training courses as appropriate.

Pre-Employment Health Assessments & Medical Arrangements

Pre-employment health assessments are undertaken for all new employees, usually by means of a confidential questionnaire, by the Occupational Health Medical Adviser. Confidential medical details are held in the strictest confidence and will only be disclosed to Human Resources with the prior consent of the employee. However, information, such as restrictions on particular types of work, or special precautions necessary for health and safety reasons will be provided to the managers to avoid putting the employee or others at risk.

Fire Safety

All Council premises are subject to the requirements of a fire certificate or have a fire safety risk assessment undertaken in respect of them. Relevant precautions, including the provision and maintenance of fire safety systems and structural precautions, staff training and practice evacuation drills, will be specified in the risk assessment or fire certificate. Responsibilities for the implementation and maintenance of these precautions will be specified in the local organisation and arrangements statement for the premises.

First Aid

First aid arrangements for each premises and the names of nominated persons and appointed first aiders are displayed at the premises. A list of first aiders and nominated persons, together with training information and refresher training arrangements is held by the Occupational Health and Safety Manager.

Smoking

Specified no smoking arrangements exist for all employees.

Putting People First - Equality and Diversity Policy Statement

Forward

This Policy Statement spells out the Council's commitment to equality and diversity and the measures the Council will take to achieve equality. Kingston has had a Policy Statement since 1986. This has been reviewed and updated on a regular basis. Much has already been achieved but we are not complacent and there is still much to do.

This revised Policy Statement sets out our arrangements for ensuring compliance with new legislation specifically on Race, Disability and Gender. More detail on this, together with our three-year action plan is available in our Equality Scheme, published in December 2006. This policy statement also outlines the way we shall address issues concerning religion and belief, sexual orientation and age.

We are proud of our diverse borough and value every resident. Equality is therefore a crucial part of our key strategic aim of putting people first to make the Council more accessible and responsive. This policy statement will be widely circulated both within the community and within the Council itself.

Everyone who works for the Council will play a part in ensuring that our commitment becomes a reality.

Bruce McDonald
Chief Executive
November 2007

Introduction

The Royal Borough of Kingston has a very diverse population. According to the 2001 Census 15.5% of Kingston's population is from Black and minority ethnic groups; this rises to 20.6% for those under eighteen. However, the GLA estimate of Kingston's BME population in 2007 is 21% and the proportion in our schools is 40%. This is higher than the national average. Kingston has the largest Korean population in Western Europe; recent estimates put this as high as 8-10,000.

Our translation and interpretation service provides 122 translators for 44 languages. The majority population are Christian (64.6%), 3.9% are Muslim, 3.6% Hindu, 0.8% Buddhist and 0.6% Sikh. Approximately 20% of people in the Borough are disabled.

Diversity embodies all the differences that make us unique individuals. In Kingston we recognize that diversity is not only a reality, it's a distinct advantage, and one that we value and embrace. Just as the people of Kingston are infinitely diverse, so is our workforce. Our understanding of diversity helps us serve our community better.

Success and productivity are natural extensions of a corporate culture that truly values all people, putting an appreciation of diversity among our top corporate priorities.

Our commitment to equality in our service delivery and our employment practices means that we believe in:

- Providing fairness and equality of opportunity
- Recognising that everyone is different and that these differences must be equally respected
- Challenging discrimination so that we demonstrate our commitments to equality and do not exclude people or make them feel isolated
- Respecting people's difference in viewpoint and ensuring that everyone has the opportunity to raise their point of view

What does the Policy Statement cover?

The Policy Statement covers residents, visitors, service users, elected members, employees and potential employees.

Staff in locally managed education establishments have their own policies and procedures determined by their governors, which means that they are not covered by this policy. This policy statement is recommended as a model of good practice and where a policy of this nature does not exist this one may be adopted or customised to meet specific needs.

The Policy Statement covers all forms of unlawful or unfair discrimination including those on the grounds of: age, asylum or refugee status, caring responsibilities, class, colour, disability (including physical, sensory impairment, mental health, learning disability or HIV status), ethnic or national origin (including Travellers), gender, gender reassignment, language, marital status, nationality (including citizenship), part-time working, race, religion, sexuality, or trade union membership.

As a Council we have adopted the 'social model' of disability as opposed to the 'medical model'. The key difference between the two is in the 'location' of the problem. According to the medical model, disabled people are unable to participate in society as a direct result of their impairment. However, according to the social model, people with impairments are disabled by physical, social, cultural and corporate barriers. Disabled people generally have the same needs and aspirations as non-disabled people, expecting to be able to access services independently. It is society and the environment that disables people with impairments. Thus disabled people are not 'people with disabilities'; they are 'disabled people', disabled by society and the built environment.

The policy statement applies to all aspects of the Council's functions including:

- Service provision
- Commissioning and procurement of goods and services
- Recruitment, employment, training and staff development
- Community engagement including consultation with local people
- Grant making
- Partnerships with other organisations
- Promotion and publicity
- The exercise of our statutory powers and responsibilities

The Policy Statement applies at all levels in the Council and implementation is the responsibility of every Council employee.

Policy Statement aim

Our overall aim is to ensure that everyone can fully participate in the social, cultural, political or economic life of the Borough. This includes our staff. To this end we aim to:

- Eliminate unlawful discrimination
- Promote equality of opportunity and improve access to services (by removing the barriers which deny access to our services)
- Promote good relations between everyone, all people of different races, disabled people, and encourage community cohesion
- Celebrate and value diversity
- Comply with our legal duties under the relevant acts in relation to race, disability, gender, sexual orientation, religion and belief, age and human rights.

Our commitments

- **Policy and planning:** we will promote equality and value diversity in all our policies and service planning.
- **Service delivery and customer care:** we will ensure that our services are relevant to the diverse needs of our residents and local communities, are accessible to all and are delivered in a way that is appropriate and sensitive.
- **Community engagement and development:** we will encourage community participation to ensure that we listen to and invest in the needs of our residents and communities.
- **Information:** we will ensure that information about our services is offered in appropriate formats and languages and appears in media read or heard by local people.
- **Protection from violence and harassment:** we will continue to work with our partners to ensure that domestic violence, racist crime, homophobic crime, adult abuse and abuse of disabled people is tackled.
- **Commissioning and procurement:** we will ensure that equality issues are part of the commissioning and procurement process.
- **Partnerships:** we will ensure that our partners are aware of our commitments and share in them.
- **Employment:** we will aim to have a workforce that is representative of the community we serve. To this end we will ensure that our workforce is built on open and fair employment practices, that our staff are valued and that the work environment is inclusive.

How we will achieve our commitments

A plan of action:

The Council's Equality Scheme outlines the way in which we plan to implement our policy statement and includes a three-year action plan for implementation. Points below summarize the Council's main actions.

Measuring success:

The Council has adopted the Equality Standard for Local Government. This provides a framework for continuous improvement in equality. The Standard covers race, gender, disability, sexual orientation, religion and belief and age. There are five levels of achievement. Each level covers employment and service delivery. We aim to have achieved level 3 in 2007 and level 4 and 5 in the following years. The Standard will help us mainstream equality into everything the Council does.

Structures for implementation:

The Council has an Equal Opportunities Forum, which brings together representatives from directorates, staff side and the voluntary sector. The Chief Executive chairs the Forum. Its function is to advise on policy and promote good practice. The Equal Opportunities Forum will scrutinise progress on equality, advise on policy and promote good practice.

There are also equality groups operating throughout the Council who are responsible for co-ordinating equality at a Directorate level.

Consulting with residents and staff:

The Council has set up the following consultative forums to help in implementing this Policy:

- 'Kingston Disabled and Older People's Forum' which offers a way for local disabled people (including older people who have impairments resulting from conditions associated with old age) to be involved in shaping services. The Forum is run in partnership with Kingston Primary Care Trust and Kingston Hospital Trust.
- A Black and Ethnic Minorities Forum which acts to inform, challenge, check and support the Council's equality initiatives in order to improve its commitment and effectiveness in carrying out its functions.
- Young People's Forum
- Learning Disability Parliament
- Consultation with Deaf BSL users
- Black and Minority Ethnic Staff Group
- Disabled Staff Group
- Senior Women's Network
- The Futures Group

Assessing our policies and services:

We will continue to monitor existing policies (monitoring service users, identifying gaps in provision and planning change) and assess the impact of new policies to ensure that they do not discriminate. We will put our policies into action based on consultation, raising awareness and developing outcomes that make a difference.

Training our staff:

The Council runs training on equality for staff. Some includes specific training for policy officers and for managers. Mandatory generic equality training is being delivered to all front line staff. The Council also runs regular training sessions on race, disability and age equality. In addition there is an equality slot on the Induction course that all new staff attend. Equality is included in the induction programme for councillors.

Dealing with complaints:

Complaints about any service provided by the Council should be made to nominated people in each directorate. A leaflet 'Have Your Say' is available online and in reception areas with names of those who can be contacted. The Council has a Code of Conduct in relation to staff and breaches of this code are investigated in accordance with the Council's disciplinary procedure.

Who is responsible for equality and implementing this Policy Statement?

The Leader of the Council has overall responsibility for this Policy Statement. The Chief Executive and Directors have the management responsibility for ensuring that the Policy Statement is implemented across the Council. Managers are responsible for delivering equality in their services, providing support for staff to work together to achieve equality, and acting on any staff or community complaints. All employees are responsible for ensuring that they work together to recognise and remove barriers so that they can promote equality, fairness and dignity, and behave in accordance with this Policy Statement.

Resources

The Council will integrate equality into the mainstream budgetary allocation. Staff in the corporate Human Resources team have specialist equality responsibilities. There are also additional resources in some Directorates with staff specialising in equality issues.

Review of this Policy Statement

This Policy Statement is effective from December 2007 and will be reviewed annually and amended as necessary to reflect changes in legislation, codes of practice or special issues of local concern.

ROYAL BOROUGH OF KINGSTON UPON THAMES

STATEMENT OF ENVIRONMENTAL POLICY

The Royal Borough of Kingston upon Thames is committed to improving its own environmental performance, to minimising its impact on the local, regional and global environment and to encouraging others working in, living in, and visiting the Royal Borough to do likewise.

The Council will aim to:

Raise the environmental awareness of Councillors, council officers, the public and the business community to encourage them to make environmentally sound and sustainable decisions.

Encourage the efficient and least environmentally damaging use of energy and in particular, to reduce the emission of carbon dioxide.

Reduce the need to travel and minimise the environmental impact of transport while ensuring reasonable access to the community.

Encourage the environmentally sound and sustainable use of resources.

Reduce the quantity of waste produced in the Royal Borough of Kingston upon Thames and limit the environmental impact of waste.

Limit the level of pollution caused by activities in the Royal Borough and encourage improvement in the quality of air, water and land.

Protect and enhance Natural Habitats, Open Spaces and Landscape for wildlife, access and amenity.

Protect quality in, and enhance the Built Environment and Townscape for the benefit of those who live, work in and visit the Borough.

Protect and promote the health and safety and limit the impact of noise.

Environmental Policy - Principles and Action

1. Environmental Policy Formulation

- 1.1 The Council will establish and update environmental policies that seek to achieve a continual improvement in environmental performance.
- 1.2 The aim of the Council is to reduce its environmental impact to a level not exceeding that which is achievable by economically viable applications of best available practices, techniques and technology.
- 1.3 All policies will meet relevant regulatory requirements.

2. Action to reduce environmental impact

- 2.1 The Council will take all reasonable measures necessary to reduce pollutant emissions and waste generation to a minimum and to conserve resources.
- 2.2 The impact of current activities on the environment will be examined.
- 2.3 The environmental impact of all new activities, projects and operations will be considered in advance by relevant officer(s), and be reported to the appropriate Committee when they are of significance.
- 2.4 Monitoring procedures will be established and applied, to check compliance with the Council's environmental policy. Records of results will be established and updated where these procedures require measurement and testing.
- 2.5 The Council will establish and update procedures and action to be taken in the event of detection on non-compliance with its environmental policy, objectives or targets.
- 2.6 Trends in the provision of budgets and resources for environmental action and protection will be monitored and reported annually in order to inform the budget process.
- 2.7 The Council will foster a sense of responsibility for the environment amongst employees at all levels.

3. Accidents

- 3.1 Measures necessary to prevent accidental emissions of pollutants, materials and energy from Council property shall be taken.
- 3.2 The Council will co-operate with other public, industrial and commercial bodies to establish and update contingency procedures to minimise the impact and frequency of any emergency situations that may occur that would have an adverse impact on the environment.

4. Public Information

- 4.1 Information necessary to understand the environmental impact of the local authority's activities will be provided to the public, and an open dialogue with the public will be pursued.
- 4.2 Advice will be provided to the public on the environmental aspects of the Council's services, and how the public can help improve the Council's environmental performance.

5. Contract Performance

- 5.1 Provisions will be made to ensure that Contractors working on the Council's behalf apply environmental standards equivalent to our own.

ROYAL BOROUGH OF KINGSTON UPON THAMES

WHISTLEBLOWING POLICY

Introduction

Kingston Council is committed to providing high quality services for residents in the Royal Borough. In order to do this, we aim to create a working environment for staff that is open, fair and honest.

The Council's Whistleblowing Policy has been developed to support staff in their role, whether they are directly employed by the Council or working on our behalf for a partner company or agency.

This short guide provides an overview of the Whistleblowing Policy. A full version is available on our website at www.kingston.gov.uk/whistleblowing

What is whistleblowing?

A member of staff 'blows the whistle' when they tell someone in authority about a dangerous or illegal activity that they are aware of through their work. This can include health and safety risks, environmental issues, fraud, poor standards of care and other problems. Often it is only through whistleblowing that this information ever comes to light.

Who can use the Council's whistleblowing procedure?

- All Council staff, whether full time or part time, permanent or temporary;
- Councillors;
- All staff working in schools (including volunteers and students);
- Contractors working for the Council on Council premises e.g. agency workers, builders or drivers; and
- Staff working for one of the Council's partner companies, including those providing services under a contract with the Council in their own premises e.g. care homes.

When should I raise a concern?

If you find out about something that could pose a risk to customers of the Council, colleagues working for the Council or the Council itself. These may include:

- Illegal activities
- Miscarriages of justice
- Risks to health and safety
- Damage to the environment
- Misuse of public funds
- Fraud and corruption
- Abuse of clients
- Other wrongdoing, (including attempts to cover up wrongdoing)

Who do I tell?

If you work for the Council:

You should raise any concerns with your line manager. However, if you feel unable to do so or you are concerned about something serious, you can approach a senior manager, your Head of Service, a Director or the Chief Executive. You can raise a concern by talking to the person or by writing to them.

If you suspect fraud or corruption, you can approach the Assistant Director of Finance - Audit.

Staff in Social Services can approach the Customer Services Officer or any of the senior officers listed above.

If you work in a school:

You should approach the Head Teacher. However, if you feel unable to do so or you are concerned about something serious, you can approach the Chair of Governors, the Director of Learning and Children's Services, the Assistant Director of Finance - Audit or the Chief Executive. You can raise a concern by talking to the person or by writing to them.

If you work for an agency or are a temporary worker:

You should raise any concerns with your line manager. However, if you feel unable to do so or you are concerned about something serious, you can approach a senior manager, your Head of Service, a Director or the Chief Executive. You can raise a concern by talking to the person or by writing to them.

If you work for a company that has a contract with the Council:

You should raise any concerns with the Head of Strategic Services, tel: 020 8547 5175. Alternatively, you can contact the Assistant Director of Finance – Audit, tel: 020 8547 5660.

You can also write to the Head of Strategic Services or the Assistant Director of Finance – Audit at the following address:

Royal Borough of Kingston upon Thames
Guildhall 2
High Street
Kingston upon Thames
KT1 1EU

What happens next?

We will look into your concern to see what should happen. This may involve:

- An internal investigation
- An external auditor
- An independent inquiry
- The police

We will normally write to you within 10 working days of receiving your concerns. We will list these concerns, tell you who is handling the matter, how you can contact them and whether we need any further information from you. We will also tell you where to get support if you need it.

Will I get into trouble? Will anyone find out that I have ‘blown the whistle’?

Kingston Council does not allow the harassment or victimisation of anyone who raises a genuine concern. Any such harassment may result in disciplinary action.

However, there may be a situation where you want to tell us of your concern and not let anyone else know that you have done so. If we are not able to resolve the problem without telling someone else who you are, we will always talk to you about this first.

Where can I find out more?

You can find out more about the Whistleblowing Policy by:

- Visiting our Intranet site (Council staff and Councillors)
- Visiting our website at www.kingston.gov.uk/whistleblowing