



***Royal Borough of Kingston
upon Thames***

Model Conditions

***Routine Goods £10,000 -
£100,000***

[Notes:

1. You must ensure each time that you use this document that you check to make sure that it is up to date and accurate to meet the needs of your specific contract. Pay particular attention to the following paragraphs and sections: 29 (TUPE) and Schedule A.

2. If you are buying ICT goods or services, you may need to add the following unamended OGC Model ICT Contract Clauses which you will obtain from the Head of ICT:

**28.11 and 28.12 (Contractor Personnel – Staffing Security);
40 (Authority Data);
41 (Protection of Personal Data);
42 (Freedom of Information);
43 (Confidentiality);
and 48 (Security Requirements).**

Schedule 45.2 (Warranties) will need to be tailored to reference specific documentation sets which the contractor has or will provide as part of the delivery of the service.

Schedule 2.5 (Security Requirements and Plan) will need to be amended for some smaller ICT Service contracts.

Please seek advice from the Head of ICT regarding all the above.

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 require that standard contract clauses on information assurance will be incorporated into contracts.

3. Adult Safeguarding standard contract clauses

These do not apply to every contract. They will certainly apply not only where contractors are providing direct care, but also to contracts for building maintenance, and security etc where contractors are required to visit people in their own homes.

For organizations providing support services including building maintenance security and other ancillary services:

Details of how to raise adult safeguarding alerts can be found on the council's web site. [Organisation's name] will ensure that their

policy and procedures are consistent with SCIE Report 39: Protecting adults at risk: London multi-agency policy and procedures to safeguard adults from abuse

The training standards, e-learning packages and training courses provided by the Kingston Safeguarding Adults Partnership Board (SAPB) can be found on the EVOLVE website [web site about to be changed]. [Organisations name] is responsible for ensuring that training consistent with this standard is provided for all employees [and volunteers]. Further information can be found by visiting the SAPB website.

1. [Organisation's name] will ensure that all staff have completed appropriate adult safeguarding awareness training to enable them to identify and report suspected abuse
2. Provide opportunities for staff to update their training in this area as described in SAPB standard detailed on the EVOLVE web site
3. Ensure that employees are encouraged to report the abuse of adults at risk
4. Respond to all reasonable requests for information from the SAPB and Safeguarding Adult Managers (SAMs)

For health and social care provider organisations:

The training standards, e-learning packages and training courses provided by the Kingston Safeguarding Adults Partnership Board (SAPB) can be found on the EVOLVE website [web site about to be changed]. [Organisation's name] is responsible for ensuring that training consistent with this standard is provided for all employees [and volunteers]. Further information can be found by visiting the SAPB website.

1. [Organisation's name] will ensure that their policy and procedures are consistent with SCIE Report 39: Protecting adults at risk: London multi-agency policy and procedures to safeguard adults from abuse this will include
 - Ensuring all staff and volunteers receive appropriate training
 - Completing a data sharing agreement with the borough/Clinical Commissioning Group
 - Participating in, and providing relevant information to, adult safeguarding investigation and protection planning meetings
 - Participating in the Kingston Safeguarding Adults Partnership Board as required.

For health and social care provider organisations operating hospital residential or nursing home services regulated by the

Care Quality Commission. For those operating in the Royal Borough of Kingston:

The training standards, e-learning packages and training courses provided by the Kingston Adult Safeguarding Adults Partnership Board (SAPB) can be found on the EVOLVE website [web site about to be changed]. [Organisation's name] is responsible for ensuring that training consistent with this standard is provided for all employees and volunteers. Further information can be found by visiting the SAPB website.

1. [Organisation's name] will ensure that their policy and procedures are consistent with SCIE Report 39: Protecting adults at risk: London multi-agency policy and procedures to safeguard adults from abuse this will include:

- Ensuring all staff and volunteers receive appropriate training
- Completing a data sharing agreement with the Royal Borough of Kingston and Kingston Clinical Commissioning Group
- Participating in, and providing relevant information to, adult safeguarding investigation and protection planning meetings.
- Participating in the Kingston Safeguarding Adults Partnership board as required.

2. [Organisation's name] will ensure they discharge the responsibilities of the managing authority (Deprivation of Liberty Regulations 2009 as introduced by an amendment to the Mental Capacity Act 2005 in the Mental Health Act 2007).

3. Refer any suspected deprivation of liberty relating to a person whose care is funded by Royal Borough of Kingston, Kingston Clinical Commissioning Group, the managing authority (as defined in the Deprivation of Liberty Regulations 2009) or someone acting on their behalf to the supervisory body by contacting the Safeguarding Adults and Mental Capacity Act Team (SAMCAT) at

- Guildhall, High Street, Kingston upon Thames, Surrey, KT1 1EU
- Telephone: 020 8547 4735
- Fax: 020 8547 6142
- Email: adult.safeguarding@rbk.kingston.gov.uk

For health and social care provider organisations operating hospital residential or nursing home services regulated by the Care Quality Commission. For those operating in other local authority areas:

1. [Organisation's name] will ensure that their policy and procedures are consistent with the policy, procedures and training standards of the local Safeguarding Adults Partnership Board. This will include
 - Ensuring all staff and volunteers receive appropriate training
 - Participating in, and providing information for, adult safeguarding investigation and protection planning meetings.
 - Participating in the Kingston Safeguarding Adults Partnership Board as required.
2. [Organization's name] will complete a data sharing agreement with the Royal borough of Kingston and Kingston Clinical Commissioning group
3. [Organisation's name] will ensure they discharge the responsibilities of the managing authority (Deprivation of Liberty Regulations 2009)
4. Refer any suspected deprivation of liberty relating to a person whose care is funded by Royal Borough of Kingston or Kingston Clinical Commissioning Group to the Supervisory body by contacting the Safeguarding Adults and Mental Capacity Act Team (SAMCAT) at
 - Guildhall, High Street, Kingston upon Thames, Surrey, KT1 1EU
 - Telephone: 020 8547 4735
 - Fax: 020 8547 6142
 - Email: adult.safeguarding@rbk.kingston.gov.uk

For investigating organisations operating in the Royal Borough of Kingston:

The training standards, e-learning packages and training courses provided by the Kingston Safeguarding Adults Partnership Board (SAPB) can be found on the EVOLVE website [web site about to be changed]. [Organisation's name] is responsible for ensuring that training consistent with this standard is provided for all employees [and volunteers]. Further information can be found by visiting the SAPB website.

1. [Organisation's name] will ensure that their policy and procedures are consistent with SCIE Report 39: Protecting adults at risk: London multi-agency policy and procedures to safeguard adults from abuse (all subsequent paragraph numbers relate to this policy). This will include
 - a. Ensuring all staff and volunteers receive appropriate training
 - b. Completing a data sharing agreement with the Royal borough of Kingston and Kingston Clinical Commissioning group

- c. Arranging, participating in and providing information to adult safeguarding investigation and protection planning meetings as required.
2. [Organisation's name] will identify a Safeguarding Adults Lead who will ensure that the requirements outlined in paragraphs 1.1.1.3 and chapter 1.5 are met. This will include
- a. Managing resources and performance within internal care pathways and liaising with other investigating organisations where inter-agency operational problems become apparent.
 - b. Ensuring that performance information is shared with SAPB
 - c. Attending appropriate multi agency meetings as required.
 - d. Ensuring that complaints received from any source about *Safeguarding Adults practice and process are managed under the relevant complaints procedures of the organisation about which the complaint has been made* (paragraph 1.9.2.2)
 - e. Ensure representation at the Multi Agency Safeguarding Hub as appropriate.]

GENERAL CONDITIONS OF CONTRACT (Goods)

1. Contract Documents

- (i) The contract shall consist of the completed Proposal (and any documents annexed to or referred to in the Proposal and these Conditions ("The Contract"))
- (ii) The documents forming the Contract are to be taken as mutually explanatory of one another but in the event of any inconsistency between these Conditions and any provision in the Proposal the Proposal shall prevail.

2. Variation

No deletion, addition or variation to the Contract shall be valid unless agreed in writing and signed by both parties.

3. Delivery

- (i) The Contractor shall supply and deliver the goods to the Council at the place(s) and in such quantities and in such manner and at such times as are specified in the Contract and the goods shall be of such type and quality and at the rates and prices as are set out in the Contract.
- (ii) All goods supplied pursuant to the Contract shall be delivered free of delivery charges and at the Contractor's risk unless the Contract provides otherwise.
- (iii) Where any quantity specified in the Contract is described as estimated, the Council may order a greater or lesser quantity of the goods than that indicated; otherwise the quantity shall be fixed as aforesaid.
- (iv) The goods shall be marked in accordance with any specification contained within the Contract or, where applicable, any written instruction of the appropriate Chief Officer of the Council and all lawful requirements, and shall be properly packaged and secured for delivery to the Council in an undamaged condition. Where the goods supplied are of a hazardous, dangerous or noxious nature, such goods or the container in which the goods are stored or transported shall be clearly marked so as to show the nature of the goods, any particular hazards associated with the goods, any particular precautions involved in handling the goods, and any measures to be taken in case of accident (peculiar to the nature of the goods).
- (v) Where the cost of goods supplied includes a refundable deposit on a container or other packing for the goods the Contractor shall collect the container or packing from the Council at its own cost when requested to do so by the Council.

At the time of delivery the Contractor shall provide the Council officer, who is authorised to receive the goods, with an advice or delivery note containing particulars of the quantities, weights, prices and descriptions of all goods delivered at that time unless otherwise provided in the Contract.

- (vi) Title in the goods and risk shall only pass when goods have been delivered to the Council at the delivery point specified in the Contract or, where applicable, in any written order given by the appropriate Chief Officer of the Council, the authorised Council officer has accepted delivery.
- (vii) The Contractor's agents, or employees delivering the goods to the Council at the specified delivery point shall ensure that the Council officer is authorised to accept receipt of the goods.
- (viii) The delivery date is of the essence to the Contract.

4. Termination

- (i) If the Contractor fails to deliver any of the goods in accordance with the Contract, then the Council may terminate the Contract, without prejudice to any other rights or remedies which it might have, either wholly or to the extent of such default and purchase goods of the same or similar description to make good such default or, in the event of the Contract being wholly terminated, to secure the delivery of all the goods required to be delivered.
- (ii) Where the Contract is wholly terminated the Contractor shall promptly collect any goods which have been delivered.
- (iii) Where there has been delivery of less than the agreed quantity of goods and the Council does not exercise its right to wholly determine the Contract the Council may accept the goods which correspond to the Contract and recover for the Contractor's breach in respect of the failure to deliver the remainder of the goods.
- (iv) In any event the Council shall be entitled to recover, without prejudice to any other rights and remedies it might have, from the Contractor the amount by which the cost of purchasing other goods exceeds the amount which would have been payable to the Contractor in respect of the goods if they had been delivered in accordance with the Contract. This cost will include the amount of any expenses properly incurred by the Council and of any direct loss and/or damage caused to the Council as a result of the determination.
- (v) The Council may exercise these rights upon 7 days written notice to the Contractor.

5. Cancellation

The Council may cancel any written order, whether or not accepted, or reduce the quantity of any goods ordered by submitting to the

Contractor a written notice which specifically refers to the relevant order, stipulates the changes and is actually received by the Contractor not less than 14 days prior to the requested delivery date, and in every such case the Contractor shall have no claim in respect of any goods no longer required by the Council.

6. Prices

The rates and prices set out in the Contract are on a fixed price basis and unless the Contract provide otherwise no modification or variation will be allowed during the Contract period.

7. Warranties

- (i) The Contractor warrants that the goods supplied shall:
 - (a) be the best of their kind and free from all defects; and
 - (b) conform as to the quantity, quality and description specified in the Contract; and
 - (c) conform in all respects with any samples, patterns or specifications provided by either the Council or the Contractor; and
 - (d) be capable of any standard of performance specified in the Contract; and
 - (e) be of a design, construction and quality which complies with all relevant requirements of any Statute, Regulation, Order or Directive in force when the goods are supplied.

8. Standard Specifications

Without prejudice to any higher standard required elsewhere in the Contract, all goods shall conform to any applicable specification or code of practice issued by the British Standards Institution or the International Standards Organisation that is current at the date of the Proposal.

9. Corruption

- (i) The Council may immediately determine the Contract and exercise its rights under Clause 4 if the Contractor or any person on its behalf whether employed by the Contractor or not and whether acting with or without the knowledge of the Contractor:
 - (a) shall have agreed with any third party to fix or adjust either party's prices or to refrain from issuing a Proposal; or
 - (b) shall have communicated to any person, except the Council, the amount or approximate amount of its Proposal otherwise than in confidence to obtain premium quotations for insurances; or
 - (c) shall have given, agreed to give, offered to give or promised any person (directly or indirectly for the benefit of that person or any

other) any gift, loan, fee, reward or other consideration or conferred any advantage as an inducement to, reward for, or otherwise in return for such person having done, agreed or forborne to do, anything in relation to any other proposal or for any contract; or

(d) shall have directly or indirectly canvassed any Member or Officer of the Council in order to obtain or attempt to obtain entry to any lists of persons approved by the Council to carry out works on its behalf, or information concerning any other tenderer or any proposal submitted by any other tenderer, or any advantage or benefit to the disadvantage of other tenderers; or

(e) shall show favour or disfavour to any person in relation to any contract with the Council; or

(f) shall otherwise have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972.

10. Assignment

Neither party shall assign the benefit of this contract without the prior written consent of the other party such consent not to be unreasonably withheld

11. Sub-Contractors

No part of the Services shall be contracted unless formally agreed by the Parties. The Parties shall develop an agreed joint protocol for the appointment and vetting of sub-contractors and the Contractor shall, wherever possible within the terms of the protocol, use sub-contractors within or local to the Royal Borough of Kingston. 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.

12. Liability

The Contractor shall indemnify the Council and keep the Council fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Council may sustain or incur or which may be brought or established against it by any person arising out of or in relation to or by reason of any claim or allegation that any of the goods infringes any intellectual property right of any third party, or any claim or allegation that the goods have occasioned personal injury, death or damage to property except to the extent that the same is due to any act or neglect of the Council or of any person for whom the Council is responsible.

13. Insurance

- (i) Without prejudice to its obligation to indemnify the Council under Clause 12 the Contractor shall take out and maintain insurance with a reputable insurance company in respect of claims arising out of its liability referred to in Clause 12.
- (ii) The Contractor shall maintain insurance cover with a reputable insurance company **in accordance with Schedule A.**
- (iii) The Contractor shall on request supply evidence that such policies of insurance remain in force.
- (iv) The Contractor shall undertake to use reasonable commercial efforts to pursue claims under such insurance policies.
- (v) Unless there is a general clause of Indemnity to Principals in the policy or policies the Contractor shall obtain and produce on demand to the Council such endorsement(s) as may be necessary to note the interest of the Council in the policy or policies.

14. Liquidated Damages

If the goods (services/maintenance) are not provided within the time prescribed by the Contract and the value of the Contract exceeds £100,000, the Contractor shall pay liquidated damages as set out in the Form of Tender. The parties agree that the liquidated damages represent the Council's genuine pre-estimate of the damages likely to be suffered by it if the goods are not provided within the time prescribed by the Contract. All said sums shall be paid as liquidated damages and not a penalty.

15. Intellectual Property

Where any specifications or designs of the goods, or any of the goods, have been provided by the Council the copyright, design right or other intellectual property right in them shall remain the property of the Council.

16. Loss and Damage

The Council shall notify the Contractor of any loss or damage to the goods within 7 days of delivery and acceptance of the goods in accordance with Clause 3 above and the goods shall be held for inspection to enable a claim to be made on any carrier. The Contractor, upon receiving notice of any loss or damage to the goods in transit from the Contractor shall repair or replace free of charge such goods damaged or lost in transit and due delivery and acceptance of the goods shall not be deemed to have taken place until replacement or repaired goods have been delivered to the Council in accordance with Clause 3. The Council reserves the right to hold such damaged goods at the Contractor's risk or to return them at the risk and expense of the Contractor.

17. Return of Goods

- (i) The Contractor shall permit the Council to return any goods which are not in accordance with the Contract at any time up to 30 days after delivery notwithstanding that some of the goods may already have been accepted by the Council.
- (iii) Unless within a reasonable time of receipt of notice of rejection the Contractor collects such goods, the Council may cause such goods to be removed and charge the Contractor with the expenses incurred in such removal.

18. Payment

Unless the method of payment is otherwise provided for in the Contract, an invoice for the entire sum due to the Contractor for the delivery of goods shall be delivered or sent to the appropriate Chief Officer of the Council by the Contractor immediately after the dispatch of such goods. No payment for any goods will be made until the appropriate Chief Officer of the Council has certified that the goods have been supplied, delivered and accepted in accordance with the Contract, and until payment has been approved by the Council.

19. Insolvency

Where the Contractor makes a composition or arrangement with his creditors, or becomes bankrupt, or being a company, makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or has a provisional liquidator appointed, or has a winding-up order made, or passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or under the Insolvency Act 1986 or any amendment or re-enactment thereof has an administrator or an administrative receiver appointed the Council may require the goods to be delivered and if this requisition is not satisfied within 7 days from the date of the Council's notice to that effect the Council may by written notice, and without prejudice to any other rights or remedies of the Council, immediately terminate the Contract.

20. Legislation

- (i) The Contractor shall comply with all current and future legislation relevant to the performance of the services including but not limited to: -
 - (a) not unlawfully discriminating on the basis of age, race, religion or belief, gender, gender reassignment, marital status, sexual orientation and disability. Refer to the following legislation: Equality Act 2010.
 - (b) abiding by good health and safety practice based on its responsibilities under any applicable health and safety at work legislation;
 - (c) paying its staff at least the minimum wage in line with the National Minimum Wage Act 1998 and comply with all relevant employment legislation;

- (d) processing all personal data in accordance with the Data Protection Act 1998;
 - (e) ensuring services minimise their impact on the environment and use resources efficiently and put in place measures to mitigate and adapt to climate change. Refer to the following legislation: Climate Change Act 2008, Energy Act 2008 and 2010, Environmental Protection Act 1990.
- (ii) The Contractor shall abide by the Council's codes of practice, rules and procedures notified to the Contractor during the course of the Agreement.

21. Recovery of Money

Whenever under the Contract any sum of money is due from the Contractor the Council may deduct that sum from any sum then due or which at any later time becomes due to the Contractor under the Contract or under any other contract with the Council.

22. Confidential Information and Freedom of Information

- (i) Definitions:

“Confidential Information” means any non-public information that is

obtained by either party by virtue of the Contract and which is subject to a legally enforceable duty of confidence and which is exempt from disclosure by virtue of Section 41 FOIA.

“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 Contract (including the Contract.)

“Request for Information” means a request for information as described in Section 8 of FOIA.

- (ii) 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.
- (iii) The Contractor may identify in writing, information which it considers commercially sensitive, a trade secret or confidential, in which case the Council may consult with the Contractor before releasing the information and have due regard to the Contractor's comments or objections
- (iv) Notwithstanding Clause 22(iii) 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.

- (v) The Contractor understands and acknowledges that the Council may be obliged under FOIA to disclose Information without consulting or obtaining consent from the Contractor.
- (vi) 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.
- (vii) 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.
- (viii) The Council and the Contractor shall bear their own respective costs in relation to any disclosure under FOIA.
- (ix) Subject to clause 22(i) to 22(xii) the parties shall keep secret and not disclose, and shall procure that its employees, servants and agents keep secret and do not disclose, any Confidential Information without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Contract.
- (x) The duty of confidentiality shall not apply to any information:
 - (a) which is in the possession of the party concerned, without restriction as to its disclosure, before receiving it from the disclosing party, or
 - (b) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
 - (c) which is or becomes public knowledge (otherwise than by breach of this Clause).
 - (d) which is liable to disclosure by statute or an order of a court of law.
 - (e) subject to a Request for Information
- (xi) Nothing in this Clause shall prevent the Council:
 - (a) disclosing such information relating to the outcome of the procurement process for the Contract as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with EU directives or elsewhere in accordance with requirements of United Kingdom government policy on the disclosure of information relating to government contracts; or
 - (b) disclosing any information obtained from the Contractor to any other department, office or agency of the Crown or to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract provided that in any such disclosure the Council discloses only the information which is necessary for the purpose concerned

and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- (c) Disclosing any information, which is subject to a Request for Information.
- (xii) Nothing in this Clause 22 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the normal course of its business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of any intellectual property rights.
- (xiii) The Contractor shall not use Confidential Information obtained from the Council for the solicitation of business from the Council or any other part of the Crown.
- (xiv) The Contractor shall notify any sub-contractor of the provisions of this clause and any sub contract shall contain like terms to this Clause.
- (xv) The obligations imposed by this Condition 22 shall continue to apply after the expiry or termination of the Contract.

23. Data Protection

The Council reserves the right to publish all details of items of spend over £500 in respect of the contract, subject to any exemptions under the Data Protection Act where appropriate.

24. PCI DSS Compliance

The Council is required to periodically demonstrate compliance with PCI DSS (Payment Card Industry Data Security Standard). The compliance process requires the Council to undergo an assessment that includes all the system components used to process, store or transmit cardholder data, and any other component that resides on the same network segment as those system components, hereafter known as "System Components inScope". Some of those system components and/or processes may have been outsourced to a Service Provider.

25. Public Statements

The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior written approval of the Council, which shall not be unreasonably withheld, except insofar as information is publicly available by virtue of the Freedom of Information Act 2000.

26. Records

The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the parties, full and accurate records of the performance of the Contract, all expenditure reimbursed by the Council and all payments made by the Council. The Contractor shall grant to the

Council, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

27. Entire Agreement

The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

28. Relationship Between the Parties

Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Council and the Contractor.

29. Transfer of Undertakings (TUPE)

Where, in the opinion of the Council, the Transfer of Undertakings (Employment Protection) Regulations 2006 and the Applied Rights Directive (2001/23/EC) 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.

30. 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 (Employment Protection) Regulations 2006 and Applied Rights Directive (2001/23/EC) are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Clause 30(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 30(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 30(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 30(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 30(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 4.
- (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 4) 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.

31. Vetting of staff and identification

Where the contract involves close contact with children or vulnerable adults the Contractor will ensure that all of its staff and all of the staff of any subcontractor engaged under the contract will have at all times they are employed current Criminal Records Bureau authorisation clearance to undertake their duties under the contract.

32. Dispute Resolution

- (i) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- (ii) A dispute may be referred, with the agreement of both parties, to be settled under the supervision of the Centre of Dispute Resolution of 70 Fleet Street, London, EC4Y 1EU (CEDR).
- (iii) The CEDR shall appoint a mediator to consider the dispute in line with CEDR's recommended procedure at the time.
- (iv) Each will pay its share towards the mediator's costs.
- (v) If the dispute is not settled after being considered by the mediator, it will be referred to the courts.
- (vi) Work under the Contract shall continue without any delay while the dispute is being settled

33. Governing Law

This Agreement shall be governed by and interpreted in accordance with English Law.

34. Third Party Rights

No third party has any rights under the Contracts (Rights of Third Parties) Act 1999 in connection with the agreement.

35. Right of Set Off

The Council may set off any amount owed to the Contractor, under the Agreement, against any sum owed to the Council under the agreement.

36. Force Majeure

- (i) 'Force Majeure' means fire, flood, explosion, sabotage, accident, embargo, riot, civil commotion, government regulation or any disaster that affects either party's ability to meet its responsibilities under the Contract. Force Majeure does not include any circumstance arising from the wilful act, neglect or failure to take reasonable precautions on the part of the party claiming Force Majeure.
- (ii) Neither party shall be liable to the other for any loss arising from a Force Majeure event. However, the parties shall take all reasonable steps to meet their responsibilities under the Contract despite the Force Majeure.
- (iii) The party claiming Force Majeure must immediately tell the other party stating the nature of the circumstances giving rise to Force Majeure and how long Force Majeure will continue and the steps being taken to minimise the effect of Force Majeure.
- (iv) The Contractor cannot claim Force Majeure as a result of the failure or delay of sub-contractor unless the failure or delay of that sub-contractor is a result of Force Majeure on the part of the sub-contractor.
- (v) If Force Majeure continues for a period in excess of three months the either party may determine the contract.

37. Notices

Any notice required to be given under this Contract may be given by electronic mail, facsimile transmission, sending the same by actual delivery, by hand to a Partner, Director or Contract Manager, or by special delivery or by recorded delivery at the address of the party concerned given in this Contract. If sent by special delivery or recorded delivery the notice or further notice shall, subject to proof to the contrary, be deemed to have been received 48 hours after the date of posting (excluding Saturday and Sunday and Public Holidays).

38. Waiver

No failure on the part of the Council to enforce any provision of this Agreement shall result in the Council being taken to have waived, or being precluded permanently or temporarily from enforcing or relying on any provision of this Contract.

39. Whistleblowing

- (i) The Contractor/Supplier will adopt and promote the 'Whistleblowing' policy of the Royal Borough of Kingston upon Thames.
- (ii) 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. (Wrong doing 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).
- (iii) 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 wrong doing within the Supplier and to protect them from victimisation or discrimination.

40. Business Continuity

The Council requires the Contractor/ Supplier to make provision to address the issues of Business Continuity, as set out in the Council's Business Continuity Policy.

41. Risk Management

The Council requires the Contractor/ Supplier to make provision to address the issues of Risk Management, as set out in the Council's Risk Management Policy.

SCHEDULE A

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
INSURANCE:	Professional Indemnity £ Employers' Liability £ Public Liability £ (insert relevant amounts as agreed with the Council's insurance advisor)