



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

***Model Conditions***

***Routine Works, Services and  
Maintenance***

***£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](mailto: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.]

- (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. Other Services**

Nothing in the Contract shall prevent or restrict the rights of the Council to order a service of the same or a similar description to those specified in the Contract from any other supplier.

## **4. Standard Specifications**

Without prejudice to any higher standard required elsewhere in the Contract, all services 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.

## **5. Contract Performance**

The Contractor shall perform the services strictly in accordance with the Contract and to the reasonable satisfaction of the Council and warrants that:

- (i) it is a contractor experienced in performing services of a similar type, nature and complexity to the Council’s Requirements set out in the Contract;
- (ii) it will perform the services in accordance with good up to date practice and accepted trade practices and with all skill, care and attention.

## **6. Intellectual Property**

All royalties or other sums payable in respect of the performance of the services, or goods supplied in the performance of the services, for any patented articles, processes or inventions or in respect of the supply and use for the performance of the Contract of drawings, or models of buildings the subject of copyright (other than drawings or models provided by the Council) shall be deemed to have been included in the Contract sum, and the Contractor shall indemnify the Council from and against all claims, proceedings, damages, costs and expenses which may be incurred by the Council by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes, and inventions or infringing or being held to have infringed copyright.

## **7. Corruption**

- (i) The Council may immediately determine the Contract and exercise its rights under Clause 18 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.

## **8. 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.

## **9. Sub-Contractors**

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 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.



## **10. Liability**

- (i) The Contractor shall be liable for, and shall indemnify the Council against any claim in respect of personal injury to or the death of any person 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;
- (ii) The Contractor shall be liable for, and shall indemnify the Council in respect of damage to any property;
- (iii) The Contractor shall at all times prevent any public or private nuisance or other interference with the rights of any adjoining or neighbouring property and shall, at the Council's option, defend or assist the Council in defending any action or proceedings which may be commenced in relation thereto howsoever such action may arise. For the avoidance of doubt, the Council may issue to the Contractor such instructions as it considers necessary if any injunction is granted, or court order is made, in consequence of any nuisance or interference.

## **11. Insurance**

- (i) The Contractor shall maintain insurance cover **in accordance with Schedule A**, with an insurance company of repute in respect of its liabilities referred to in clause 8;
- (ii) The Contractor shall on request supply evidence that such policies remain in force;
- (iii) The Contractor undertakes to use reasonable commercial efforts to pursue claims under such insurance policies;
- (iv) 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.

## **12. Use of Land and Buildings**

- (i) Where the services are to be performed on the Council's premises the Contractor shall have use of the Council's premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract;
- (ii) The Contractor shall not use the Council's premises for any purpose or activity other than the performance of the services unless given prior written approval by the Council;
- (iii) Should the Contractor require modifications to the Council's premises, such modifications shall be subject to prior written approval by the Council and shall be carried out by the Council at the Contractor's expense. The Council shall undertake approved modification work without undue delay and ownership of such modifications shall rest with the Council;

- (iv) The Contractor shall not deliver any equipment, materials, consumables and plant, other than the Council's property, to be used in performing the Contract ("the Equipment") outside normal working hours without prior written approval by the Council;
- (v) The Contractor shall maintain all Equipment and its place of storage within the Council's Premises in a safe, serviceable and clean condition. All Equipment shall be at the risk of the Contractor and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council;
- (vi) On completion of the Contract the Contractor shall remove all Equipment and shall clear away from the Council's premises all waste arising from the performance of the services and shall leave the Council's premises in a clean and tidy condition. The Contractor shall provide for the haulage or carriage of Equipment to the Council's premises and its off-loading and removal when no longer required;
- (vii) Make good any damage to the premises caused by the Contractor and/or the Equipment.

### **13. Access to Council Premises**

- (i) Where the services are to be performed on the Council's premises the Council shall grant to the Contractor reasonable access to the site;
- (ii) If the Council gives the Contractor notice that a specifically named person whom the Contractor is using, or intends to use, in carrying out the Contract shall not be admitted to the Council's premises, the Contractor shall ensure that that person shall not seek admission and shall not be admitted;
- (iii) If and when so directed in writing by the Council, the Contractor shall within 7 days provide:
  - (a) a list showing the name and address of every person whom the Contractor wishes to be admitted to the Council's Premises and, where required by the Council, every other person who is or may be involved in any other way in the performance of the Contract, the capacity in which each person is or may be so involved, and any other particulars required by the Council;
  - (b) satisfactory evidence as to the identity of each such person; and
  - (c) any other information about each such person, with any supporting evidence required by the Council.
- (iv) Where any persons whom the Contractor wishes to use in carrying out the Contract are required to have passes for admission to the Council's premises the Council shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Any such person who cannot produce a proper pass when required to do so by any appropriate personnel or agent of the Council, or who contravenes

any conditions on the basis of which a pass is issued, may be refused admission to the Council's premises or required to leave the Council's premises if already there;

- (v) The Contractor shall promptly return any pass if at any time the Council so requires, or if the person for whom it was issued ceases to be involved in the performance of the Contract. The Contractor shall promptly return all passes on completion or earlier termination of the Contract.

#### **14. Payment**

- (i) Upon receipt of the Invoice from the Contractor, the Authorised Officer shall determine whether the Service during the Statement period was performed properly.
- (ii) The Council shall pay the sum due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.
- (iii) No payment issued by an Authorised Officer in accordance with the provisions of these Conditions 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.
- (iv) The Council shall be entitled to vary or adjust any invoice submitted by the Contractor to include additions or deductions ascertained in accordance with Condition 2 above.

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.

#### **15. Liquidated Damages**

If the works are not completed within the time prescribed by the Contract, 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 works are not completed within the time prescribed by the Contract. All said sums shall be paid as liquidated damages and not a penalty.

#### **16. Legislation**

- (i) The Contractor shall comply with all current and future legislation relevant to the performance of the services. In particular, but without prejudice to the generality of Clause 15 (i) the Contractor, its employees and agents shall:-

- (a) not unlawfully discriminate on the basis of age, race, religion or belief, gender, gender reassignment, marital status, sexual orientation and disability;
  - (b) abide by good health and safety practice based on its responsibilities under any applicable health and safety at work legislation;
  - (c) pay its staff at least the minimum wage in line with the National Minimum Wage Act 1998 and comply with all relevant employment legislation;
  - (d) process all personal data in accordance with the Data Protection Act 1998;
  - (e) ensure 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.

## **17. Insolvency**

If 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 then the Contract shall forthwith automatically determine, but may be re-instated if the Contractor and Council so agree.

## **18. Termination for Default**

- (i) If, before the completion of the Contract to the satisfaction of the Council, the Contractor shall make default in any one or more of the following aspects:
  - (a) without reasonable cause it wholly or substantially suspends the performance of the services; or
  - (b) it fails to proceed regularly and diligently with the performance of its obligations under the Contract;

the Council may give to the Contractor a notice specifying the default or defaults (“the Specified Default or Defaults”).

- (ii) If the Contractor continues a Specified Default for 14 days from receipt of the notice under Clause 17 (i) then the Council may on, or within 10 days from, the expiry of that 14 days by a further notice to the Contractor determine the Contract either wholly or to the extent of such default. Such determination shall take effect on the date of receipt of such further notice;
- (iii) If the Contractor ends the Specified Default or Defaults, or the Council does not give the further notice referred to in Clause 17 (ii), and the Contractor repeats a Specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Council may, by notice to the Contractor, determine the Contract either wholly or to the extent of such default. Such determination shall take effect on the date of receipt of such notice;
- (iv) A notice of determination under this clause shall not be given unreasonably or vexatiously.

## **19. Consequence of Termination**

In the event of determination of the Contract under this Contract and so long as there has not been re-instatement then:

- (i) the Contractor shall provide the Council with 2 copies of, and the Council may retain, all drawings, details or descriptions as the Contractor has prepared, or previously provided, and drawings and information relating to the Contract completed before the determination of the Contract;
- (ii) the Council may employ and pay other persons to carry out and complete the Contract and to make good any defects and he or they may enter upon any site where the services were to be performed and use all temporary buildings, plant, tools, equipment and all unfixed materials and goods delivered to, placed on or adjacent to such site and intended for incorporation therein (“the Site Materials”), and may purchase all materials and goods necessary for the carrying out and completion of the Contract and for the making good of defects as aforesaid; provided that where the aforesaid temporary buildings, plant, tools, equipment and Site Materials are not owned by the Contractor the consent of the owner thereof to such use is obtained by the Council;
- (iii) except where an insolvency event listed in Clause 16 (other than the Contractor being a company making 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 thereof) has occurred the Contractor shall, if so required by the Council within 14 days of the date of determination, assign to the Council without payment the benefit of any agreement entered into for the purposes of the Contract to the extent that the same is assignable;

- (iv) except where the Contractor has a trustee in bankruptcy appointed or, being a company, has a provisional liquidator appointed or has a petition alleging insolvency filed against it and which is subsisting, or passes a resolution for voluntary winding up (other than for the purposes of amalgamation or reconstruction) which takes effect as a creditors voluntary liquidation the Council may pay any supplier or sub-contractor for any materials or goods delivered or services performed for the purposes of the Contract before the date of determination in so far as the price thereof has not already been paid by the Contractor. Payments made under this clause may be deducted from any sum due or to become due to the Contractor or may be recoverable from the contractor by the Council as a debt;
- (v) the Contractor shall, when required in writing by the Council so to do (but not before), remove from the site where the services were to be performed any temporary buildings, plant, tools, equipment, goods and materials belonging to it and the Contractor shall have removed by their owner any temporary buildings, plant, tools, equipment, goods and materials not belonging to it. If within a reasonable time after such requirement has been made, the Contractor has not complied therewith in respect of temporary buildings, plant, tools, equipment, goods and materials belonging to it, then the Council may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor;
- (vi) subject to the Clause 18 (vii) below any provisions of the Contract which require any further payment or any release or further release of retention monies to the Contractor shall not apply provided that this sub-clause shall not be construed so as to prevent the enforcement by the Contractor of any rights under the Contract in respect of amounts properly due to be paid by the Council to the Contractor which the Council has unreasonably not paid and which have accrued 28 days or more before the date of determination;
- (vii) within a reasonable time of the completion of the Contract and the making good of any defects as may be required by the Council pursuant to Clause 18 (ii) the Council shall prepare a statement of account setting out the amount of expenses properly incurred by the Council including those incurred pursuant to Clause 18 (ii) and of any direct loss and/or damage caused to the Council as a result of the determination ("the Council's Expenses"), the amount of any payment made to the Contractor ("the Contractor Payment"), and the total amount which would have been payable for the services on due completion in accordance with the Contract ("the Outstanding Contractor Payment"). If the sum of the Council's Expenses and the Contractor Payment exceeds or is less than the Outstanding Contractor Payment the difference shall be a debt payable by the Contractor to the Council or by the Council to the Contractor as the case may be;
- (viii) If the Council decides after the determination of the Contract not to have the Contract carried out and completed pursuant to Clause 18 (ii), it shall so notify the Contractor in writing within 6 months from the date of such determination. Within a reasonable time from the date of such

written notification the Council shall send to the Contractor a statement of account setting out:

- (a) the total value of services properly performed by the Contractor at the date of determination;
- (b) 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;

After taking into account any amounts previously paid to the Contractor under the Contract, if the amount stated under Clause 18 (viii) (b) exceeds or is less than the amount stated under Clause 18 (viii) (a), the difference shall be a debt payable by the Contractor to the Council or by the Council to the Contractor as the case may be;

- (ix) If after the expiry of the 6 month period referred to in Clause 18 (viii) the Council has not begun to operate the provisions of Clause 18 (vii) and has not given a written notification pursuant to Clause 18 (viii), the Contractor may require by notice in writing to the Council that it states whether Clause 18 (vii) is to apply and, if not to apply, require that a statement of account pursuant to Clause 18 (viii) be prepared by the Council for submission to the Contractor;
- (x) The provisions of this Clause 18 are without prejudice to any other rights and remedies which the Council may possess.

## **20. Recovery of Money**

Whenever under the Contract any sum of money is due from the Contractor the Council may unilaterally 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.

## **21. 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);

“Requests 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 20 (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 20 (i) and 20 (viii), 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, or
  - (c) which is or becomes public knowledge (otherwise than by breach of this Clause), or



- (d) which is liable to disclosure by statute or an order of a court of law, or
  - (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; or
  - (c) disclosing any information, which is subject to a Request for Information;
- (xii) Nothing in this Clause 20 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 20 shall continue to apply after the expiry or termination of the Contract.

## **22. 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.

## **23. 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 in Scope". Some of those system components and/or processes may have been outsourced to a Service Provider.

#### **24. 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.

#### **25. 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.

#### **26. Entire Agreement**

The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract 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.

#### **27. 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.

#### **28. Transfer of Undertakings (TUPE)**

Where, in the opinion of the Council, the Transfer of Undertaking (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.

## **29. 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 26 (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 26 (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 26 (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 26 (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 26 (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 17;
- (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 17) 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.

### **30. 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.

### **31. 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.

### **32. Governing Law**

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

### **33. Third Party Rights**

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

### **34. 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.

### **35. Force Majeure**

- (i) For the purpose of the Contract, the expression '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 a 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 then either party may determine the contract.

### **36. Notices**

Any notice required to be given under this Contract may be given by sending the same by actual delivery, by hand to a Partner, Director or Contract Manager, electronic mail, facsimile transmission, 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).

### **37. 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.

### **38. 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 ie 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.

### **39. 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.

### **40. 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 **XXXX** until **XXXX** (inclusive) with the option to extend up to **XXXX** at the Council's discretion, giving **three/six months** notice in writing.

COMMENCEMENT DATE: **XX Month** 2013

CONTRACT DOCUMENTS: Specification  
Invitation to Submit Proposals  
Completed Method Statements  
Completed Pricing Schedule  
Conditions of Contract  
Correspondence sent during the mobilisation period.

INSURANCE: Professional Indemnity Insurance - **£2m**  
Employer's Liability - **£10m**  
Public Liability - **£10m (£5m may be acceptable for lower-value contracts)**

Professional Indemnity Insurance £ 2m  
Employers. Liability £ 10m  
Public Liability £ 10m (£5m may be acceptable for lower value contracts)