

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA.

and

NATIONAL CAR PARKS LIMITED

**CONTRACT FOR THE PROVISION OF DECRIMINALISED
TRAFFIC AND PARKING ENFORCEMENT SERVICES**

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CONTRACT FOR THE PROVISION OF DECRIMINALISED TRAFFIC AND PARKING ENFORCEMENT SERVICES

Date: 19 JANUARY 2006

SECTION A

1. PARTIES AND RECITALS

1.1 Parties

- (1). The Council of The Royal Borough of Kensington and Chelsea (the "Council") and
- (2). National Car Parks Limited trading as NCP (Service Provider) whose registered office is at 21 Bryanston Street, London, W1H 7AB and whose registered number is 253240

1.2 Recitals

- 1.2.1 On 06 July 2005 the Council issued its Invitation to Tender to which the Service Provider responded on 02 September 2005.
- 1.2.2 The Council has selected the Service Provider to provide the Services and the Service Provider undertakes to provide the same on the terms set out below.
- 1.2.3 The Parties acknowledge that a major objective of this Contract is to achieve year on year continuous improvement in the provision of the Services to be achieved in the most economically efficient manner possible for the mutual benefit of the Service Provider and the Council.
- 1.2.4 The Parties shall act fairly towards each other in a spirit of trust and mutual co-operation for the achievement of the objective set out in Clause 1.2.3 above. A system of regular review meetings as detailed in Clause 14 and the Partnership Charter will be established for this purpose.
- 1.2.5 The Structure of the Contract will be monitored using Key Performance Indicators KPIs and achievement / non-achievement of targets by the Service Provider will determine the level of remuneration received by the Service Provider each month.
- 1.2.6 The Council is keen that the Service Provider uses innovation to reduce costs and share benefits accruing.
- 1.2.7 Open book accounting will be used and is intended to bring benefits to both Parties.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The terms and expressions used in this Contract shall have the meanings set out below:
- 2.1.1 **"1999 Act"** means the Local Government Act 1999;
- 2.1.2 **"Approved Indices"** means the published NJC Labour Rates for Local Government, and the National Statistics monthly digest of statistics index 18.3 Retail Price Index all items.
- 2.1.3 **"Council's Representative"** and **"Council's Authorised Representative"** means the person appointed and authorised by the Council to represent the Council for the purposes of this Contract, whose details are set out in Schedule 1 (Representatives);
- 2.1.4 **"Bank Holiday"** means Bank and Public Holidays;
- 2.1.5 **"Benchmarking Exercise"** means an exercise carried out by the Parties in accordance with Clause 21 (Benchmarking) the purpose of which is to assess whether the processes and procedures used by the Service Provider to deliver the Services might be improved having regard to processes and procedures used by third parties to deliver similar services in similar circumstances;
- 2.1.6 **"Best Value Performance Plan"** means the best value performance plan which the Council is required to prepare in compliance with its duty to ensure best value in the way in which its functions are exercised having regard to economy, efficiency and effectiveness as defined in section 6 of the 1999 Act;
- 2.1.7 **"Borough"** means the Royal Borough of Kensington and Chelsea;
- 2.1.8 **"General Change in Law"** means A Change in Law which is not a Specific Change in Law;
- 2.1.9 **"Commencement Date"** means the date on which the Service Provider shall commence to provide the full Services as set out and described in this Contract (See Clause 4 herein). The Commencement date for this Contract shall be 4th July 2006;
- 2.1.10 **"Change in law"** means the coming into effect after the Commencement Date of any Directive, Statute, Statutory Instrument, Regulation or bye-law other than one which has been published:
- (a) in a draft bill as part of a Governmental Departmental Consultation Paper;
 - (b) in a Bill or white paper,
 - (c) in a draft statutory instrument or
 - (d) published as a proposal in the Official European Journal
 - (e) any applicable judgement of a relevant court of law which changes a binding precedent.
 - (f) any Guidance (that is any ministerial guidance, circular or best practice note with which the Contractor is legally bound to comply)
- 2.1.11 **"Contract"/ "Contract Documents"** means this contract including the Schedules, Contract Plan and Method Statements;
- 2.1.12 **"Contractor"** means any person with whom the Council enters into a contract to

provide the required services specified under this Contract. For the purposes of this Contract this shall have the same meaning as "**Service Provider**";

- 2.1.13 "**Contract Manager**" means the person appointed and authorised by the Service Provider to represent the Service Provider for the purposes of this Contract, whose details are set out in Schedule 1 herein (Representatives);
- 2.1.14 "**Contract Plan**" means the document submitted by the Service Provider with his Tender to demonstrate his ability to meet the requirements of the Council;
- 2.1.15 "**Contract Term**" means the Initial Contract Term as set out in Clause 4 including, , any extension also as set out in Clause 4 or any reduction as a result of the earlier termination of this Contract for whatever reason;
- 2.1.16 "**Council Software**" means the software owned by the Council and licensed to the Service Provider under Clauses 35.5 and 36 of this Contract and as set out in Schedule 9 herein (Communication Technology).
- 2.1.17 "**Data**" means any data, document or information howsoever stored which is communicated in writing, orally, electronically, or by any other means by the Council to the Service Provider or is obtained or gleaned by the Service Provider during the Contract Term. Data shall further mean any information, data or document which is compiled for the Council by the Service Provider during the Contract Term.
- 2.1.18 "**Day**" means any working day which is not a statutory Bank Holiday;
- 2.1.19 "**De-cant Pound**" means the Pound or Pounds used for storage of certain Designated Vehicles which have been stored at the Council's Vehicle storage Pound at Lots Road London SW10 and to which the Council's Representative shall have required the Service Provider to relocate such Designated Vehicles;
- 2.1.20 "**Deployed Hours**" means the time actually spent carrying out enforcement duties as defined in Schedule 3. The time on duty is that recorded by the PA on the HHC or in the pocket book and shall commence immediately the PA enters the first street in which they have been detailed to enforce their beat and logs this onto the HHC. The time on duty shall end when the PA exits the last street on their beat and logs off the HHC. In the case of an OBPA, time and duty commences when the enforcement vehicle in which they are travelling leaves its base within the Borough at the start of a shift. An OBPA's time on duty ends when their enforcement vehicle returns to base at the end of a shift. For the avoidance of doubt, Deployed Hours does not include:-
- a). meal and refreshment breaks;
 - b). time for changing uniform at the start and end of a shift;
 - c). travel to and from work, or for undertaking any duties other than enforcement duties as defined in the in the Contract Documents ;
 - d). any time a PA spends returning to his operating base due to the incorrect standard of dress, unsatisfactory standard of appearance, failure to have the necessary equipment, or any other matter which is within the control

of the Service Provider or a PA, and which requires the PA to stop undertaking enforcement duties unnecessarily;

- e). training either prior to or during the Contract Term, and
- f). time spent on the provision and maintenance of vehicles to carry out removals or wheel-clamping actions or the operatives maintaining the enforcement vehicles, replenishing fuel or consumables associated with the enforcement vehicles.

2.1.21 **“Despatch Controller”** means the person employed by the Service Provider and having responsibility for the day to day operational control of the Service Provider’s enforcement operations with respect to vehicle removals and vehicle clampings. The Despatch Controller may also be the Radio Controller for the purposes of the Contract.

2.1.22 **“Directive”** means the EC Acquired Rights Directive 77/187, as amended;

2.1.23 **“Dispute Resolution Procedure”** means the procedure to deal with disputes as set out at Clause 25 (Dispute Resolution Procedure);

2.1.24 **“Equipment and Materials”** means all plant, equipment, materials and consumables (including any of the aforementioned being used on the recommendation of the Council) to be used by the Service Provider to provide the Services;

2.1.25 **“Fellow Service Providers”** means any Contractors, Sub-Contractors etc providing services to the Council whose co-operation is required by the Service Provider to ensure that the Services are co-ordinated and facilitated;

2.1.26 **“Force Majeure Event”** means the occurrence after the Tender Acceptance Date of war, civil war armed conflict or terrorism or nuclear, chemical or biological contamination unless the source or the cause of the contamination is as a result of the acts or omissions of the Service Provider or pressure waves caused by devices travelling at supersonic speeds which directly causes either party to be unable to comply with all or a material part of its obligations under the Contract;

2.1.27 **“Gone on arrival”** and **“GOA”** means a vehicle recommended / authorised for removal or clamping (A candidate vehicle) which, by the time that the removal or clamping vehicle arrives at the location at which the candidate vehicle was parked in contravention, the vehicle has been driven away.

2.1.28 **“Hand Held Computer”** and **“HHC”** means the piece of computer equipment comprising the computer and its associated printer and cable (If required) which together form the means to issue PCNs.

2.1.29 **“ Health Emergency Badge”** and **“HEB”** means the replacement for the BMA badge previously provided to Doctors. The HEB is provided to medical practices and is valid only when used on emergency duties;

2.1.30 **“Insurance”** means the policies of insurance which the Service Provider is obliged to take out and maintain pursuant to Clause 24;

- 2.1.31 **“Invitation to Tender”** means the document distributed to organisations bidding for the Contract;
- 2.1.32 **“Intellectual Property”** means all manner of intellectual property rights (including, without limitation, patents, trade marks and service marks, copyright and design rights and know-how);
- 2.1.33 **“KPIs”** means the key performance indicators as set out in Schedule 2 part C, by which the standard of performance of the Service Provider will be measured;
- 2.1.34 **“Lease”** means the document contained in Schedule 12;
- 2.1.35 **“Legislation”** means any Act of Parliament or subordinate legislation within the meaning of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 19 in each case in the United Kingdom;
- 2.1.36 **“Locations”** means the place or places from where the Services and to be provided as set out in Schedule 3 (Specification);
- 2.1.37 **“Maximum Performance Payment”** and **“MPP”** means one twelfth of the sum of the annual corporate overheads and profit margin of the contract.
- 2.1.38 **“Minimum Enforcement Requirement”** means a combination of the MFR which applies to category 2 and 3 roads and the Deployed Hours requirement applicable to Category 1 and special category roads;
- 2.1.39 **“Minimum Frequency Requirement”** and **“MFR”** means the minimum level of enforcement frequencies which the Service Provider is required to achieve in all circumstances for both on-street and off-street patrols;
- 2.1.40 **“On Board Parking Attendant”** and **“OBPA”** means any Parking Attendant deployed by the Service Provider to work on board a vehicle removal or clamping vehicle and having the authority to finally determine whether a vehicle in contravention is eligible for clamping or removal and who, if appropriate, can organise it to be clamped or removed;
- 2.1.41 **“Parking Attendant”** and **“PA”** means an operative of the Service Provider designated as responsible for issuing Penalty Charge Notices (PCNs) having successfully completed the necessary training and been awarded the appropriate qualification certificate;
- 2.1.42 **“Parking Plan”** means the Council's plans relating to parking, on-street parking and traffic and parking enforcement, a copy of which is set out in Schedule 5 (Street Lists, Maps, CPZ, TUPE and Ancillary Information);
- 2.1.43 **“Partnership Charter”** means the document referred to in Schedule 12 of this Contract.
- 2.1.44 **“Party”** means a party to this Contract and "Parties" shall be construed accordingly;
- 2.1.45 **“Pay and Display”** and **“P&D”** means a metering machine or an item of

equipment located in a car park or on a street which accepts payment of parking fees and produces a receipt or ticket to be placed in or on a vehicle parked in a parking bay served by the machine such that a Parking Attendant may observe that the vehicle is parked in full accordance with and not in breach of the parking regulations;

- 2.1.46 **“PCN System”** means the computer system provided to process Penalty Charge Notices issued in accordance with the provisions of the Road Traffic Act 1991 (As amended) which will be used by the Service Provider to transfer PCN data from HHCs used by its PAs;
- 2.1.47 **“Penalty Charge Notice”** and **“PCN”** means a penalty notice issued by a Parking Attendant in respect of any vehicle parked or left in such a manner as to be in breach of the parking regulations;
- 2.1.48 **“Persistent Evader”** means the owner or keeper of a vehicle in receipt of multiple PCNs who consistently fails to pay the charges due;
- 2.1.49 **“Persistent Offender”** means the owner or keeper of a vehicle in receipt of multiple PCNs who usually pays most or all of the charges due within the allowed time;
- 2.1.50 **“Prohibited Act”** means:
- (a) Offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:
 - (i) For doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council, or;
 - (ii) For showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
 - (b) Committing any offence:
 - (i) Under the Prevention of Corruption Acts 1889-1916;
 - (ii) Under legislation creating offences in respect of fraudulent acts, or;
 - (iii) At common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council, or;
 - (iv) Defrauding or attempting to defraud or conspiring to defraud the Council;
- 2.1.51 **“Qualifying change in Law”** means a Specific Change of Law
- 2.1.52 **“Relevant Transfer”** means a relevant transfer for the purposes of TUPE;
- 2.1.53 **“Relief Event”** means any of the following events; (Unless any of the events listed in paragraphs (a) to (d) inclusive arise (directly or indirectly) as a result of

any wilful act, default or breach of the Contract by the Service Provider):

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local council or other like body to carry out works or provide services;
- (c) any failure or shortage of power, fuel or transport;
- (d) any blockade or embargo which does not constitute a Force Majeure Event;

2.1.54 "**Remuneration**" means the amount to be paid by the Council to the Service Provider for the provision of the Services under Clause 7 (Remuneration) which shall be calculated in accordance with the provisions of Schedule 2 (Payment Mechanism and Key Performance Indicators);

2.1.55 "**Review Date**" means the date, being the anniversary of the Commencement Date, on which a review of the payments to the Service Provider is undertaken in relation to the Index / Indices stipulated by the Council in Clause 54 of this Contract or such other Index / Indices stipulated by the Council at its sole discretion as a result of representations to vary the Indices in Clause 54 of this Contract by the Service Provider;

2.1.56 "**Senior Executive**" means the Council's Chief Executive or his nominated deputy

2.1.57 "**Service Provider**" means any person with whom the Council enters into a contract to provide the required services specified under this Contract. For the purposes of this Contract this shall have the same meaning as "**Contractor**";

2.1.58 "**Service Provider Software**" means the software owned by the Service Provider and licensed to the Council under Clause 35 of this Contract and as set out in Schedule 9 herein (Communication Technology);

2.1.59 "**Services**" means the whole or any part of the services set out in Parts 1 and 2 Schedule 3 (Specification) to be provided by the Service Provider to the Council under this Contract;

2.1.60 "**Specific change in Law**" means any change of law, which specifically affects the Service or any part thereof or imposes a general statutory obligation on the Council to its staff or the public generally, that may lawfully and properly be discharged by the Service Provider under the terms of the Contract.

2.1.61 "**Target Costs**" means the estimated costs to be incurred by the Service Provider as calculated in accordance with Schedule 10 (Target Costs) and for the purposes of calculating the Remuneration shall be deemed to include all of the costs of providing the Services. Except where provide for under the Contract the Service Provider shall not be entitled to an increase in the Remuneration based on unforeseen circumstances or contingencies however incurred or arising;

- 2.1.62 **“Schedule”** means any Schedule to the Contract;
- 2.1.63 **“Schedule of Rates”** means the priced Schedule of Rates, in Schedule 10 of this Contract
- 2.1.64 **“Special Parking Area”** and **“SPA”** means the geographical area within the Borough where parking enforcement is decriminalised and where parking restrictions are enforced by the Council in accordance with the provisions of the Road Traffic Act 1991 (As amended);
- 2.1.65 **“Specification”** means the Specification set out in Schedule 3;
- 2.1.66 **“Standard of Dress”** means the provision of and wearing in the proper manner of the approved uniform commensurate with the work performed by an employee of the Service Provider;
- 2.1.67 **“Suspension”** means the result of a specific request to suspend the conditions of the relevant Traffic Management Order. Reasons for the suspension may include but are not limited to, carriageway works, Police requests, construction work, weddings and funerals. An administrative charge may be levied for effecting a suspension dependant upon the reason for the suspension;
- 2.1.68 **“Tender”** means the Tender for the provision of the Service submitted by the Service Provider;
- 2.1.69 **“Tender Acceptance Date”** means the date that the Council’s letter of acceptance is posted to the Service Provider in accordance with the Invitation to Tender.
- 2.1.70 **“Tenderer”** means any person who is invited to and does submit a Tender;
- 2.1.71 **“TRACE”** means the public enquiry service operated by the Association of London Government (ALG) to provide information on the location of vehicles towed away by the London Boroughs;
- 2.1.72 **“Traffic Management Order”** and **“TMO”** means a written Order made by the Council, which defines the traffic regulations to be enforced within the Borough. In relation to parking, this means the hours and areas which are or which will become subject to restrictions and where parking is permitted;
- 2.1.73 **“TUPE”** and **“TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 1981 and the European Acquired Rights Directive 77 / 187 and any amendments thereto;
- 2.1.74 **“Transfer Date”** means the Commencement Date;
- 2.1.75 **“Transferring Employees”** means the employees of the Council whose contracts of employment become, by virtue of the application of TUPE, contracts to be transferred from the employment of the Council, or previous Service Provider to the Service Provider as set out in Schedule 5 (Street Lists, Maps, CPZ, TUPE and Ancillary Information.);
- 2.1.76 **“Uniform”** means the appropriate uniform:-

- (a) to be worn by Personnel during any and all periods when any Personnel are carrying out any part or parts of the Service;
- (b) complying with the Specification and with Chapter 3 paragraphs 12 –14 (Inclusive) of COPPE and including the Council’s name in a prominent position, and;
- (c) in all cases being readily distinguishable from uniforms worn by the Police, metropolitan Police PCSOs and Traffic Wardens.

2.1.77 **“Value Added Tax”** and **“VAT”** means value added tax charged under the Value Added Tax Act 1983 or any regulations made thereunder or any statutory modification or re-enactment thereof and for the avoidance of doubt shall also include any interest, fine, default, surcharge or penalty in respect of value added tax;

2.1.78 **“Vehicle”** means any car, commercial vehicle (Including HCVs) motorcycle, sidecar, tricar, motor scooter, caravan, and trailer, whether runners or non-runners (Including vehicles that cannot be towed) vehicle shells only or parts of the foregoing categories;

2.1.79 **“Vehicle Drive Away”** and **“VDA”** means a vehicle parked in contravention of the regulations which should be issued with a PCN but where the driver has returned to the vehicle and driven off before the PCN can be served;

2.1.80 **“Vehicle Pound”** and **“Pound”** means the location provided by the Council for the Service Provider to manage and use for the storage and recovery of vehicles which have been removed under this Contract;

2.1.81 **“Vehicle Registration Mark”** and **“VRM”** means the unique number of the vehicle as registered at the Government “Driver Vehicle Licence Authority” (DVLA) and displayed on number plates at the front (Normally) and the rear of the vehicle and which is also shown on the Vehicle Excise Licence;

2.1.82 **“Vehicle Release Receipt”** means the document issued at the Vehicle Pound to motorists reclaiming their vehicles;

2.1.83 **“Working Hours”** means the hours during which the Services are to be provided as set out in Schedule 3 (Specification).

2.2 Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

2.3 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

2.4 References to Clauses and Schedules are, unless otherwise provided, references to the Clauses and the Schedules to this Contract.

2.5 In the event of any conflict or inconsistency between any provision of the Clauses and

any provisions of the Schedules, the Clauses shall prevail. In the event of any conflict or inconsistency between the Schedules, the provisions of Schedule 3 (Specification) shall prevail over the provisions of all other Schedules unless and only to the extent that any other Schedule expressly states that a particular requirement of Schedule 3 (Specification) shall not apply.

- 2.6 Except as otherwise expressly provided in this contract, all remedies available to the Service Provider or to the Council under this contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

3. REPRESENTATIVES

3.1 Council's Representative

3.1.1 The Council's Representative is as set out in Schedule 1 (Representatives).

3.1.2 The Council's Representative shall liaise with and give instructions to the Service Provider and his officers, employees and agents in relation to all matters concerning the performance by the Service Provider of his obligations under this Contract and to determine any matters or issue any notices as may be the function of the Council's Representative under this Contract.

3.1.3 The Council's Representative may notify the Service Provider that the Council has nominated certain officers as Instructing Officers. An Instructing Officer shall be entitled to instruct the Service Provider to carry out work that is part of the Services.

3.2 Contract Manager

3.2.1 The Contract Manager is as set out in Schedule 1 (Representatives).

3.2.2 The Contract Manager shall have the power on behalf of the Service Provider in connection with any matter relating to the performance of the Services and exercise the rights, functions and obligations that are vested in him under this Contract.

4. COMMENCEMENT DURATION AND COMPLETION

4.1 Commencement Date and Contract Term:-

4.1.1 The rights and obligations of the parties under this Contract shall take effect on the Tender Acceptance Date and shall continue until 3rd of July 2010 (The Initial Contract Term).

4.1.2 The Service Provider will commence the Service on the Commencement Date.

4.1.3 The Initial Contract Term may be extended by the Council on the same terms and conditions as follows:

- (a) for a period of three years until 2nd of July 2013 (The First Extension Period) by no less than 6 months prior written notice expiring at the end of the Initial Contract Term;

- (b). for a further period of three years from 2nd of July 2013 until 1st July 2016 (The Second Extension Period) by no less than 6 months prior written notice expiring at the end of the First Extension Period

4.2 Service Provider's Pre-Commencement Obligations.

- 4.2.1 No later than 14 days following notification of the acceptance of his Tender convene a pre-service commencement meeting which shall be attended by senior representatives of the Service Provider (including the Contract Manager), representatives of the Council, representatives of the former Service Provider (if applicable) and representatives of any Fellow Service Providers as the Council shall determine necessary. At the pre-service commencement meeting the parties shall review the Service Provider's Contract Plan for the implementation of the Services, transitional arrangements and handover necessary for the smooth, seamless and successful transition of the Services from any former Service Provider to the Service Provider. The Contract Plan shall be revised and agreed and will form the basis on which the Contract is implemented.
- 4.2.2 If at any time prior to the Commencement Date it should appear to the Council's Representative that the Service Provider's progress does not conform to the Contract Plan the Council's Representative may require the Service Provider to modify it
- 4.2.3 The Service Provider shall liaise with Fellow Service Providers to ensure that any Service transition is carried out successfully. In addition, the Service Provider shall arrange and attend as many meetings with the Council, the former Service Provider and any Fellow Service Providers as are reasonably necessary for the successful handover of the Services.
- 4.2.4 To the extent that the Service Provider has not already done so in his Tender and the same (where applicable) has been bound into the Contract, The Service Provider shall carry out or provide to the Council's satisfaction no later than 14 days prior to the Commencement Date: -
 - (a) Proof of insurances held;
 - (b) The Guarantee/Bond if applicable;
 - (c) The Contract Plan (revised as necessary during the meetings outlined in Clause 4.2 above) setting out in practical terms how the Service Provider intends to provide the Services;
 - (d) Measures to ensure that the Service Provider, his staff and agents are fully familiar with the provisions of the Contract, their obligations under the Contract, the Council's computer systems and the identities of all relevant Fellow Service Providers;
 - (e) Actions necessary to comply with all his obligations under TUPE;
 - (f) The identities, positions and responsibilities and contact details of all

relevant staff including, in particular, the Contract Manager and authorised deputies together with duly signed confidentiality agreements (as set out in the Contract) by each member of staff;

(g) Sign the Lease.

4.3 The Council shall:

- 4.3.1 Notify to the Service Provider in writing the names and contact telephone numbers of the person who is to be Council Representative as at the Commencement Date and the persons holding such other positions as required in Schedule 1 (Representatives);
- 4.3.2 Provide the Service Provider with such Data and information that it holds title to as the Service Provider may reasonably require in order for him to commence the Services;
- 4.3.3 Provide all reasonable assistance to the Service Provider prior to the Commencement Date, to include, where possible, the following:
 - (a) Allow the Service Provider to interview appropriate Council Staff
 - (b) Report to the Service Provider on current issues, which may affect the Services.

4.4 Premises

- 4.4.1 Where premises are provided by the Council for the Service Provider to use to carry out the Services the terms of occupation are contained in Schedules 3 (Specification) and 12 (The Lease) and such premises shall be used exclusively for the Services and shall not be used for any other purpose.
- 4.4.2 The Council's Representative shall be made aware as soon as possible of any defect, shortfall or any other consideration related to the premises provided by them for the use of the Service Provider.
- 4.4.3 On completion of the Contract or earlier termination under Clause 26 the premises shall be evacuated within 14 days and reinstated to a standard compatible with their state when handed over to the Service Provider.
- 4.4.4 Whilst on Council premises all staff shall comply with such reasonable rules regulations and other requirements as may be in force in respect of the conduct of persons attending and working in Council premises.

4.5 Transfer of Responsibility at the end of the Contract Term

- 4.5.1 The Service Provider shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a new contractor or to the Council as the case may be and the Service Provider shall take no action at any time during the Contract Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make difficult such transfer including but not limited to; preparation of a demobilisation plan at least six months before the expiry of the Contract Term The plan will be subject to the

approval of the Council's Representative and once approved may be included in any new tender documents issued by the Council.

- 4.5.2 down-loading any computer records relevant to the Contract and the Services provided which are not otherwise held on the PCN system so that they may be retained for operational use by the Council.
- 4.5.3 Returning to the Council all street equipment, Notice issuing equipment, and associated hardware and software issued to the Service Provider during the period of the Contract
- 4.5.4 Transferring to the Council all hard copy information and records that need to be retained.

SECTION B

5. THE SERVICE

- 5.1 The Service Provider shall provide the Services at the Locations during the Working Hours for the whole of the Contract Term in accordance with the Council's requirements as set out in Part 1 of Schedule 3 (Specification) and the terms of this Contract. The Service Provider shall provide the Services at the Locations during the Working Hours from the dates of implementation agreed by the Council and the Service Provider in accordance with the Council's requirements as set out in Part 2 of Schedule 3 (Specification) and the terms of this Contract.
- 5.2 In providing the Services, the Service Provider shall comply with the Council's parking policies set out in Schedule 10 (Council Policies) and the Contract Plan
- 5.3 In providing the Services, the Service Provider shall comply with and take into account all applicable laws, bye laws, traffic regulation orders, enactments, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
- 5.4 The Service Provider shall throughout the contract cooperate with all other agencies on request by the Council. The agencies may include the Metropolitan Police and Transport for London.

6. KEY PERFORMANCE INDICATORS

- 6.1 Information relating to the payment mechanism, performance related pay scheme and the Key Performance Indicators (KPI's) is set out in Schedule 2 (Payment Mechanism and Key Performance Indicators).
- 6.2 The payment received by the Service Provider depends on his achievement against the KPIs outlined in Clause 6.1.
- 6.3 The Service Provider shall not be liable for any failure to achieve the KPIs and shall not be subject to any deduction to the extent that the failure results from:
 - 6.3.1 A breach by the Council of any of its obligations under this Contract;

- 6.3.2 A Force Majeure Event, or;
- 6.3.3 A Relief Event.
- 6.4 If at any time the Service falls below the standard set in accordance with the KPIs, other than where such failure is due to a Relief Event, the Service Provider shall:
 - 6.4.1 Accept an adjustment to the Remuneration in the manner specified in Clause 7.2;
 - 6.4.2 Arrange such additional resources as are necessary to perform the Services to achieve the KPIs and re-perform any non-conforming Services as early as practicable thereafter with no change to the Target Cost.

7. REMUNERATION

- 7.1 In consideration of the provision of the Services, the Council shall pay the Remuneration to the Service Provider.
- 7.2 The Remuneration shall be paid monthly as a proportion of the Target Costs adjusted in accordance with Schedule 2 (Payment Mechanism and Key Performance Indicators) and Clause 9 (Payment Terms) and Clause 10 (Change to the Services and/or the Remuneration), together with an amount related to the achievement of Key Performance Indicators as described in Schedule 2 (Specification), less any deductions permitted under the Contract.
- 7.3 If the failure to achieve the KPIs is only partially as a result of any matter falling within Clause 6.3, the Remuneration shall be adjusted to such extent as the Parties agree.
- 7.4 In addition to the monthly payments as outlined in Clause 7.2 the Service Provider may qualify for a further Remuneration generated by a Share of the savings achieved by his innovation or efficiency as described in Schedule 9 (Target Cost Schedule).
- 7.5 The Council's ability to monitor the Contract must be based on sustainable, accurate and realistic operational performance and on clear and robust financial information. It is in both parties mutual benefit to share such information in confidence in order to develop trust and to better understand of the pressures and market forces exerted on each of them. The Council will therefore seek to develop and improve a system of 'open book accounting' the format of which will be agreed during the negotiations and set out in this Contract.
- 7.6 Without prejudice to the rest of this Clause 7, the Service Provider shall, at the request of the Council, provide to the Council a certificate of costs (The "Certificate of Costs") within twenty one (21) Days of such request, provided that the Council may not request a Certificate of Costs more than once in any six months of the Contract Term unless a Change is agreed under the Change Control Procedure.
- 7.7 The Certificate of Costs shall set out the Service Provider's direct costs, and overheads in providing the Services over the preceding year of the Contract Term, including details of the following:-
 - 7.7.1 actual capital expenditure, including capital replacement costs;

- 7.7.2 actual operating expenditure relating to the provision of the Services, with an analysis showing the costs of staff, consumables, sub-contracted and bought-in services;
 - 7.7.3 all interest, expenses and other third party financing costs incurred in relation to the Services.
 - 7.7.4 Details of the overhead recoveries that have been made in relation to the Services, and;
 - 7.7.5 the Target Cost.
- 7.8 Following receipt of the Certificate of Costs, the Service Provider shall provide to the Council such additional information as it may reasonably request so that the Council can verify the accuracy of the Certificate of Costs.

8. VALUE ADDED TAX ("VAT")

- 8.1 The Council shall pay any VAT on the Remuneration at the rate and in the manner prescribed by law from time to time.
- 8.2 The Service Provider shall provide the Council with any information reasonably requested by the Council in relation to the amount of VAT chargeable in accordance with Clause 7.6.
- 8.3 Where any amount is calculated by reference to any sum that has or may be incurred under this Contract, the amount shall include any VAT to the extent the such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.

9. PAYMENT TERMS

- 9.1 The Service Provider shall submit an application for payment of the Remuneration to the Council's Representative within seven (7) Working Days of the end of each payment period set out in Schedule 2 (Payment Mechanism and Key Performance Indicators).
- 9.2 The application for payment of the Remuneration shall be in the form of a pro-forma invoice in three distinct parts covering:-
 - 9.2.1 the Services Provided and the monthly proportion of Target Cost;
 - 9.2.2 changes effected under the Change Control Procedures and details of any relief due to a Force Majeure Events or a Relief Event;
 - 9.2.3 the Performance Related Payment, which shall be supported by a report setting out any adjustments for achievement or non-achievement of KPIs.
- 9.3 An application for a Share of savings on Target Cost will be dealt with as described in Schedule 9 (Target Cost Schedule).
- 9.4 In the event that the entitlement of the Service Provider to any amount is disputed the Council's Representative shall notify the Service Provider within fourteen (14) Days of receipt of the application for payment giving reasons why the amount is disputed. For the

avoidance of doubt, the Council may withhold payment of any amount disputed.

- 9.5 Should the Council's Representative require any adjustment to the Remuneration set out in the application the Council's Representative shall inform the Service Provider in writing of the reason for and effect of any such adjustment at the same time as certifying the application.
- 9.6 The Council shall pay the Remuneration (subject to any adjustment in accordance with Clause 7.2) to the Service Provider within thirty (30) Days of receipt of the invoice for payment of the Remuneration under Clause 7.2 and Clause 7.4.
- 9.7 Interest is payable on late payment of the Remuneration at the rate of 2% above the Lloyds Bank PLC base rate.

10. CHANGE TO THE SERVICES AND / OR THE REMUNERATION

- 10.1 Either Party may request a change to the Services and/or the Remuneration in accordance with the Change Control Procedures set out in Schedule 4 (Change Control Procedures).
- 10.2 Any dispute relating to the calculation or payment of the Remuneration under Clause 9 and Clause 10 shall be resolved in accordance with the Dispute Resolution Procedure.
- 10.3 Any changes to the Target Cost as described in Schedule 9 (Target Cost Schedule) will be handled through the Change Control Procedures.

SECTION C

11. EQUIPMENT AND MATERIALS

- 11.1 Unless otherwise specified, the Service Provider shall provide all Equipment and Materials necessary for the provision of the Services and shall be responsible for the costs of providing such Equipment and Materials.
- 11.2 The Service Provider shall ensure that all Equipment and Materials are:
- 11.2.1 Suitable for the purposes for which they are intended;
 - 11.2.2 Maintained in a safe, serviceable and clean condition and replaced as necessary, and;
 - 11.2.3 Adequately insured.
- 11.3 On expiry of the Contract Term or earlier termination of the Contract, the Council may on request purchase for market value the Equipment and Materials or any part of the Equipment and Materials, which are used exclusively in the provision of the Services, all street equipment, Notice issuing equipment, and associated hardware and software issued to the Service Provider during the period of the Contract will remain the property of the Council and must be returned to the Council.

12. TUPE

- 12.1 Application of TUPE

12.1.1 The Parties agree that the commencement of provision of the Services shall constitute a Relevant Transfer and that on the Transfer Date the contracts of employment of the Transferring Employees shall be transferred to the Service Provider in accordance with The provisions of TUPE to the intent and effect that, with effect from the Transfer Date each of the Transferring Employees shall be treated as if he / she had at all times been employed by the Service Provider upon the same terms and conditions as those which applied to his or her employment by the Council immediately prior to the Transfer Date. The Service Provider shall be deemed to have satisfied itself concerning its liabilities under TUPE and shall be deemed to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or effecting his tender Emoluments and Outgoings

12.1.2 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise.

12.2 Pensions

12.2.1 The Service Provider shall ensure that all Transferring Employees are afforded pension rights in accordance with their TUPE and employment law obligations generally.

12.3 Communication of Service Provider's measures under TUPE

12.3.1 The Service Provider shall, within ten (10) Days of receiving a request from the Council, furnish to the Council any information which is reasonably necessary concerning any measures (within the meaning of TUPE and the Directive) that the Service Provider intends to take in relation to any Transferring Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this Clause 12.

12.4 Indemnities

12.4.1 The Service Provider shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the Service Provider in relation to any Transferring Employee, on or after the Relevant Transfer.

12.4.2 The Service Provider shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff associated or other employee representative under TUPE or the Directive and, whether any such claim arises or has its origin before or after the Relevant

Transfer .

12.5 TUPE Compliance on Termination

12.5.1 During twelve (12) months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract and within (15) fifteen calendar days of being so requested to do so, the Service Provider shall fully and accurately disclose to the Council or any other person at the direction of the Council any and all information in relation to all persons engaged in providing the Services including:

- (a) A list of employees employed by the Service Provider in the provision of the Services;
- (b) A list of agency workers or agents engaged by the Service Provider in the provision of the Services;
- (c) The total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons and
- (d) The terms and conditions of employment of such persons.

12.6 During the twelve (12) months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

12.6.1 Vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;

12.6.2 Materially increase or decrease the number of employees employed in connection with the Services, or;

12.6.3 Assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services.

13. STAFFING

13.1 Staff Training

13.1.1 The Service Provider shall at all times employ in and about the provision of the Services sufficient staff who are properly and sufficiently trained, qualified, competent, careful, skilled, honest and experienced to ensure that the Services are provided at all times and shall ensure that adequate training is provided and maintained to all such staff to ensure that they are comprehensively trained to perform to the standard required especially in regard to:

- (a) The task or tasks to be performed;
- (b) All relevant Council guidelines;
- (c) All relevant provisions of this Contract;

- (d) All statutory requirements relevant to the Services; and
- (e) The need to maintain the highest standards of courtesy and consideration.

13.2 The Service Provider shall ensure that all parking attendants have a minimum Qualification as described in Schedule 3 (Specification) equal to the British Parking Association, ALG, or other recognised accreditation standard.

13.3 The Service Provider agrees:

13.3.1 that where any staffing or skill levels have been agreed as part of the Council's requirements as set out in Schedule 3 (Specification), those levels will be maintained throughout the Contract Term;

13.3.2 that where any named staff have been agreed to be provided as part of the Council's requirements as set out in of Schedule 3 (Specification), those staff will be assigned to work on this Contract;

13.3.3 that he has sufficient reserves of trained and competent staff within each skill level to provide the Services including sufficient reserves to provide cover for staff holidays, staff sickness, emergencies or any other absence, and;

13.3.4 that he will replace promptly any staff who are assigned to this Contract and who cease to be in his employment or under his control for whatever reasons and that such replacements shall have the broadly equivalent skill levels and shall in every way be suitable for the performance of the Services.

13.4 Access to Council Premises

13.4.1 The Council shall give access to any premises occupied by or on behalf of the Council to any person employed or engaged by the Service Provider, provided that the Council may refuse admission of such a person if such admission would present a security risk.

13.4.2 Any person employed or engaged by the Service Provider who requires access to any premises occupied by or on behalf of the Council shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside those premises.

13.5 Removal of Staff

13.5.1 where the Council becomes aware of a complaint against a member of the Service Provider's staff who is involved in the provision of the Services, the Council's Representative shall inform the Contract Manager of the nature of the complaint and provide supporting documentation where possible.

13.5.2 on receipt of a notice under Clause 13.5.1 above, the Contract Manager shall meet with the Council's Representative to discuss measures to resolve the complaint and to avoid future complaints.

13.5.3 where the Council's Representative deems that the complaint justifies the removal of a member of the Service Provider's staff from the provision of the Services, (

and has explained and disclosed his reasons to the Service Provider) the Service Provider shall immediately remove or procure the removal of that person from the provision of the Services and shall provide or procure the provision of a suitable replacement.

13.6 Checks on Staff

13.6.1 If the circumstances under which the Services are provided are such that the Service Provider's employees are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 (for the purposes of this sub-Clause the "Act"), by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (for the purposes of this sub-Clause the "Order"), then the Service Provider shall use reasonable endeavours to ensure that the Service Provider's employees shall provide information in accordance with the Act and Order about convictions which would otherwise be spent under the provisions of the Act.

13.6.2 The Service Provider shall disclose to the Council's Representative the names and addresses and sufficient details of all convictions of the Service Provider's employees to enable proper checks to be made and in the event that such checks reveal that members of the Service Provider's employees have relevant convictions, the Council's Representative may deem that such persons should be removed from the provision of the Services.

13.6.3 any dispute in relation to this Clause 13 shall be resolved in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the relevant individual shall not continue to provide the Service pending the outcome of the dispute.

SECTION D

14. REVIEW MEETINGS

14.1 The Council's Representative and the Contract Manager shall hold review meetings at monthly intervals and at any other times as required by the Council.

14.2 The purpose of the review meetings is to:

14.2.1 Review the previous months KPIs;

14.2.2 In the event that the Service Provider's performance measured by the KPIs is static or falling then formulate an agreed plan for improving performance;

14.2.3 Resolve problems which may otherwise prejudice the performance of the Parties' obligations under this Contract;

14.2.4 Explore and agree improvement in methods of improving service quality, reducing costs and achieving continuous improvement and

14.2.5 Provide an opportunity for either Party to raise issues which could cause disruption to the provision of the Services or otherwise prejudice this Contract develop and review any objective data as to the level of public observance of on street traffic and parking restrictions and consider whether any change in service or performance criteria are necessary to meet the Councils Compliance Targets.

- 14.3 In addition to the review meetings held under Clause 14.1, either party may, no later than 2 months prior to the expiry of the 3rd . and 6th. years of the Contract (The Review Dates), request a review of the terms of this Contract .Each review shall take no longer than 2 months and be completed at least one month prior to the relevant Review Date. The purpose of the review shall be to consider whether any future modifications to the Contract are necessary taking into account the KPIs, the Target Costs, the Remuneration, and any other objective comparable data as to the quality and standard of service, performance, delivery and price (with the provision of the same or similar services) Either party may refuse any resulting modification where these are outside of their legal capacity, breach any relevant law or guidance or good industry practice or are not otherwise in accordance with Clause 16 of this Contract. Minutes of such meetings shall be taken by the Service Provider and agreed between the parties.
- 14.4 Either party may request a review under Clause 14.3 no earlier than 6 months following (or any other time by agreement) any order made by Transport for London under sections 295 and 420 of the Greater London Authority Act 1999 extending road user congestion charging (the Congestion Charge) to cover all or any part of the Council's area. Any changes resulting from the meetings described in this Clause 14 shall be effected through the Change Control Procedures.

15. PROVISION OF INFORMATION

- 15.1 The Council shall provide the Service Provider with the information set out in Schedule 3 (Specification).
- 15.2 The Council shall promptly notify the Service Provider of any proposed changes to Bye-Laws or traffic regulation orders which may affect the provision of the Services.
- 15.3 The Service Provider shall keep and maintain such necessary data and information and Shall complete or provide such assistance as the Council may reasonably require by written notice to the Service Provider to enable the Council to complete all official returns including, but without limitation, the following:
- 15.3.1 returns to any central government body or properly authorised agency of central government, and;
 - 15.3.2 information required by any statutory body or compliance with any statute or Statutory instrument or for any other purpose connected with the Contract.
- 15.4 The Service Provider shall at all times maintain separate records of the following:
- 15.4.1 full particulars of the costs of performing the Services, including those related to finance, investment and maintenance;
 - 15.4.2 a summary of any of the costs referred to in Clause 15.4.1, including details of any funds held by the Service Provider specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Service Provider of his obligations under this Contract;
 - 15.4.3 a full record of all incidents relating to health, safety and security which occur during the Contract Term;

- 15.4.4 a full record of all maintenance procedures carried out during the Contract Term, and;
- 15.4.5 such other records as the Council may reasonably require having regard to the cost to the Service Provider of maintaining and providing such records.
- 15.5 The records referred to in this Clause 15 shall be retained for a period of at least six (6) years after the Service Provider's obligations under this Contract have come to an end.
- 15.6 All information referred to in this Clause 15 is subject to the obligations set out in Clause 39 (Confidentiality).
- 15.7 Upon the expiry or termination of this Contract, and in the event that the Council wishes to enter into another contract for the provision of the Services and irrespective of the identity of any replacement provider of the Services, the Service Provider shall comply with all reasonable requests by the Council to provide information relating to this Contract.

16. MONITORING

- 16.1 The Service Provider shall provide such facilities as the Council may reasonably require for its representatives to visit any place where the records maintained under this Clause 16 are held and to examine such records, and shall permit such records to be examined and copied by representatives of the Council.
- 16.2 The Service Provider shall at all times during the Contract Term allow the Council's Representative access on reasonable notice during normal working hours (save in the case of emergency where no notice shall be required) to the Locations for the purpose of:
- 16.3 Monitoring and inspecting work being performed in order to provide the Services;
- 16.4 Inspecting any or all records and documents in the possession custody or control or held by the Service Provider in connection with the provision of the Services;
- 16.5 Interviewing Service Provider employees in connection with the provision of the Services, and;
- 16.6 Inspecting the Equipment and Materials, systems and procedures used by the Service Provider to provide the Services.
- 16.7 The Service Provider's attention is also drawn to Schedule 2 (Payment Methods and Key Performance Indicators) and Schedule 3 (Specification), which should be read in conjunction with this Clause 16.

SECTION E

17. PARTNERING PRINCIPLES

- 17.1 The Parties accept that a co-operative and open relationship is needed for success and that partnering will achieve this when carrying out their obligations under this Contract.
- 17.2 The Parties shall use the meetings described in Clause 14 (Review Meetings) and under the Partnership Charter to help to resolve problems, which may otherwise prejudice the

performance of the Contract.

18. QUALITY MANAGEMENT

- 18.1 If the Service Provider is qualified to ISO BS EN ISO 9000:2000 then this Contract shall be performed in accordance with the procedures set out in his Quality Manual.
- 18.2 In the event that the Service Provider is not qualified to BS EN ISO 9000:2000 then the Service Provider shall at the Commencement Date have in place, and throughout the Contract Term maintain in relation to his performance of the Services, a system of quality assurance and improvement to be agreed with the Council.

19. ENVIRONMENTAL MANAGEMENT

- 19.1 If the Service Provider is qualified to BS ISO 14001 then this Contract shall be performed in accordance with the procedures set out in his Environmental Management System.
- 19.2 In the event that the Service Provider is not qualified to BS ISO 14001 then the Service Provider shall at the Commencement Date institute, and throughout the Contract Term maintain in relation to his performance of the Services, a system designed to ensure good environment practice incorporating all relevant Council environmental strategies.
- 19.3 The Service Provider shall endeavour to recycle relevant materials and shall dispose of all Waste pursuant to the Environmental Protection Act 1990 and the Producer Responsibility Obligations (Packaging Waste) Regulations.
- 19.4 The Service Provider shall ensure that every member of staff engaged by him in and about the provision of the Services is made aware of the Council's environmental policies and their roles and responsibilities in achieving conformity with the environment policy and good environmental practice. The Service Provider shall support and assist the Council in meeting the aims laid down in the Council's Environmental Policy Statement

20. CONTINUOUS IMPROVEMENT

- 20.1 In providing the Services, the Service Provider shall have regard throughout the Contract Term to making arrangements in consultation with the Council to secure continuous improvement in the way in which the Services are provided. In particular, but without prejudice to Clause 20, the Service Provider shall at all times in the performance of the Contract demonstrate to the satisfaction of the Council that he understands, and has incorporated, the principles of Best Value into his operation and shall perform the Contract in a manner consistent with these principles with a view to securing continuous improvement.

21. BENCHMARKING

- 21.1 If requested by the Council, the Service Provider shall carry out a Benchmarking Exercise in support of the Council's Best Value Performance Plan in relation to Parking Services.
- 21.2 The Service Provider shall commence any Benchmarking Exercise within three (3) months of the Council's request.

- 21.3 In connection with any Benchmarking Exercise, the Council and the Service Provider shall meet as often as reasonably necessary to assess whether the processes and procedures used by the Service Provider to deliver the Services concerned might be improved having regard to the processes and procedures used by other Service Providers who are in a position to provide the Services.
- 21.4 The Council and the Service Provider shall each bear their own costs in carrying out the Benchmarking Exercise including the costs of any third party, which either may commission.
- 21.5 If the results of the Benchmarking Exercise disclose that the processes and procedures used by the Service Provider to deliver the Services or the Remuneration might be improved having regard to the processes and procedures used by and the prices charged by other Service Providers who are in a position to provide the Services, then the Council may request a variation to the Services in accordance with the Change Control Procedures.

SECTION F

22. WARRANTIES AND REPRESENTATIONS

- 22.1 The Parties each warrant and represent that they have full capacity and have taken all steps and obtained all approvals to enable them to lawfully enter into and to perform each of their obligations under this Contract.
- 22.2 The Service Provider warrants and represents that:
- 22.2.1 In entering this Contract he has not committed any Prohibited Act, and;
- 22.2.2 he has satisfied himself as to the nature and extent of the risks assumed by him under this Contract;
- 22.3 The Council represents that it has used all reasonable endeavours to provide full accurate and up to date information to the Service Provider in relation to the Services to be provided under this Contract.

23. INDEMNITY

- 23.1 The Service Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising out of, in respect of or in connection with this Contract during the Contract Term save to the extent that the same is caused by or arises from the negligence, breach of this Contract or any other contract, breach of statutory duty, breach of Legislation or other wrongful act or omission of the Council its agents or servants.
- 23.2 The aggregate liability of the Service Provider, whether for damages, payments of compensation or by way of indemnity or of any nature whatsoever arising under or in relation to this Contract or the Services (including as a result of negligence) shall in relation to:
- 23.2.1 any claim for which the Service Provider has insurance cover or should have insurance cover available under the policies of insurance which he is required to maintain pursuant to Clause 24 (insurance), be limited to the maximum sum

insured (or which should have been insured) under the relevant policy of insurance;

- 23.2.2 all breaches of this Contract resulting in direct loss of or damage to any kind of property, be limited to £5 million and
- 23.2.3 all other liability for all breaches or non-performance of this Contract whether in contract, tort or otherwise be limited to 200% of the Remuneration payable by the Council to the Service Provider during the twelve (12) months in which the breach occurs.
- 23.3 In no event shall either Party be liable to the other for loss of profits, business revenue, goodwill or anticipated savings.
- 23.4 In relation to any claim the Service Provider shall notify and keep the Council fully informed and consult with it about the conduct of the claim and shall have due regard to the Council's interests.

24. INSURANCE

- 24.1 The Service Provider shall take out and maintain the following insurance policies:
 - 24.1.1 Employer's Liability insurance of not less than ten million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident;
 - 24.1.2 Public Liability insurance to provide an indemnity of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
 - 24.1.3 Third Party liability motor insurance of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident; and
 - 24.1.4 Any other insurance that may be required by law.
- 24.2 The Council may require the Service Provider to name the Council as co-insured (other than employer liability and professional indemnity insurance) with any other Party maintaining the insurance and any other matter that the Council considers reasonable in the circumstances.
- 24.3 The Service Provider shall on request provide to the Council evidence and copies of all insurance policies required under this Clause 24 within twenty one (21) Days of such request. If the Service Provider is in breach of this Clause 24, the Council may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Service Provider on written demand.
- 24.4 The Service Provider shall give the Council notification within thirty (30) Days after any claim on any of the insurance policies referred to in this Clause 24 accompanied by full details of the incident giving rise to the claim.
- 24.5 The Service Provider shall inform the Council of any material changes in the insurances pursuant to this Clause 24.

SECTION G

25. DISPUTE RESOLUTION PROCEDURE

- 25.1 Any dispute or differences arising out of or in connection with this Contract (a "Dispute") (whether such disputes are in contract, tort or arise out of or under any rule of the common law or equity or under any statute) may be resolved pursuant under this Clause 25.
- 25.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion between the Contract Manager and the Council's Representative at the review meetings held under Clause 14 (Review Meetings).
- 25.3 In the event that a Dispute is not resolved within seven (7) Days of it having been referred to a review meeting, then either Party may refer it to Chief Executive of the Service Provider and Senior Executive of the Council for resolution and the same shall meet for discussion within seven (7) Days thereafter or such longer period as the Parties may agree. If the Dispute is not resolved as a result of the meetings referred to in Clause 25.2 either Party may propose to the other Party that mediation be entered into with the assistance of the Expert appointed in accordance with Schedule 7 (Adjudicator and Expert).
- 25.4 Within fourteen (14) Days of the appointment of an Expert, the Parties shall meet with the Expert in order to agree in good faith a programme for the exchange of information and the structure to be adopted for the mediation process.
- 25.5 If the Parties accept the Expert's recommendations or otherwise reach agreement on the resolution of the Dispute, such agreement shall be put into writing and, once signed by the Council's Representative and the Contract Manager, shall be binding on the Parties.
- 25.6 No reference of any Dispute to an Expert pursuant to this Clause 25 shall relieve either Party from any liability for the due and punctual performance of its obligations under this Contract. Notwithstanding the foregoing provision of this Clause 25, either Party shall have the right to seek appropriate injunctive relief against the other in an appropriate court having jurisdiction in England and Wales and, provided such court is satisfied that the proceedings have not been brought frivolously or vexatiously, all aspects of the Dispute shall be dealt with by such court and not under this Clause 25.

26. DEFAULT AND TERMINATION

- 26.1 The Council may terminate this Contract on written notice to the Service Provider if:
- 26.1.1 A court makes an order that the Service Provider be wound up or a resolution for a voluntary winding-up of the Service Provider is passed;
- 26.1.2 Any receiver or Manager in respect of the Service Provider is appointed or possession is taken by or on behalf of any creditor of all or a material part of any property of the Service Provider;
- 26.1.3 The Service Provider enters into any voluntary arrangement for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 2000, the Companies Act 1985 or the Enterprise Act 2002;

- 26.1.4 An administration order is made in respect of the Service Provider;
 - 26.1.5 A breach by the Service Provider of its obligation to take out and maintain the Required insurances under Clause 24 (Insurance);
 - 26.1.6 The Service Provider commits any Prohibited Act that is not capable of remedy or;
 - 26.1.7 The Service Provider commits a breach of the Health and Safety requirements under Clause 30 (Health and Safety).
 - 26.1.8 There is a change in control of the Service Provider or any company which is a holding company (direct or indirect) of such holding company unless the Council has approved the same in writing such approval to be withheld at the sole discretion of the Council
- 26.2 If either Party has committed a substantial breach of this Contract which is capable of remedy, the other Party may serve a written notice on the Party in specifying:
- 26.2.1 The type of breach that has occurred giving reasonable details and
 - 26.2.2 That this Contract will terminate on the day falling thirty (30) Days after receipt of the notice, unless the Party in breach puts forward an acceptable rectification programme or rectifies the breach within twenty one (21) Days of receipt of the notice, and, if the Party in breach fails to rectify the breach within the time period specified in the notice or to provide an acceptable rectification programme, the Contract will terminate with immediate effect and without notice.
 - 26.2.3 The Service Provider may terminate this Contract on written notice if the Council has instructed the Service Provider to temporarily suspend provision of the services and has not instructed the Service Provider to re-commence full provision of the Services for a period of ninety (90) Days from receipt of the instruction.

27. CONSEQUENCES OF EXPIRY OR TERMINATION

- 27.1 The Service Provider and the Council shall each carry out their respective responsibilities in accordance with this Contract until expiry of the Contract Term or earlier termination.
- 27.2 The Service Provider shall use his best endeavours to give assistance to the Council to effect an orderly continuation of the Services after termination or expiry of this Contract in such a manner as the Council may reasonably require.
- 27.3 The costs of any assistance provided by the Service Provider under Clause 27.2 shall be borne by the Service Provider unless the Contract is terminated because of the Councils breach.
- 27.4 The termination of this Contract shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall thereafter accrue to either Party.
- 27.5 On termination or expiry of this Contract, neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Contract shall not effect the continuing rights and obligations of the Parties under Clauses 1, 12, 22, 23,

27, 32, 36, 51 and 52 or under any other provision of this Contract that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination. For the avoidance of doubt the rights of the Council under this Clause 27 are in addition to any other rights or remedies that the Council may have pursuant to any parent company guarantee or performance bond

27.6 On termination of the contract, the existing Service Provider will cooperate fully with the Council and the new service provider in relation to any information, resources etc that may be required in order to ensure an effective and efficient handover.

28. FORCE MAJEURE

28.1 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.

28.2 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

28.3 If no such terms are agreed on or before the date falling one hundred and twenty (120) Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and eighty (180) Days, then, either Party may terminate this Contract by giving thirty (30) Days written notice to the other Party.

28.4 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

28.5 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Party is prevented from carrying out obligations by that Force Majeure Event.

28.6 Nothing in this Clause 28 shall affect any entitlement of the Council to make deductions pursuant to Schedule 2 (Payment Mechanism and Key Performance Indicators) in the period during which the Force Majeure Event is subsisting.

29. RELIEF EVENTS

29.1 If and to the extent that a Relief Event adversely affects the ability of the Service Provider to provide the Services in accordance with the KPIs and the terms of this Contract, the Service Provider is entitled to apply for relief in accordance with Clause 28.1 from any rights the Council may assert under this Contract.

29.2 To obtain relief, the Service Provider must:

- 29.2.1 as soon as practicable, and in any event within fourteen (14) Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform his obligations, give to the Council a notice of his claim for relief from his obligations under this Contract, including details of the nature of the Relief Event, the date of occurrence and its likely duration;
- 29.2.2 within fourteen (14) Days of receipt by the Council of the notice referred to in Clause 29.2.1 above, give full details of the relief claimed and
- 29.2.3 Demonstrate to the reasonable satisfaction of the Council that:
- (a) the Service Provider could not reasonably have foreseen the occurrence or consequences of the relevant Relief Event and could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring significant additional expenditure;
 - (b) the Relief Event directly caused or substantially contributed to the need for relief from obligations under this Contract;
 - (c) the relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with good industry practice, without incurring significant additional expenditure and
 - (d) the Service Provider is using reasonable endeavours to perform his obligations under this Contract.
- 29.3 Where the Service Provider has complied with his obligations under this Clause 29, the Council shall not be entitled to exercise its rights to terminate this Agreement under Clause 26 (Default and Termination) and, subject to Clause 29.4 below, shall give such other relief as has been requested by the Service Provider.
- 29.4 In respect of any unconnected event nothing in clause 28.3 above shall affect any entitlement to make deductions or any deductions made as a result of Clause 6 (Key Performance Indicators) during the period in which the Relief Event is subsisting.
- 29.5 In the event that information required by Clause 29.2 above is provided after the dates referred to in that clause, then the Service Provider shall not be entitled to any relief in respect of the period for which the information is delayed.
- 29.6 The Service Provider shall notify the Council if at any time it receives or becomes aware of any relevant further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 29.7 If the Parties cannot agree the extent of the relief required, or the Council disagrees that a Relief Event has occurred or that the Service Provider is entitled to relief from his obligations under this Contract, the Parties or either of them shall refer the matter to the dispute Resolution Procedure.

SECTION H

30. HEALTH AND SAFETY

- 30.1 The Service Provider shall comply with and shall procure that all his staff and agents engaged in the provision of the Services comply with the requirements of the Health and Safety at Work Etc. Act 1974, and any other acts, regulations and approved codes of practice relating to the health and safety of staff and others who may be affected by the Service Provider's work activities.
- 30.2 The Service Provider shall provide to the Council's Representative any information Relating to the Service Provider's compliance with Clause 30.1 that the Council may reasonably request at any time from the Commencement Date.
- 30.3 The Council's Representative shall be permitted to access at any reasonable time any site where the Service Provider is undertaking any Services under this Contract for the purpose of carrying out an inspection of health, safety and welfare standards.
- 30.4 The Service Provider shall fully co-operate with the reasonable requests of the Council's Health and Safety adviser and shall provide access to all areas of the Services, Health and Safety documentation, welfare facilities, accident records, training records and certificates, equipment inspection records, statutory registers and notices, plant and equipment for the purposes of inspection.
- 30.5 The Service Provider shall provide to the Council's Representative, within seven (7) Days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of the Services, which he receives from any statutory body.

31. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

- 31.1 In the performance of the Services and in his dealings with service users, Council employees and members of the general public, the Service Provider shall comply and shall ensure that his employees and agents comply with:
- 31.1.1 The Human Rights Act 1998 as if the Service Provider were a public body as defined in the Human Rights Act 1998;
- 31.1.2 All legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations and shall in particular comply with the provisions set out in Schedule 8 (Equal Opportunities).
- 31.2 The Service Provider shall inform the Council's Representative as soon as the Service Provider becomes aware of any legal proceedings or compliant brought or likely to be brought against the Service Provider under the legislation set out in Clause 31.1.
- 31.3 The Service Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's compliance with this Clause 31.
- 31.4 The Council's equal opportunities policies and procedures as may be adopted and Amended from time to time and as notified to the Service Provider.

32. DATA PROTECTION

- 32.1 The Service Provider shall comply with his obligations under the Data Protection Act (The "1998 Act") and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.
- 32.2 Notwithstanding the general obligation in clause 32.1, where he is processing personal data (as defined by the 1998 Act) as a data processor for the Council (as defined by the 1998 Act) the Service Provider shall ensure that he has in place appropriate technical and organisational measure to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data including that obtained during the operation of Closed Circuit Television), as required under the Seventh Data Protection Principle in Schedule 1 to the 1998 Act;
- 32.3 The Service Provider shall provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with his obligations under the 1998 Act;
- 32.4 The Service Provider shall promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 32.2.
- 32.5 The Service Provider shall ensure that he does nothing knowingly or negligently which places the Council in breach of the Council's obligations under the 1998 Act.

33. FREEDOM OF INFORMATION

- 33.1 The Service Provider hereby acknowledges that from time to time the Council may receive requests for information relating to the Contract and the Services which but for any right to claim commercial confidentiality the Council will be obliged to disclose pursuant to the Freedom of Information Act 2000 and attendant subordinate legislation (Freedom of Information Act).
- 33.2 The Service Provider shall ensure that without prejudice to the generality of his obligations to provide information that he does all manner of things reasonably necessary to assist the Council in meeting the requirements of the Freedom of Information Act within the timescales set out therein.

34. THE CONTRACT STANDARD

- 34.1 The Service Provider shall perform the Services to the following standards (the Contract Standard):-
- 34.1.1 Using all due skill care and diligence;
- 34.1.2 Applying all reasonable professional standards and techniques in accordance with the Contract;
- 34.1.3 In compliance with the reasonable instructions issued to the Service Provider by any Council Representative pursuant to or in connection with the Contract;
- 34.1.4 In accordance with all Legislation relevant to the performance of the Services;

- 34.1.5 In a manner which does not prejudice the reputation and interests of the Council;
- 34.1.6 In co-operation and liaison with fellow Service Providers as required to perform the Services.
- 34.2 The Services shall be carried out by the Service Provider by such method and with such materials and equipment to achieve the objectives under clause 18.

35. INTELLECTUAL PROPERTY

- 35.1 The Council has provided the Service Provider with the following information which is contained in Schedule 5 to the Contract:-
- 35.1.1 a map of the Political Wards within the Royal Borough;
- 35.1.2 a map showing the hours of parking controls within the Borough;
- 35.1.3 a map showing the Red Route network of roads within the Borough;
- 35.1.4 a copy of the Contract and the Tender Documents;
- 35.1.5 copies of all relevant Traffic Management Orders (TMOs);
- 35.1.6 samples of all parking permits issued by the Council, and;
- 35.1.7 plans at 1:1250 scale showing parking controls within the Borough.
- 35.2 The Council's Representative shall supply the Service Provider from time to time during the Contract Term with such modified or further documents as may be necessary, in the opinion of the Council's Representative, for the proper and adequate provision of the Services.
- 35.3 Copyright in the Contract shall remain jointly with the British Parking Association and the Council. All intellectual property rights in all other plans and documentation listed in this Clause 35 or produced during the Contract Term shall remain with the Council but the Service Provider may obtain or make any further copies of the Contract Document or the other listed plans and documents as required and at his own expense. At the completion or the termination of the Contract the Service Provider shall return to the Council all documents provided by the Council and any additional copies subsequently made or obtained. (See also Clause 39 "Confidentiality" herein).
- 35.4 The Service Provider shall not in connection with the Contract, use, manufacture, supply or deliver any process, article, matter or thing the use, supply or manufacture of which would be an infringement of any royalty or patent rights or any other intellectual property rights and the Service Provider
- 35.5 The Council hereby grants to the Service Provider from the Commencement Date a non-exclusive, non-transferable licence to use and maintain the Council Software (and related technical, user and other documentation) as detailed in Schedule 9 (Communication Technology) for the sole purpose of providing the Services.
- 35.6 The Service Provider hereby grants to the Council from the Commencement Date a non-exclusive, non-transferable licence to use the Service Provider Software (and related

technical, user and other documentation) as detailed in Schedule 9 (Communication Technology) for the sole purpose of ensuring continued, efficient Service provision by, for example, facilitating operational monitoring purposes or to ensure that responses made to queries or complaints regarding the Service provision are factually accurate and expedited.

36. TERMINATION OF SOFTWARE LICENCES

- 36.1 The licence[s] granted under this Clause 36 shall terminate immediately on expiry of the Contract Term.
- 36.2 Copyright, patent rights or other intellectual property rights in any material produced during the Contract Term and in all reports submitted under the terms of the Contract shall vest in the Council.

37. PUBLICITY

- 37.1 Except with the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, neither Party shall make any press announcement or publicise this Contract or the Services in any way.

38. COMPLAINTS PROCEDURE

- 38.1 The Service Provider shall comply with whatever instructions or requests are made by the Council's Representative in order to comply with the Council's complaints procedures, which are set out in Schedule 11 (Council Policies).
- 38.2 If the Council receives correspondence which alleges rudeness, abuse, misdemeanour (etc) by any member of the Service Provider's staff, a copy of the correspondence will be supplied to the Contract Manager who shall acknowledge receipt of the letter and investigate such allegations fully. Within seven days of the Contract Manager receiving the letter the Council's Representative must receive a report of these investigations including details of all actions taken and a proposed draft reply for the Council to send to the correspondent.
- 38.3 If the Service Provider receives correspondence which alleges rudeness, abuse, misdemeanour (etc) of any member of the Service Provider's staff the Contract Manager must pass copies of such correspondence to the Council's Representative by the next working day and within seven days submit a report of the investigations, including details of all actions taken and a proposed draft reply that the Service Provider intends to send to the correspondent.
- 38.4 Where a complaint is made against a particular member of the Service Provider's staff, if the Council's Representative considers it would be beneficial, the Service Provider shall arrange for any member of his staff to attend an interview to be conducted by the Council's Representative at a specified location. A member of the Service Provider's management shall also attend. A minimum of two days written notice of the interview shall be given.
- 38.5 If a complaint is made to the Service Provider or any of his staff concerning any Council Officer, a policy or procedure, the Contract Manager shall report the details of the complaint to the Council's Representative by the next working day.

- 38.6 If any member of the Service Provider's staff is approached by a member of the public who wishes to make a complaint against the Service Provider or Council they must be told to contact the Council.
- 38.7 Should the Council's Representative uphold a complaint against an employee of the Service Provider which it is considered makes that person unsuitable to continue on the Contract, the Service Provider shall comply immediately with a request to remove that employee from this Contract.
- 38.8 The Service Provider shall make himself aware of the Council's complaints procedures and provide formal complaint forms to members of the public upon request.

39. CONFIDENTIALITY

- 39.1 The Service Provider shall not without the written consent of the Council's Representative during the Contract Term or at any time thereafter make use for his own purposes or disclose to any person (Except as may be required by law) this Contract or any information contained therein or in any material provided to the Service Provider pursuant to or in connection with this Contract all of which information shall be deemed to be confidential.
- 39.2 The Service Provider shall neither dispose of nor part with possession of any confidential material provided to the Service Provider by the Council, pursuant to the Contract or prepared by the Service Provider pursuant to the Contract other than in accordance with the express written instructions of the Council.
- 39.3 The Service Provider shall not and shall ensure that his employees do not divulge to any third party any information which comes into his or their possession in the course of providing the Services without the prior written consent of the Council's Representative.

40. ASSIGNMENT AND SUB-CONTRACTING

- 40.1 Subject to any express provision of this Contract, the Service Provider shall not, without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract.
- 40.2 The Council shall be entitled to:
- 40.2.1 assign, novate, or otherwise dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993); or
- 40.2.2 Transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the Council's business.

41. AUDIT

- 41.1 The Service Provider shall at all reasonable times (including following termination for whatever reason of this Contract) afford to or procure for any auditor (including any auditor carrying out functions under the Audit Commission Act 1998 or the 1999 Act) conducting an internal audit or an external audit, inspection or an audit of Best Value Performance Plans or to or for the Council's Representative (or its nominee) access to any records, information and data in the possession or control of the Service Provider which

in any way relate to or are or have been used in connection with the performance of the Services including (but without limitation) Council data and information stored on a computer system operated by the Service Provider and shall include permission to copy and remove any copies and remove the originals of such documents.

42. CORRUPT GIFTS AND FRAUD

- 42.1 The Service Provider shall not, whether by himself or by any person employed to provide the Service, solicit or accept any gratuity, tip or any other form of money or reward, collection or charge for any part of the Service other than charges properly approved by the Council in accordance with the provisions of the Contract.
- 42.2 As soon as either Party becomes aware of or suspects the commission of any Prohibited Act in the performance of the Services or otherwise, that Party shall notify the other Party.
- 42.3 The Council's Representative shall have the right to require that the Service Provider suspend from any further work on this Contract any person reasonably suspected of fraudulent action or malpractice.

43. RIGHTS AND DUTIES RESERVED

- 43.1 All rights, duties and powers, which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved.

44. LOCAL GOVERNMENT OMBUDSMAN

- 44.1 Where any investigation by a Local Government Ombudsman (the "Ombudsman") takes place the Service Provider shall:
- 44.1.1 Provide any information requested in the timescale required by the Ombudsman;
 - 44.1.2 Attend any meetings as required by the Ombudsman and permit his personnel so to attend;
 - 44.1.3 Promptly allow access to and investigation of any documents deemed by the Ombudsman to be relevant;
 - 44.1.4 Allow himself and any employee deemed to be relevant to be interviewed by the Ombudsman;
 - 44.1.5 Allow himself and any employee to appear as witness in any ensuing proceedings, and;
 - 44.1.6 Co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.
- 44.2 No additional payment shall be made to the Service Provider for performing the requirements set out in Clause 44.1.
- 44.3 Where any financial redress or other compensation is ordered by the Ombudsman in any investigation arising directly or indirectly out of the default or neglect by the Service Provider in connection with provision of the Services or any other action by the Service

Provider the Council shall be entitled to recover the cost of that financial redress or other compensation from the Service Provider.

45. ENTIRE AGREEMENT

45.1 The Parties acknowledge that this Contract sets forth the entire agreement between them with respect to provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

46. NO PARTNERSHIP OR AGENCY

46.1 Nothing in this Contract shall be construed as a legal partnership (within the meaning of The Partnership Act 1890) or as a contract of employment between the Council and the Service Provider.

46.2 The Service Provider shall not be, and shall not be deemed to be, an agent of the Council and the Service Provider shall not hold himself out as having authority or power to bind the Council in any way.

47. NO WAIVER

47.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of this Contract or to require performance by the other Party of any of the provisions of this Contract shall not:

47.1.1 constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor

47.1.2 affect the validity of the Contract or any part thereof or the right of the Parties to enforce any provision in accordance with its terms.

47.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause 48 herein (Notices).

48. SEVERANCE

48.1 Each provision of this Contract is separate and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.

48.2 If any provision of this Contract is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Contract but (except to the extent in the case of that provision) it and all other provisions of this Contract shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this Contract would not negate the commercial intent and purpose of the Parties under this Contract.

48.3 If any provision of this Contract is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant

regulatory authorities subject to it not negating the commercial intent of the Parties under this Contract.

49. VARIATION

49.1 This Contract can only be varied if any such variation is agreed by both Parties and Subject to the change control procedures as set out in Schedule 4 to this Contract.

50. NOTICES

50.1 No notice to be served upon the Council shall be valid or effective unless it is sent by prepaid post or delivered by hand to the Council's Representative at 19 – 27 Young Street, London. W8 5EH, or other address specified by the Council's Representative

50.2 Any notice served upon the Service Provider shall be valid and effective if it is sent by prepaid post or delivered by hand to the principle place of business or to premises owned or occupied by the Service Provider for the purposes of this Contract or is delivered by hand to the Contract Manager or to the Registered Office of the Service Provider.

51. EUROPEAN MONETARY UNION

51.1 The Parties to this Contract confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of, or discharging or excusing performance under this Contract or any transaction, or give a Party the right unilaterally to alter or terminate this Contract or any transaction.

51.2 The words "an event associated with economic and monetary union in the European Union" shall include without limitation each and any combination of the following:

51.2.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise) in the United Kingdom;

51.2.2 the fixing of conversion rates between an European Union (EU) member state's currency and the new currency or between the currencies of member states;

51.2.3 the substitution of that new currency for the Euro as the unit of account of the EU;

51.2.4 the introduction of that new currency as lawful currency in a member state;

51.2.5 the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states;

51.2.6 the disappearance or replacement of a relevant rate option or other price source for the Euro or the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen, or;

51.2.7 The withdrawal of any member state from a single or unified European currency.

52. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

52.1 The Parties agree that this Contract shall not be enforceable by any third party pursuant to

the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

53. LAW AND JURISDICTION

53.1 This Contract shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

54. TARGET COST FLUCTUATION

54.1 For the purposes of calculating the Remuneration the rates stated in the Target Cost Schedule will remain fixed for 12 months following the Commencement Date. The rates shall be adjusted thereafter to take account of any increase or reduction in the Approved Indices during the previous 12 months and shall apply for the 12 months following.

54.2 The percentages for corporate overheads and profit margin described in item 10.8 of Schedule 10 (Target Cost Schedule) as Indirect Contract Costs shall remain fixed for the entire life of the Contract.

55. BONDS AND GUARANTEES.

55.1 If the Service Provider is a subsidiary company within the meaning of Section 736 of the Companies Act 1985 he shall provide a Guarantee in the form set out in the Tender Documents by his ultimate holding company or companies (As defined by the said Act) to secure the due performance by the Service Provider of his obligations to the Council under this Contract.

55.2 The ultimate holding company must satisfy the Council as to its financial suitability as a Guarantor in the Council's unqualified discretion.

55.3 If the Service Provider is a non-subsubsidiary company he shall provide a Performance Bond in the form set out in the Tender Documents to the satisfaction of the Council in advance of the Contract. The surety must be a reputable Insurance Company or Bank. The Council shall have the right to refuse as surety any company that is not acceptable to it.

55.4 The Service Provider shall supply the Council forthwith and upon each Review Date a certificate from the surety or guarantor as appropriate confirming that the Bond or Guarantee is still in place and that no reduction in value or liability has occurred.