

Dated

2005

**THE MAYOR AND BURGESSES OF
THE ROYAL BOROUGH OF KINGSTON UPON THAMES**

- and -

EDEN BROWN LIMITED

CONTRACT

**relating to the recruitment and provision of
Temporary Staff**

Royal Borough of Kingston upon Thames
Guildhall
Kingston upon Thames
Surrey
KT1 1EU

CONDITIONS OF CONTRACT

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AGREEMENT dated 16th November
day of (month) 2005

BETWEEN

THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KINGSTON
UPON THAMES acting by the Council ("the RBK");

AND

EDEN BROWN LIMITED 17 -29 Sun Street, London EC2M 2PT ("the Contractor").

BACKGROUND

1. The RBK seeks provision by a recruitment agency of a recruitment service in respect of specific categories of temporary staff on a vendor neutral basis.
2. The Contractor wishes to manage the supply of temporary staff to RBK in the categories detailed in the Service Level Agreement ("SLA") annexed hereto as Annex "1"

NOW IT IS AGREED:

1. Definitions and Interpretation

In this Contract the masculine shall include the feminine and the neuter, and the singular shall include the plural and vice versa, and the following words and expressions shall have the following meanings except where the context requires otherwise:

- 1.1 Commencement Date means 31st May 2005
- 1.2 "Conditions" means these conditions of contract;
- 1.3 "Contract" means this agreement between the RBK and the Contractor as set out in the Contract Documents;
- 1.4 "Contract Documents" means the documents comprising the Contract, as follows:
 - the Invitation to Tender documents;
 - these Conditions;
 - the RBK Specification;
 - Deed of Guarantee; and
 - the Contractor's Tender submission, incorporating the Pricing Schedule.
- 1.5 "Contract Manager" means a competent and appropriately qualified and experienced person appointed by the Contractor to be its representative in relation to the performance of the Contract who will receive and act on any instructions given by the RBK Representative;
- 1.6 "Contract Period" means the duration of the Contract as set out at Condition 3.2;
- 1.7 "Force Majeure Event" means any circumstance beyond the reasonable control of a party which renders the continued providing or receiving of all or part of the Service in accordance with the Contract illegal or impossible,

including, but not limited to fire, flood, Act of God, riot, civil disturbance, industrial dispute (not directly involving either party), war or sabotage;

- 1.8 "Category of Services" means those activities undertaken by the Contractor, its employees and agents which are the subject of this Agreement and which are detailed in Annex 1 and the Service Level Agreement
- 1.9 "RBK's Representative" means the person appointed by the RBK to act on its behalf for the purpose of managing the Contract;
- 1.10 "Neutral Advisor" means the mediator appointed pursuant to Condition 31
- 1.11 "Rate and Pricing Schedule" means the document which incorporates the pricing mechanism upon which the Contractor's tender is based;
- 1.12 "Recruitment Orders" means the RBK's Recruitment Order, clearly indicating the position, specification and rate per hour of the services and any contract or agreed rates related thereto
- 1.13 "Service" means the Service to be provided by the Contractor in accordance with the Contract, in particular, but not limited to, the Specification, including any modification made pursuant to Condition 7;
- 1.14 "SLA" means the Service Level Agreement between the parties, a copy of which is annexed hereto as "Annex 1".
- 1.15 "Specification" means the London Borough of Hillingdon document contained in the tender documentation which describes the Service to be provided by the Contractor and any modifications to it made pursuant to Condition 7;
- 1.16 Reference to the Contractor's personnel shall be deemed to include the Contractor's partners, directors and employees and the Contractor's agents, sub-contractors and essential visitors unless the context otherwise requires.
- 1.17 A reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
- 1.18 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.

2. Contract Principles

2.1 Sufficiency of Information

- 2.1.1 The Contractor is deemed to have satisfied itself as to the nature and extent of the Services to be provided and shall be deemed to be satisfied as to the accuracy and sufficiency of the rates and prices stated by the Contractor in its tender which shall (except insofar as is otherwise expressly set out in the Contract) cover all the Contractor's obligations and costs under the Contract. The Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Contractor's tender.

2.2 Documents Mutually Explanatory

2.2.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Should the Contractor become aware of any ambiguities or discrepancies in or between the Contract Documents, the Contractor shall immediately give full written details to the RBK's Representative who shall resolve the discrepancy and issue appropriate instructions to the Contractor. If any such instruction changes the pricing basis upon which the Contractor tendered, the instruction shall be treated as a modification and valued under Condition 7.2.

2.2.2 In case of discrepancy between these Conditions and other documents forming part of the Contract these Conditions shall prevail.

2.3 Variations

2.3.1 Following the formation of a binding agreement, no deletion from, addition to, or variation of the Contract shall be valid or of any effect unless agreed in writing and signed by the parties.

2.4 Copyright

2.4.1 Copyright in the Contract Documents shall vest so far as it lawfully can in the RBK but the Contractor may obtain or make at its own expense any further copies required for use by the Contractor in the provision of the Service.

2.5 Interest

2.5.1 Where either the RBK or the Contractor has a right under the Conditions to recover a sum due as a debt which is not in dispute, interest shall accrue from the date the debt arises at a rate of 3% above the Bank of England Reference Rate

2.5.2 The rights of the parties under Condition 2.5.1 shall be without prejudice to any other rights or remedies which they may possess.

3. **Appointment and Contract Duration**

3.1 The RBK appoints the Contractor to provide the Service throughout the Contract Period in consideration of payment by the RBK of the prices set out in the Pricing Schedule in accordance with the provisions of the Contract.

3.2 The Contract shall commence with effect from the agreement Commencement Date and subject to the Contract provisions for earlier termination of all or part of the Contract shall continue in force until 6 June 2007, with the provision for the RBK to extend, by written notice not later than three months before expiry of the contract, for a period for up to a further two years.

4. Contractor's Obligations

- 4.1 The Contractor shall provide the Service in compliance with the Contract.
- 4.2 The Contractor shall provide the Service with reasonable skill, care and diligence and due propriety and with the utmost good faith, in accordance with legislative requirements, in accordance with the RBK Representative's written instructions and whether all of these requirements are met shall be determined by the RBK Representative acting reasonably.
- 4.3 The Contractor shall use all reasonable endeavours to ensure that each candidate is suitable for the assignment in which they are to be placed, which shall include, but will not be limited to, taking all reasonable steps to verify the immigration status of each candidate to ensure that such candidate is legally entitled to work in the United Kingdom.
- 4.4 The Contractor shall promptly inform the RBK's Representative and confirm in writing, if the Service, or any part of it, is not being, or may not be, performed, whether or not the result of any act or omission by the RBK, giving details, reasons and likely duration. The provision of this information shall not relieve the Contractor from its contractual obligations.
- 4.5 If the Contractor requires any further instruction or information in connection with the provision of the Service, the Contractor shall make a sufficiently detailed, and sufficiently timely, written application to the RBK's Representative specifying any critical date by which a response is needed, but otherwise giving the RBK's Representative reasonable time to respond.
- 4.6 The Contractor shall at all times comply with all relevant RBK policies, Codes of Practice, Contract Standing Orders and Financial Regulations, provided a copy has been provided by the RBK.
- 4.7 Except as otherwise provided in the Contract, the Contractor shall provide all staff, equipment, materials, information, data and other things whatsoever required for the provision of the Service including to give effect to any modifications pursuant to Condition 7. Except as otherwise provided, the Contractor shall not in any circumstances use any premises or equipment of the RBK.
- 4.8 If the Contractor is unable or fails to provide the Service, or any part of it, in accordance with the Contract, the RBK may make its own arrangements for provision of the Service, or any part of it, and all costs incurred as a result may be deducted from any sums due, or that become due, to the Contractor, or shall be recoverable from the Contractor by the RBK as a debt. The RBK's powers under this Condition 4.8 shall not be exercised unreasonably or vexatiously and these rights shall be without prejudice to any other rights or remedies of the RBK.
- 4.9 The Contractor shall co-operate and co-ordinate its activities with other contractors or sub-contractors engaged by the RBK as appropriate.

- 4.10 The Contractor shall ensure that neither the Contractor nor its personnel shall do any act or thing at any premises owned or occupied by the RBK other than the proper performance of the Service, and no signs or advertisements shall be exhibited without prior RBK written approval.
- 4.11 Each year the Contractor shall provide upon request to the RBK's Representative a copy of its audited accounts within six months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements. In the event that the Contractor fails to provide accounts in accordance with this Condition 4.10 then, without prejudice to any other rights or remedies available to the RBK, the RBK's Representative or such persons as may from time to time be nominated by the RBK's Representative shall be given access to all accounting documents and information in the possession, custody or control of the Contractor.
- 4.12 The Contractor shall accept full responsibility for the terms of engagement of all temporary staff and shall undertake all administration, make all statutory deductions from pay and maintain all records required either legally or to satisfy the specific requirements of this contract.

5. Contractor's Personnel

- 5.1 The Contractor shall employ sufficient persons to ensure that the Service is provided in accordance with the Contract.
- 5.2 The Contractor's personnel employed in connection with the Contract shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and the Contractor shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provisions of the Service and in particular:
- 5.2.1 the task or tasks such person has to perform;
 - 5.2.2 all relevant provisions of the Contract;
 - 5.2.3 all relevant policies, rules, procedures and standards of the Contractor and the RBK;
 - 5.2.4 all relevant legislative requirements.
- 5.3 The RBK's Representative shall have the power upon written notice, to require the Contractor, but not unreasonably, to remove from the provision of the Service any employee, sub-contractor or agent of the Contractor including the Contractor's Representative. The Contractor shall forthwith remove such person/s from the provision of the Service and as soon as reasonably practical shall provide a replacement. The Contractor shall fully and promptly indemnify the RBK against any claim made by such personnel.
- 5.4 The Contractor shall take all reasonable steps to avoid changes to key personnel involved in provision of the Service.
- 5.5 If the circumstances under which the Service is provided are such that personnel of the Contractor are exempt from the provisions of Section 4 (2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, then the Contractor shall ensure that all personnel to be engaged in the provision of the Service are questioned in accordance with the said Order about convictions which would

otherwise be spent under the provisions of the said Act. The Contractor shall disclose to the RBK's Representative the names and addresses and sufficient information and as appropriate all convictions of its personnel to be engaged in and about the provision of the Service to enable proper checks to be made. The RBK's Representative may require such personnel not to be engaged in the provision of the Service and immediately substituted by the Contractor, unless the RBK's Representative considers substitution unnecessary.

6. Contract Management

- 6.1 The Contractor shall at all times properly manage and monitor the Service.
- 6.2 The Contractor shall appoint a Contract Manager to act on its behalf for all purposes connected with the Contract, and any replacements shall be subject to the prior written approval of the RBK not to be unreasonably withheld. Notices, information, instructions or other communications given to the Contract Manager shall be deemed to have been given to the Contractor.
- 6.3 The Contractor shall ensure that at all times the RBK Representative has up-to-date contact details for the Contract Manager or any temporary or permanent replacement including name, work and mobile telephone numbers. The Contract Manager or a duly authorised and competent representative shall be available to meet the RBK Representative at all reasonable times and shall provide such written reports as the RBK Representative may reasonably require prior to such meetings or generally.

7. Modifications

- 7.1 The RBK's Representative shall have the power to issue to the Contractor instructions in writing upon reasonable notice:
 - 7.1.1 requiring the Contractor to omit or postpone any part of the Service;
 - 7.1.2 requiring the Contractor to provide services additional to the Service, provided that such additional services shall be similar to the Service;
 - 7.1.3 requiring the Contractor to vary the scope of the Service or any part of it.
- 7.2 The valuation of modifications made pursuant to Condition 7.1 shall be ascertained by the RBK's Representative in accordance with the following provisions:
 - 7.2.1 wherever it is appropriate and reasonable to do so the valuation shall be ascertained in accordance with the principles used and the rates and prices contained in the Pricing Schedule;
 - 7.2.2 otherwise the ascertainment of the valuation shall be on a fair and reasonable basis taking reasonable account of any compensating reduction, increase or re-organisation of some other part of the services and the extent to which it is reasonable for the Contractor to re-deploy existing staff and either party may seek appropriate written evidence of market rates;
 - 7.2.3 where the modification relates to an omission or postponement

under Condition 7.1.1 the valuation shall not include and the RBK shall not be liable to the Contractor in respect of, any loss or reduced contribution to overheads or profit, whether in respect of this Contract or any other contract.

- 7.3 If the Contractor reasonably disagrees with the valuation of any modifications, it shall provide notice in writing to the RBK Representative within 14 days of the date of the written instruction referred to at 7.1 setting out reasons why it opposes the valuation and, if appropriate, providing appropriate documentary evidence such as its own cost and relevant market rates.
- 7.4 The parties shall meet and negotiate in good faith within 14 days of the date of the Contractor's notice referred to in 7.3 with a view to reaching agreement on the valuation of the modification. If agreement is not reached within two months of the date of the Contractor's notice, then either party may refer the matter to the dispute resolution procedure set out at Condition 31.
- 7.5 Prior to resolution of any valuation dispute the Contractor shall implement the modification and upon resolution the valuation shall be backdated to the date of implementation.

8. **Data Protection**

- 8.1 The parties shall comply with the provisions of the Data Protection Act 1998 so far as applicable to this Contract and the Service and shall indemnify each other against all actions, costs, expenses claims, proceedings and demands which may be brought against the other party for breach of statutory duty under this Act which arises from the use disclosure or transfer of personal data by the other party or its servants or agents.

9. **Confidentiality**

- 9.1 The RBK reserves the general right to disclose information about this contract, unless otherwise agreed in writing.
- 9.2 The Contractor shall not disclose the Contract or any provision thereof of any information resulting from, in connection with, or during the course of, the Contract, to any person unless it is strictly necessary for the performance of the Contract, and authorised in writing by the RBK. The Contractor shall comply with any instructions regarding changes to authorisations and other instructions regarding disclosure or non disclosure.
- 9.3 This Condition does not apply in relation to information:
- (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality;
 - (b) which is or becomes known from other sources without breach of any restriction on disclosure;
 - (c) which is required to be disclosed by law or any professional or regulatory obligation; or
 - (d) requested of RBK in accordance with the Freedom of Information Act 2000.
- 9.4 Subject to Condition 9.2 the Contractor shall ensure that information about the Contract, or arising from or connected with the Contract:

- (a) is divulged only to the minimum number of persons;
- (b) is divulged only to the extent essential to each person's action in carrying out (or in connection with) the Contract and that such persons do not divulge such information;
- (c) is properly safeguarded.

9.5 Subject to the retention of proper professional records, the Contractor shall, on written request from the RBK, return all documents containing any part of the Service carried out by the Contractor, including but not limited to, documents stored electronically.

9.6 The Contractor shall ensure that any contract with:

- (a) any employee;
- (b) any contractor engaged in any way in connection with the Contract.

contains a condition requiring that person to keep all information in relation to the Contract and its performance confidential and shall draw their attention to the requirements of Condition 9.2.

9.7 No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the RBK, to whom any press or other enquiry or any such matter should be referred. This Condition does not apply in relation to information:

- (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality;
- (b) which is or becomes known from other sources without breach of any restriction on disclosure or;
- (c) which is required to be disclosed by law or any professional or regulatory obligation.

9.8 The Contractor shall not, in connection with the Contract, communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the RBK.

9.9 Except with the consent in writing of the RBK the Contractor shall not make use of the Contract or any information issued or furnished by or behalf of the RBK otherwise than for the purpose of the Contract.

9.10 The decision of the RBK regarding anything in this Condition 9 shall be final and conclusive.

10. Freedom of Information Act

10.1 Notwithstanding any other clause in this contract, if the Council receives a request for information pursuant to the Freedom of Information Act 2000 ("the FOI Act"), such request relating to the services or any other part of this contract, and the Council has reason to believe that such information is held by the Contractor, the following shall apply:-

10.1.1 The Council shall serve in writing a request upon the Contractor requiring such information pursuant to the FOI Act ("the FOI Request");

- 10.1.2 The Contractor shall where possible, at its own expense respond in full and in writing to all particulars described in the FOI Request (including, if requested, providing electronic copies of such information) within 3 days from the date of receipt of the FOI Request;
- 10.1.3 If the Council serves any request for information that is supplemental to the FOI Request, the Contractor shall respond in full and in writing within 2 working days from the date of receipt of the request for supplemental information; and
- 10.1.4 The Contractor shall ensure that all sub-Contractors, consultants and agents comply with the provisions of this clause.
- 10.2 The Council shall not be liable in any way to a third party in respect of any information requested pursuant to a FOI Request. The Contractor shall furthermore indemnify the Council against any and power and demand and make good to the Council all liabilities incurred, all damage and loss suffered, all claims, demands, actions and proceedings made or brought and all costs, disbursements and expenses incurred by the Council arising directly or indirectly out of the serving of a FOI Request pursuant to the provisions of this clause 10.
- 10.3 The Contractor warrants that any response to a FOI Request shall be complete and accurate to the best of the Contractor's knowledge.

11. Drawings, Documents, Designs, Software and Other Data

- 11.1 Except where otherwise expressly agreed in writing, any drawings, specifications, software, designs or other data (including working documents, maps and photographs) completed or provided by the RBK or the Contractor in connection with the Contract shall become or, as the case may be, remain the property of the RBK, in whom shall be, or shall remain, vested all intellectual property rights and be delivered up to the RBK on completion or termination of the Contract.
- 11.2 Where the RBK has agreed to accept modern storage media, drawings, and other documents shall be supplied by the Contractor in an agreed form.

12. Performance Monitoring

- 12.1 Generally, in order to assess whether or not the Contractor is providing the Service to the required standard, the RBK shall have regard to:
- 12.1.1 the Contractor's compliance with Condition 35 Quality Assurance;
 - 12.1.2 oral and written complaints from recipients or users of the Service;
 - 12.1.3 the reliability of the Service provided;
 - 12.1.4 the Contractor's measurement of achievement against performance indicators, if any, set out in the SLA;
 - 12.1.5 the Contractor's measurement of achievement against its own performance indicators (if any) as specified in the SLA;
 - 12.1.6 random spot-checks in accordance with the SLA; and

- 12.1.7 regular formal contract review meetings in accordance with the SLA and, in any event, not less than three times per annum where the RBK Representative and the Contract Manager shall discuss the Contractor's performance in accordance with the Contract.

13. Retention of Documents, Access and Inspection

- 13.1 The Contractor shall retain all accounts, documents and records in connection with the Contract for at least three years after the expiry or termination of the Contract or for any longer period required by law or agreed between the parties.

- 13.2 At all times during the Contract Period, upon reasonable notice wherever appropriate in the circumstances, the Contractor shall allow the RBK's Representative, the RBK's auditors and such persons as may, from time to time, be nominated by the RBK, access to:

- 13.2.1 all workplaces of the Contractor for the purpose of inspecting work being performed pursuant to the provision of the Service;

- 13.2.2 all workplaces of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Service;

- 13.2.3 any personnel or agent of the Contractor for the purpose of interviewing such persons in connection with the provision of the Service;

- 13.2.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.

- 13.3 During access and inspection visits, the Contractor shall provide all reasonable access and facilities free of charge.

14. Unsatisfactory Performance

- 14.1 Where, in the reasonable opinion of the RBK Representative, the Contractor has failed to perform the whole or any part of the Service, with the standard of skill, care and diligence which a competent and suitably qualified person performing the same services could reasonably be expected to exercise, or in accordance with the Contract, the RBK Representative may give the Contractor a notice specifying details of the unsatisfactory performance.

14.2 Where the Contractor has been notified of a failure in accordance with Condition 14.1, the RBK may require the Contractor to perform the Service to the RBK representative's reasonable satisfaction within such period as may be specified, including where necessary, the correction or re-execution of any Service already carried out; or withhold or reduce payments to the Contractor, in such amount as the RBK reasonably deems appropriate (in accordance with the provisions of the Contract).

15. Health, Safety, Fire and Environmental Requirements

15.1 The Contractor shall comply with

15.1.1 the requirements of the Health and Safety at Work etc Act 1974 the Management of Health and Safety at Work Regulations 1999 (including the provision by the Contractor of a copy of its risk assessment under such regulations when requested by the RBK), the Provision and Use of Work Equipment Regulations 1992;

15.1.2 all current relevant health, safety, fire and environmental legislation and official codes of practice and guidance;

15.1.3 all RBK health, safety, fire and environmental requirements, codes of practice and guidance as notified in writing by the RBK.

15.1.4 all requirements of the Contract in relation to health, fire, safety and environmental matters.

15.2 The Contractor shall upon request provide a copy of its policies in relation to health, safety, fire and environmental issues.

15.3 The Contractor shall, so far as reasonably practicable and relevant to the provision of the Service, conserve energy, water and other resources.

15.4 All written work in connection with the Contract shall (unless otherwise specified or agreed in writing) be produced on recycled paper containing at least 80% post-consumer waste and used on both sides where appropriate.

16. Racial Discrimination, the Promotion of Race Equality and the Human Rights Act

16.1 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the Field of Employment) of the Race Relations Act 1976, as amended (the RRA); and/or discriminate directly or indirectly, or by way of victimisation or harassment against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part III of the RRA (Discrimination in Other Fields); and/or contravene Part IV of the RRA ("other unlawful acts") where appropriate; and/or act incompatibly with the Sex Discrimination Acts 1975 and 1986, Disability Discrimination Act 1995 or rights contained within the European Convention of Human Rights.

16.2 The Contractor shall, for purposes of ensuring compliance with clause 16.1 above, in relation to Contractor staff employed in the performance of the

contract, observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment, as approved by parliament in 1983, including, but not limited to, those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy.

- 16.3 The Contractor shall in performing the contract comply with the provisions of section 71 (1) of the RRA as if the Contractor were a body within the meaning of Schedule 1A to the RRA (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups).
- 16.4 Where in connection with the contract the Contractor, its agents or subcontractors, or the Contractor staff are required to carry out work on the RBK's premises or alongside the RBK's employees on any other premises, the Contractor shall comply with the RBK's own equal opportunities and diversity.
- 16.5 The Contractor shall monitor the representation among Contractor staff of persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body), having regard to the RBK's procedures for monitoring representation among its own employees;
- 16.6 Where it appears to the Contractor in relation to particular work of the Contractor's staff, either that the Contractor's staff includes no members of a particular racial group doing that work or that members of that racial group are underrepresented amongst the Contractor's staff doing that work compared to their representation in the Contractor's staff as a whole or in the population from which the Contractor's staff are normally recruited, undertake the following actions as may be appropriate and reasonably practicable:
- 16.6.1 the placing and use of job advertisements to reach members of such racial groups and to encourage their applications;
 - 16.6.2 the use of employment agencies and careers' offices in areas where members of such racial groups live and work;
 - 16.6.3 the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such racial groups; and
 - 16.6.4 the provision of appropriate training and the encouragement of members of the Contractor's staff from such racial groups to apply for promotion or transfer to do work in which such racial groups are underrepresented.
- 16.7 The Contractor shall 12 months from the date of the Contract Commencement Date and annually thereafter submit a report to the Authority demonstrating its compliance with Clauses 16.1 to 16.6.

- 16.8 In addition to the report referred to in Clause 16.7, the Contractor shall provide such additional information as the RBK may reasonably require for the purpose of assessing the Contractor's compliance with Clauses 16.1 to 16.6.
- 16.9 The Contractor shall notify the Council's AR forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the RRA or the Human Rights Act.
- 16.10 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of the contract being in contravention of the RRA or the Human Rights Act, the Contractor shall, free of charge:
- 16.10.1 provide any information requested in the timescale allotted;
 - 16.10.2 attend any meetings as required and permit Contractor staff to attend;
 - 16.10.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 16.10.4 allow itself and any Contractor staff to appear as witness in any ensuring proceedings; and
 - 16.10.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 16.11 Where any investigation is conducted or proceedings are brought under the RRA or the Human Rights Act which arise directly or indirectly out of any act or omission of the Contractor, its agents or subcontractors, or the Contractor staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the RBK with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the RBK may have been ordered or required to pay to a third party.
- 16.12 Where any investigation is conducted or proceedings are brought under the RRA or the Human Rights Act which arise directly or indirectly out of any act or omission of the Contractor, its agents or subcontractors, or the Contractor staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall rectify the act or omission of the Contractor, its agents or subcontractors, or the Contractors staff and shall take appropriate steps to prevent repetition of the unlawful act or omission.
- 16.13 In the event that the Contractor enters into any subcontract in connection with the contract, it shall impose obligations on its subcontractors in terms substantially similar to those imposed on it pursuant to this Clause 16.

17. Gratuities

17.1 The Contractor shall not, whether itself, or by any partner, director, employee or sub-contractor, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Service other than charges in accordance with the provisions of the Contract.

18. Indemnity and Insurance

18.1 The Contractor shall be liable for and shall fully and promptly indemnify and keep indemnified the RBK, its employees and agents, against all liabilities, demands, proceedings, damages, costs, losses, claims, charges and expenses whatsoever in any way arising out of or in connection with:

18.1.1 the defective provision of the Service or breach by the Contractor of any requirement of the Contract or failure to provide the Service or any part of it, and

18.1.2 the injury to, or death of, any person howsoever arising whether in contract, tort or otherwise except and to the extent that it may arise out of the act default or negligence of the RBK its employees or agents other than the Contractor or its personnel.

18.2 The liability set out in Condition 18.1 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Service so far as the management of, or instructions issued to, such third parties is the responsibility of the Contractor.

18.3 Without in any way limiting its responsibilities under this Condition 18, the Contractor shall insure with a reputable insurance company approved by the RBK against its liabilities under Condition 18.1.

18.4 For all claims against which this Condition 18 requires the Contractor to insure, the insurance cover shall be the minimum sum specified, or such greater sum as the Contractor may choose, in respect of any one incident and the Contractor's insurance policy effecting such cover shall have the interest of the RBK endorsed on it, or shall otherwise expressly by its terms confer its benefits upon the RBK.

18.5 The Contractor shall supply to the RBK upon request certified copies of the insurance policies together with documentary evidence necessary to demonstrate compliance with this Condition 18.

18.6 If the Contractor fails to take out and maintain any of the insurances required under this Condition 18 or if the RBK reasonably considers that the policies of insurance do not effect sufficient cover, then the RBK shall require the Contractor to forthwith procure and effect such insurance as the RBK may reasonably require and in the meantime or in default, the RBK may itself cause such insurance to be effected. The amount paid or payable by the RBK may be deducted from any monies due or to become due to the Contractor under the Contract or such amount may be recoverable by the RBK from the Contractor as a debt.

18.7 Public Liability Insurance

18.7.1 The Contractor shall, throughout the Contract Period, maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure against all sums which either party may become legally liable to pay by reason of all losses, claims, demands, proceedings insured under a public liability insurance policy and suffered by:-

- (i) The RBK or its employees;
- (ii) The Contractor or its employees (to the extent not already covered by the Contractor's existing employer's liability insurance); and
- (iii) Any other person;

to the extent not covered by the insurance required under Condition 18.

18.7.2 The Contractor shall ensure that any such insurance expressly covers loss or damage to goods or property (including computer hardware and software) loaned, leased or hired to it and which remains in the legal ownership of the RBK.

18.7.3 The Contractor shall have public liability insurance of not less than five million pounds sterling (£5,000,000) in respect of any one incident.

18.8 Professional Indemnity Insurance

18.8.1 The Contractor shall maintain with reputable insurers or indemnitors, professional indemnity insurance which fully insures the Contractor in respect of the Contractor's obligations and liabilities to provide the Service, in an amount of not less than one million five hundred thousand pounds sterling (£1,500,000), for any one occurrence or a series of occurrences arising out of any one event (for a period of 12 years from the date of the completion by the Contractor of its obligations pursuant to the Contract provided that such insurance is available to contractors of the same profession or discipline at commercially reasonable rates. The Contractor shall immediately inform the RBK if such insurance ceases to be available at commercially reasonable rates).

18.9 Employer's Liability Insurance

18.9.1 The Contractor shall have employer's liability insurance of not less than ten million pounds sterling (£10,000,000) in respect of any one incident.

18.9.2 The Contractor shall ensure that all sub-contractors providing temporary staff within social services maintain insurances which are not less than the above mentioned (£10,000,000) and shall obtain certified documentary evidence and produce it to the RBK on request. Sub-contractors providing temporary staff in all other areas shall maintain public liability insurance of not less than five million pounds sterling (£5,000,000) in respect of any one incident, employers liability insurance of not less than five million pounds sterling (£5,000,000) in respect of any one incident and professional indemnity insurance of not less than one million pounds sterling for any one occurrence or a series of occurrences arising out of any one event as outlined in 18.8.1.

- 18.10 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Contract.
- 18.11 The RBK shall indemnify and keep indemnified the Contractor against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in relation to the injury to, or death of, any person, or loss of, or damage to, any property including property belonging to the Contractor to the extent that it may arise out of the negligence of the RBK, its employees or agents other than the Contractor or its personnel.
- 18.12 The Contractor indemnifies the RBK against all claims made by temporary staff supplied in terms of this Contract in relation to employment rights with the Council.
- 18.12.1 In the course of an assignment, the temporary worker is under the direction and control of the Council who will be responsible for his/her supervision and training on all in-house systems and procedures necessary for the temporary worker to carry out their duties.
- 18.12.2 The Council accepts all health and safety obligations while the temporary worker is on assignment including any training or induction of the Council's health and safety policies.
- 18.12.3 It is the Council's responsibility to ensure that the temporary worker is protected against racial, sexual and disability discrimination in the course of his/her assignment with the Council.

19. Security

- 19.1 RBK shall by prior arrangement provide such access to RBK premises as the Contractor may reasonably require to fulfil its obligations under the Contract.
- 19.2 The Contractor shall comply with all security requirements of the RBK while at RBK premises including providing identity details and submitting to security checks on request and complying with RBK requirements relating to security passes, including returning them on exiting RBK premises.
- 19.3 The RBK reserves the right to refuse admission to or require removal of any person from RBK premises who is considered unacceptable for any reason.
- 19.4 The Contractor shall be responsible for theft, loss or damage to:
- 19.4.1 its own property, plant, equipment, data or personal possessions brought onto RBK premises;
- 19.4.2 RBK property, plant, equipment, or data used or within the care and control of the Contractor.
- 19.5 The Contractor shall indemnify the RBK in respect of the matters referred to in this Condition 19.

20. Occupation of RBK Premises

20.1 Any land or premises (including temporary buildings) made available to the Contractor by the RBK in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract. Any utilities required by the Contractor shall be subject to such charges (if any) as are set out elsewhere in the Contract.

21. Contractor's Physical Resources

21.1 Except as otherwise agreed, the Contractor shall provide all resources and everything necessary for the provision of the Service.

21.2 The Contractor shall be responsible for the security of its resources together with anything used in connection with the provision of the Service and except as otherwise provided in this Contract, the RBK shall have no liability for those resources.

22. Royalties and Patent Rights

22.1 The Contractor shall not in connection with the Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent or patent rights or any other intellectual property rights and the Contractor shall indemnify the RBK against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the RBK may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the RBK may have to make to any person or body entitled to patent rights or any other intellectual property rights in respect of any process or thing used, manufactured, supplied or delivered by the Contractor in connection with the Contract.

22.2 Any and all intellectual property rights developed under the Contract or arising from the provision of the Service by the Contractor shall belong to the RBK and the Contractor shall execute or cause to be executed all deeds and documents and undertake all acts required to vest such intellectual property rights in the RBK.

22.3 The Contractor shall keep confidential and shall ensure that its personnel keep confidential any and all information which is learnt or obtained in relation to any intellectual property rights by the Contractor and/or its personnel in connection with the provision of the Service and shall enter into a confidentiality agreement with the RBK should this be required by the RBK.

23. Invoices and Payments

- 23.1 The Contractor will submit on a monthly basis, consolidated bills with an attached breakdown by cost centre and nominal code. The Contractor shall also provide all information agreed to be necessary to the RBK to enable ready validation and approval of these amounts charged, in accordance with the fees and charges in the SLA.
- 23.2 The RBK shall make reasonable endeavours to pay invoices within 14 days of the date of receipt of valid invoice.
- 23.3 Payment of invoices will not be delayed in the event of a dispute for any undisputed amounts.
- 23.4 The RBK shall have 14 days from date of invoice to dispute any amounts charged.
- 23.5 Should any amount be disputed, such amount shall be deducted from the next invoice.
- 23.6 All charges, fees and rates quoted are exclusive of VAT, which will be applied at the rate applicable at the date of invoice.
- 23.7 The Contractor reserves the right to increase the charges to reflect any increase in statutory employer contributions. The Contractor will provide the RBK with 30 days notice of such an increase.
- 23.8 The Contractor shall similarly reduce the charges to reflect any decrease in statutory employer contributions.
- 23.9 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the services shall be inclusive of all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging its obligations under the contract.

24. Value Added Tax

- 24.1 The RBK shall pay the Contractor such Value Added Tax as may be properly chargeable in respect of the supply of the Services in accordance with the Contract.

25. Assignment and Sub-Contracting

- 25.1 The RBK shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Contractor.
- 25.2 The Contractor shall neither assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof nor sub-contract the provision of the Service or any part thereof without the written consent of the RBK (which consent may be given subject to such condition, if any, as the RBK may think fit to impose).
- 25.3 The Contractor shall ensure that any sub-contractor complies with all applicable provisions of the Contract. Any sub-contract shall not relieve the

Contractor of its obligations under the Contract.

- 25.4 The Contractor shall include a term in any sub-contract that payment will be made within 30 days of receipt of a valid invoice.

26. Assistance in Legal Proceedings

- 26.1 The Contractor shall notify the RBK's Representative of any accident, damage or breach of any statutory provision relating in any way to the Service immediately upon becoming aware of it. Such notification shall include all relevant information to enable the RBK's Representative to investigate the matter fully.

- 26.2 If requested to do so by the RBK's Representative, the Contractor shall provide the RBK's Representative with any relevant information arising out of the provision of the Service, in connection with any legal inquiry, hearing, arbitration or Court proceedings in which the RBK may become involved or any relevant disciplinary hearing internal to the RBK and shall give evidence in such inquiries or proceedings or hearings.

- 26.3 Assistance shall be provided by the Contractor pursuant to this Condition 26 free of charge where it is required in relation to a matter which was caused or arose during the course of the Contract.

27. Prevention of Corruption

- 27.1 The RBK shall be empowered to terminate the Contract immediately and to recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have done any act intended as an inducement for obtaining any contract with the RBK or shall have committed any offence under the Prevention of Corruption Acts 1889 to 1016 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local government Act 1972, or statutory modification or amendment thereto.

- 27.2 The decision of the RBK in relation to this Condition 27 shall be final and conclusive.

28. Termination

- 28.1 The RBK has relied on the information provided by the Contractor contained in the Contractor's Tender Submission and supporting documents (if any) submitted to the RBK prior to its acceptance and prior to the RBK entering into this Contract and any material misrepresentation made shall entitle the RBK, to rescind or terminate this Contract at its option.

- 28.2 If the Contractor or, where applicable, any of its directors or partners:

28.2.1 commits a material or fundamental breach of any of its obligations under the Contract;

28.2.2 persistently breaches any of its obligations under the Contract;

28.2.3 is subject to a merger, change of control, or take-over or changes its composition or staffing in a way which in the reasonable opinion

of the RBK seriously affects the ability of the Contractor to discharge its obligations under the Contract, except that maternity or paternity leave taken by employees under statutory or contractual entitlements shall be disregarded;

- 28.2.4 has any of its directors or partners convicted of dishonesty;
- 28.2.5 experiences, in the opinion of the RBK's Representative, whose opinion shall be final and binding, an irreconcilable conflict of interest of the RBK and any other client or interest of the Contractor;
- 28.2.6 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act, 1986;
- 28.2.7 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
- 28.2.8 has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 28.2.9 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 28.2.10 has an administrator or an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 28.2.11 has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge;
- 28.2.12 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or an administrative receiver, or which entitle the Court to make a winding-up order;

Then in any such circumstances the RBK may, but not unreasonably without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing having immediate effect, or upon such period of notice as the RBK shall determine at its sole discretion.

- 28.3 The RBK may terminate this Contract at any time by giving the Contractor 6 months notice in writing.

28.4 For the avoidance of doubt, the rights of the Council under this Condition are in addition to any other rights or remedies the Council may have pursuant to the parent company guarantee annexed hereto as Annex "2".

29. Consequences of Termination

29.1 If the Contractor's employment is terminated as provided in Conditions 27, 28.1, 28.2 or 34 and is not reinstated, the RBK shall:

29.1.2 cease to be under any obligation to make further payment until the cost, loss and/or damage arising out of the termination of the Contractor's employment shall have been calculated and provided such calculation show an amount due to the Contractor;

29.1.3 be entitled to reoccupy any premises and repossess any other physical resources licensed, loaned, or hired to the Contractor and to exercise a lien over any of the physical resources or any other thing belonging to the Contractor for any sum due to the RBK, and shall have full and unlimited licence over all drawings, documents, descriptive schedules and other data for use in connection with the Service;

29.1.4 be entitled to make all arrangements which are, in its view, necessary to procure the orderly completion of the provision of the Service including emergency, temporary arrangements if required and re-letting another contract and, subject to the RBK's Best Value duty, the RBK shall have no obligation to use the least expensive method of performing the Service;

29.1.5 be entitled to use all of the Contractor's physical resources or other things, and all such drawings, documents, descriptive schedules or other data;

29.1.6 be entitled in respect of any costs, loss or damage to the RBK arising out of the termination of the Contractor's employment, to deduct the same from any amount which would otherwise have been due from the RBK to the Contractor under the Contract or any other contract or be entitled to recover the same from the Contractor as a debt. Such costs, loss or damage shall include the reasonable costs to the RBK of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the Service or any part of it;

29.2 If the RBK shall omit or require the Contractor to cease to provide a substantial part of the Service, the RBK may, notwithstanding Condition 7, at its sole discretion, terminate the Contractor's employment by not giving less than 3 month's notice in writing, re-occupy its premises, and repossess its physical resources licensed, and loaned or hired to the Contractor. If the Contractor's employment is terminated under this Condition 29.2, neither the RBK nor the Contractor shall have claims against the other in respect of any loss or damage resulting from or arising out of the termination of the Contractor's employment except that:

- 29.2.1 the Contractor shall be entitled to receive from the RBK any sum or sums due in respect of work properly performed up to the time of termination of the Contractor's employment.
 - 29.2.2 the Contractor shall have the right to claim from the RBK reimbursement of all reasonable costs necessarily and properly incurred in relation to the orderly cessation of the Service, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract.
 - 29.2.3 the Contractor shall have the right to claim from the RBK reimbursement of all reasonable costs necessarily and properly incurred, for the avoidance of doubt, the RBK will not indemnify the Contractor against loss of profit or contribute to overheads on other contracts. The RBK's maximum liability under the provisions of this Condition 28.2 shall be the annual Contract price.
- 29.3 Where the Contract is terminated under Condition 27, 28 or 34, the RBK may, during any notice period:
- a. direct the Contractor, where the Service or part of it has not commenced, to refrain from commencing such Service or part of it or where the Service has commenced, to cease work immediately;
 - b. direct the Contractor to complete in accordance with the Contract all or any part of the Service, which shall be paid at the rates set out in the Pricing Schedule.

The rights of each party under this Condition 29 are in addition to and without prejudice to any other rights or remedies of that party against the other directly or pursuant to any guarantee, indemnity or bond.

30. Recovery of Sums Due to the RBK

- 30.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the RBK it may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or any other contract with the RBK.

31. Disputes Resolution and Arbitration

- 31.1 If any dispute or difference of any kind whatsoever shall arise between the RBK and the Contractor in connection with or arising out of the Contract or the carrying out of the Service, including any dispute as to any decision, opinion, instruction, direction, certificate or valuation given by any RBK officer (whether during the progress of the Contract or after its completion, and whether before or after termination, abandonment or breach of the Contract), it shall be referred to the RBK's Representative and the Contract Manager who shall endeavour to resolve the dispute or difference.
- 31.2 If the RBK's Representative and the Contract Manager shall fail to resolve a matter pursuant to Condition 30.1 within fourteen (14) days the matter shall be referred to a Corporate Director of the RBK and to a Director of the Contractor. If the matter is still unresolved for a further fourteen (14) days,

then either party may require that the matter be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators. The award of the arbitrator shall be final and binding upon the RBK and the Contractor.

- 31.3 If, upon the referral to an arbitrator of any dispute between the RBK and the Contractor, the arbitrator shall find that in the exercise of his powers, duties and discretions under the Contract either party has acted unreasonably in all the circumstances in the issue of any notice, instruction or certificate or in the giving or withholding of any consent, the arbitrator shall have the power to make an award which has the effect of amending such notice, instruction, certificate or decision to give or withhold consent in such manner as the arbitrator may think fit.

32. Complaints in Respect of Service Provision

- 32.1 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.
- 32.2 The Contractor shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the RBK's Representative at all reasonable times. The Contractor shall immediately notify the RBK's Representative in writing of all complaints received and of all steps taken in response.

33. Recovery of Sums on Behalf of the RBK

- 33.1 Where it is provided in the Specification that the Contractor may or shall seek any sum or sums from any third party on the RBK's behalf, the Contractor shall proceed with expedition and diligence in accordance with all reasonable requirements of the RBK. Any sums obtained shall be remitted immediately to the RBK in such manner as the Specification provides and shall until receipt by the RBK be held by the Contractor as trustee of the RBK. If any such monies are paid by the Contractor into any bank, building society or other similar account, such account shall be designated as a trust account with the RBK's name appearing in its title. On no account shall any such monies be mixed with any other money. The Contractor shall keep full and proper records as to the receipt and transfer of such monies in such form as the RBK may require and shall provide whenever requested access to and copies of those records.

34. Conflicts of Interest

- 34.1 Conflicts of interest shall not be permitted in relation to the performance of the Service.
- 34.2 The Contractor shall notify the RBK's Representative immediately upon becoming aware of any potential conflict of interest (whether direct or indirect) which may arise between the interests of the RBK and any interests of the Contractor or its other clients.
- 34.3 If there is a direct conflict of interest (as determined by the RBK), the Contractor shall comply with the RBK's directions to remove or avoid such a conflict.

34.4 If there is an indirect conflict of interest, the Contractor shall satisfy the RBK that satisfactory arrangements have been made to ensure that the conflict cannot prejudice the performance of the Service.

34.5 The RBK may terminate the Contract if the Contractor breaches this Condition 34.

35. **Quality Assurance**

35.1 The Contractor shall operate a self-regulatory system of quality assurance and quality measures relevant to the Contract in addition to any quality requirements in the Specification which ensures that the Service is provided in accordance with the requirements of the law and the Contract, including the following measures as a minimum to:

35.1.1 Make available back-up, replacement and support staff whenever necessary;

35.1.2 Give senior management time and staff for the performance and organisation of the Service;

35.1.3 Ensure that there are properly organised and efficient systems and processes in place between the Contractor and any permitted sub-contractors to enable full understanding and agreement concerning the Service which is to be provided and the necessary liaison with the RBK.

35.1.4 Enable a quick response to the RBK's requests or requirements for the Service and matters associated with the Service, including but not limited to attendance at meetings and requests for information.

35.1.5 Ensure compliance with all contractual timescales and all other reasonable response times.

35.1.6 Maintain and monitor all contractual or relevant performance indicators.

35.1.7 Check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the RBK intends to use it.

35.1.8 Deal properly with any potential conflicts of interest in accordance with the Contract.

35.1.9 Keep the RBK informed about progress in the provision of the Services.

36. Best Value

- 36.1 The Contractor acknowledges that the RBK is subject to a statutory duty pursuant to the Local Government Act 1999 to make arrangements to secure continuous improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness ("the Best Value duty").
- 36.2 The Contractor shall co-operate fully and assist the RBK, so far as reasonably required, in relation to all requests for assistance by the RBK in connection with the performance of the RBK's Best Value duty as it relates to the Contract at no extra charge including, but not limited to:-
- 36.2.1 complying with all requests for information, including providing access to premises, staff, documents, data and processes.
 - 36.2.2 providing assistance to enable the RBK to undertake best value consultation exercises including undertaking customer or user satisfaction surveys, if required and providing a written report to the RBK setting out the results.
 - 36.2.3 providing all assistance and information necessary to include an objective comparison of the quality and standard, performance and delivery of the Service, with other organisations.
 - 36.2.4 maintaining and monitoring performance of all contractual performance measurements and targets and providing a detailed performance management report in writing at contract review meetings.
 - 36.2.5 on each anniversary of the Commencement Date providing proposals for service improvements, including an annual review of performance indicators and targets and implementing such proposals as agreed by the RBK.
 - 36.2.6 throughout the Contract Period, and not less than annually proactively suggest efficiency savings.
 - 36.2.7 The Contractor shall be subject to a duty to demonstrate continuous improvement in its performance of the Service throughout the Contract Period.
 - 36.2.8 The requirements of this Condition 36 shall be at no additional cost to the RBK.

37. Transfer of Responsibility

- 37.1 The Contractor shall provide all relevant information which may be required by the RBK in order that the RBK can act fairly, properly and in accordance with its statutory obligations in connection with any tendering exercise whether relating to the provision of the Service or the future provision of the same or any similar service and whether such tendering exercise takes place before or after completion by the Contractor of its obligations under this Contract. The RBK may make a request for any such information at any reasonable time and the Contractor shall comply with that request as soon as practically possible.

37.2 In the event that a different organisation is required to take over the Service at the expiry or termination of the Contract, the Contractor shall fully co-operate in the transfer under arrangements as notified to them by the RBK.

37.3 The transfer shall be arranged between the RBK and the Contractor so as to reduce to a minimum any interruption in the Service.

38. Contractor's obligations in connection with TUPE

38.1 Where requested to do so the Contractor shall provide such information in connection with The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), as the RBK may require, to the RBK and/or to any other person authorised by the RBK who is to be invited to submit a tender in relation to the provision of similar services, within ten (10) days of the request.

38.2 During the eight (8) month period preceding the expiry of the Contract or within any period of notice of termination, the Contractor shall not without the prior written agreement of the RBK, which shall not be unreasonably withheld or delayed:

a. materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or

b. materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.

38.3 The Contractor shall not knowingly do or omit to do anything, which may adversely affect an orderly transfer of responsibility for provision of the Services. The Contractor agrees to indemnify the RBK fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of TUPE related information.

If the Contractor fails to comply with the requirements of this Condition 38, in addition to its other contractual remedies, the RBK may exclude the Contractor from the re-tender process.

39. Force Majeure

39.1 If either party is prevented, hindered or delayed from performing its obligations under this Contract by a Force Majeure Event then:

39.1.1 that party's obligations under this Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that the party is so prevented hindered or delayed;

39.1.2 as soon as reasonably possible after commencement of the Force Majeure Event that party shall notify the other party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under this Contract;

- 39.1.3 if that party fails to give the notice referred to in Clause 39.1.2 it shall forfeit its rights under Clause 39.1.1;
- 39.1.4 that party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Contract; and
- 39.1.5 as soon as reasonably possible after the cessation of the Force Majeure Event that party shall notify the other party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Contract.

39.2 if the Force Majeure Event continues for more than fourteen (14) days after the commencement of the Force Majeure Event either party may terminate the Contract.

40. Observance of Statutory and Other Requirements

- 40.1 The Contractor shall comply with all legislative and other provisions including codes of practice and European Directives to be observed and performed in connection with the Service and shall indemnify the RBK against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Condition 40.
- 40.2 The Contractor will note the RBK's current and future obligations under the Data Protection Act 1998, the Freedom of Information Act 2000, the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Race Relations Act 1976 (all as amended from time to time) and any codes of practice and best practice guidance issued by the Government and the appropriate enforcement agencies.
- 40.3 The Contractor will comply with the above legislation in so far as it places obligations upon the Contractor in the performance of its obligations under the Contract.
- 40.4 The Contractor will facilitate the RBK's compliance with the RBK's obligations under these provisions and comply with any reasonable request from the RBK for that purpose.
- 40.5 The Contractor will act in respect of any person who receives or requests service under the Contract as if the Contractor were a public authority for the purposes of the Human Rights Act 1998.
- 40.6 The Contractor notes particularly that the RBK may be required to provide information relating to the Contract or the Contractor to a person in order to comply with its obligations under these provisions.

41. Agency

- 41.1 Except as expressly provided otherwise in this Contract or as instructed in writing by the RBK neither the Contractor nor its personnel shall in any circumstances hold itself or themselves out as being the employee or agent of the RBK.

- 41.2 The Contractor shall ensure that neither it nor its staff is held out as having power to:
- 41.2.1 enter into any contract on behalf of the RBK or in any other way to bind the RBK to the performance, variation, release or discharge or any legal obligations with third parties; or
 - 41.2.2 perform or discharge duties or functions which by statute must be performed or discharged by the RBK.
- 41.3 Neither the Contractor nor its personnel shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any byelaw or regulation of any kind.

42. Notices

- 42.1 Any demand, notice, or other communication required to be given or served under this Contract shall be in writing and shall be sufficiently served if served personally on the RBK Representative or Contract Manager as appropriate, or if sent by first class post, by telex, electronic mail or facsimile transmission to the registered office or last known address of the party to be served, when it shall be deemed to be served on the second business day after the date of posting or successful transmission, subject to proof to the contrary.

43. Waiver

- 43.1 Failure by the RBK at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provisions and shall not affect the validity of the Contract or any part thereof or the right of the RBK to enforce any of the provisions in accordance with its terms.

44. Exclusions

- 44.1 It is here agreed and declared that nothing contained in the Contract shall constitute a partnership between the RBK and the Contractor.

45. Severance

- 45.1 If any provision of this Contract shall become or be declared by a Court or other competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision of this Contract all of which shall remain in full force and effect.

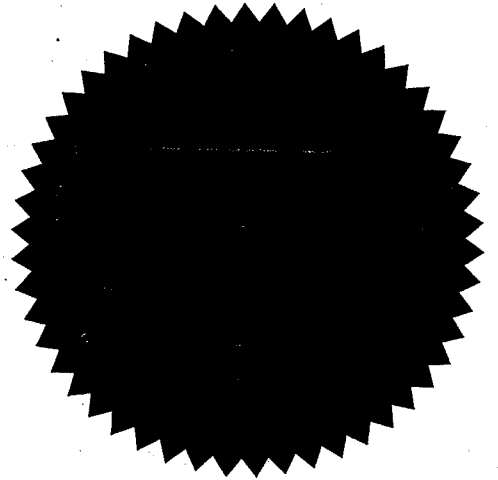
46. Third Party Rights

- 46.1 The Contract shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights. No third party shall have any right to enforce or rely on any provision of the Contract which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly. The application of any legislation giving or conferring on third parties contractual or other rights in connection with the Contract shall be excluded.

IN WITNESS the hands of the parties hereto have executed this document as

a Deed the day and year first before written

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE ROYAL)
BOROUGH OF KINGSTON UPON THAMES)
was hereunto affix to this Deed in the presence of :-)



[Handwritten Signature]
Mayor
[Handwritten Signature]
Head of Legal Services

EXECUTED AS A DEED BY)
acting by a Director and its Secretary*)
two Directors* whose signatures are here)
subscribed)

[Handwritten Signature]

namely NICK SOHAIL

(signature) *[Handwritten Signature]* Director

and M. D. STERLING

(signature) *[Handwritten Signature]* Director/Secretary
delete as appropriate

47. Final Contract

47.1 Subject to any variations made pursuant to Condition 2.3, this contract embodies all the terms binding between the parties and replaces all previous representations or proposals not embodied herein. Neither the RBK nor the Contractor's standard terms and conditions of business will be binding on the parties save to the extent that they are embodied in this Contract.

48. No Partnership or Joint Venture

48.1 Nothing in this Contract shall create, or be deemed to create, a legal partnership or joint venture between the parties.

49. Law

49.1 The Contract shall be governed by and interpreted in accordance with English Law, and shall be subject to the jurisdiction of the English Courts.

