

WESTMINSTER CITY COUNCIL

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CONDITIONS  
FOR  
SUPPLY OF SERVICES  
(SHORT FORM)

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## CONTENTS

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|     |  |    |
|-----|--|----|
| 1.  | DEFINITIONS AND INTERPRETATIONS            | 1  |
| 2.  | APPOINTMENT                                | 2  |
| 3.  | THE CONTRACTOR'S OBLIGATIONS               | 2  |
| 4.  | WARRANTY                                   | 3  |
| 5.  | PAYMENTS                                   | 4  |
| 6.  | CANCELLATION                               | 4  |
| 7.  | DEPOSIT                                    | 4  |
| 8.  | VAT  | 4  |
| 9.  | DEFECTS IN THE PERFORMANCE OF THE SERVICES | 4  |
| 10. | TERMINATION                                | 5  |
| 11. | TERMINATION CONSEQUENCES                   | 6  |
| 12. | AUDIT AND INFORMATION                      | 7  |
| 13. | CONFIDENTIALITY                            | 7  |
| 14. | PERSONNEL AND EQUALITY OF OPPORTUNITY      | 8  |
| 15. | DISPUTE RESOLUTION                         | 8  |
| 16. | FORCE MAJEURE                              | 9  |
| 17. | EMERGENCIES                                | 9  |
| 18. | GENERAL                                    | 10 |
| 19. | SPECIAL CONDITIONS                         | 10 |

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[Month and Year]

THIS AGREEMENT is made the 9th day of May 2011

BETWEEN

- (1) THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER of 64 Victoria Street, London, SW1P 6QE ("the City Council"); and
- (2) A N CONTRACT SERVICES LTD (a company registered in England and Wales under number 02534054) whose registered offices is at 78 York Street, London W1H 1DP ("the Contractor")

BACKGROUND

- A. The City Council wishes to procure A Handyperson Service
- B. By a tender dated 25 March 2011 the Contractor has offered to provide such services.
- C. The City Council has accepted the Contractor's offer subject to the Conditions set out in this document.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. The following terms shall have the following meanings for the purposes of this agreement:-

| PHRASE              | MEANING  |
|---------------------|--|
| Commencement Date   | means 11 May 2011  |
| Conditions          | means the terms and conditions set out in this document and any special terms and conditions agreed by the City Council;   |
| Emergency           | an emergency or disaster resulting in destruction of, or damage to, life or property;  |
| Expiry Date         | means 10 May 2012  |
| Payments            | means at the agreed rates laid out in Schedule 1   |
| Performance Default | a breach by the Contractor of its obligations under this agreement including, for the avoidance of doubt, a defect or omission in the provision of the Services; |
| Services            | means the services described in Schedule 1   |
| Term                | means the period from the Commencement Date until the  |

Expiry Date;

- 1.2. In this agreement, except where the context otherwise requires:-
  - 1.2.1. clause headings contained in this agreement are for reference purposes only and shall not be taken into account in its construction or interpretation;
  - 1.2.2. each gender includes all genders;
  - 1.2.3. the singular includes the plural and vice versa
  - 1.2.4. a reference to any clause or schedule is, except where expressly stated to the contrary, a reference to such clause or schedule of and to this agreement.
- 1.3. The schedules attached to this agreement form part of this agreement.

2. APPOINTMENT

- 2.1. The City Council appoints the Contractor to provide the Services for the Term in return for the Payments.
- 2.2. The Conditions shall apply to the appointment of the Contractor to the exclusion of any other terms and conditions on which any quotation or offer has been given to the City Council or subject to which any contract has been accepted or purported to be accepted by the Contractor.
- 2.3. The Contractor shall be deemed to have satisfied itself before entering into this agreement as to the accuracy and sufficiency of the Payments which shall, except where expressly provided to the contrary in this agreement, cover all the Contractor's obligations under this agreement and the Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Payments.

3. THE CONTRACTOR'S OBLIGATIONS

3.1. Services to be provided by the Contractor

The Contractor shall, subject to clause 4, provide the Services in accordance with the provisions of schedule [1] and shall comply with all applicable regulations or other legal requirements concerning the performance of the Services.

3.2 Not Used

3.3 Inspection

The Contractor shall not unreasonably refuse any request by the City Council to inspect the performance of the Services by the Contractor and the Contractor shall provide the City Council with all facilities reasonably required for such inspection.

### 3.4 Delegation or Sub-Contracting

The Contractor shall not delegate or sub-contract any of its duties or obligations under this agreement unless it has the express prior written consent of the City Council to do so (the giving of which consent shall be entirely at the City Council's discretion).

### 3.5 Intellectual Property

The Contractor shall not cause or permit anything which may damage or endanger the intellectual property of the City Council or the City Council's title to it, nor assist or allow others to do so.

### 3.6 Indemnity

The Contractor shall indemnify the City Council, and keep it indemnified, from and against any and all loss, damage, cost, expense or liability (whether criminal or civil) suffered, and legal fees and costs incurred, by the City Council resulting from any negligent or tortuous act or omission by the Contractor or any breach of this agreement by the Contractor, including (without limitation):-

3.6.1 any act, neglect or default of the Contractor's employees or agents; or

3.6.2 breaches in respect of any matter arising from the supply of the Services resulting in any claim by any third party.

### 3.7 Insurance

The Contractor shall:-

3.7.1 maintain at its own costs a public liability policy of insurance to

cover the liability of the Contractor in respect of any act or default for which it may become liable to indemnify the City Council under the terms of this agreement;

3.7.2 to arrange that the total cover [per claim] of that policy is £5 million;

### 3.8 Notice of Performance Default

The Contractor shall comply with the terms of any notice specifying a breach of the provisions of this agreement and requiring the breach to be remedied (so far as it may be remedied) but nothing in this clause is intended to require the City Council to serve notice of any breach before taking action in respect of it.

## 4. WARRANTY

The Contractor warrants to the City Council that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the City Council to expect in all the circumstances.

5. PAYMENTS

- 5.1. Subject to clause 9, in consideration of the Contractor providing the Services in accordance with this agreement the City Council agrees to make the Payments [in accordance with the agreed rates laid out in the quote document, [Schedule 1]
- 5.2. The Contractor may invoice the City Council on or at any time after performance of the Services or relevant part of the Services.
- 5.3. Subject to clause 9, the City Council shall pay the Payments (at the agreed rates laid out in the Schedule 1 within 28 working days after the end of the month of receipt by the City Council of a proper invoice or, if later, after acceptance of the Services in question by the City Council.
- 5.4. The City Council may set off against the Payments (or relevant instalment of the Payments) any sums owed to the City Council by the Contractor.
- 5.5. Save as provided at the agreed rates laid out in Schedule 1, no increase in the Payments may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the City Council in writing.

6. NOT USED

7. NOT USED

8. VAT

- 8.1. All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes.
- 8.2. Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

9. DEFECTS IN THE PERFORMANCE OF THE SERVICES

- 9.1. The Contractor shall be responsible for correcting any Performance Default including, but not limited to, any Performance Default drawn to its attention in a written notice from the City Council. The City Council shall be entitled to withhold payment of the Payments (or relevant instalment of the Payments) until the Performance Default is corrected. If any event, the Performance Default shall be corrected at no additional cost to the City Council and within any timescale stipulated in the written notice by

the City Council (if any) or, if no such timescale is given or notice served, as soon as possible and at a time which minimises the adverse effect on the City Council.

- 9.2. If the Contractor fails to correct a Performance Default, or fails to correct it within the time stated in clause 9.1, the City Council, acting reasonably, shall be entitled to assess the cost of having the Performance Default corrected by a third party and shall be entitled to deduct this amount from any payment due to the Contractor under clause 5 or recover it from the Contractor as a debt.
- 9.3. If it is not possible to correct a Performance Default, the City Council shall be entitled to make a deduction from the payment of any sums due to the Contractor under clause 5 of an amount equal to such costs and losses as the City Council may reasonably and fairly consider to be attributable to the Performance Default, including the City Council's reasonable management and administration costs in addressing the Performance Default.

#### 10. TERMINATION

- 10.1. The City Council may terminate this agreement without liability to the Contractor by giving written notice with immediate effect to the Contractor at any time if:-
- 10.1.1. the Contractor is in material breach of its obligations under this agreement;
  - 10.1.2. the Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - 10.1.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Contractor; or
  - 10.1.4. the Contractor ceases, or threatens to cease, to carry on business; or
  - 10.1.5. the City Council reasonably apprehends that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor accordingly; or
  - 10.1.6. the Contractor or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this agreement or to any other contract with the City Council; or
  - 10.1.7. the Contractor or any of its employees shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916.

11. CONSEQUENCES OF EXPIRY OR TERMINATION

11.1. If this agreement is terminated the City Council shall:-

- 11.1.1. not be liable to make any payments to the Contractor, provided that notice of termination is duly given, until the costs, losses and/or damage arising from the termination have been calculated and it is apparent that such sum is due to the Contractor;
- 11.1.2. be entitled to repossess any information, data, materials, clothing, equipment, vehicles or goods loaned or hired by it to the Contractor or created in connection with the performance of the Services and accordingly and for this purpose the Contractor hereby grants to the City Council a licence for it and any of its appointed agents to enter onto any land or premises belonging to or under the control of the Contractor
- 11.1.3. be entitled to exercise a lien over any materials and other goods belonging to the Contractor for such sum due to the City Council from the Contractor.
- 11.1.4. for the purposes of recovering any monies due to the City Council for any loss or damage arising from the termination of the Contractor's employment (such loss or damage to include costs incurred in connection with the City Council exercising its rights pursuant to Clause 11.1.2 above, and the City Council's officers' time spent on such termination and/or in making alternative arrangements for the provision of the whole or part of the Services), to deduct any sums owing to the City Council from any monies due to the Contractor or to recover any such monies as a debt;
- 11.1.5. once the total costs (including loss or damage referred to above) shall have been calculated, recover any balance due to the City Council or alternatively pay to the Contractor any balance due.
- 11.2. On the expiry of this agreement the Contractor shall return to the City Council any information, data, materials, clothing, equipment, vehicles or goods loaned or hired by it to the Contractor or created in connection with the performance of the Services.
- 11.3. In the event that the Contractor fails to return any item to which clause 11.2 relates in accordance with that clause the City Council shall be entitled whether itself or through any of its authorised agents to recover possession of the item/s concerned and accordingly and for this purpose the Contractor hereby grants to the City Council a licence for it and any of its authorised agents to enter onto any land or premises belonging to or under the control of the Contractor.



- 11.4. The rights of the City Council under this clause 11 are in addition to and without prejudice to any other rights and remedies the City Council may have arising from the termination.
- 11.5. The provisions of this clause 11 shall survive the expiry or early termination of this agreement.

**12. AUDIT AND INFORMATION**

- 12.1. The Contractor shall keep full and proper records in relation to the performance of its obligations under this agreement and provide the City Council with any information regarding such records as may be reasonably requested in writing by the City Council and/or its internal or external auditors having regard to the City Council's duties and responsibilities as a public authority.
- 12.2. Any information requested in writing under clause 12.1 shall be provided by the Contractor within a reasonable time being no longer than three working days from the date of such written request and shall be provided in hard copy and, where available, also electronically. The City Council shall be entitled to have the originals of any document so requested.
- 12.3. Without prejudice to the Contractor's obligations under clauses 12.1 and 12.2, the City Council shall be entitled to request, and the Contractor shall provide within a reasonable time, employment and relevant personal information in relation to the Contractor's personnel engaged upon or in connection with the provision of the Services for the purposes of anti-fraud measures such as data matching. The Contractor shall ensure that it takes any measures necessary pursuant to the Data Protection Act 1998 and any other relevant legislation to facilitate such disclosure lawfully and fairly.

**13. CONFIDENTIALITY**

- 13.1. Subject to clause 13.2, any data or information provided by the City Council for the purposes of, or in relation to, this agreement which is so designated by the City Council shall be kept confidential by the Contractor, and any data or information provided by the Contractor for the purposes of, or in relation to, this agreement which is so designated by the Contractor shall be kept confidential by the City Council; but the foregoing shall not apply to any data or information which is public knowledge at the time when it is so provided by either party, is required to be disclosed by law or by order of a court of competent jurisdiction and shall cease to apply if at any future time it becomes public knowledge through no fault of the other party. The Contractor acknowledges that, as a public authority, the City Council may receive requests for

information relating to this agreement and the Services which, but for any right to claim commercial confidentiality or any other applicable exemption, the City Council will be obliged to disclose under the Freedom of Information Act 2000 (the "2000 Act"). The City Council shall consult with the Contractor over any such request and the Contractor shall respond promptly with its opinion as to whether the material should not be disclosed on the grounds of confidentiality or otherwise and provide such other reasonable assistance as may be required to enable the City Council to comply with its obligations under the 2000 Act.

- 13.2. The Contractor shall ensure that at all times it and all of its staff agents sub-contractors and sub-consultants engaged by it in connection with the performance of any of its obligations arising under from or in connection with this Agreement comply in respect of each such obligation with all rules procedures policies guidelines and the like issued by the City Council from time to time relating to the handling and security of data or information including without limitation confidential information.
- 13.3. The obligations in this clause 13 shall survive the expiry or early determination for whatever reason of this Agreement without limit in point of time.

14. PERSONNEL AND EQUALITY OF OPPORTUNITY

- 14.1. The Contractor shall comply with a request by the City Council that any officer, employee, agent or sub-contractor of the Contractor who is performing the Services should cease to do so. The City Council shall give reasons to the Contractor for its request. The City Council shall not be obliged to compensate the Contractor for any losses or additional costs which the Contractor suffers as a result of complying with the City Council's request save where the City Council has acted unreasonably in making the request.
- 14.2. In performing its obligations under the Agreement, the Contractor shall not unlawfully discriminate against any person on the grounds of their sex, marital or civil partnership status, sexual orientation, gender reassignment, colour, race, ethnic, or national origin, disability, age, religion or belief or part-time or temporary status in employment.

15. DISPUTE RESOLUTION

- 15.1. If there is a dispute between the Contractor and the City Council concerning the interpretation or operation of this agreement it shall be referred to a senior officer of the City Council and a senior representative of the Contractor for resolution.
- 15.2. If any dispute is not resolved within 20 working days of the referral under clause 15.1 (or such longer period as the City Council and the Contractor may agree), then the

parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure 2001 (the "model Procedure") or such later edition as may be in force from time to time. To initiate the mediation a party must give notice in writing (the "ADR notice") to the other party requesting a mediation in accordance with this clause. The mediation is to take place not later than 20 working days after the date of the ADR notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 10 working days after the date of the ADR notice, then CEDR will, at the request of any party, decide the issue for the parties having consulted with them.

- 15.3. If the dispute is not resolved within 10 working days of the mediation then the parties may litigate the matter in accordance with clause 18.5.

16. FORCE MAJEURE

If either party is unable to perform any obligation under this agreement because of a matter beyond that party's reasonable control that arises from any of the following matters only:-

- a) explosion;
- b) war;
- c) civil disorder;
- d) actual or threatened terrorist attack; or
- e) acts of local or central Government or other competent authorities (other than the City Council in its capacity as contracting party);

that party will have no liability to the other for that failure to perform.

17. EMERGENCIES

- 17.1. If an Emergency arises during the Term which cannot be dealt with by performance of the Services, the City Council may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the City Council to ensure that the Emergency is dealt with and normal operation of the Services resumes as soon as is reasonably practicable.
- 17.2. The reasonable and proper costs incurred by the Contractor of any additional or alternative services provided to the City Council under clause 17.1 shall be agreed between the parties failing which they shall be determined in accordance with clause 15.

18. GENERAL

- 18.1. The Contractor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations under this agreement.
- 18.2. A notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 18.3. No waiver by the City Council of any breach of this agreement by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.4. If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 18.5. This agreement shall be governed by the laws of England, and the Contractor agrees to submit to the exclusive jurisdiction of the English courts.
- 18.6. This agreement is not exclusive and the City Council shall be entitled to procure services of the same or similar nature to the Services from any third party or carry them out itself.
- 18.7. The City Council reserves the right to add or remove buildings from the contract at any point during the contract term.
- 18.8. This agreement shall not confer nor be deemed to confer a benefit on any third party for the purposes of the Contracts (Rights of Third Parties) Act 1999.
- 18.9. Except where expressly provided otherwise in this agreement, this agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this agreement.

19. NOT USED

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this deed.

SIGNED as a deed by )  
 )  
by two directors or a director and )  
company secretary )

.....  
Director

.....  
Director/Company Secretary