

**LEEDS CITY COUNCIL**

**GENERAL CONDITIONS OF CONTRACT**

**PROVISION OF BAILIFF AND DEBT COLLECTION SERVICES FOR COUNCIL  
TAX AND NON DOMESTIC RATES**

**LCC4102**

**SERVICES**

**INDEX OF CLAUSES**

CLAUSE 1.	DEFINITIONS
CLAUSE 2.	SCOPE OF THIS AGREEMENT
CLAUSE 3.	ORDERING PROCEDURES
CLAUSE 4.	CHARGES AND PURCHASING CARD PAYMENTS
CLAUSE 5.	THE COUNCIL'S RESPONSIBILITIES
CLAUSE 6.	LEGISLATIVE CHANGE
CLAUSE 7.	WARRANTIES AND REPRESENTATIONS
CLAUSE 8.	LIMITATION OF LIABILITY
CLAUSE 9.	CONFIDENTIALITY AND SECURITY OF CONFIDENTIAL INFORMATION
CLAUSE 10.	TERMINATION
CLAUSE 11.	CONSEQUENCES OF TERMINATION
CLAUSE 12.	RECOVERY OF SUMS DUE
CLAUSE 13.	PROGRESS REPORTS
CLAUSE 14.	HEALTH AND SAFETY HAZARDS
CLAUSE 15.	DATA PROTECTION ACT
CLAUSE 16.	PUBLICITY
CLAUSE 17.	FRAUD
CLAUSE 18.	CORRUPT GIFTS AND PAYMENTS OF COMMISSION
CLAUSE 19.	CONTRACTOR'S STAFF AND CRIMINAL RECORDS BUREAU CHECKS
CLAUSE 20.	DISCRIMINATION
CLAUSE 21.	FORCE MAJEURE
CLAUSE 22.	TRANSFER AND SUB-CONTRACTING
CLAUSE 23.	AMENDMENTS TO THIS AGREEMENT
CLAUSE 24.	COMMUNICATIONS

CLAUSE 25.	SEVERABILITY
CLAUSE 26.	WAIVER
CLAUSE 27.	ACCESS TO PREMISES
CLAUSE 28.	THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999
CLAUSE 29.	DISPUTE RESOLUTION PROCEDURE
CLAUSE 30.	LAW AND JURISDICTION
CLAUSE 31.	ENTIRE AGREEMENT
CLAUSE 32.	AGENCY
CLAUSE 33.	QUALITY OF SERVICES
CLAUSE 34.	DAMAGE
CLAUSE 35.	POWER OF THE COUNCIL IN DEFAULT
CLAUSE 36.	POWER OF "SET OFF"
CLAUSE 37.	HUMAN RIGHTS
CLAUSE 38.	COUNCIL POLICIES AND CODE OF CONDUCT FOR CONTRACTORS
CLAUSE 39.	SCRUTINY BOARD/EXECUTIVE BOARD ASSISTANCE
CLAUSE 40.	CONFLICT OF INTEREST
CLAUSE 41.	FREEDOM OF INFORMATION ACT 2000
CLAUSE 42.	ENVIRONMENTAL REQUIREMENTS
CLAUSE 43.	AUDIT AND THE AUDIT COMMISSION
CLAUSE 44.	BUSINESS CONTINUITY AND DISASTER RECOVERY

## **1 Definitions and Interpretations**

1.1 In these Conditions and the other documents incorporated with and forming part of the Contract the following words have the meanings hereinafter respectively assigned to them:

- (i) "Agreement" means this agreement, comprised of the clauses hereto the invitation to tender and the proposal
- (ii) "Charges" means the charges due to the Contractor for the supply of the Services
- (iii) "Confidential Information" means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
- (iv) "Contract Period" means the period referred to in the Council's Invitation to Tender
- (v) "Contractor" shall mean the other Party(s) to this Agreement specified in the order
- (vi) "Council" shall mean the Council specified in the order
- (vii) "Council Property" means anything issued or otherwise furnished in connection with the Agreement by or on behalf of the Council, other than any real property
- (viii) "Council's Responsibilities" means the responsibilities of the Council under this Agreement
- (ix) "Council's Specification" means the statement of requirements issued by the Council in respect of the supply of the Services
- (x) "Default" means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other

- (xi) "Documentation" means the documentation as specified in the relevant order
- (xii) "Environmental Information Regulations" means the Environmental Information Regulations 2004;
- (xiv) "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation guidance and/or codes of practice made or issued under this Act from time to time ;
- (xv) "Services" means Goods including materials or Services to be supplied by the Contractor under this Agreement in accordance with the Invitation to Tender
- (xvi) "Information" has the meaning given under section 84 of the Freedom of Information Act 2000;
- (xvii) "Invitation to Tender" means the statement of service requirement issued by the Council in respect of the performance of the services. The Invitation to Tender has been incorporated into this Agreement
- (xviii) "Non-discharged Orders" means orders placed by the Council with the Contractor in respect of which the Services have not been performed by the Contractor at the date of termination of this Agreement
- (xix) "Order" means an Order for the Services placed by the Council in accordance with clause 3 of the Agreement
- (xx) "Parent Company" means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
- (xxi) "Party" means a Party to this Agreement and "Parties" shall be construed accordingly
- (xxii) "Premises" means any premises/site where the services are to be performed
- (xxiii) "Proposal" means the Contractor's Proposal, in response to the Invitation to Tender

- (xxiv) "Purchasing Card" means the badge charge card used for payment of Services
- (xxv) "Representative" means a representative of the Council or the Contractor as appropriate appointed for the purpose of co-ordinating the preparation and performance of this Agreement
- (xxvi) "Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA, or the Environmental Information Regulations.
- (xxvii) "Staff" means all persons employed by the Contractor to perform this Agreement together with the Contractor's servants, agents and Sub-contractors
- (xxviii) "Sub-Contract" means any contract or proposed contract between the Contractor and any third Party in respect of the Services

the terms "Sub-Contractor" and "Sub-Contracting" shall be similarly construed

- 1.2 As used in this Agreement the masculine includes the feminine and neuter and the singular includes the plural and vice versa.
- 1.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.4 A reference to any document other than as specified in Clause 1.3 shall be construed as a reference to the document as at the date of execution of this Agreement.
- 1.5 Each Party shall comply with any express obligation in this Agreement to comply with any document statute, enactment, order, regulation or other similar instrument that is referenced in this Agreement.
- 1.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.7 Except as otherwise expressly provided in this Agreement, all remedies available to the Contractor or to the Council for default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.8 Neither Party shall be liable for any default of its obligations under the Agreement to the extent that such default is caused by a failure or delay by the other Party in performing its obligations under this Agreement

provided and to the extent that the affected Party notifies the other Party of such failure or delay within thirty (30) days of the affected Party becoming aware of its occurrence and of its likely impact.

- 1.9 If the Contractor adds any terms or conditions then such added terms or conditions shall be deemed to be null and void and the acceptance of any Tender by the Council shall not in any way be deemed to be an acceptance by the Council of the terms or conditions null and void as aforesaid and the Council's Conditions shall prevail

## **2 Scope of this Agreement**

- 2.1 This Agreement governs the overall relationship of the Parties with respect to the provision of the Services. The Council is entitled (but not required) at any time during the duration of this Agreement to order Services from the Contractor in accordance with the Ordering Procedures set out in Clause 3, and the Contractor shall provide such Services in accordance with all applicable provisions of this Agreement.
- 2.2 This Agreement shall take effect on the date specified in the Invitation to Tender hereof and, subject to the rights of termination contained herein, shall expire on the date specified in the Invitation to Tender (or the date specified in the order) thereof.
- 2.3 Subject to clause 4.3 below, in the event that the Council requires that this Agreement be extended for a further period of twenty-four months beyond the period stated in Clause 2.2 above then this Agreement may be extended by agreement of both Parties, such extension to be evidenced in writing.
- 2.4 In the event that this Agreement is extended as referred to in Sub-Clause 2.3 the terms of this Agreement shall apply to any such extension.

## **3 Ordering Procedures**

- 3.1 Subject to the following provisions of this Clause, the Council shall be entitled to any time during the term of this Agreement to order Services from the Contractor by sending an Order to the Contractor for the supply of such Services.
- 3.2 The terms and conditions relating to an Order shall comprise of all of the Clauses and Schedules of this Agreement and the provisions of the Order, including any terms included in the Order pursuant to Clause 3.3.
- 3.3 Where the Council or the Contractor see the need for including an additional term in any Order, either Party may at any time request such term by sending written notice thereof to the other Party prior to the placing of an Order. The Parties shall discuss any term requested by either Party, but no term shall become part of the Order to which it relates unless agreed by both Parties. In the event of any conflict or

inconsistency between any term of an Order and any provisions of the Clauses or Schedules of this Agreement, the term in the Order shall prevail, but only in relation to the Services performed under the relevant Order in which such terms are contained.

3.4 In respect of each Order, the Council shall perform the Council's responsibilities specified in that Order.

3.5 Where Services are ordered and the duration of the Order extends beyond the Contract Period these terms and conditions shall remain in force and effect within that Order provided always that such Order was raised by the Council prior to the expiry of the Contract Period

3.6 Clause 3.5 shall survive the termination or expiry of this Agreement

3.7 Where Purchasing Cards are to be used, requests for Services under this Agreement may be made in person, by telephone, facsimile or via the internet. Where a request for Services is made in accordance with this clause the Contractor will be provided with the Purchasing Card number, expiry date and reference number. The Contractor will not process the transaction until such time as the Services have been delivered to the Council in accordance with Clause 4 of this Agreement. For the avoidance of doubt there will be no price increase within the first twelve month period of this Agreement.

#### **4 Charges**

4.1 In consideration of the performance of the Services in accordance with the terms of this Agreement, the Council shall pay the Charges in accordance with this invoicing procedure.

4.2 During the period referred to in clause 2.2 of this Agreement the Charges shall be reviewed annually and shall be revised only by agreement of both Parties. Any change to the Charges shall in any event not exceed index linked increases in the retail price index.

4.3 Prior to any extension being entered into in accordance with clause 2.3 above the Council shall consider whether the extension continues to meet the Council's duty to obtain best value.

4.4 Payment shall be made within thirty (30) days of receipt by the Council (at its nominated address for invoices) of a valid invoice, from the Contractor.

4.5 The Charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time.

4.6 In the event that the Contractor, in accordance with the terms of this Agreement, enters into a supply contract or a Sub-Contract in connection with this Agreement, the Contractor shall ensure that a term is included in

the supply contract or a Sub-Contract which requires the Contractor to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or Sub-Contract (as appropriate).

- 4.7 The Contractor shall submit invoices to the Council denominated in sterling. In the event that the United Kingdom joins the European Monetary Union (and provided always that the exchange rate for conversion between sterling and the Euro has been fixed), the Council shall, at any time thereafter, upon giving three (3) months notice to the Contractor, be entitled to require the Contractor at no additional charge to the Council to convert the Charges from sterling into Euros (in accordance with EC Regulation number 1103/97). The Contractor shall thereafter submit all invoices to the Council denominated in Euros.
- 4.8 Interest shall be payable on any late payments under this Agreement at the rate of 3% above the National Westminster Bank's base lending rate
- 4.9 The use of Purchasing Cards is the Council's preferred method of payment and such payments shall be made within four working days directly from the Council's Nominated Bank. Only under exceptional circumstances will payment to suppliers be made by other methods of payment.
- 4.10 Where the Contractor has indicated that it will accept Purchasing Cards either through the submission of a pre-qualification Questionnaire or tender the amount charged to the card shall be no more than the rates tendered by the Contractor. For the avoidance of doubt the Contractor shall not be allowed to include any administration fee in the amount charged to the Council that the Purchasing Card company charge the Contractor for accepting payment by Purchasing Card.
- 4.11 Where the Contractor has indicated that it will accept Purchasing Cards refusal to do so will constitute a material breach of contract and the Council may seek to terminate this Agreement in accordance with Clause 10.2 below.
- 4.12 Where Purchasing Cards are not used, payment shall be made within thirty days of receipt by the Council of a valid invoice, from the Contractor.

## **5 The Council's Responsibilities**

- 5.1 The Council shall perform the Council's responsibilities in accordance with the provisions set out in this Agreement.

## **6 Legislative Change**

- 6.1 The Contractor shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are



referenced in this Agreement and any amendments thereto except that where any such amendment necessitates a change to a Service and provided that such amendment could not have reasonably been foreseen by the Contractor at the date hereof the Parties shall enter good faith negotiations to make such adjustments to the Charges as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such amendments.

## **7 Warranties and Representations**

7.1 The Contractor warrants and represents that:-

- 7.1.1 the Contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor
- 7.1.2 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence
- 7.1.3 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

## **8 Limitation of Liability**

8.1 Neither Party excludes or limits liability to the other Party for death or personal injury or any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

8.2 Subject always to Clause 8.1, and notwithstanding any other provision contained herein, the total liability of the Contractor (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the contract.

8.3 Subject always to Clause 8.2, in no event shall either Party be liable to the other for:-

8.3.1 indirect or consequential loss or damage; and/or

8.3.2 loss of profits, business, revenue, goodwill or anticipated savings

8.4 The provisions of Clause 8.2 shall not be taken as limiting the right of either Party to claim from the other Party for:-

8.4.1 additional operational and administrative costs and expenses; and/or

8.4.2 any costs or expenses rendered worthless

resulting directly from the default of the other .

8.5 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.

8.6 The Parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

## **9 Confidentiality and Security of Confidential Information**

9.1 Each Party:-

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

9.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:-

(a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

(b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Contract.

9.3 Where it is considered necessary in the opinion of the Council, the Contractor shall ensure that Contractor's staff or such professional

advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

9.4 The Contractor shall not use any Confidential Information received otherwise than for the purposes of this Agreement.

9.5 The provisions of Clauses 9.1 to 9.4 shall not apply to any Confidential Information received by one Party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Clause 9);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing
- (c) which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 42 (Freedom of Information) or
- (f) where the receiving Party is the Council and the Confidential Information is or is related to an item of business at a meeting of the Council or of any committee, sub-committee or joint committee of the Council or is or is related to an executive decision and it is not reasonably practicable for that item of business to be transacted or for that executive decision to be made without reference to the Confidential Information PROVIDED THAT where the Confidential Information is exempt information within the meaning of section 101 of the Local Government Act 1972 (as amended) the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in so doing shall give due weight to the interests of the Contractor and where reasonably practicable shall consider any representations made by the Contractor

9.6 Nothing in this Clause 9 shall prevent the Council:-

disclosing any Confidential Information for the purpose of:-

- (a) the auditing examination and certification of the Council's accounts; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
  - (i) to any department, office or agency of the Crown or to any regulatory authority or body; or
  - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract;
- (c) provided that in disclosing information under sub-paragraph (b)(i) or (ii) the Council discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence .

9.7 Nothing in this Clause 9 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

9.8 In the event that the Contractor fails to comply with this Condition 9, the Council reserves the right to terminate this Agreement by notice in writing with immediate effect.

## **10 Termination**

10.1 The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:-

- 10.1.1 any of the circumstances detailed in Clause 18.2 or Clause 19.5 arise; or
- 10.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 10.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
- 10.1.3 the Contractor, being a company, passes a resolution, or the Court makes an order that the Contractor or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or

administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Contractor or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Contractor or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or

10.1.4 the Contractor, being an individual, or where the Contractor is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction.

10.1.5 the Contractor, being an individual, or where the Contractor is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time be convicted of any of the following offences:

- (a) fraud, where the offence relates to fraud affecting the financial interests of the Council, within the meaning of –
  - (i) the offence of cheating the Revenue
  - (ii) the offence of conspiracy to defraud;
  - (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act 1978 and the Social Security Administration Act 1992;
  - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;

- (v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;
    - (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
    - (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
  - (b) money laundering within the meaning of the Money Laundering Regulations 2003; or
  - (c) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.
- 10.2 Without prejudice to Clause 10.1, the Council may at any time by notice in writing terminate this Agreement forthwith, if the Contractor is in material default of any obligation under this Agreement and:-
- 10.2.1 the material default is capable of remedy and the Contractor shall have failed to remedy the material default within thirty (30) days of written notice to the Contractor specifying the material default and requiring its remedy; or
  - 10.2.2 the material default is not capable of remedy
- 10.3 The Council may at any time by notice in writing terminate an Order as from the date of service of such notice if any of the circumstances detailed in Clause 18.2 or Clause 19.5 arise.

## **11 Consequences of Termination**

- 11.1 The termination or expiry of this Agreement or an Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 11.2 In the event of any termination of this Agreement pursuant to Clause 10.1 or Clause 10.2 the Council shall, in respect of any non-discharged Orders, be entitled without prejudice to the Council's other rights and remedies, to:
  - 11.2.1 obtain a refund of any charges paid by the Council in respect of any Services which have not been performed by the Contractor in accordance with the terms of the non-discharged Order.
- 11.3 In the event of the termination of this Agreement by the Council, the provisions of this Clause and Clauses 1, 8, 9, 11, 12, 18 and 30 and the

provisions of any Schedules attached hereto shall survive the termination of this Agreement by the Council.

11.4 In the event of the termination of this Agreement by the Contractor the provisions of this Clause and Clauses 1, 8, 9, 11, 12, 18 and 30 and the provisions of any Schedules attached hereto shall survive the termination of this Agreement.

11.5 In the event of any termination of an Order pursuant to Clause 10.3 the Council shall be entitled, without prejudice to the Council's other rights and remedies, to:-

11.5.1 obtain a refund of any Charges paid by the Council in respect of any Services which have not been performed by the Contractor in accordance with the terms of the Order.

## **12 Recovery of Sums Due**

12.1 If any sum of money shall be due from the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or any agreement with the Council.

## **13 Progress Reports**

13.1 Where a progress report, or other information pertaining to the progress of the performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Agreement.

## **14 Health and Safety**

14.1 The Contractor shall notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement.

14.2 The Council shall promptly notify the Contractor of any health and safety hazards which it becomes aware of at the Council's Premises created by the Contractor in the performance of this Agreement. Where the Council notifies the Contractor of such health and safety hazards the Contractor shall remove the hazard and make safe the premises at the Contractor's expense.

14.3 The Contractor shall inform all persons engaged in the performance of this Agreement at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

14.4 While on the Council's Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working on those Premises.

- 14.5 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement on the Council's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 14.6 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Contractor's Staff and other persons working on the Premises in the performance of this Agreement.
- 14.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

**15 Data Protection Act**

- 15.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties to this Agreement will observe all their obligations under the DPA which arise in connection with this Agreement.
- 15.2 Notwithstanding the general obligation as referred to in Clause 15.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) act only in accordance with the Council's instructions;
  - (b) provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
  - (c) promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 15.2; and
  - (d) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA
- 15.3 The Contractor is only authorised to disclose such personal data as is necessary to provide the Services or as may be required by law.



## **16        Publicity**

16.1        Except with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise this Agreement in any way.

16.2        Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 16.1 by all their servants, employees, agents and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 16.1 by its Sub-Contractors.

Notwithstanding the provisions of Clause 16.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## **17        Fraud**

17.1        The Contractor must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Contractor shall immediately inform the Council.

## **18        Corrupt Gifts and Payments of Commission**

18.1        The Contractor shall neither:-

18.1.1     offer or give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

18.1.2     enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or acting on its behalf by the Contractor or on the Contractor's behalf or to the Contractor's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

18.2        In the event of any breach of this Clause 18 by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention

of Corruption Acts, 1889 to 1916 or under Section 117(2) and (3) of the Local Government Act 1972 in relation to this or any other contract with the Council, the Council may summarily terminate this Agreement or the relevant Order by notice in writing to the Contractor in accordance with Clause 10.1.1 or Clause 10.3 (as appropriate). Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Contractor the amount or value of any such gift, consideration or commission.

- 18.3 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:-

18.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Contractor under Clause 18.2 in respect of any loss resulting from such termination of this Agreement); or

18.3.2 the right of the Council under this Clause 18 to terminate this Agreement; or

18.3.3 the amount or value of any such gift, consideration or commission.

## **19 Contractor's Staff and Criminal Records Bureau Checks**

- 19.1 The Council reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Council any staff employed or engaged by the Contractor, or by a Sub-Contractor, whose admission would be, in the opinion of the Council, undesirable.

- 19.2 If and when directed by the Council, the Contractor shall provide a list of the names and addresses of all staff who it is expected may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Council may reasonably require.

- 19.3 The Contractor's staff, engaged within the boundaries of any of the Council establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of staff when at that establishment and when outside that establishment.

- 19.4 The decision of the Council as to whether any staff is to be refused admission to any premises occupied by or on behalf of the Council and as to whether the Contractor has failed to comply with Clause 19.2 shall be final and conclusive.

- 19.5 If the Contractor shall fail to comply with Clause 19.2 or if the Contractor does not comply with the provisions of Clause 19.2 within a reasonable time of written notice so to do then the Council may terminate this Agreement in accordance with Clause 10.1.1 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 19.6 The Parties agree that during the term of the Agreement and for a period of six (6) months thereafter, they will not, whether directly or indirectly, procure the services of any of the other Party's employees or consultants directly engaged in the performance of this Agreement without the prior written agreement of the other. This Clause shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business.
- 19.7.1 Throughout the duration of this Agreement the Contractor shall have in place and adhere to procedures for ascertaining whether staff who are or who are proposed to be involved in the provision of the Service have prior criminal convictions of any nature. The Contractor shall ensure that all such checks have been carried out and shall exhibit proof of this to the Council. The Contractor shall be liable for the costs of all CRB checks carried out by the Contractor on people who are to be utilised in the performance of this Agreement.
- 19.7.2 At any stage during the course of the contract the Council can carry out its own CRB check on any member of the Contractor's staff working on the contract, if in the reasonable opinion of the Council it has cause for concern. The cost of any CRB check carried out by the Council shall be borne by the Contractor. If the Contractor and/or member of staff refuse the CRB check that member of staff must be immediately withdrawn from working on the Contract and an acceptable person substituted.
- 19.7.3 The Council reserves the right to require any staff of the Contractor to be withdrawn and an acceptable person substituted in the event of the disclosure at any stage of information that, in the reasonable opinion of the Council, renders the member of staff wholly unsuitable for the delivery of the Services.
- 19.7.4 Where information regarding the identity of a member of staff utilised in the performance of this Agreement is required by the Council in relation to a complaint made against such a member of staff the Contractor shall provide the relevant information. In any other case where the Council reasonably requires to ascertain the identity of a member of staff for a specific purpose the relevant information will be provided by the Contractor. Information released under the terms of this provision is released on the understanding that its release does not contravene the Data Protection Act 1998 and any amending legislation and the

Contractor fully indemnifies the Council in respect of any claim arising out of the release of the information to the Council.

## **20 Discrimination**

- 20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 20.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 20.1 by all servants, employees, agents and consultants of the Contractor and all Sub-Contractors.
- 20.3 The Contractor and any Sub-Contractor shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 and, accordingly, will not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train, promote, discipline or dismiss employees.

## **21 Force Majeure**

- 21.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions by the affected Party, its agents or employees.
- 21.2 For the avoidance of doubt, both Parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement.
- 21.3 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding

the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

21.4 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

21.5 It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of Force Majeure.

21.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **22 Transfer and Sub-contracting**

22.1 This Agreement is personal to the Contractor. The Contractor shall not assign, novate, Sub-Contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council such consent not to be unreasonably withheld.

22.2 Notwithstanding any Sub-Contracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

22.3 Subject to Clause 22.5, the Council shall be entitled to:-

22.3.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any contracting authority (as defined in Regulation 4(2) of the Public Contracts (Work, Services and Supply) (Amendment) Regulations 2000) (a "Contracting Authority"); or

22.3.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Council

provided that where such assignment, novation or other disposal increases the burden of the Contractor's obligations pursuant to this

Agreement, the Contractor shall be entitled to such additional Charges as may be agreed between the Parties to compensate for such additional burdens.

22.4 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 22.5, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Council.

22.5 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 22.3.2 or if a successor body which is not a Contracting Authority becomes the Council pursuant to Clause 22.4 (in the remainder of this Clause both such bodies are referred to as the "Transferee"):-

22.5.1 the rights of termination of the Council in Clause 10.1.2, Clause 10.1.3 and 10.2 shall be available, mutatis mutandis, to the Contractor in the event of the bankruptcy, insolvency or default of the Transferee

22.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Contractor

22.5.3 the rights of the Council under Clause 19 shall cease; and

22.5.4 The Council shall be entitled to disclose to any Transferee any confidential information of the Contractor which relates to the performance of the Services by the Contractor. In such circumstances the Council shall authorise the transferee to use such confidential information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the Transferee shall be bound by the confidentiality undertaking contained herein in relation to such confidential information.

## **23 Amendments to this Agreement**

23.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Council on behalf of the Council and by a duly authorised representative of the Contractor on behalf of the Contractor.

23.2 Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Council on behalf of the Council and by a duly authorised representative of the Contractor on behalf of the Contractor.

- 23.3 The control of change under this Agreement shall be in accordance with any agreed change control procedures. The control of change under any Order shall be in accordance with any agreed order change control procedures.

## **24 Communications**

- 24.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Council or as the case may be by or on behalf of the Contractor. The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of this clause 24.1.
- 24.2 Any notice whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or e-mail addressed to the other Party in the manner referred to in Clause 24.3 below and if that letter is not returned as being undelivered that notice shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or four hours for a facsimile transmission or e-mail.
- 24.3 For the purposes of Clause 24.2 above the address of each Party shall be:-

For the Council:

**Resources  
Revenues Section  
Hough Top Court  
Bramley  
Leeds LS13 4QP**

For the attention of: **[redacted]**

Telephone: **0113 2475006** Facsimile:

E-mail: **[redacted]**

For the Contractor:

**(insert address )**

For the attention of: **(insert name)**

Either Party may change its address for service by notice as provided in this Clause 24.

**25 Severability**

- 25.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

**26 Waiver**

- 26.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 26.2 A waiver of any default shall not constitute a waiver of any subsequent default.
- 26.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 24.

**27 Access to Premises**

- 27.1 Unless otherwise agreed any land or premises (including temporary buildings) made available to the Contractor by the Council in connection with this Agreement shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing this Agreement. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Council may determine.
- 27.2 The Council shall be responsible for maintaining the security of such land or premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Council while on the premises, and shall procure that all of its employees, agents and Sub-Contractors shall likewise comply with such requirements. Where relevant the Council shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.



## **28 The Contracts (Rights of Third Parties) Act 1999**

- 28.1 This Agreement shall not create any rights that shall be enforceable by anyone other than the Parties to this Agreement.

## **29 Dispute Resolution Procedure**

- 29.1 The Parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in sub-clause 29.2.
- 29.2 If the dispute cannot be resolved by the Parties representatives nominated under Clause 29.1 the dispute may be referred to effective dispute resolution ("EDR") under the supervision of a suitable EDR organisation, such organisation to be agreed between the Parties (hereinafter referred to as "the Organisation") . EDR shall commence by either Party serving on the other written notice ("EDR Notice") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to the Organisation for the appointment of the Neutral.
- 29.3 EDR shall be conducted using a sole mediator ("Neutral") in or substantially in accordance with the Organisation's recommended agreement for the time being in use. The Neutral should be an accredited mediator agreed between the Parties, or in default of agreement within 14 days of notice of either Party calling upon the other to engage in EDR, appointed by the Organisation.
- 29.4 The Parties agree to co-operate fully and promptly and in good faith with the Organisation or the Neutral in the performance of their obligations under this Clause. ~~Both Parties~~ will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Services.
- 29.5 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of EDR.
- 29.6 If and to the extent that after engaging in good faith in EDR the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.
- 29.7 In the event that the process of EDR does not succeed in finding a resolution to the dispute within a period of 56 days, or such other time as

the Parties may agree, either Party may take such action as is available to it under this Agreement or generally at law.

- 29.8 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

### **30 Law and Jurisdiction**

- 30.1 This Agreement shall be considered as a contract made in England and according to English Law and, subject to Clause 29, shall be subject to the exclusive jurisdiction of the English Courts to which both Parties hereby submit.

- 30.2 This Agreement is binding on the Council and its successors and assignees and the Contractor and the Contractor's successors and permitted assignees.

### **31 Entire Agreement**

- 31.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

### **32 Agency**

- 32.1 The Contractor is not and shall not in any circumstances hold itself out as being the servant or agent of the Council. The Contractor shall not hold itself out as being authorised to enter into any contract on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party. The employees of the Contractor shall not hold themselves out to be and shall not be held out by the Contractor as being servants or agents of the Council.

### **33 Quality of Services**

- 33.1 All Services to be carried out by or on behalf of the Contractor for the purpose of executing this Agreement shall be carried out with all necessary skill care and attention. The Council shall have the power to reject any Services which it does not consider to have been carried out in accordance with this Agreement and the Council may request that the Services rejected be carried again forthwith. The Contractor shall not be entitled to receive any payment from the Council for any such Services.

**34        Damage**

- 34.1        Where the Contractor causes damage to any thing in the performance of this contract the Council may direct the Contractor to make good the said damage forthwith at the Contractor's own risk and expense.

**35        Power of the Council in Default**

- 35.1        Where the Council re-let the Agreement or any part thereof pursuant to clause 10 the Contractor shall make good to the Council all loss damages and expenses they may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Agreement shall have been accepted by the Council.

**36        Power of "Set Off"**

- 36.1        The Council shall have power to set off any sums due from the Contractor to the Council against any sums due from the Council to the Contractor under the Agreement.

**37        Human Rights**

- 37.1        The Contractor shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.
- 37.2        The Contractor shall not do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.
- 37.3        The Contractor shall indemnify the Council against any loss claims and expenditure resulting from the Contractor's breach of Clauses 37.1 and 37.2.

**38        Council Policies and Code of Conduct for Contractors**

- 38.1        The Consultant shall at all times carry out the provisions of this Agreement in accordance with the Council's approved Equal Opportunities Policy; Health and Safety Policy and Code of Conduct for contractors, service providers and suppliers.

**39        Scrutiny Board/Executive Board Assistance**

- 39.1        It is a condition of this Agreement that if required by the Council to do so the Contractor shall throughout the period of this Agreement and for a period of six years after expiry of this Agreement give all reasonable

assistance to the Council including attending the Council's Scrutiny and/or Executive Board in order to answer questions pertaining to this Agreement should the need arise.

- 39.2 In the event that the Council requires the Contractor's assistance after the expiry of this Agreement as referred to in Clause 39.1 the Council shall pay the reasonable expenses of the Contractor arising as a result of providing such assistance.

#### **40 Conflict of Interest**

- 40.1 The Contractor shall notify the Council immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Council and any other client of the Contractor and the Contractor shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Council.

#### **41 Freedom of Information Act 2000**

- 41.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these Information disclosure requirements.

- 41.2 The Contractor shall and shall procure that its sub-contractors shall:
- (i) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
  - (ii) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

- 41.3 The Council shall be responsible for determining at its absolute discretion whether:-

- a) the Information is exempt from disclosure under, the FOIA and the Environmental Information Regulations;
- b) the Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

41.4 The Contractor acknowledges that the Council may, acting in accordance with the FOIA, the Local Government Act 1972 (as amended) the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) or the Environmental Information Regulations be obliged to disclose Information:-

- (i) without consulting with the Contractor, or
- (ii) following consultation with the Contractor and having taken its views into account.

41.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

41.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

## **42 Environmental Requirements**

42.1 The Contractor shall, when working on the Council's Premises, perform the Services in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **43.1 Audit and the Audit Commission**

43.1 The Contractor shall keep and maintain until 12 years after the Agreement has been completed, or as long a period as may be agreed between the Council and the Contractor, full and accurate records of this Agreement including the Goods/Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council's auditor (whether internal or external) such access to those records as may be required by the Council's auditor in connection with this Agreement.

## **44 Business Continuity and Disaster Recovery**

44.1 The Contractor should aim to adopt best practice of BS7799 & ISO/IEC 17799 as part of its system of internal control, to ensure business continuity, minimise business damage by preventing and minimising the impact of security incidents and to maximise business investments and opportunities.

44.2 The Contractor may be required to submit a business continuity and disaster Recovery plan to the Council for approval.

