

Form of Contract

The Council of the London Borough of Ealing

{Date}

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## Conditions of Contract

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**AGREEMENT** dated 19<sup>th</sup> day of APRIL Two Thousand and 7.

**BETWEEN**

**THE COUNCIL OF THE LONDON BOROUGH OF EALING** of the Town Hall, New Broadway, Ealing, London, W5 2BY ("Client");

**AND**

**EDEN BROWN LIMITED** whose registered office is situated at 222 Bishopsgate, London EC2M 4QD. (Company registration number 3643845) ("Contractor")

**BACKGROUND**

1. The Client seeks provision of a vendor neutral managed recruitment service
2. The Mayor and Burgesses of the London Borough of Hillingdon (LBH) invited tenders on behalf of the London Contracts and Supplies Group (LCSG), which represents 32 London Boroughs, the Corporation of London and other public sector organisations. The Client as part of the LCSG seeks to procure the Service from the Contractor on the basis of the tender submitted by the Contractor as a result of such invitation and the subsequent Contract made between LBH and the Contractor and dated the 7<sup>th</sup> day of June 2004 subject to the modifications and variations recited below.
3. The Contractor has agreed to provide the Service on the terms of this Contract.

**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 25th April 2005, or such later date as shall be agreed by the parties
- 1.2 "Conditions" means these conditions of contract;
- 1.3 "Contract" means this agreement between the Client and the Contractor as set out in the Contract Documents;
- 1.4 "Contract Documents" means the documents annexed or deemed annexed hereto comprising the Contract, as follows:
  - 1 the Invitation to Tender documents originally issued by LBH comprising Instructions and Conditions for Tender, Tender Timetable, Bona Fide Tender Certificate Form of Tender;

- 2 these Conditions;
  - 3 the Client Specification annexed hereto which shall replace the original Specification issued by LBH;
  - 4 the Contractor's Tender submission, with the omission of the Pricing Schedule, the original submitted to LBH being substituted by that annexed hereto; and such other documents, if any, as shall have been submitted to LBH save to the extent that the same shall be substituted by any document annexed hereto, and in the event of any ambiguity or discrepancy the documents annexed hereto shall prevail
  - 5 such other documents and processes as shall be agreed from time to time by the parties
- 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 Client's 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; or the introduction of any previously unrecognised malicious code including virus, Trojans and worms.
- 1.8 "Client's Representative" shall mean the Director of Human Resources for the time being of the Client or any person or persons appointed or nominated by the Client to act on its behalf for the purpose of managing the Contract;
- 1.9 "Neutral Advisor" means the mediator appointed pursuant to Condition 30;
- 1.10 "Pricing Schedule" means the document which incorporates the pricing mechanism upon which the Contractor has entered into this Contract;
- 1.11 "Request to Fill" for Agency Staff means the Client's authority, clearly indicating all of the agreed information to be provided to the Contractor and where applicable the agreed prices related thereto. (See Appendix 2 of the Specification)
- 1.12 "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;
- 1.13 "Specification" means the Client document annexed hereto which describes the Service to be provided by the Contractor and any modifications to it made pursuant to Condition 7;
- 1.14 "Supplier" means any agency that the Contractor enters into an agreement with for the purpose of the provision of agency staff under this Contract

- 1.15 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 all Suppliers and essential visitors unless the context otherwise requires.
- 1.16 A reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
- 1.17 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, which 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 Client'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 Client 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 Client or the Contractor has a right under the Conditions to recover a sum due as a debt, interest shall accrue from the date the debt arises at a rate of 4% 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 Client appoints the Contractor to provide the Service throughout the Contract Period in consideration of payment by the Client 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 Commencement Date and subject to the Contract provisions for earlier termination of all or part of the Contract shall continue in force for a period of 3 years (unless extended by the Client by written notice not later than three months before expiry for a maximum of 2 years extension).

## **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 Client Representative's written instructions and whether all of these requirements are met shall be determined by the Client's Representative acting reasonably.
- 4.3 The Contractor shall promptly inform the Client'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 Client, giving details, reasons and likely duration. The provision of this information shall not relieve the Contractor from its contractual obligations.
- 4.4 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 Client's Representative specifying any critical date by which a response is needed, but otherwise giving the Client's Representative reasonable time to respond.
- 4.5 The Contractor shall at all times comply with all relevant Client policies, Codes of Practice and Financial Regulations, provided a copy has been provided by the Client or the Contractor is directed to the same on the Client's internet site.
- 4.6 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 Client.

- 4.7 If the Contractor is unable or fails to provide the Service, or any part of it, in accordance with the Contract, the Client, subject to the provisions in Section 5(d) of the Specification 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 Client as a debt. The Client's powers under this Condition 4.7 shall not be exercised unreasonably or vexatiously and these rights shall be without prejudice to any other rights or remedies of the Client.
- 4.8 The Contractor shall co-operate and co-ordinate its activities with other contractors or sub-contractors engaged by the Client as appropriate.
- 4.9 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 Client other than the proper performance of the Service, and no signs or advertisements shall be exhibited without the prior written approval of the Client.
- 4.10 Each year the Contractor shall provide upon request to the Client'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 Client, the Client's Representative or such persons as may from time to time be nominated by the Client's Representative shall be given access to all accounting documents and information in the possession, custody or control of the Contractor.

## **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 Client;
- 5.2.4 all relevant legislative requirements.
- 5.3 The Client'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, Supplier 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 Client 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 Client'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 Client's Representative may require such personnel not to be engaged in the provision of the Service and immediately substituted by the Contractor, unless the Client's Representative considers substitution unnecessary.
- 5.6 Where the Contractor instructs a Supplier to undertake any portion of the Service the Contractor shall be entirely responsible for the acts, defaults or neglects of the Supplier his employees, servants, agents or workmen ensuring that the performance of the Service is entirely in accordance with the Conditions
- 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 Client, such approval 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 Client's 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 Client's Representative at all reasonable times and shall provide such written reports as the Client's Representative may reasonably require prior to such meetings or generally.
- 7. Modifications**
- 7.1 The Client'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 Client'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 Service 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 Client 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 Client's Representative within 14 days of the date of the written instruction referred to at Condition 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 Condition 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 30.
- 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 Client 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 or 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 Client. 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 or;
  - (c) which is required to be disclosed by law or any professional or regulatory obligation.
- 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 Client, 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 it's performance confidential and shall draw their attention to the requirements of Condition 9.2.
- 9.7 No information regarding the Service 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 Client, 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 Client.

- 9.9 Except with the consent in writing of the Client the Contractor shall not make use of the Contract or any information issued or furnished by or behalf of the Client otherwise than for the purpose of the Contract.
- 9.10 The decision of the Client regarding anything in this Condition 9 shall be final and conclusive.
- 9.11 Nevertheless, to the extent that the Freedom of Information Act 2000 applies to this Contract, the Contractor shall provide such information as requested, provided always that the same does not fall within the exempt information category of the Act, in accordance with the specified timescale and in the form or format as shall have been agreed with the Client's Representative.

#### **10. Drawings, Documents, Designs, Software and Other Data**

- 10.1 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 Client or the Contractor in connection with the Contract shall become or, as the case may be, remain the property of the Client, in whom it shall be, or shall remain, vested all intellectual property rights and be delivered up to the Client on completion or termination of the Contract.
- 10.2 Where the Client has agreed to accept modern storage media, drawings and other documents shall be supplied by the Contractor in an agreed form.
- 10.3 Where any software used in the provision of the Service is owned by a third party the Contractor shall, on completion or termination of the Contract, if so requested by the Client, use reasonable endeavours to enable the Client to use the said Software for such reasonable period as the Client shall so require.

#### **11. Performance Monitoring**

- 11.1 Generally, in order to assess whether or not the Contractor is providing the Service to the required standard, the Client shall have regard to:
- 11.1.1 the Contractor's compliance with Condition 34 Quality Assurance;
  - 11.1.2 oral and written complaints from recipients or users of the Service;
  - 11.1.3 the reliability of the Service provided;
  - 11.1.4 the Contractor's measurement of achievement against performance indicators, if any, set out in the Specification;
  - 11.1.6 the Contractor's measurement of achievement against its own performance indicators (if any) as specified in its tender submission;
  - 11.1.7 random spot-checks in accordance with the Specification; and

- 11.1.8 regular formal contract review meetings in accordance with the Specification and, in any event, not less than four times per annum where the Client's Representative and the Contract Manager shall discuss the Contractor's performance in accordance with the Contract.

## **12. Retention of Documents, Access and Inspection**

- 12.1 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.
- 12.2 At all times during the Contract Period, upon reasonable notice wherever appropriate in the circumstances, the Contractor shall allow the Client's Representative, the Client's auditors and such persons as may, from time to time, be nominated by the Client, access to:
- 12.2.1 all workplaces of the Contractor for the purpose of inspecting work being performed pursuant to the provision of the Service;
- 12.2.2 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;
- 12.2.3 any personnel or agent of the Contractor for the purpose of interviewing such persons in connection with the provision of the Service;
- 12.2.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.
- 12.3 During access and inspection visits, the Contractor shall provide all reasonable access and facilities free of charge.

## **13. Unsatisfactory Performance**

- 13.1 Where, in the reasonable opinion of the Client's 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 Client's Representative may give the Contractor a notice specifying details of the unsatisfactory performance.
- 13.2 Where the Contractor has been notified of a failure in accordance with Condition 13.1 the Client may:
- (a) require the Contractor to perform the Service to the Client 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
- (b) withhold or reduce payments to the Contractor, in such amount as the Client reasonably deems appropriate in accordance with the provisions of the Contract.

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#### **14. Health, Safety, Fire and Environmental Requirements**

- 14.1 The Contractor shall comply with;
- 14.1.1 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 Client), the Provision and Use of Work Equipment Regulations 1992;
- 14.1.2 all current relevant health, safety, fire and environmental legislation and official codes of practice and guidance;
- 14.1.3 all health, safety, fire and environmental requirements, codes of practice and guidance issued by the Client and as notified in writing by the Client.
- 14.1.4 all requirements of the Contract in relation to health, fire, safety and environmental matters.
- 14.2 The Contractor shall upon request provide a copy of its policies in relation to health, safety, fire and environmental issues.
- 14.3 The Contractor shall, so far as reasonably practicable and relevant to the provision of the Service, conserve energy, water and other resources, reduce waste and noise pollution 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.
- 14.4 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.

#### **15. Equal Opportunities**

- 15.1 As a manager, employer and provider for services and/or supplies, the Contractor shall do all it reasonably can to seek the elimination of all forms of discrimination in its employment practices, management and provision of its services in relation to sex, religion, race, disability and sexual orientation in accordance with an established equal opportunities policy (as amended from time to time). The Contractor shall provide a copy of its equal opportunities policy to the Client upon request.
- 15.2 In any event the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 and the Equal Pay Act 1970 (amended 1984) and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors and Suppliers employed in the execution of the Contract do not unlawfully discriminate.
- 15.3 The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice in employment which came into effect on 31<sup>st</sup> May 2002 and the Manpower Services Commission's Code of Good Practice on Employment of Disabled People.

- 15.4 In the event of any judicial or other official finding of unlawful discrimination against the Contractor, the Contractor shall take all reasonable steps to prevent a repetition of the unlawful discrimination and shall provide details of those steps to the Client upon request.
- 15.5 In its provision of the Service the Contractor shall ensure that its staff behave with courtesy and respect to everyone regardless of sex, religion, race, disability and sexual orientation.
- 15.6 The Contractor shall provide such information as the Client may reasonably request for the purpose of assessing the Contractor's compliance with this Condition 15.
- 16. Gratuities**
- 16.1 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.
- 17. Indemnity and Insurance**
- 17.1 The Contractor shall be liable for and shall fully and promptly indemnify and keep indemnified the Client, 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;
- 17.1.1 The defective provision of the Goods or Service or breach by the Contractor of any requirement of the Contract or failure to provide the Service or any part of it, and
- 17.1.2 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 Client its employees or agents other than the Contractor, or its personnel, or Suppliers.
- 17.2 The liability set out in Condition 17.1 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.
- 17.3 Without in any way limiting its responsibilities under this Condition 17, the Contractor shall insure with a reputable insurance company approved by the Client against its liabilities under Condition 17.1.
- 17.4 For all claims against which this Condition 17 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 Client endorsed on it, or shall otherwise expressly by its terms confer its benefits upon the Client.
- 17.5 The Contractor shall supply to the Client upon request certified copies of the insurance policies together with documentary evidence necessary to demonstrate compliance with this Condition 17.

- 17.6 If the Contractor fails to take out and maintain any of the insurances required under this Condition 17 or if the Client reasonably considers that the policies of insurance do not effect sufficient cover, then the Client shall require the Contractor to forthwith procure and effect such insurance as the Client may reasonably require and in the meantime or in default, the Client may itself cause such insurance to be effected. The amount paid or payable by the Client 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 Client from the Contractor as a debt.
- 17.7 Public Liability Insurance
- 17.7.1 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:-
- (a) The Client or its employees;
  - (b) The Contractor or its employees (to the extent not already covered by the Contractor's existing Employer's Liability insurance); and
  - (c) Any other person;
- to the extent not covered by the insurance required under Condition 17.10.
- 17.7.2 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 Client.
- 17.7.3 The Contractor shall have public liability insurance of not less than five million pounds sterling (£5,000,000) in respect of any one incident. (£10,000,000 for Social care sector).
- 17.8 Professional Indemnity Insurance
- 17.8.1 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 Client if such insurance ceases to be available at commercially reasonable rates).
- 17.8.2 Employer's Liability Insurance
- 17.8.3 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.



- 17.9 The Contractor shall ensure that all sub-contractors and Suppliers unless otherwise agreed maintain insurances which is not less than the abovementioned and shall obtain certified documentary evidence and produce it to the Client on request.
- 17.10 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Contract.
- 17.11 The Client 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 Client, its employees or agents other than the Contractor or its personnel.

## **18. Security**

- 18.1 Client shall by prior arrangement provide such access to Client premises as the Contractor may reasonably require to fulfil its obligations under the Contract.
- 18.2 The Contractor shall comply with all security requirements of the Client while at Client premises including providing identity details and submitting to security checks on request and complying with Client requirements relating to security passes, including returning them on exiting Client premises.
- 18.3 The Client reserves the right to refuse admission to or require removal of any person from Client premises who is considered unacceptable for any reason.
- 18.4 The Contractor shall be responsible for theft, loss or damage to:
- 18.4.1 its own property, plant, equipment, data or personal possessions brought onto Client premises;
- 18.4.2 Client property, plant, equipment, or data used or within the care and control of the Contractor.
- 18.5 The Contractor shall indemnify the Client in respect of the matters referred to in this Condition 18.

## **19. Occupation of Client Premises**

- 19.1 Any land or premises (including temporary buildings) made available to the Contractor by the Client 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.

## **20. Contractor's Physical Resources**

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

- 20.2 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 Client shall have no liability for those resources.

## **21. Royalties and Patent Rights**

- 21.1 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 Client against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Client 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 Client 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.
- 21.2 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 Client 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 Client.
- 21.3 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 Client should this be required by the Client.

## **22. Invoices and Payments**

- 22.1 The Contractor shall submit an invoice to the Client as specified in the Contract or within 28 days of the completion of the Service quoting the Cost Code Contractor reference number where appropriate or the Request to Fill as appropriate.
- 22.2 The Contractor shall submit with the invoice, such records as the Client may reasonably require including, but not limited to time sheets, expenses incurred, invoices paid or any other documents which would enable the Client to verify the information and the amounts referred to in that invoice as specified in Appendix 2 of the Specification.
- 22.3 The Contractor shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format the Client may require.
- 22.4 The Client shall pay the Contractor in respect of the satisfactory performance of the Service in accordance with the Contract.
- 22.5 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Service 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.

- 22.6 The Client shall pay the Contractor within 30 days of the receipt of a valid invoice, or such lesser period as stated in the Specification provided that the Client is satisfied that the Service for which the invoice relates has been performed fully in accordance with the Contract.

**23. Value Added Tax**

- 23.1 The Client shall pay the Contractor such Value Added Tax as may be properly chargeable in respect of the supply of the Service in accordance with the Contract.

**24. Assignment and Sub-Contracting**

- 24.1 The Client 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.
- 24.2 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 Client (which consent may be given subject to such condition, if any, as the Client may think fit to impose).
- 24.3 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.
- 24.4 The Contractor shall include a term in any sub-contract, that once payment has been received from the Client, payment will be made within 30 days of receipt of a valid invoice.

**25. Assistance in Legal Proceedings**

- 25.1 The Contractor shall notify the Client'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 Client's Representative to investigate the matter fully.
- 25.2 If requested to do so by the Client's Representative, the Contractor shall provide the Client'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 Client may become involved or any relevant disciplinary hearing internal to the Client and shall give evidence in such inquiries or proceedings or hearings.
- 25.3 Assistance shall be provided by the Contractor pursuant to this Condition 25 free of charge where it is required in relation to a matter, which was caused or arose during the course of the Contract.

**26. Prevention of Corruption**

- 26.1 The Client 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 Client or shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 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.

26.2 The decision of the Client in relation to this Condition 26 shall be final and conclusive.

## **27. Termination**

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

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

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

27.2.2 persistently breaches any of its obligations under the Contract;

27.2.3 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 Client 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;

27.2.4 has any of its directors or partners convicted of dishonesty;

27.2.5 experiences, in the opinion of the Client's Representative, whose opinion shall be final and binding, an irreconcilable conflict of interest of the Client and any other client or interest of the Contractor;

27.2.6 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;

27.2.7 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;

27.2.8 has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

27.2.9 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

27.2.10 has an administrator or an administrative receiver, as defined in the Insolvency Act 1986, appointed;

27.2.11 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;

- 27.2.12 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 Client 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 Client shall determine at its sole discretion.

- 27.3 The Client may terminate this Contract at any time by giving the Contractor 6 months notice in writing

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

## **28. Consequences of Termination**

- 28.1 If the Contractor's employment is terminated as provided in Conditions 26, 27.1, 27.2 or 33 and is not reinstated, the Client shall:

- 28.1.2 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 shows an amount due to the Contractor;

- 28.1.3 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 Client, and shall have full and unlimited licence over all drawings, documents, descriptive schedules and other data for use in connection with the Service;

- 28.1.4 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 Client's Best Value duty, the Client shall have no obligation to use the least expensive method of performing the Service;

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

- 28.1.6 be entitled in respect of any costs, loss or damage to the Client 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 Client 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 Client 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;

- 28.2 If the Client shall omit or require the Contractor to cease to provide a substantial part of the Service, the Client 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 28.2, neither the Client 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:

- 28.2.1 the Contractor shall be entitled to receive from the Client any sum or sums due in respect of work properly performed up to the time of termination of the Contractor's employment;
- 28.2.2 the Contractor shall have the right to claim from the Client 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.
- 28.2.3 the Contractor shall have the right to claim from the Client reimbursement of all reasonable costs necessarily and properly incurred, for the avoidance of doubt, the Client will not indemnify the Contractor against loss of profit or contribution to overheads on other contracts.
- 28.3 Where the Contract is terminated under Condition 26, 27 or 33, the Client 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.
- 28.4 The rights of each party under this Condition 28 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, or indemnity.
- 28.5 Where the termination of the Contract arises as a result of notice in accordance with Condition 27.4 only those provisions of Condition 28 which are appropriate shall apply.

## **29. Recovery of Sums Due to the Client**

- 29.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Client 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 Client.

## **30. Disputes Resolution and Arbitration**

- 30.1 If any dispute or difference of any kind whatsoever shall arise between the Client 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 Client 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 as stated in Stage 1, 2 and 3 of the Specification.

- 30.2 If the parties shall fail to resolve a matter pursuant to Condition 30.1 within the specified period and the matter is still unresolved for a further fourteen (14) days, then either party may require that the matter shall be the subject of a mediation procedure with the assistance of the Centre for Dispute Resolution and the parties shall seek to resolve the dispute or difference amicably by using an alternative dispute resolution (ADR) procedure acceptable to both parties where the decision of the mediator is accepted by the parties the award of costs shall form part thereof. If either party fails or refuses to agree to participate in the ADR procedure or if in any event the dispute or difference is not resolved within 60 days after it has arisen the dispute or difference shall 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 Client and the Contractor.
- 30.3 If, upon the referral to an arbitrator of any dispute between the Client 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.

### **31. Complaints in Respect of Service Provision**

- 31.1 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.
- 31.2 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 Client's Representative at all reasonable times. The Contractor shall immediately notify the Client's Representative in writing of all complaints received and of all steps taken in response.

### **32. Recovery of Sums on Behalf of the Client**

- 32.1 Where it is provided in the Specification that the Contractor may or shall seek any sum or sums from any third party on the Client's behalf, the Contractor shall proceed with expedition and diligence in accordance with all reasonable requirements of the Client. Any sums obtained shall be remitted immediately to the Client in such manner as the Specification provides and shall until receipt by the Client be held by the Contractor as trustee of the Client. 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 Client'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 Client may require and shall provide whenever requested access to and copies of those records.

32.2 The Contractor shall be liable for and shall indemnify the Client against all costs, loss and expenses whatsoever in respect of, or in any way arising out of the fraud of the Contractor or its employees in connection with the performance of the Service.

32.3 The Contractor shall participate in the National Fraud Initiative and allow access to its payroll to enable security checks to be undertaken on a percentage of its personnel for the purpose of detecting benefit fraud. The Contractor shall also be responsible for checking the accuracy of the information provided to it by its personnel and by persons it assesses as part of the Service and shall request such persons to complete a declaration which includes their agreement to whatever checks are appropriate to enable the information they have provided to be verified, such form to be in the format agreed with the Client's Representative.

### **33. Conflicts of Interest**

33.1 Conflicts of interest shall not be permitted in relation to the performance of the Service.

33.2 The Contractor shall notify the Client's Representative immediately upon becoming aware of any potential conflict of interest (whether direct or indirect), which may arise between the interests of the Client and any interests of the Contractor or its other clients.

33.3 If there is a direct conflict of interest (as determined by the Client), the Contractor shall comply with the Client's directions to remove or avoid such a conflict.

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

33.5 The Client may terminate the Contract if the Contractor breaches this Condition 33.

### **34. Quality Assurance**

34.1 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:

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

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

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

34.1.4 Enable a quick response to the Client'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.



- 34.1.5 Ensure compliance with all contractual timescales and all other reasonable response times.
- 34.1.6 Maintain and monitor all contractual or relevant performance indicators.
- 34.1.7 Check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Client intends to use it.
- 34.1.8 Deal properly with any potential conflicts of interest in accordance with the Contract.
- 34.1.9 Keep the Client informed about progress in the provision of the Services.

**35. Best Value**

- 35.1 The Contractor acknowledges that the Client 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").
- 35.2 The Contractor shall co-operate fully and assist the Client, so far as reasonably required, in relation to all requests for assistance by the Client in connection with the performance of the Client's Best Value duty as it relates to the Contract at no extra charge including, but not limited to:-
  - 35.2.1 complying with all requests for information, including providing access to premises, staff, documents, data and processes.
  - 35.2.2 providing assistance to enable the Client to undertake best value consultation exercises including undertaking customer or user satisfaction surveys, if required and providing a written report to the Client setting out the results.
  - 35.2.3 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.
  - 35.2.4 maintaining and monitoring performance of all contractual performance measurements and targets and providing a detailed performance management report in writing at contract review meetings.
  - 35.2.5 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 Client.
  - 35.2.6 throughout the Contract Period, and not less than annually pro-actively suggest efficiency savings.
  - 35.2.7 The Contractor shall be subject to a duty to demonstrate continuous improvement in its performance of the Service throughout the Contract Period.
  - 35.2.8 The requirements of this Condition 35 shall be at no additional cost to the Client.

## **36. Transfer of Responsibility**

- 36.1.1 The Contractor shall provide all relevant information which may be required by the Client in order that the Client 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 Client 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.
- 36.1.2 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, at no extra cost, under arrangements to be notified to them by the Client.
- 36.2 The transfer shall be arranged between the Client and the Contractor so as to reduce to a minimum any interruption in the Service.

## **37. Contractor's obligations in connection with TUPE**

- 37.1 The Contractor is an independent contractor and nothing in the Contract shall be deemed to constitute a partnership or any employment relationship between the parties nor shall anything in the Contract be deemed to constitute one party the agent of the other for any purpose.
- 37.2 The Contractor shall indemnify the Client and or any successor Contractor against all costs, expenses and liabilities incurred by the Client and or any successor Contractor arising from any claim by the Contractor's employees or ex-employees (and any claim by any employees or ex-employees of suppliers of the Contractor) for breach of contract, unfair or wrongful dismissal, redundancy or other claim whether statutory, contractual or otherwise, incurred by or transferred to the Client or any successor Contractor by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) or any subsequent or related legislation.

## **38. Force Majeure**

- 38.1 If either party is prevented, hindered or delayed from performing its obligations under this Contract by a Force Majeure Event then:
- 38.1.1 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;
- 38.1.2 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;
- 38.1.3 if that party fails to give the notice referred to in Clause 38.1.2 it shall forfeit its rights under Clause 38.1.1;

- 38.1.4 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
- 38.1.5 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.
- 38.2 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.

**39. Observance of Statutory and Other Requirements**

- 39.1 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 Client against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Condition 39.
- 39.2 The Contractor will note the Client'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.
- 39.3 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.
- 39.4 The Contractor will facilitate the Client's compliance with the Client's obligations under these provisions and comply with any reasonable request from the Client for that purpose.
- 39.5 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.
- 39.6 The Contractor notes particularly that the Client 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.

**40. Agency**

- 40.1 Except as expressly provided otherwise in this Contract or as instructed in writing by the Client neither the Contractor nor its personnel shall in any circumstances hold itself or themselves out as being the employee or agent of the Client.
- 40.2 The Contractor shall ensure that neither it nor its staff is held out as having power to:
- 40.2.1 enter into any contract on behalf of the Client or in any other way to bind the Client to the performance, variation, release or discharge or any legal obligations with third parties; or

40.2.2 perform or discharge duties or functions, which by statute must be performed or discharged by the Client.

40.2.3 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 by law or regulation of any kind.

#### **41. Notices**

41.1 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 Client's 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.

#### **42. Waiver**

42.1 Failure by the Client 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 Client to enforce any of the provisions in accordance with its terms.

#### **43. Exclusions**

43.1 It is here agreed and declared that nothing contained in the Contract shall constitute a partnership between the Client and the Contractor.

#### **44. Severance**

44.1 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.

#### **45. Third Party Rights**

45.1 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.

#### **46. Final Contract**

46.1 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 Client nor the Contractor's standard terms

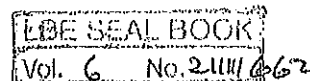
and conditions of business will be binding on the parties save to the extent that they are embodied in this Contract.

**47. Law**

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

**IN WITNESS** whereof the parties hereto have executed this document as a Deed the day and year first before written

THE COMMON SEAL of THE COUNCIL OF  
THE LONDON BOROUGH OF EALING was  
hereunto affixed to this Deed in the presence of:- )



*[Handwritten Signature]*

**Authorised Officer**

**EXECUTED AS A DEED** by **EDEN BROWN LIMITED** acting by  
a director and its secretary/two directors whose signatures are here subscribed

namely ..... *Nick Smail* .....

Signature ..... *Nick Smail* .....DIRECTOR

and ..... *P. HOROE* .....

Signature ..... *P. HOROE* .....SECRETARY/DIRECTOR

in the presence of:-

WITNESS *A. Han*

NAME *ADAM HERRON*

ADDRESS *222 BISHOPSGATE, LONDON. EC2M 4AD*

OCCUPATION *Director*

## **Specification**

### **The Provision of Vendor Neutral Managed Services for Temporary Agency Staff including Technical and Specialist Agency Staff**

#### **1. Introduction**

This Specification summarises the services, processes and standards that will be required by the Council of the London Borough of Ealing ('Client') from Eden Brown Limited ("Contractor") who will be managing specialist recruitment agencies in each field ("Supplier(s)").

During the first two months of the Contract Period the Contractor shall contact all the existing Suppliers providing the Service to the Client, and arrange for them to enter into an agreement with the Contractor so that all instructions and payments shall be solely between the Client and the Contractor. Where a Supplier refuses to comply with such an arrangement, and that Supplier has supplied agency staff that are undertaking an assignment for the Client, the Contractor shall report the situation to the Client and no further agency staff shall be requested from that Supplier

The Client has contracted with the Contractor to provide a vendor neutral managed recruitment service for the provision of technical and specialist agency staff ("the Service"). This excludes:

- a) Individual "self-employed" consultants invoicing the Client for the provision of services. (The option of whether the Contractor can provide payroll services to "self-employed" consultants will be reviewed once the Service is established and operating to required performance standards.)
- b) Providing cover for Senior Management including Chief Officer grades unless agreed in advance as "one off" specific arrangements providing these are in accordance with council policies and procedures.
- c) Providing cover for Education Schools i.e. provision of agency staff working in schools.
- d) Providing agency staff to cover positions in council services that have been "contracted out".
- e) Providing a recruitment service or support for permanent recruiting into permanent positions in the council or those on temporary contracts who would be employees of the Client. The Contractor may provide such additional services if agreed in advance as "one-off" specific arrangements providing these are in accordance with council policies and procedures.

This Specification forms part of the Contract for the Provision of Vendor Neutral Managed Services for Temporary Staff including Technical and Specialist Agency Staff and will be used along with the key performance indicators as the basis against which the Service will be monitored and reviewed. The Specification will only be changed or modified by agreement by both Parties in writing usually as a result of the regular three monthly reviews. Such changes will become part of this Specification. Nominated representatives from Human

Resources, Strategic Procurement and Finance will attend on behalf of the Client. The Director of Human Resources will have authority to agree any changes on behalf of the Client. The Contractor's Account Team and Account Director will attend the review meetings on behalf of the Contractor

## **2. The Service**

The Contractor will install and manage a suitable computerised vendor management system (e.g. MATRIX) to manage the assignment, booking, timesheet and invoicing processes on behalf of the Client.

The Contractor will put in place an account management team that will be responsible for the implementation and service of this Contract. The Contractor shall also be responsible for developing and maintaining the relationship with the Client and with the Supplier(s).

The Contractor will manage activities including those listed below but not limited to:

- Filling assignments.
- Adhering to the agreed selection criteria for all agency staff candidates.
- Managing agency staff sickness and holiday cover so that assignments are filled.
- Managing the timesheet processes.
- Providing a dedicated account management team which shall consist of four people, two of whom will be based at the Client's offices. The Contractor shall ensure that at least one of the team will be available at the Client's offices at any time between 8am and 6pm, Mon - Fri. The size and capacity of the account team shall be subject to review from time to time and any changes mutually agreed.
- Dealing with, and supporting the Client's managers, where any performance and or disciplinary issues need to be resolved by a Supplier.
- Resolving any issues in a Supplier's performance.
- Attending the contract and service reviews with the Client.
- Provide management information and reports (as set out in Appendix 1 and 2).
- Maintaining neutrality by treating all Suppliers in an equal fashion depending on their tiering, if applicable. The Contractor will not offer any unfair advantage to their own company's sales teams through their processes or the information they hold.
- Reviewing rates and charges and negotiating with Supplier(s) to ensure a competitive pricing structure is achieved.
- Seeking to fill all assignments and advising the Client if any recruitment issues impact on the "fill rate". The Client and the Contractor will work together to resolve any assignment "fill rate" issues.
- Conducting margin reviews with the Client at each quarterly meeting to determine that margins are set at realistic levels within the market.
- Supporting the Client's aims of using an E-invoicing and E-purchasing system, providing the Contractor does not incur additional cost for the provision of the service.

- Managing and maintaining relationships with an appropriate number of Suppliers to deliver the Service in accordance with this Specification.
- Ensuring all Suppliers adhere to the Race Relations Act 1976 and the Amendment Act 2000 and have due regard to the need to eliminate unlawful discrimination, promote equality and good relations between people of different groups, as well as conform to other diversity legislation.
- Ensuring that all Suppliers adhere to all other relevant legislation as required by specific assignments as specified and agreed with the Client.
- Ensuring that all Suppliers comply with the Client's Health & Safety requirements, Code of Conduct and Diversity policies (specified in Appendix 4).
- Conducting regular audit checks on Suppliers where there are performance issues, Client concerns or supplying to Social Services assignments.
- Ensuring all Suppliers adhere to requirements for necessary checks (please see section 5e for more details) specifically:
  - Two work references
  - Identity checks
  - Right to work in the UK
  - Health screening check
  - Criminal Records Bureau (CRB) check as defined in section 5e.
  - GSCC registration checks for qualified social workers and checks for other groups as may be required by the GSCC in future.
  - Such additional checks as may be required by the Client from time to time and agreed with the Contractor.

### **3. The Client's Commitments**

The Client will be expected to complete the following activities within a reasonable timescale:

- To give access to appropriate information as requested by the Contractor providing this does not conflict with the Client's confidentiality, policies or Data Protection.
- Give feedback on CV's – target 48 hours
- Give feedback on interviews – target 24 hours
- Attend Managers forums every six months
- Make payment of invoices within 30 days from receipt of invoice (to be reviewed quarterly with the aim of reducing by a phased reduction. Such reduction not to be less than 14 days).
- Payment of the invoice will not be delayed where the invoice value is disputed, provided the disputed amount does not exceed 20% of the total value of the invoice.
- The Client shall have 14 days from receipt of the invoice to dispute any amounts charged.
- Should any amount be disputed, such amount shall be deducted from the next invoice.
- The Executive Director of Finance and Business Support will give a general notification that recruiting managers must use this Contract for the supply of agency staff. Recruiting managers will be instructed that they are not to



directly use any supplier or process invoices from any supplier that should be within the scope of this Contract.

- The Client will work with the Contractor to eradicate any payment of invoices from those Suppliers that should be instructed through the Contractor and be within the scope of this Contract.

#### 4. Formal Review Meetings

Meeting	Attendees on behalf of the Client	Attendees on behalf of the Contractor
Annual Contract Review	HR Director & nominated representatives from Human Resources, Strategic Procurement & Finance.	The Contractor Account Team & Chief Executive
Quarterly Review (One of these reviews will be the annual review)	Nominated representatives from Human Resources, Strategic Procurement & Finance.	The Contractor Account Team & Account Director
Ad Hoc as requested by either party	Nominated representatives as appropriate	The Contractor Account Manager plus nominated representative(s) as appropriate

Agenda items for review meetings will be:

- Margin review and fill rates
- Performance review against key performance indicators (KPI's)
- Savings review
- Payment performance
- Strategic aims of the Client
- Specific issues arising from the performance review

Please note that during the implementation of the Service, review meetings will need to be held on a weekly basis moving to monthly reviews. The period during which weekly then monthly reviews will be held will be agreed between the Client and the Contractor. Attendees will be those attending quarterly reviews.

Day to day informal meetings will take place between the Client and the Contractor at the request of either to resolve any issues that arise which either require urgent action or can be dealt with quickly and easily and are of a minor nature.

## **5. Agency Staff**

### **a. Bookings**

The Contractor will ensure that new assignments are entered appropriately on to the MATRIX Vendor Management System and will ensure that Suppliers use the system to enter the required information and to upload the details of suitable candidates.

### **b. Management of Agency Staff**

The Contractor will ensure that regular progress checks are undertaken by the Suppliers with the Agency Staff to ensure that the Agency Staffs meet the Client's expectations as part of the audit process.

### **c. Response times**

The Contractor will meet the following key performance indicators in delivering the Service to the Client.

<b>Service</b>	<b>Performance standard</b>
During office hours of 0800 to 1800, within 60 minutes of an assignment being notified, the Contractor shall confirm that the assignment can be filled within the agreed lead-time.	During the course of a contract year The Contractor shall fail to confirm within 60 minutes on no more than 10 occasions.
Selection of candidates from initial short listing	Aim is that 90% of candidates can be selected from those supplied for initial short listing over a quarterly period.
Fill Rate for assignments	Aspire to fill 100% of assignments with agency staff. Recognise that market conditions may impact but fill rate should not be lower than 95% over a quarterly period.
Filling a new assignment for the start date agreed between the Contractor and the recruiting manager.	During the course of a contract year, no more than 5% of Agency Staff shall be placed outside the agreed start date.
Unplanned turnover of Agency Staff	During the course of a calendar month unplanned turnover of Agency Staff shall be no more than 10%.
Completion of first working week of appointment to the client.	During the course of a contract year no more than 10% of Agency Staff shall fail to complete the first full week of their assignment.
Sickness	During the course of a contract year Agency Staff to seek to achieve at least 95% attendance.

Completion of assignments to contractually agreed end dates	More than 90% of assigned Agency Staffs must complete to agreed end dates over a quarterly period.
Access to information as requested from time to time by the Client, Contract Manager and the Client's HR function. This will include, but not be limited to, equal opportunities reporting on candidates, cost savings and spend reports.	For standard reports – within an hour, non-standard reports – 72 hours. For non standard reports, if there are additional changes to software required, charges could be incurred. Any such charge will be notified in advance by the Contractor.
Induction	The Contractor's on-site Account Manager will meet and greet all new starters and ensure they receive basic induction. This applies to Client's "main locations".
Operation of the Contractor's electronic system (MATRIX)	No more than 2% unplanned downtime for MATRIX operation in any quarter. Planned downtime not to cause operational disruption to the managed service between 0800–1800 Monday to Friday.
The Contractor's Account Management Team	Composition of account team specified above in Specification. Minimum of 1 account manager to be present at the Client's offices at any time between 0800 and 1800 Mon – Fri.
Agreeing standard conditions between the Suppliers and the Contractor	80% of volume of agency staff from Suppliers under the managed service within 2 months of the "go live" date. 99% of volume of agency staff from Suppliers under the managed service within 6 months of the "go live" date.

d. Failure to achieve Response times

Where the Contractor fails to achieve the Performance Standard over any three month period the Client shall require the Contractor to provide evidence at the next Quarterly Review Meeting, or in the event of substantial failure at an Ad Hoc Meeting to be called within 14 days of written notification to the Contractor to investigate the reason why the key performance indicators are not being met.

If this is as a result of action or inaction on the part of the Client then the Client shall as soon as practicable, take such steps as are necessary to remedy the situation.

Where the failure is on the part of the Contractor the Client shall give the Contractor such time as appears reasonable in the circumstances to rectify the situation. The Client shall monitor the performance of the Contract over the

next month or such longer period as the Client shall determine to satisfy itself that the Contractor is making effort to comply with the requirements of the Specification. Where the Contractor still has not rectified the situation a Special Meeting will be called with a view to ascertaining exactly what action the Contractor proposes to take to remedy the situation.

The Client shall have the right to require the Contractor to provide additional staff or other resources where this is considered the reason for the failure on the part of the Contractor, or to change or move the members of the account team where this is considered appropriate, and likely to contribute to the rectification of the Service. The Client shall also be entitled to withhold up to 10% of the Contractor Charge in any one month and if necessary retain the same as compensation for whatever period the failure on the part of the Contractor to provide the Service to the required standard relates. Continued failure may result in termination of the Contract in accordance with the Conditions of Contract.

#### **e. Selection process for Agency Staff**

The Contractor will ensure that the Suppliers have complied with the following recruitment selection processes prior to the submission of agency staff candidates for assignments with the Client.

- Agency staff candidates must have been interviewed face-to-face where possible (if not possible, a telephone interview must take place), by a suitably trained and experienced member of the Supplier's staff. Agency staff candidates that will be in assignments in social care or working with children must have had a face-to-face interview. This is to ensure that agency staff candidates are suitable for the specific assignment and that they meet the requirements of the relevant job specification.
- Agency staff candidate approval must be obtained for the Supplier to have the "right to represent" the agency staff candidate for each assignment. In the event that the same agency staff candidate is submitted by two Suppliers and both have confirmed they have the right to represent the agency staff candidate, then the Contractor reserves the right to contact the agency staff candidate to confirm which Supplier has the right to represent them.
- Two recent work references will have been obtained for each agency staff candidate put forward for an assignment. One such reference must be obtained before initial submission of the candidate and the second prior to placement with the Client. Where two references are not possible, the Contractor will investigate and inform the Client of the situation.
- Each agency staff candidate will have had his or her identity checked using a birth certificate and/or passport.
- Agency staff candidates must be eligible to work in the United Kingdom. Eligibility to work in the UK must be confirmed by the Supplier with original copies of the appropriate documentation before submission of a candidate.

- Agency staff candidates will have undergone health screening checks as specified in Appendix 3 for all social services placements when so required for a specific assignment, and as requested by recruiting manager elsewhere.
- Enhanced Criminal Records Bureau (CRB) checks will have been obtained by the Supplier for any agency staff candidate put forward for assignments in front line social care or contact with children or vulnerable adults. Standard CRB checks are required for any agency staff candidates that will have access to records but not direct contact with children or vulnerable adults. Agency staff candidates must produce the original documents together with photographic proof of identity to be produced for the Recruiting Manager prior to the start of the assignment.
- Suppliers must have obtained evidence of General Social Care Council (GSCC) registration for agency staff candidates who are qualified social workers and will be submitted for assignments. This will also apply to agency staff candidates where the requirement for GSCC registration is extended by the Government to include other groups in social care in the future. Agency staff candidates must produce the original documents together with photographic proof of identity to be produced for the Recruiting Manager prior to the start of the assignment.
- The Supplier will undertake all the relevant checks to ensure the suitability of each agency staff candidate submitted, and all relevant checks and proofs must be in place before an agency staff candidate is placed on assignment with the Client.
- The Client will specify additional checks that may be required as appropriate as and when they arise or as an amendment to this Specification following a review meeting and agreement.

**f. Holiday Pay**

PAYE Agency Staff are entitled to 20 days leave under the Working Time Directive. The Contractor will ensure that the Suppliers adhere to the relevant legislation.

**g. Statutory Sick Pay and Statutory Maternity Pay**

The Contractor will ensure that Suppliers agency staff are entitled to their statutory rights to both SSP and SMP as and when required.

**h. Health and Safety**

The Client takes responsibility to ensure that all Agency Staff are aware and adhere to all health and safety procedures on a day to day basis as laid down by the Client.

## **I Day to Day Supervision of Agency Staff Work**

The Client will be responsible for the day to day supervision of Agency Staff work whilst an assignment is being undertaken for the Client and all Agency Staff shall comply with the instructions of the Client's nominated officer in regard to their specific work assignment.

### **6. Handover**

Where at the expiry or termination of the Contract any agency staff are still undertaking an assignment for the Client they shall be required to complete such assignment. No additional fees shall be due from the Client as a result of the appointment of a new contractor to undertake the Service or the Client taking over such role and dealing directly with the Supplier in accordance with the provisions of Clause 36 of the Conditions

### **7. Complaints Procedure/Resolution of Issues**

#### **Stage 1**

- a. Any complaint about the Service provided by The Contractor or any complaint the Contractor may have about the Client, shall in the first instance be dealt with directly between the Client Recruiting Manager and the Contractor Account Manager. Any complaint shall be discussed and resolved within 5 working days or if not practical due to specified circumstances, within a timeframe agreed between the Recruiting Manager and The Contractor Account Manager. If the matter remains unresolved after 20 working days, it shall be referred by either party to Stage 2 of this procedure.

#### **Stage 2**

- b. If the complaint is not resolved at Stage 1 of this procedure, the matter shall be referred to the Client's nominated Human Resources (HR) Representative and the Contractor's Account Director. Any complaint shall be discussed and resolved within 5 working days or if not practical due to specified circumstances, within a timeframe agreed between the Client's nominated HR Representative and the Contractor's Account Director. If the matter still remains unresolved, it shall be referred to Stage 3 of this procedure.

#### **Stage 3**

- c. If the complaint is not resolved at Stage 2 of this procedure, the matter shall be referred to the Client's Human Resources (HR) Director and the Contractor's Chief Executive. Any complaint shall be discussed and resolved within 5 working days or if not practical due to specified circumstances, within a timeframe agreed between the Client HR Director and the Contractor Chief Executive. The Client HR Director and The Contractor Chief Executive will have the option, by mutual agreement, of referring

the complaint to be heard by an independent organisation which has been selected by mutual agreement between the Client's HR Director and the Contractor's Chief Executive and where no agreement is possible by either party an independent mediator shall be appointed or the matter referred as stated in Condition 30.3 of the Conditions of Contract.

**Contract for the Provision of Vendor Neutral Managed Services for  
Temporary Agency Staff including Technical and Specialist Agency Staff**

**Suppliers Pricing Schedule**

**Pricing**

**1. Definitions**

'Margin Saving' is the reduction of the margin price paid through using the Contractor (the 'New Margin'), compared to the 'Original Margin' (defined as margin previously paid to the Supplier as identified and agreed between the Contractor and the Client).

**2. Basic Charging**

**Year 1 Pricing Model**

<b>Job Category</b>	<b>Original Margin</b>	<b>New Margin</b>	<b>Contractor charge per hour Yr 1</b>
Planning	18%	15%	41 pence
Housing	19.19%	15%	41 pence
Benefits	17.08%	12%	41 pence
Parking	16.2%	12%	41 pence
IT	18.14%	12%	41 pence
Finance	21%	14%	41 pence
Social Services – a) Those to be booked by managers due to short notice requirements	11%	11%	0 pence
Social Services – b) Those that can be booked via Eden Brown system during office hours	25%	17%	41 pence
Technical	22.46%	14%	41 pence
Building Surveying	19%	14%	41 pence
Legal	24.75%	16%	41 pence
Environmental Health	19.67%	15%	41 pence
Clerical/Admin	19.04%	12%	
HR	20%	14%	41 pence
Policy	19.71%	15%	41 pence



Other	Not applicable	As agreed	41 pence
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### **Year 2 and 3 Savings Model**

<b>Monthly Margin Saving</b>	<b>Eden Brown share of savings</b>	<b>Payment to Eden Brown</b>	<b>Ealing Net Savings</b>	<b>Annual Net Ealing Savings</b>
Up to £50,000	21.00%	£10,500	£39,500	£474,000
£60,000	21.00%	£12,600	£47,400	£568,800
£70,000	21.00%	£14,700	£55,300	£663,600
£80,000	21.00%	£16,800	£63,200	£758,400
£90,000	21.00%	£18,900	£71,100	£853,200
£100,000	22.75%	£22,750	£77,250	£927,000
£110,000	25.00%	£27,500	£82,500	£990,000
£120,000	27.00%	£32,400	£87,600	£1,051,200
£130,000	28.75%	£37,375	£92,625	£1,111,500
£140,000	30.25%	£42,350	£97,650	£1,171,800
£150,000	31.50%	£47,250	£102,750	£1,233,000
£160,000	32.50%	£52,000	£108,000	£1,296,000

This pricing model which applies to the second year of the Contract is based on the Contractor receiving a percentage share of the savings based on the Margin Saving which the Client receives.

### **3. The Contractor Charge**

In year one only, the Contractor's charge will only be applied for each hour where net Margin Saving as agreed with the Client, is greater than double the Contractor Charge per hour. This does not apply in year two. The Contractor will report on which Suppliers are signed up to the Contract and new margins will be no more than those defined in the basic charging shown in the year one table above. If there are any disputes about amounts in one invoice, this will be corrected in the next invoice submitted by the Contractor. In any contract year, the management charge to the Contractor will not exceed;

Year 1 £500,000.

Year 2 £575,000.

Year 3 £650,000.

### **4. Other Savings**

From the Discovery report prepared by the Contractor and through their experience, the Contractor has shown a number of other saving areas that will be realised for the Client. These Other Savings include, but are not limited to lower National Insurance contributions, reduced Working Time Directive charges, overtime margin charges and lower costs of moving from temporary to permanent.

### **5. National Insurance Contribution**

The Contractor will ensure that only the actual National Insurance Contributions are charged to the Client.

#### **6. Working Time Directive**

The Contractor will ensure that only the appropriate amount is charged to the Client in relation to the Working Time Directive.

#### **7. Overtime Margin Charge**

The New Margin charged for overtime hours will be 5%. No hourly Contractor charge for overtime hours.

#### **8. Expenses**

Expenses are to be agreed in advance with the Client for each instance. Car mileage is also to be agreed in advance with the Client and shown separately on cost summary sheets and reports. Where agreed these must be the Client's standard rates.

No agency margin or Contractor charge will apply to expenses.

#### **9. Agency Staff to Permanent**

Charges for agency staff that are offered permanent contracts and subsequently become permanent employees of the Client will be charged as follows:

Up to 12 weeks temporary work: 12.5% of candidate's initial basic annual salary  
Over 12 weeks: No charge

#### **10. Savings Reporting**

Both Margin Savings and Other Savings stated above will be separately identified and reported to the Client on a weekly basis (or time period in line with invoicing) and issued at the same time as the invoice for that week.

#### **11. Realising Savings**

There will be two main options for realisation of savings by the Client.

- a) Actual price, including Margin Savings and Other Savings, plus the Contractor charge, which will be charged directly to the Client recruiting manager budget area
- b) Original Cost is charged by the Contractor to the recruiting manager budget area. Margin Savings and Other Savings (excluding temporary to permanent savings), less the Contractor charge are to be paid to the Client within 30 days (aim of phased reductions to 14 days) from the end of the weekly period (or time period in line with invoicing). This will include detailed savings and costs by budget area as instructed by the Client

Variation between these two options are as agreed between the Contract contact person as identified. The Client will give the Contractor at least 6 weeks written notice of changes. Any changes are made at nil cost to the Client.

Option 11b will be used at the start of the Service.

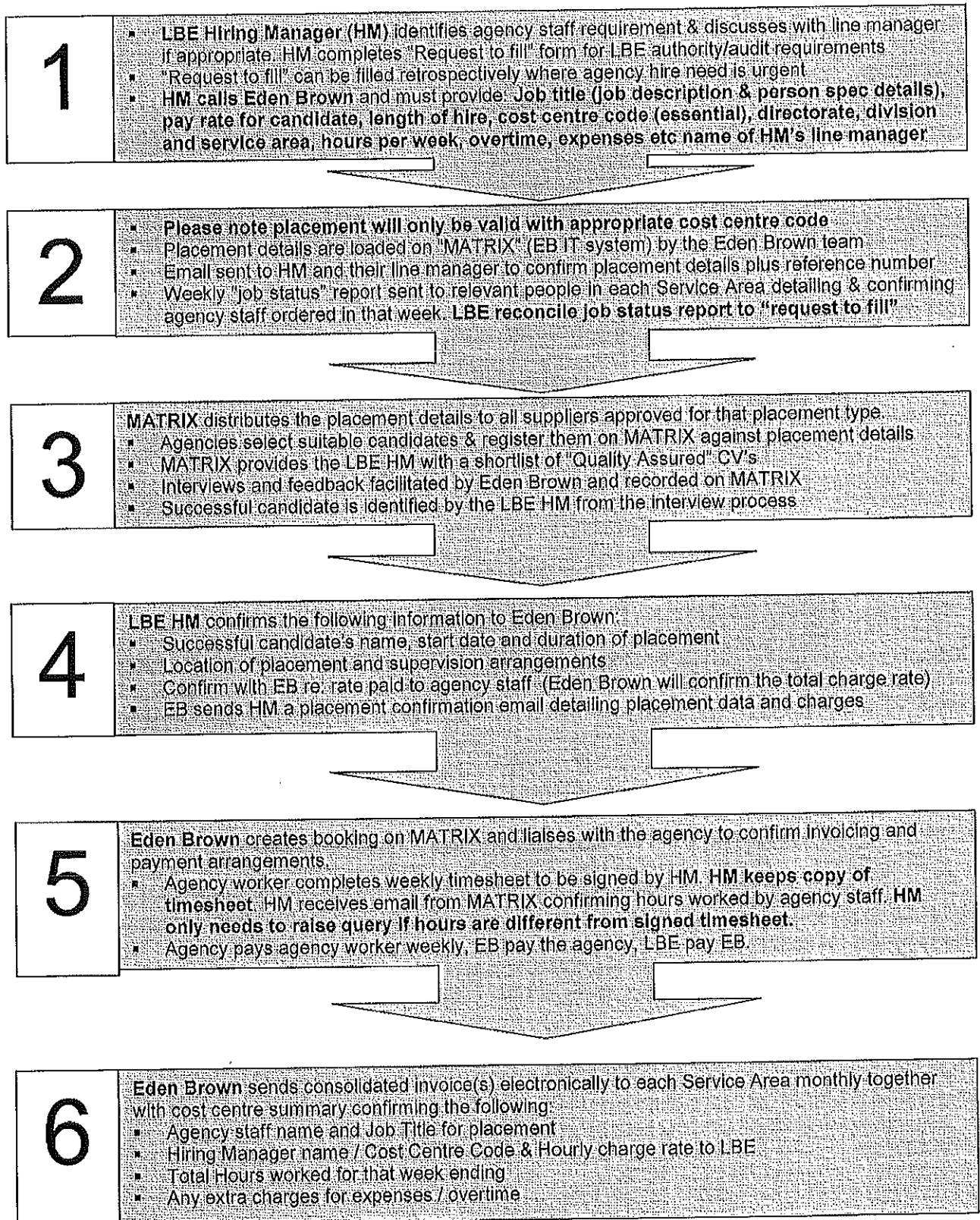
## 12. Pay Rate Banding and Benchmarking

Pay rates for margins and other costs will be agreed with Suppliers, and where possible costs set within a banding structure as agreed with the Client. The cost structure will be benchmarked as a minimum on an annual basis.

On behalf of the Client	On behalf of the Contractor
Signed _____	Signed _____
Name _____	Name _____
Job Title _____	Job Title _____
Date _____	Date _____

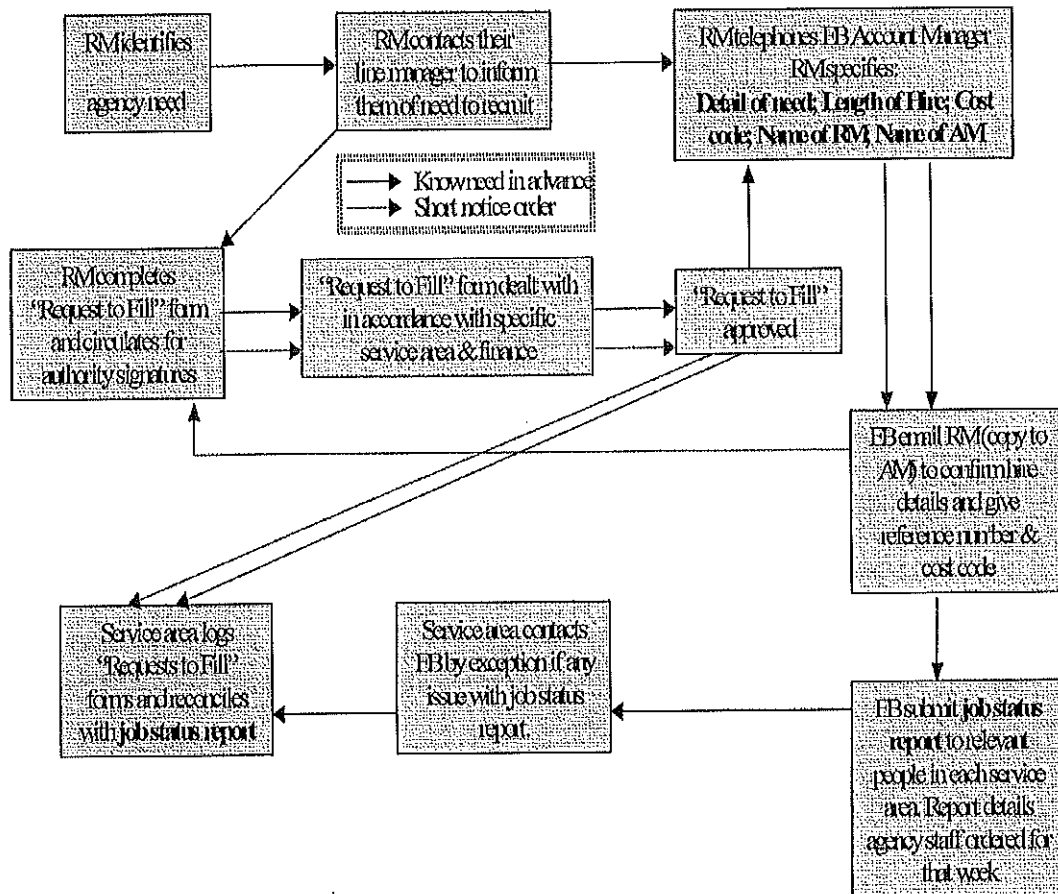
## Appendix 1 - Process

### General Process



## Detailed Processes

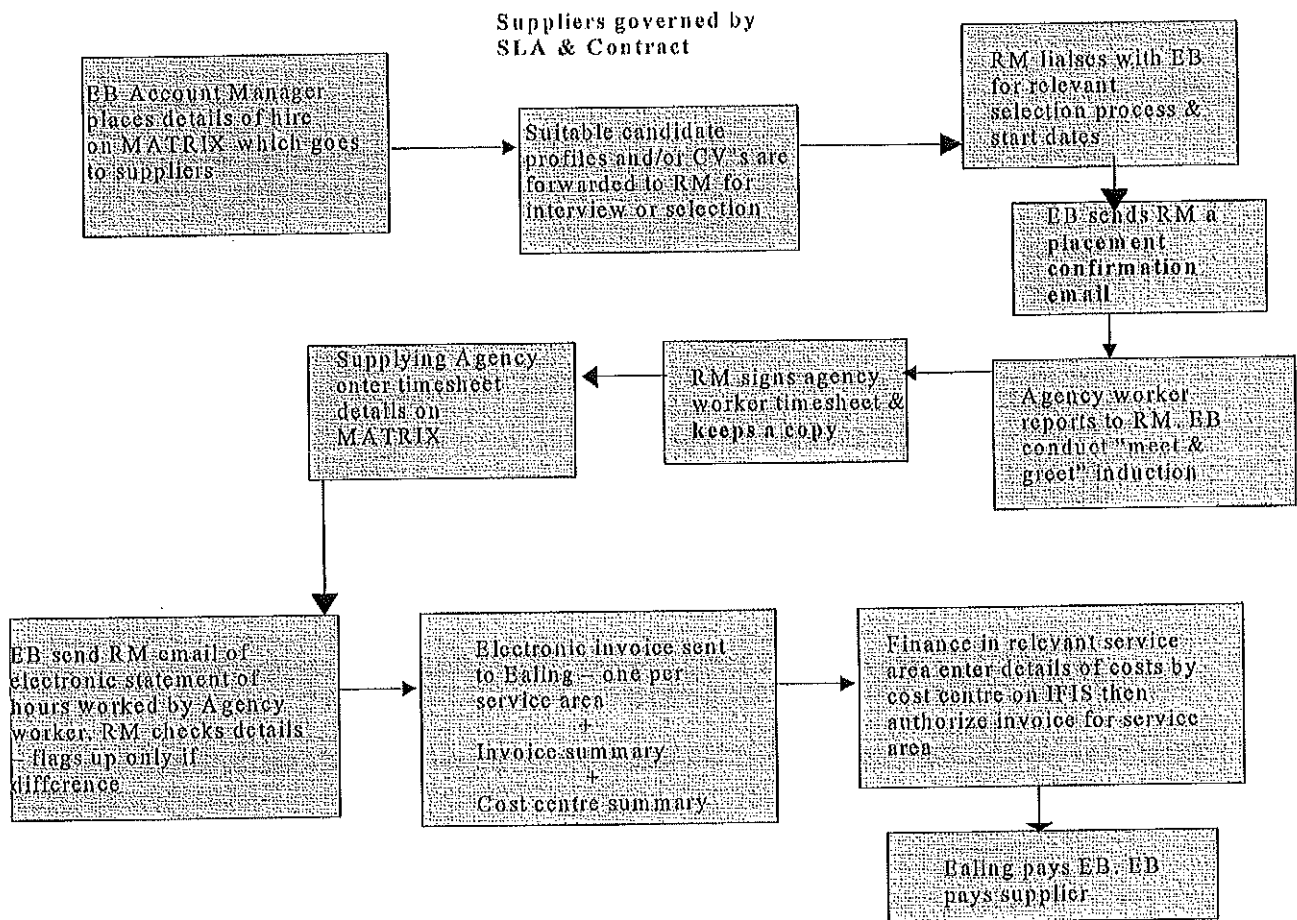
### "To Be" Process



RM=Recruiting Manager

AM=Authorising Manager

EB=Eden Brown



## **Appendix 2 - Reporting**

### **Management Performance Reporting**

#### **Monthly**

1. Diversity report – Ethnic breakdown of candidates who have been put forward for assignments compared to those appointed to complete assignments during that month. Breakdown of the same by gender.
2. Agency placement report – By service area – number of agency hires during that month. Should be shown by headcount and Full Time equivalent. Should also include length of hire and reason for hire as well as hiring manager.
3. Invoice – By service area (number and areas to be defined) containing line by line reporting of each agency hire by candidate name, agency hire has been supplied by, line manager, service area, cost code, hours hired for and cost.
4. Overall management report – covering all main areas of information contained in 1-3 above plus original and current cost breakdowns (pay rate, National Insurance, Working Time Directive and Margin costs), along with details of suppliers position on terms and conditions.

#### **Weekly**

1. Job Status Report – List by service area and line by line of agency hires for the previous week including hiring manager

Other information to be supplied that will demonstrate compliance with performance table in specification.

**Appendix 3 – Medical Questionnaire**  
**CONFIDENTIAL**  
**MEDICAL QUESTIONNAIRE FOR AGENCY HIRE**  
**MANAGED SERVICE FOR LONDON BOROUGH OF EALING**

PLEASE COMPLETE ALL QUESTIONS IN BLACK INK. INFORMATION WILL BE KEPT IN THE STRICTEST CONFIDENCE

Please note that supplying false information will be treated as a disciplinary matter and could result in your dismissal and refusal of assignment.

**SURNAME**

**FIRST NAMES**

**PREVIOUS NAME**

**FEMALE** ☐

**MALE** ☐

**DATE OF BIRTH**

**TEL. NO (Home)**

**TEL. NO (Mobile)**

Please specify the assignment that you will be doing for the London Borough of Ealing  
e.g. Accountant, social work with children

Have you worked for the London Borough of Ealing before? YES ☐ NO ☐

If 'YES' please state post held \_\_\_\_\_ From: \_\_\_\_\_ Until: \_\_\_\_\_

HAVE YOU EVER HAD? PLEASE MARK YES OR NO	YES	NO	IF "YES" PLEASE GIVE DATES AND DETAILS
Asthma	<input type="checkbox"/>	<input type="checkbox"/>	
Bronchitis	<input type="checkbox"/>	<input type="checkbox"/>	
Tuberculosis	<input type="checkbox"/>	<input type="checkbox"/>	
Any other chest illness	<input type="checkbox"/>	<input type="checkbox"/>	
Do you smoke	<input type="checkbox"/>	<input type="checkbox"/>	
Heart/Circulatory problems	<input type="checkbox"/>	<input type="checkbox"/>	
Chest Pain	<input type="checkbox"/>	<input type="checkbox"/>	
Bowel complaints	<input type="checkbox"/>	<input type="checkbox"/>	
Gastric disorder	<input type="checkbox"/>	<input type="checkbox"/>	
Stomach problems	<input type="checkbox"/>	<input type="checkbox"/>	



HAVE YOU EVER HAD? PLEASE MARK YES OR NO	YES	NO
Typhoid	<input type="checkbox"/>	<input type="checkbox"/>
Hepatitis	<input type="checkbox"/>	<input type="checkbox"/>
Diabetes	<input type="checkbox"/>	<input type="checkbox"/>
Thyroid disorder	<input type="checkbox"/>	<input type="checkbox"/>
Bladder problems	<input type="checkbox"/>	<input type="checkbox"/>
Kidney problems	<input type="checkbox"/>	<input type="checkbox"/>
Back injury	<input type="checkbox"/>	<input type="checkbox"/>
Backache	<input type="checkbox"/>	<input type="checkbox"/>
Difficulty in bending or lifting	<input type="checkbox"/>	<input type="checkbox"/>
Rheumatism	<input type="checkbox"/>	<input type="checkbox"/>
Joint pains	<input type="checkbox"/>	<input type="checkbox"/>
Arthritis	<input type="checkbox"/>	<input type="checkbox"/>
Ruptures/Hernia	<input type="checkbox"/>	<input type="checkbox"/>
Mental illness	<input type="checkbox"/>	<input type="checkbox"/>
Anxiety	<input type="checkbox"/>	<input type="checkbox"/>
Severe headaches	<input type="checkbox"/>	<input type="checkbox"/>
Migraine	<input type="checkbox"/>	<input type="checkbox"/>
Epilepsy/Fits	<input type="checkbox"/>	<input type="checkbox"/>
Blackouts	<input type="checkbox"/>	<input type="checkbox"/>
Dizzy turns	<input type="checkbox"/>	<input type="checkbox"/>
Ear infections	<input type="checkbox"/>	<input type="checkbox"/>
Eye problems	<input type="checkbox"/>	<input type="checkbox"/>
Eye injury	<input type="checkbox"/>	<input type="checkbox"/>
Dermatitis	<input type="checkbox"/>	<input type="checkbox"/>
Eczema	<input type="checkbox"/>	<input type="checkbox"/>
Other skin problems	<input type="checkbox"/>	<input type="checkbox"/>
Any allergies including to any drugs or chemicals	<input type="checkbox"/>	<input type="checkbox"/>
Are you currently receiving any medical treatment?	<input type="checkbox"/>	<input type="checkbox"/>

HAVE YOU EVER HAD? PLEASE MARK YES OR NO	YES	NO
Are you taking any medication?	<input type="checkbox"/>	<input type="checkbox"/>
Are you attending your GP or a Specialist regularly	<input type="checkbox"/>	<input type="checkbox"/>
Please specify any conditions not already mentioned including any serious illnesses or operations	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever been exposed to a hazardous substance e.g. Asbestos	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever had to leave or change any job due to ill health?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a pre-existing work related condition	<input type="checkbox"/>	<input type="checkbox"/>

**Number of days absent from work due to illness or injury in the last year. Please give details.**

I declare that the information given in this document is true and correct to the best of knowledge and I have omitted no relevant details. I understand that if any false information is knowingly made this may result in my dismissal from the agency and refusal of assignment.

**TO BE SIGNED BY THE CANDIDATE**

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This medical questionnaire has been reviewed and the candidate is fit to complete the assignment for the London Borough of Ealing. Any relevant issues that may affect the assignment have been communicated to the London Borough of Ealing and Eden Brown

-----OFFICIAL USE ONLY-----

**Name of agency:**

**Name of Representative from agency scrutinising questionnaire:**

**Position within agency:**

**Signature:**

**Date:**

## APPENDIX 4

# CODE OF CONDUCT FOR AGENCY WORKERS

	CONTENTS	PAGE
1	Introduction	
2	Health and Safety	
3	Gifts & Hospitality	
4	Conflicts of Interest	
5	Confidentiality	
6	Data Protection and disclosure of information	
7	Whistleblowing Policy	
8	Counter Fraud and Corruption Policy	
9	Equality & Diversity Policy	
10	E-Mail & Internet Policy	

## 1. INTRODUCTION

The Council is committed to delivering high quality services to its customers. In order to achieve that objective the Council expects high standards from its agency workers. This code provides important information about the standards you are expected to meet.

Within this code, 'Council's Nominated Officer' means the person responsible for your assignment with the Council.

## 2. HEALTH AND SAFETY

The Council has a number of policies designed to create a safe environment for people working for the Council. You will help prevent accidents and injuries by being aware of the policies and complying with them. The policies are listed below:-

You must:

Comply with all instructions relating to health, safety and security;

Use the protective clothing and equipment supplied by the Council;

Comply with hygiene requirements;

Report any hazards, defects, accidents or incidents as soon as you become aware of them to the Council's Nominated Officer;

Not interfere with, or misuse anything provided for health, safety or welfare;

Avoid risk of injury or danger to yourself or others;

Leave any Council building as soon as the fire alarm sounds and follow the instructions given by the fire wardens;

Inform your agency and the Council of any work that you do which, when added to your Council assignment hours, would take your total working hours above 48 hours per week;

Inform the Council of any medical condition which would be adversely affected by your assignment;

### 3. GIFTS AND HOSPITALITY

Some people believe they will get a better service or more favourable treatment if they provide additional payments or offer gifts and/or hospitality. As such, it is important that you abide by the following rules:

Report any hospitality, favourable treatment or gifts you are offered or receive to the Council's Nominated Officer;

Return any gifts the Council's Nominated Officer says you may not keep;

Do not ask for a gift, tip, or Christmas box

Do not accept gifts, hospitality or more favourable treatment from individuals, organisations or suppliers that the Council has dealings with (for example goods or services free or below the normal price);

Do not allow an individual, organisation or supplier that has dealings with the Council to pay for you to attend for example, a sporting event, the theatre, a holiday, travel to a meeting or hotel accommodation.

This does not prevent you:

Accepting reasonable hospitality while you are working such as a cup of tea or coffee, or other light refreshment when visiting sites, offices or people's homes;

Accepting an invitation which the Council's Nominated Officer has agreed it is appropriate for you to take up if your assignment means you will be representing the Council, eg. a relevant course or conference;

Accepting a gift which is of token value such as a calendar or inexpensive pen.

### 4. CONFLICT OF INTEREST

There may be occasions where there is potential for a conflict between the Council's interests and your own. It is important that these interests are clearly seen. To avoid any difficulties arising from a potential conflict of interest you must notify your agency and the Council's Nominated Officer if you have links of any sort, (personal or business) with an individual or organisation which/who may:

Complete work for the Council;

Supply goods or services to the Council or are tendering or preparing to do so;

Apply for or receive grants or other benefits from the Council;

Apply for a job with the Council

You must also:

Avoid acting as professional representative on behalf of a friend, partner, or relative, in their dealings with the Council;

The above matters are for illustration of the principles involved, and are not intended to be an exhaustive list. Your duty is to report any potential conflict of interest (or anything which might appear to a third party as a potential conflict of interest) as soon as it arises. Even if you are personally convinced that your treatment of an individual or organisation will not be affected by your connection, then you must report the issue to your agency and the Council's Nominated Officer. Although it will often be appropriate to discuss the situation verbally in the first instance, you should follow up the report in writing and ask the Council's Nominated Officer to supply you with written acknowledgment.

## 5. COUNCIL SERVICES – CONTRACTING OUT

If there are proposals to contract out (tender) any of the Council's services, strict rules are applied to ensure the highest standards of impartiality and integrity are maintained. The Council's Nominated Officer will inform you if your assignment activities mean you could be affected by these rules.

You must:

Inform the Council's Nominated Officer immediately if you are approached by a contractor or supplier seeking unauthorised information or preferential treatment;

Not treat any contractor more or less favourably than another;

Avoid saying or doing anything that may lead a contractor to think you will treat them more favourably or less favourably than others.

Not disclose to any contractor or other party any information about the bid or business details of another contractor or in house operation;

Not commit the Council to any course of action which could increase the cost of contracting out or in any way be detrimental to the interests of the Council whilst the contracting out proposal is being considered;

Avoid unlawfully disrupting services while options for contracting out are being considered or pursued;

## **6. CONFIDENTIALITY**

Working for the Council during your assignment means that you will inevitably receive a wide range of information about the Council and how its services are provided. The information you receive is confidential to the Council and must not be disclosed except in the normal course of your duties or as required by law.

How information is handled is of the utmost importance. There are particular procedures to be followed in respect of any request for information from a Councillor, or from a member of the public, or from the media. These procedures must be followed at all times.

The relevant legislation includes the Data Protection Act, the Freedom of Information Act and the Public Interest Disclosure Act. A breach of confidentiality may render you liable for criminal and / or civil penalties. If you do not understand the general principles of the relevant legislation then you should refer to the relevant policy documents, and discuss them with the Council's Nominated Officer.

## **7. WHISTLEBLOWING POLICY**

### **7.1. Introduction**

The Council is committed to delivering high quality services to its customers and to that end expects high standards from its employees and contractors. In order to maintain those high standards a culture of openness and accountability is vitally important. The aims of this policy are threefold:-

- to encourage you to raise concerns about malpractice within the organisation without fear of reprisal;
- to reassure you that your concerns will be taken seriously;
- to provide information about how to raise your concerns and explain how the Council will respond

### **7.2. Scope of the Policy**

This policy applies to all Council employees, former employees, agency staff and contractors engaged by the Council.

### **7.3. What is whistleblowing?**

In practical terms, whistleblowing occurs when a concern is raised about danger or illegality that affects others, eg. clients, members of the public or the Council itself. As the person blowing the whistle you would not usually be directly affected by the danger or illegality. Consequently you would rarely have a personal interest in the outcome of any investigation into your concerns. This is different

from a complaint or grievance. If you make a complaint or lodge a grievance, you are saying that you personally have been poorly treated. This poor treatment could involve a breach of your individual employment rights or bullying and you are entitled to seek redress for yourself.

#### **7.4. Blowing the Whistle on Malpractice**

Malpractice covers a wide range of concerns. The types of activity that should be disclosed include but are not limited to the following:-

- fraud or corruption (see also the Counter Fraud and Corruption Policy)
- financial maladministration
- unauthorised use of public funds
- the physical, emotional or sexual abuse of clients
- failure to comply with legal obligations
- endangering of an individual's health and safety
- damage to the environment
- a criminal offence
- failure to follow financial and contract procedure rules
- showing undue favour to a contractor or a job applicant
- miscarriages of justice
- deliberate concealment of information relating to any of the above

You should raise your concerns with the Council's Nominated Officer as soon as you suspect malpractice. Remember that the earlier you raise concerns the easier it will be to take action. You (the whistleblower) are a witness to events, not a complainant and so you do not need to wait for proof of malpractice before raising concerns.

When reporting a concern you should provide as much information and detail as possible. In particular you should provide the full names of the people involved or who know about what is happening, including the names of councillors or contractors, dates of events and any relevant documentation. This will help the investigator to focus their investigation on the main issues quickly.

There will be some cases where it is not appropriate for you to raise concerns with the Council's Nominated Officer, for example where you suspect the Council's Nominated Officer already knows about the malpractice and appears to be 'turning a blind eye', or where you suspect the Council's Nominated Officer may be involved. In those cases, you should report your concerns to the Director of Human Resources, the Head of Audit or the Head of Legal Services.

Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. You will be advised whether an investigation takes place or not. When making a decision the Council will consider whether continuing with an investigation is in the public interest.



### **7.5. Advice and Support**

The Council recognises that employees may wish to seek advice and support from their trade union before blowing the whistle. When any meeting or interview is arranged, you may wish to be accompanied by a trade union or professional association representative. Employees may also wish to seek advice from 'Public Concern at Work (PCAW), an organisation which is entirely separate from the Council. PCAW have lawyers who provide confidential advice, free of charge, to people concerned about wrongdoing at work. They can be contacted by telephone on 020 7404 6609 or via e-mail on [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk)

### **7.6. Confidentiality**

The Council understands that you may be reluctant to come forward with information about the wrongdoing of a colleague or Council Nominated Officer or indeed at all. As such, the Council recognises that whistleblowers may wish to raise concerns in confidence. If you (the whistleblower) make a request for the matter to be kept confidential then your identity will not be revealed without discussing the matter with you first.

### **7.7. Anonymous Allegations**

You are encouraged to give your name when raising concerns. A concern expressed anonymously is much less powerful and is often more difficult to investigate. The decision whether to investigate an anonymous allegation will be made by the Head of Legal Services in consultation with the Director of Human Resources. When making this decision they will take into account the seriousness of the issues raised, the credibility of what is being said and the likelihood of confirming the allegation from other sources.

### **7.8. Protection for the Whistleblower**

All concerns raised under this procedure will be treated seriously and a decision made about whether or not an investigation is appropriate. Depending upon the nature of the matter it may be referred to the external auditor or the police. The person to whom you reported your concern will be responsible for keeping you informed about the progress of the investigation and the action which has been taken, although you may not be told the outcome. In some cases the investigation may result in criminal or disciplinary proceedings. If this happens you may be invited to give a written statement or give evidence at a hearing. The Council will support you in this process and ensure that you are clear about what will happen.

The Council will not tolerate harassment or victimisation and will take action to protect you if you have raised a concern in good faith. Any employee who is

found to have victimised or harassed an employee or a temporary agency staff who has raised a concern will face disciplinary action.

#### **7.9. Allegations not made in Good Faith**

Concerns that are raised frivolously, maliciously, for personal gain or where they are known to be untrue may result in disciplinary action or, in the case of agency staff, the termination of the agency contract. In the case of contractors, the matter will be reported to the Council's relevant contract manager so that a decision can be made about the appropriate action to take.

#### **7.10. Blowing the Whistle Outside the Council**

In certain circumstances it may be appropriate to raise concerns outside the Council to the appropriate 'prescribed regulator'. This should only be done where you are raising a genuine concern in good faith and where you believe the information is true, ie. more than just suspicion. You are advised to discuss your concerns with a legal advisor, trade union or PCAW before reporting them outside the Council.

Examples of prescribed regulators are set out below:

- The Audit Commission
- The Standards Board for England
- Information Commissioner
- Environment Agency
- Health and Safety Executive
- Commissioner of the Inland Revenue
- General Social Care Council
- The Commission for Social Care Inspection
- National Care Standards Commission

As a last resort you may choose to raise your concern outside the Council to someone other than a prescribed regulator, eg. to the police or your MP. You should only do this if, in addition to the conditions above, they meet one of three preconditions.

Provided the disclosure is reasonable in all the circumstances and is not made for personal gain, the preconditions are that you:

- reasonably believed that you would be victimised if you raised the matter internally within the Council; or
- reasonably believed that the matter would be 'covered up' and there is no prescribed regulator; or
- you have already raised the matter internally or with a prescribed regulator

### 7.11. Complaints, Grievances and Members

This policy should not be confused with other policies that exist for dealing with complaints or grievances (see also paragraph 3). For example, complaints about the quality of service delivery should be addressed through the Council's corporate complaints procedure. Guidance on handling complaints about Councillors can be found in the Convention on Working Relations, in the Constitution. Employees who are aggrieved about their own employment situation should consider whether to use the grievance procedure.

### 7.12. Review and Operation of this Policy

The Head of Legal Services has overall responsibility for the operation of this policy. A record of concerns raised will be kept and reported annually to the Standards Committee. This policy may be reviewed from time to time.

## 8 Counter Fraud and Corruption Policy

### Definitions

- Fraud is defined as deliberate dishonesty by words, conduct or omission in order to obtain money, property or assets belonging to another (such as the Council) with the intention of permanently depriving the other.
- Corruption is defined as offering or accepting inducements designed to influence official action.

### Behaviour

- The Council's members and staff will adhere to the principles of selflessness, integrity, objectivity and accountability, openness, honesty and leadership. All those served by the Council are expected to act honestly, openly and with integrity at all times.

Suspected breaches will be dealt with as follows:

	<i>Either (a) or (b)</i>		<b>Standards Board for England</b>	<b>Disciplinary proceedings</b>
	<b>(a) Criminal proceedings</b>	<b>(b) Civil Action</b>		
<b>Members</b>	✓	✓	✓	✓
<b>Staff</b>	✓	✓		✓
<b>External parties</b>	✓	✓		

- The Council expects all concerned to comply fully at all times with the Council Constitution and other policies, as well as with all national or locally agreed codes of conduct and specific legal requirements.

#### **Management Responsibilities**

- Those persons with delegated responsibility and accountability for managing aspects of council activity will ensure that suitable and sufficient internal controls operate effectively at all times. The controls are to prevent loss through fraud or corruption, to protect assets and resources, and to aid prompt detection.
- Where fraud or corruption is discovered or suspected, managers have a responsibility to ensure that it is fully investigated. If evidence of fraud or corruption is established, the Council will pursue sanctions through the criminal and civil courts and disciplinary procedure will be followed. The Council will take action to recover any losses that have been incurred. Appendix 1 refers.

#### **Suspensions and concerns**

- All persons covered by the scope of this policy are duty-bound to report suspicions of fraud or corruption to senior managers, the Audit & Investigation Central Intelligence Team, Head of Legal Services or other appropriate officer. The Council operates a "whistleblowing" policy and reporting facilities for staff or the public to express concerns.

Contact details:

**Telephone number:**

24-hour Fraud referral hotline – *toll free*  
Central Intelligence Team  
Head of Legal Services

0800 328 6453  
0208825 7594/5346 or 8055  
02088258615

#### **Audit and Investigation Unit**

- The Council's Corporate Investigation Team will investigate allegations of fraud and corruption. Trained investigation staff carry out planned proactive and reactive counter fraud assignments and respond to management requests to conduct investigations. They also conduct internal and external data matching and other proactive exercises. They receive referral information from staff and the public through whistleblowing and fraud hotlines and Internet referral forms.

#### **Deterrence, prosecution and restitution**

- Criminal activity will be reported to the police\* for potential prosecution, not only as a deterrent but also to ensure recovery of losses and conform to insurance requirements. The Council will mount its own private prosecutions

(criminal or civil) and instigate vigorous loss recovery action where necessary. Cases will be publicised if it is in the public interest to do so.

- The Council will also use its disciplinary procedure to deal with cases of fraud and corruption among staff, which will lead to summary dismissal if gross misconduct is found.

***\* It should be noted that during 2004 an officer from the Metropolitan Police should be seconded full-time to the Audit & Investigation Unit to expedite such cases.***

#### **Awareness and training**

- Implementation of the counter fraud and corruption action plan will include awareness training on fraud prevention and identification to strengthen the culture of openness, honesty and accountability.

#### **External agencies**

- The Council endorses the adoption of recommended best practice. It expects relevant staff to develop effective liaison, proper working arrangements and protocols with all those who have a special interest in counter fraud activity, such as other local authorities, the police, the Benefits Agency and other government departments and agencies.
- The Council will participate in appropriate data matching activity, such as the National Fraud Initiative, and assist, where it is proper to do so, in investigations carried out by other authorised agencies.
- Discoveries of fraud or corruption against any other public body, or relevant criminal acts perpetrated elsewhere by those affected by the scope of this policy, will be investigated within the Council as to whether or not this policy has been breached and if disciplinary sanctions should also be applied. Information will be passed onto appropriate external bodies in accordance with the Data Protection Act.

#### **Monitoring of this Policy**

- The Performance & Audit Panel of Scrutiny will oversee any further development of the counter fraud and corruption policy and monitor implementation of the associated action plan.

## Appendix A: Corporate Investigation Protocols

Action	Responsibility			
	A&I	Line Mgt	HR	ICT
1) All corporate intelligence gathering and investigations, including interviews will initially be progressed within the A&I unit depending on the source of the referral. Line management and HR will be informed and assistance requested as and when necessary.	✓			
A&I investigators will seek to ascertain if the allegation(s) can be proven firstly beyond reasonable doubt or secondly on the balance of probabilities. As an alternative A&I will seek to gather evidence where they have a genuine belief that an improper act has occurred.	✓			
Where A&I suspect that an individual has benefited from the proceeds of crime and has assets to confiscate then a "Financial Investigation" will be undertaken. This will be progressed either through the police or, pending the outcome of current negotiations, the London Regional Asset Recovery Team and recovery sought as appropriate.	✓			
2) A&I will seek to establish the facts quickly and remove the threat of further fraud or loss of data through the relevant route, including police arrest, suspension, changing procedures or suspending payments.	✓			
Line Manager will act promptly where suspension or disciplinary action is required and consult with the lead A&I officer (at PIO level) in terms of the wording of any formal letter of suspension/disciplinary hearing. <i>The suspension letter should state "This does not preclude future criminal or civil action".</i>		✓		
<i>HR and line management would be advised in advance (where practical) of any imminent staff arrest.</i>			✓	

## Action

## Responsibility A&I Line HR ICT Mgt

Where advised, line management must undertake close monitoring and supervision of employees against whom allegations have been made who are allowed to remain on the premises.

Under certain circumstances, as advised by A&I and in line with CPIA guidelines, line management/HR may be asked to complete or assist in a search of the employee's work area, filing cabinets, etc - full records should be maintained. Any PC or laptop should be removed, but MUST NOT be switched on for any reason – items should be placed in marked & sealed evidence bags.

Upon request from A&I, ICT officers may be asked to access or divert an employee's emails to line management or a nominated officer for the purposes of business continuity or surveillance.

- 3) In all cases referred from the A&I unit to HR and Line Management disciplinary action will be considered in accordance with policy. Disciplinary procedures will not necessarily be delayed pending criminal or civil proceedings.

Where an investigation has been completed by A&I, line management will utilise the A&I case reports in lieu of any further investigation in respect of disciplinary action, unless advised otherwise by A&I.

In terms of disciplinary action, the Chair of the Panel will be advised by HR of the precedent set by previous similar cases, (but not until the case has been heard), involving A&I investigations in order to ensure consistency and due regard to the Council's Counter-Fraud & Corruption Policy.

## Action

## Responsibility A&I Line HR ICT Mgt

- Where appropriate, management will be informed of cases that are unsubstantiated or closed through lack of evidence for criminal, civil or disciplinary action. ✓
- 4) In cases of successful prosecution, A&I will liaise with the marketing & communications department to publicise the successful result where appropriate. ✓
- 5) The revised Counter Fraud & Corruption Plan requires managers to take responsibility for the investigation of fraud and ensure that the highest sanction is applied in addition to disciplinary action. ✓

In all cases where criminal evidence is available line management must accept the cost of forensic and similar evidence gathering within their budget. This links to management's responsibility for internal control and risk management. *It should be remembered that the earlier cases are pursued, potentially the more likely the benefit will outweigh the cost and line management can prevent "undue delay".*

***Where investigations are completed on behalf of third parties, such as Ealing Homes, costs plus investigation and administration fees will be payable. No third party work will be completed without a letter of engagement agreeing to such costs.***

## 9. EQUALITY AND DIVERSITY POLICY

The Council's policy is as stated on its Internet

## 10. E-MAIL AND INTERNET POLICY

The Council's policy is as stated on its Internet