

Date

2011



**(1) THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BRENT**

-and-

(2) [Service Provider]

**AGREEMENT
FOR THE
PROVISION OF PREPAID CARD SERVICES**

Fiona Ledden
Director of Legal & Procurement
London Borough of Brent
Town Hall
Forty Lane
Wembley
HA9 9HD
JST/301/94

CONTENTS

CLAUSE	PAGE
RECITALS	5
OPERATIVE PROVISIONS	5
Part A - Preliminary	5
A1. Definitions and Interpretations.....	5
A2 Term.....	13
A3 Service Provider's Status (Principal)	13
A4 Council's Obligations.....	14
A5 Entire Agreement	14
A6 Scope of Agreement.....	15
A7 Notices	15
A8 Mistakes in Information	16
A9 Conflicts of Interest.....	16
A10 Fraud.....	17
Part B – The Provision of the Services.....	17
B1 The Services	17
B2 Manner of Carrying Out the Services	18
B3 Standard of Work	18
B4 Key Personnel	19
B5 Service Provider's Staff	20
B6 Council Premises	20
B7 Use of Premises.....	20
B8 Equipment	21
B9 Sub-Contracting for the delivery of the Services	21
B10 TUPE.....	21
B11 Bond.....	22
B12 Emergencies	22
Part C – Payment and Price.....	23
C1 Price	23
C2 Payment and Tax	23
C3 Recovery of Sums Due	24
C4 Price adjustment.....	25

C5	Euro.....	25
C6	Change of Law	25
Part D - Statutory Obligations, Codes of Practice and Regulations.....		26
D1	Prevention of Corruption	27
D2	Discrimination.....	27
D3	The Contracts (Rights of Third Parties) Act 1999	28
D4	Environmental Requirements	28
D5	Health and Safety.....	28
Part E - Protection of Information		29
E1	Data Protection.....	29
E2	Confidentiality.....	30
E3	Freedom of Information	32
E4	Security of Confidential Information.....	34
E5	Publicity and Media	34
E6	Security of Computer Systems.....	34
E7	Intellectual Property Rights	37
E8	Audit and the Audit Commission	40
Part F – Control of the Agreement		40
F1	Assignment and Sub-Contracting.....	40
F2	Waiver	40
F3	Variation / Amendment.....	41
F4	Severability.....	42
F5	Remedies in the event of inadequate performance	42
F6	Remedies Cumulative	44
F7	Monitoring of Performance	44
F8	Possible Extension of Term.....	44
F9	Novation	44
Part G - Liabilities.....		45
G1	Indemnity and Insurance	45
G2	Professional Indemnity	47
G3	Warranties and Representations	47
Part H – Default, Disruption and Termination.....		48
H1	Termination on change of control and insolvency	48

H2	Termination on Default	49
H3	Break	50
H4	Consequences of Termination.....	50
H5	Disruption	51
H6	Recovery upon Termination	52
H7	Force Majeure	53
Part I	– Best Value Duty	54
I1	Council’s Best Value Duty	54
Part J	– Dispute and Law	55
J1	Governing Law	55
J2	Dispute Resolution	55

SCHEDULES

- 1 Specification Schedule
- 2 Pricing Schedule
- 3 Form of Bond

THIS AGREEMENT is made on the day of 2011

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** of
Town Hall, Forty Lane, Wembley Middlesex HA9 9HD (the “Council”); and
- (2) **[SERVICE PROVIDER] LIMITED** (company registered number [])
whose registered office is at [] (the “Service Provider”).

RECITALS:

- (A) To ensure the effective operation of the Council’s financial systems, there is a requirement for the provision of the Services.
- (B) The Council wishes to contract with the Service Provider to provide the Services on its behalf.
- (C) The Council and the Service Provider have agreed that the Service Provider shall provide and the Council shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.

OPERATIVE PROVISIONS:

Part A - Preliminary

A1. Definitions and Interpretations

A1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

“1976 Act” means the Race Relations Act 1976

“1999 Act” means the Local Government Act 1999

“Agreement”	means this agreement between the Council and the Service Provider consisting of these clauses and any attached Schedules, the Invitation to Tender, the Service Provider’s Tender and any other documents (or parts thereof) specified by the Council.
“Approval” and “Approved”	means the written consent of the Contract Manager.
“Best Value Duty”	means the duty imposed on the Council by Part 1 of the 1999 Act and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.
Bond	means a performance bond representing 10% of the annual contract price issued by a bank or insurance company in the form detailed in Schedule 3.
“Commencement Date”	means [] 2011.
“Commercially Sensitive Information”	means the subset of Confidential Information comprised of information: (a) which is provided by the Service Provider to the Council in confidence; and/or (b) that constitutes a trade secret.
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be

considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information.

“Contract Manager” means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such person as may be nominated by the Contract Manager to act on its behalf.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Council.

“Council Property” means any property, other than real property, issued or made available to the Service Provider by the Council in connection with the Agreement.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the Service Provider’s computer hardware, software, licences and such other items supplied and used by the Service Provider in the performance of the

Services.

“Environmental Information Regulations”	means the Environmental Information Regulations 2004.
“Extension”	means the extension of the duration of the Agreement agreed in accordance with clause F8.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Service Provider’s Staff or any staff of any sub-contractor.
“General Change in Law”	means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.
“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be

expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means an invitation for Service Providers to bid for the Services required by the Council.

“Key Personnel” means any persons that holds a position indicated as key to the successful operation of the Services as detailed in the Specification or otherwise agreed between the Parties.

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply.

“Month” means calendar month.

“Party”	means a party to the Agreement and “Parties” shall be construed accordingly.
“Premises”	means the land and buildings at the locations where the Services are to be performed in accordance with the Agreement.
“Price”	means the price exclusive of any applicable Tax, payable to the Service Provider by the Council under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Service Provider of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause C4.
“Pricing Schedule”	means the Schedule containing details of the Price.
“Quality Standards”	means the quality standards that a skilled and experienced operator engaged in the financial services sector would reasonably and ordinarily be expected to comply as supplemented by the Specification.
“Regulatory Bodies”	means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
“Replacement Service Provider”	means any third party Service Provider appointed by the Council from time to time, to provide any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the expiry, termination or

	partial termination of the Agreement, whether those services are provided by the Council internally and/or by any third party.
“Requests for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.
“Residual Services”	means those services to be provided by the Service Provider at the end of the Term as detailed in the Specification.
“Schedule”	means a schedule attached to the Agreement.
“Service(s)”	means the service or services to be provided as specified in the Specification.
“Service Provider’s Representative”	means the individual authorised to act on behalf of the Service Provider for the purposes of the Agreement.
“Specification”	means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.
“Specification Schedule”	means the Schedule containing details of the Specification.
“Specific Change in Law”	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Council, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.
“Staff”	means all persons employed by the Service Provider to perform the Agreement together with the Service Provider’s servants, agents and sub-contractors used

in the performance of the Agreement.

“Tax”	means value added tax.
“Tender”	means the Service Provider’s response to the Invitation to Tender
“Term”	means the period of duration of the Agreement in accordance with clause A2.1.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“Variation”	has the meaning given to it in F3.1.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

A1.2 In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause A1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order,

regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

(g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

(h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

A2 Term

A2.1 The Agreement shall take effect on the Commencement Date and shall, subject to clause A2.2, expire automatically three (3) years after the Commencement Date, unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

A2.2 The Council may seek to extend the duration of the Agreement in accordance with clause F8. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) or adjustment to the Price pursuant to clause C4 until the expiry of the period specified in accordance with clause F8.

A3 Service Provider's Status (Principal)

A3.1 In carrying out the Services the Service Provider shall be acting as principal and not as the agent of the Council.

A3.2 Accordingly:

- (a) the Service Provider shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Council; and
- (b) nothing in the Agreement shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Council, the Council's employees, servants or agents.

A4 Council's Obligations

A4.1 Save as otherwise expressly provided, the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Service Provider.

A5 Entire Agreement

A5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

A5.2 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (1) the body of the Agreement shall prevail over;

(2) the Schedules;

(3) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause F3 shall not take higher precedence than specified here.

A5.3 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

A6 Scope of Agreement

A6.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Council and the Service Provider.

A7 Notices

A7.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

A7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A7.3 For the purposes of clause A7.2, the address of each Party shall be:

(a) For the Council:

London Borough of Brent
Town Hall
Forty Lane
Wembley
Middlesex
HA9 9HD
For the attention of: Sarah Cardno
Tel: 020 8937 1161
Fax: [insert]
E-mail: sarah.cardno@brent.gov.uk

(b) For the Service Provider:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

E-mail:

A7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A8 Mistakes in Information

A8.1 The Service Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Service Provider in connection with the provision of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

A9 Conflicts of Interest

A9.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal

interests of the Service Provider or such persons and the duties owed to the Council under the provisions of the Agreement. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

- A9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

A10 Fraud

- A10.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Service Provider (including its shareholders, members, directors) and/or any of the Service Provider's suppliers, in connection with the receipt of monies from the Council. The Service Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

Part B – The Provision of the Services

B1 The Services

- B1.1 The Service Provider shall provide the Services during the Term in accordance with the Council's requirements as set out in the Specification and the terms of the Agreement in consideration of the payment of the Price. The Council shall have the power to inspect and examine the performance of the Services provided that the Council gives reasonable notice to the Service Provider at any premises where any part of the Services is being performed.
- B1.2 The Service Provider shall at all times deliver the Services in accordance with the Law.
- B1.3 In the event that the Council notifies the Service Provider of the Council's reasonably held opinion that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Council, the Service Provider shall at its own expense re-schedule and carry out the Services

in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.

- B1.4 Subject to the Council providing Approval, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- B1.5 Without prejudice to any other rights and remedies the Council may have pursuant to the Agreement, the Service Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Service Provider's delay in the performance of its obligations under the Agreement and which delay the Service Provider has failed to remedy following reasonable notice from the Council.
- B1.6 The Service Provider shall on request provide a detailed breakdown of the resources it is deploying in the performance of the Services so as to enable the Council to effectively monitor the Agreement and ensure appropriate quality standards are maintained.
- B1.7 At the end of the Term the Service Provider shall continue to provide such Residual Services for such further period as may be detailed in the Specification. Where Residual Services are provided, the clauses in the Agreement will apply throughout such further period as detailed in the Specification unless otherwise stated to the contrary.

B2 Manner of Carrying Out the Services

- B2.1 The Service Provider shall provide the Services in a proper, skilful and professional manner, in accordance with all relevant legislation and the Council's requirements as set out in the Specification and the terms of the Agreement to the reasonable satisfaction of the Council.

B3 Standard of Work

- B3.1 The Service Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards

authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Service Provider shall agree the relevant standard of Services with the Contract Manager prior to the delivery of the Services, and the Service Provider shall undertake its obligations in accordance with Good Industry Practice.

B3.2 The Service Provider warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services

B3.3 The introduction of new methods or systems which adversely affect the provision of the Services shall be subject to prior consultation. Consultation shall involve discussion by the Parties as to any consequent amendments to the Agreement as a result of the introduction of new methods or systems, to include discussion as to the possible revision of the Price.

B4 Key Personnel

B4.1 Where indicated in the Specification or otherwise agreed by the Parties that certain positions are key to the effective delivery of the Services (to include the Senior Relationship Manager), the Service Provider shall advise the Council prior to the Commencement Date of Key Personnel.

B4.2 Should Key Personnel change, the Service Provider take all reasonable steps to to minimise any adverse impact on the Agreement and shall

B4.2.1 notify the Council in good time of any change and:

B4.2.2 ensure that any replacement Key Personnel is of equivalent experience and skills to the Key Personnel being replaced and suitable for the responsibilities of job position

B4.2.3 ensure that that any replacement Key Personnel has a sufficient handover period in which to familiarise themselves with the Agreement and Services.

B5 Service Provider's Staff

- B5.1 The Council reserves the right under the Agreement to object to any member of Staff delivering the Services if, in the reasonable opinion of the Council, the delivering of Services by them is considered undesirable. The Council's right under the Agreement extends to any person employed or engaged by a sub-contractor, agent or servant of the Service Provider. Prior to exercising such right the Council will consult with the Service Provider.
- B5.2 Where the Council exercises the right to object to any member of Staff pursuant to clause B5.1, the Service Provider shall immediately remove the member of Staff and provide a replacement if necessary. The Council shall in no circumstances be liable to the Service Provider or member of Staff in respect of any liability, loss or damage occasioned by such removal and the Service Provider shall indemnify the Council against any claim made by such member of Staff.
- B5.3 If and when requested by the Council, the Service Provider shall provide such equalities and diversity monitoring information regarding Staff as the Council may request. Information shall be provided in the format requested by the Council.

B6 Council Premises

- B6.1 Where relevant to the provision of the Services, the Service Provider requires access to Council Premises, it shall give such notice to the Council as may be appropriate in all the circumstances and comply with all Council rules and requirements whilst on the Premises.

B7 Use of Premises

- B7.1 Where relevant to the provision of the Services, the Service Provider shall not use the Council's Premises for any purpose or activity other than the provision of the Services. The Service Provider shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council

B8 Equipment

- B8.1 Unless detailed in the Specification or agreed by the Parties, the Service Provider shall provide all Equipment necessary for the provision of the Services.
- B8.2 Where relevant to the provision of the Services, where the Council issues any Council Property free of charge to the Service Provider such property shall be and remain the property of the Council. The Service Provider shall maintain all Council Property in good order and condition and not in any circumstances have a lien on the Council Property and the Service Provider shall take all reasonable steps to ensure that the title of the Council to such Council Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

B9 Sub-Contracting for the delivery of the Services

- B9.1 Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

B10 TUPE

- B10.1 It is acknowledged by the Service Provider and the Council that TUPE does not apply to the provision of the Services by the Service Provider.
- B10.2 It is acknowledged by the Service Provider and the Council that TUPE may potentially apply upon expiry or termination of the Agreement for any reason. The Service Provider shall within 5 working days of the Council's request provide a list of Staff details for all Staff assigned to the provision of the Services, their terms and conditions, including all relevant information as may be reasonably required for disclosure to third parties the Council may appoint for any subsequent contract for the provision of the Services. If the Service Provider fails to provide this information it shall not be permitted to tender for any subsequent contract.

B10.3 In the event that TUPE applies to any subsequent contract for the provision of Services, then the Service Provider shall ensure that the information disclosed is accurate and up to date as at the point of transfer and that it uses all reasonable endeavours to ensure that all known liabilities have been discharged. The Service Provider shall provide the Council and any Replacement Service Provider with all assistance and information that the Council or the Replacement Service Provider reasonably requires for that purpose. The Service Provider shall indemnify the Council and the Replacement Service Provider against:

B10.3.1 all claims, costs, expenses, damages, compensation, fines and other liabilities resulting from a cause of action prior to the date of transfer; and

B10.3.2 all claims, costs, expenses, damages, compensation, fines and other liabilities resulting from breach by the Service Provider of Regulation 13 of TUPE as amended or from failure to consult with the workforce or any part of it.

B11 Bond

B11.1 If requested by the Council by the service of a Notice pursuant to clause A7, the Service Provider shall forthwith arrange for the provision of a Bond in favour of the Council at no additional cost to the Council.

B12 Emergencies

B12.1 The Service Provider shall provide such services additional to the Services at any time and at any place and in such manner as required by the Council to enable the Council to carry out any of its functions in a situation which, in the opinion of the Council, amounts to a possible, potential, or actual emergency or disaster, provided that such additional services shall be similar to the Services. The provision of such additional services shall be treated as a Variation under clause F3.1.

B12.2 The Service Provider shall be responsible for training any person in such manner as is required by the Council to enable such person to prevent, deal with, or alleviate the consequences of any such situation as detailed in clause B12.1. Such training shall be provided by the Service Provider at no cost to the Council except that where the Service Provider is required by the Council to participate in any formal training exercise then the Service Provider's participation shall be treated as a Variation under clause F3.1.

B12.3 The Service Provider shall, if required, make and submit for the Council's approval an emergency plan to correspond with and in response to any Council emergency plan.

Part C – Payment and Price

C1 Price

C1.1 In consideration of the performance of the Service Provider's obligations under the Agreement by the Service Provider, the Council shall pay the Price in accordance with clause C2.

C1.2 In the event that the cost to the Service Provider of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause C6 shall apply.

C1.3 The Council shall pay the Service Provider, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

C2 Payment and Tax

C2.1 The Council shall pay the undisputed sums due to the Service Provider in cleared funds within 30 days of receipt of invoices, submitted in accordance with the Specification, for work completed to the reasonable satisfaction of the Council.

- C2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.
- C2.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- C2.4 The Council may, in accordance with clause F5.2 (a), require the Service Provider to reduce future invoices so as to reduce payment in respect of any Services which the Service Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- C2.5 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Agreement under clause H2.3 for failure to pay undisputed charges.

C3 Recovery of Sums Due

- C3.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the Agreement), the Council may require the Service Provider to reduce future invoices by such sum. .Where recovery by reduction of future invoices is inappropriate for any reason, the Service Provider shall pay such sums promptly.
- C3.2 Any overpayment by either Party, whether of the Price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

C4 Price adjustment

- C4.1 Where indicated in the Specification, an annual Price adjustment during the Term shall take place in accordance with the provisions of the Specification.
- C4.2 Should the Council and Service Provider be unable to agree a Price adjustment in accordance with the Specification, the Council may exercise its rights in accordance with clause H3.

C5 Euro

- C5.1 Any legislative requirement to account for the Services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Service Provider at nil charge to the Council.
- C5.2 The Council shall provide all reasonable assistance to facilitate compliance by the Service Provider under clause C5.1.

C6 Change of Law

- C6.1 The Service Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Service Provider as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.
- C6.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause C6.1) or during any extension agreed pursuant to clause C4,

the Service Provider shall notify the Council of the likely effects of that change, including:

- (a) whether any change is required to the Services, the Price or the Agreement; and
- (b) whether any relief from compliance with the Service Provider's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

C6.3 As soon as practicable after any notification in accordance with clause C6.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Service Provider can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Service Provider before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

C6.4 Any increase in the Price or relief from the Service Provider's obligations agreed by the Parties pursuant to this clause C6 shall be implemented in accordance with clause F3.

Part D - Statutory Obligations, Codes of Practice and Regulations

D1 Prevention of Corruption

- D1.1 The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Service Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- D1.2 The Service Provider warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Council by the Service Provider or on the Service Provider's behalf.
- D1.3 Where the Service Provider or Service Provider's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Service Provider's behalf, engages in conduct prohibited by clauses D1.1 or D1.2 in relation to this or any other contract with the Council, the Council has the right to:
- (a) terminate the Agreement and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Term; or
 - (b) recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Agreement has been terminated.

D2 Discrimination

- D2.1 The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning

and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

- D2.2 The Service Provider shall take all reasonable steps to secure the observance of clause D2.1 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Agreement.

D3 The Contracts (Rights of Third Parties) Act 1999

- D3.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Council or the Service Provider) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause D3. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

D4 Environmental Requirements

- D4.1 The Service Provider shall perform the Agreement taking into account the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D5 Health and Safety

- D5.1 The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Agreement.
- D5.2 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of

practice relating to health and safety, which may apply to Staff and other persons in the performance of the Agreement.

- D5.3 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

Part E - Protection of Information

E1 Data Protection

- E1.1 The Service Provider shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.
- E1.2 Notwithstanding the general obligation in clause E1.1, where the Service Provider is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
 - (b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause E1.2; and
 - (c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

E1.3 The Service Provider shall act as a bailee of any Council data which may at any time be in the Service Provider's possession or under its control and shall store such data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as data relating to the Services.

E1.4 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

E2 Confidentiality

E2.1 Each Party:-

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

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

E2.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:

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

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

- E2.3 The Service Provider shall ensure that Staff or its professional advisors or consultants are aware of the Service Provider's confidentiality obligations under the Agreement.
- E2.4 The Service Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.
- E2.5 The provisions of clauses E2.1 to E2.4 shall not apply to any Confidential Information received by one Party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
 - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E3.
- E2.6 Nothing in this clause shall prevent the Council:
- (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or

(b) disclosing any Confidential Information obtained from the Service Provider:

(i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E2.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

E3 Freedom of Information

E3.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Service Provider's expense) to enable the Council to comply with these Information disclosure requirements.

E3.2 The Service Provider shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

E3.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
- (b) is to be disclosed in response to a Request for Information, and in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

E3.4 The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Service Provider, or
- (b) following consultation with the Service Provider and having taken its views into account.

E3.5 The Service Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

- E3.6 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause E3.4.

E4 Security of Confidential Information

- E4.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Service Provider undertakes to maintain security systems to the highest standard regarded as Good Industry Practice.
- E4.2 The Service Provider will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Service Provider's obligations under clause E2. The Service Provider will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E5 Publicity and Media

- E5.1 Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- E5.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause E5.1 by all their servants, employees, agents, professional advisors and consultants. The Service Provider shall take all reasonable steps to ensure the observance of the provisions of clause E5.1 by its sub-contractors.

E6 Security of Computer Systems

E6.1 In the event of the Service Provider making use of any computer system in connection with the Services, the Service Provider shall at its own cost and subject to the Council's satisfaction:

E6.1.1 ensure that any such computer system is at all times throughout the Term sufficient to enable the Service Provider to comply with its obligations under the Agreement.

E6.1.2 ensure that comprehensive security copies of any computerised Council data are:

- (a) updated in respect of each working day at the conclusion of such working day; and

- (b) stored:

- (i) in a secure off-site location in the Service Provider's possession or under its control; and

- (ii) in accordance with the provisions of clause E1

such as to permit the Service Provider (or in the event of the Service Provider's default, the Council or a Replacement Service Provider) to initiate and operate alternative processing arrangements including (without limitation) in the event of the partial or total failure of the Service Provider's computer system;

E6.1.3 ensure that at all times during the Term adequate disaster recovery arrangements are in place for the event of the total or partial failure of the Service Provider's computer system, which arrangements shall enable the Service Provider to continue without interruption to comply with ongoing obligations under this clause E6; and

E6.1.4 be liable for and shall fully and promptly indemnify and hold harmless the Council' its officers, employees, Replacement Service Providers (where applicable) and agents against all liabilities, damages, costs, losses,

claims, demands and proceedings incurred or suffered whatsoever (including for the avoidance of doubt, without limitation, consequential loss and, as such, loss of profits) and howsoever arising be it directly or indirectly out of or in connection with the use of the Service Provider's computer system by the Service Provider.

E6.2 The Council shall free of charge provide, either in hard copy or in computerised form (as appropriate), the Service Provider with such Council data and information in the possession and under the control of the Council as:

E6.2.1 is stored on the Council's computer system; and

E6.2.2 the Service Provider may reasonably require in order to provide the Services; and

E6.2.3 the Service Provider is not obliged itself to procure or to provide pursuant to the provision of the Agreement

Subject to the following conditions:

- (a) that such data shall remain the property of the Council
- (b) the Service Provider operating all hardware and software in accordance with all agreed procedures;
- (c) the Service Provider complying with all relevant legislation;
- (d) in the event of any data corruption, the Service Provider being responsible for the correction of such data and indemnifying the Council in respect of any costs incurred from such corruption;
- (e) the Service Provider ensuring that such data is maintained to a level of accuracy approved by the Council;

- (f) that the data is made available to the Council on a regular basis or otherwise as required to enable the Council to ensure the data is accurate and up to date; and
- (g) the data being available to the Council's internal and external audit on a regular and ad-hoc basis and that any recommendations of such audit will be implemented in agreement with the Council.

E6.3 No significant change or upgrade to the software or computer systems used by the Service Provider will be made by the Service Provider without giving three months notice to the Council.

E7 Intellectual Property Rights

E7.1 All Intellectual Property Rights in any specifications, records, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) furnished to or made available to the Service Provider by the Council shall remain the property of the Council;
- (b) prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Agreement shall belong to the Council and the Service Provider shall not, and shall procure that the Service Provider's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Service Provider may obtain in performing the Agreement except information which is in the public domain.

E7.2 The Service Provider shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Service Provider shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use,

reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Service Provider or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

E7.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Service Provider shall during and after the Term on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

(a) designs furnished by the Council;

(b) the use of data supplied by the Council which is not required to be verified by the Service Provider under any provision of the Agreement.

E7.4 The Council shall notify the Service Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:

(a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Council; and

(c) shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

- E7.5 The Council shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Service Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E7.3(a) and (b),
- E7.6 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Service Provider in connection with the performance of the Agreement.
- E7.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider may at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed) either:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.
- E7.8 At the termination of the Agreement the Service Provider shall at the request of the Council and without charge immediately return to the Council all materials, work or records held, including any back-up media.
- E7.9 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

E8 Audit and the Audit Commission

E8.1 The Service Provider shall keep and maintain until twelve years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Service Provider shall on request afford the Council or the Council's representatives or the Audit Commission such access to those records as may be required by the Council or the Audit Commission in connection with the Agreement.

Part F – Control of the Agreement

F1 Assignment and Sub-Contracting

F1.1 Save as detailed in clause F1.2, the Service Provider shall not assign or otherwise dispose of the Agreement or any part of it without prior Approval.

F1.2 The Service Provider shall not sub-contract the Agreement or any part of it without prior notification to the Council. Sub-contracting any part of the Agreement shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Agreement.

F1.3 The Service Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.4 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Service Provider to the Council within 2 Working Days of such request.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause A7.

F2.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

F3 Variation / Amendment

F3.1 The Council reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever PROVIDED THAT such addition, omission or variation does not amount to a material change to the Specification. Such a change is hereinafter called “a Variation”.

F3.2 Any such Variation shall be communicated in writing by the Contract Manager to the Service Provider’s Representative in accordance with the notice provisions of clause A7. All Variations shall be in the form of an addendum to the Agreement.

F3.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Council and agreed in writing with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause J2.

F3.4 The Service Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

F3.5 The Parties may agree an amendment to the Agreement. Where the Parties agree such amendment, this shall not be binding unless in writing and signed by

Contract Manager and the Service Provider's Representative. Any amendment shall be in the form of an addendum to the Agreement.

F4 Severability

- F4.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the event of inadequate performance

- F5.1 Where a complaint is received or a problem indicated about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager may take all reasonable steps to ascertain whether the complaint is valid and whether effective steps have been taken to resolve the complaint. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause H2 of the Agreement.
- F5.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Service Provider, or the Service Provider's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Council may, without prejudice to its rights under clause H2 of the Agreement, do any of the following:
- (a) require the Service Provider to adjust subsequent invoices to reflect such deduction from the Price to be paid to the Service Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Service Provider shall have failed to provide or performed inadequately;

- (b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will be able to perform such part of the Services in accordance with the Agreement;
- (c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- (d) terminate, in accordance with clause H2, the whole of the Agreement.

F5.3 The Council may charge to the Service Provider any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Service Provider for such part of the relevant Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Service Provider fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

F5.5 In the event that:

- (a) the Service Provider fails to comply with clause F5.4. above and the failure, is materially adverse to the interests of the Council or prevent the Council from discharging a statutory duty; or
- (b) the Service Provider persistently fails to comply with clause F5.4 above,

the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Monitoring of Performance

F7.1 The Service Provider shall comply with such monitoring arrangements as detailed in the Specification (if any) or as the Parties may agree including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Agreement.

F8 Possible Extension of Term

F8.1 Subject to satisfactory performance by the Service Provider during the Term, the Council may wish to extend the Agreement by one or more periods up to a maximum of 3 years. The Council may approach the Service Provider if it wishes to do so before the end of the Term or the end of any Extension. The clauses in the Agreement will apply throughout any such extended period unless otherwise stated to the contrary.

F9 Novation

F9.1 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Council, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under this Agreement.

F9.2 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the

execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Agreement.

- F9.3 The Council shall be entitled to disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Agreement by the Service Provider. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

Part G - Liabilities

G1 Indemnity and Insurance

- G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence.
- G1.2 The Service Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This clause shall not apply to the extent that the Service Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.
- G1.3 Subject always to clause G1.1, in no event shall either Party be liable to the other for:
- (a) loss of profits, business, revenue or goodwill;

(b) loss of savings (whether anticipated or otherwise); and/ or

(c) indirect or consequential loss or damage.

G1.4 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

G1.5 The Service Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

G1.6 The Service Provider shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.7 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

G1.8 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause G1.2 but as a minimum the Service Provider will hold insurance in respect of:

(a) employer's liability, such cover not being less than £5 million in respect of any one incident;

- (b) public liability, such cover not being less than £5 million in respect of any one incident;
- (c) such other risks and such minimum sum as may from time to time be reasonably and properly required by the Council given the nature of the Services.

G2 Professional Indemnity

G2.1 The Service Provider shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause G2.1, and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £5 (five) million for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

G3 Warranties and Representations

G3.1 The Service Provider warrants and represents that:

- (a) the Service Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Service Provider;
- (b) the Service Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- (c) all obligations of the Service Provider pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

- (d) the Service Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

Part H – Default, Disruption and Termination

H1 Termination on change of control and insolvency

H1.1 The Council may terminate the Agreement by notice in writing with immediate effect where:

- (a) the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- (b) the Service Provider is a firm and a petition is presented for the Service Provider's bankruptcy, or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider's or firm's affairs; or
- (c) the Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or

possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

H1.2 The Service Provider shall notify the Contract Manager immediately when any change of control occurs. The Council may only exercise its right under clause H1.1(a) within six months of:

(a) being notified that a change of control has occurred; or

(b) where no notification has been made the date that the Council becomes aware of the change of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the Service Provider.

H2 Termination on Default

H2.1 The Council may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Service Provider or the Service Provider's Representative with immediate effect if the Service Provider commits a Default and if:

(a) the Service Provider has not remedied the Default to the satisfaction of the Council within 25 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Council, capable of remedy; or

(c) the Default is a material breach of the Agreement.

- H2.2 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Council for any costs charged in connection with such Default of the Service Provider.
- H2.3 The Service Provider may terminate the Agreement if the Council is in material breach of its obligations to pay undisputed charges by giving the Council 60 Working Days notice specifying the breach and requiring its remedy. The Service Provider's right of termination under this clause H2.3 shall not apply to non payment of the charges or Price where such non payment is due to the Council exercising its rights under clauses C3.1 and F5.2(a).

H3 Break

- H3.1 The Council shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving six Months' written notice to the Service Provider.

H4 Consequences of Termination

- H4.1 Where the Council terminates the Agreement under clause H2, or terminates the provision of any part of the Agreement under that clause H2, and then makes other arrangements for the provision of Services, the Council shall be entitled to recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term or any Extension. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause H2, no further payments shall be payable by the Council to the Service Provider until the Council has established the final cost of making those other arrangements.
- H4.2 Where the Council terminates the Agreement under clause H3, the Council shall indemnify the Service Provider against any commitments, liabilities or expenditure

which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Agreement, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under clause H3.

H4.3 The Council shall not be liable under clause H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Service Provider under the Agreement, exceeds the total sum that would have been payable to the Service Provider if the Agreement had not been terminated prior to the expiry of the Term.

H4.4 Upon expiry or termination of the Agreement, the Service Provider shall:

- (a) permit Prepaid Card to remain outstanding;
- (b) stop and replace lost or stolen card during the wind down period of the Agreement;
- (c) return all money held in funding accounts to the Council within 10 working days at the termination date of the Agreement.
- (d) Agree a reasonable wind down period and exit plan with the Council, such wind down period not normally to exceed 180 days.

H5 Disruption

- H5.1 The Service Provider shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- H5.2 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- H5.3 In the event of industrial action by the Staff or the Service Provider's suppliers the Service Provider shall seek the Council's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.
- H5.4 If the Service Provider's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Agreement may be terminated by the Council by notice in writing with immediate effect.

H6 Recovery upon Termination

- H6.1 Save as otherwise expressly provided in this Agreement and notwithstanding the provisions of ;
- (a) termination of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of this Agreement shall not affect the continuing rights and obligations of the Service Provider and the Council under clause B3 (Standard of Work), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection), E2 (Confidentiality), E5 (Publicity and Media), E6 (Security of Computer Systems), E7 (Intellectual Property Rights), E8 (Audit), F6 (Remedies Cumulative), G1 (Indemnity and Insurance), G2 (Professional Indemnity), G3 (Warranties and Representations), H2 (Termination on

Default), H4 (Consequences of Termination), H6 (Recovery on Termination) and J1 (Governing Law).

- H6.2 At the end of the Term (and howsoever arising) the Service Provider shall forthwith deliver to the Council upon request all the Council's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Council may recover possession thereof and the Service Provider grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or sub-contractors where any such items may be held.
- H6.3 At the end of the Term (howsoever arising) and/ or after the Term the Service Provider shall provide all reasonable assistance to the Council and any new contractor appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover. The Service Provider shall provide such assistance free of charge.

H7 Force Majeure

- H7.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.
- H7.2 Any failure or delay by the Service Provider in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

H7.3 Clause H7 does not affect the Council's rights under clause H6.

H7.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause H7.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

H7.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

Part I – Best Value Duty

I1 Council's Best Value Duty

I1.1 The Service Provider acknowledges that the Council is subject to the Best Value Duty; and will assist the Council in discharging its Best Value Duty in relation to the Services.

I1.2 The Service Provider shall, throughout the Term, but only to the extent of its obligations in the Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

I1.3 The Service Provider shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with Part 1 of the 1999 Act, including:

- (a) supporting and assisting the Council in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to Council services of which the Services form part;
- (b) complying with requests for information, data or other assistance made by the Council in pursuance of its Best Value Duty;

- (c) complying with all requests by the Council to procure the attendance of specific officers or employees of the Service Provider or any sub-contractor (or any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed (but not, otherwise than where agreed, more than four times in any one year);
- (d) permitting any Regulatory Body, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - (i) the Council Property and Premises (if appropriate);
 - (ii) any document or data relating to the Services; and
 - (iii) any sub-contractor, agent or employee of the Service Provider.

Part J – Dispute and Law

J1 Governing Law

J1.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England in relation to both contractual and non-contractual matters.

J2 Dispute Resolution

J2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Director of Finance and Corporate Resources for the Council and the Senior Relationship Manager or similar senior officer of the Service Provider.

J2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

J2.3 If the dispute cannot be resolved by the Parties pursuant to clause J2.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause J2.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Service Provider does not agree to mediation.

J2.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

J2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

(b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may

be referred to the Courts.

SIGNED on behalf of (name) Ltd by (name) and (name) two of its [directors (or) authorised signatories]	)))	
		(signature)

		Full Name
		(signature)

		Full Name
--	--	-----------

SIGNED on behalf of MAYOR AND
BURGESSES OF THE LONDON
BOROUGH OF BRENT by (name)
and (name) two of its authorised
signatories

)
)
)
)

(signature)

Full Name

(signature)

Full Name

SCHEDULE 1

SPECIFICATION SCHEDULE

SCHEDULE 2

PRICING SCHEDULE

SCHEDULE 3

PERFORMANCE BOND

Performance Bond

THIS BOND is made on the day of200..

BETWEEN:

- (1) *[insert name of Surety]* ("the Surety") whose registered office is at *[insert address]* (Company Number *[insert]*)
and
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT**
("the Council"), The Town Hall, Forty Lane, Wembley, Middlesex HA9 9HD.

WHEREAS:

- (A) The Council and *[insert name of Contractor]* ("the Contractor") have entered into a binding agreement on *[insert date]* for the provision by the Contractor of *[description of service]* to the Council ("the Contract"); and
- (B) Pursuant to an undertaking given by the Surety to the Council on *[insert date of Bond Undertaking]* the Surety has agreed to enter into this Bond on the following terms and conditions

NOW THEREFORE:

1. The Surety unconditionally and irrevocably undertakes to pay forthwith to the Council within fourteen days of receipt of a written statement (a "Demand") from the Council, the sum stated in such Demand in any of the circumstances set out in paragraphs (a) to (c) below:
 - (a) the Contractor fails to perform or observe any term of the Contract required to be performed or observed; or
 - (b) the occurrence of any of the events entitling the Council to terminate the Contract set out in the Conditions of Contract; or
 - (c) the termination of the Contract by reason of insolvency of the Contractor notwithstanding that the Contract may automatically determine upon such insolvency under the terms of the Contract

provided that the Demand includes a certificate of Contractor's failure or event of default signed by the Council's director of *[Name Department]* for the time being

and all payments made under this Bond shall not exceed in aggregate the sum of [£/[10]% of the Contract Price].

2. The Surety acknowledges that:

- (a) any alteration in the terms of the Contract made by agreement between the Council and the Contractor or in the extent or nature of the Services to be performed thereunder;
- (b) any allowance of time by the Council or any forbearance or forgiveness in or in respect of any matter or thing concerning the Contract on the part of the Council or of the Council's Representative;
- (c) the liquidation bankruptcy administration absence of legal personality dissolution incapacity amalgamation reconstruction or the change in name composition status function ownership or control of the Contractor or the Surety;
- (d) any provision of the Contract being or becoming illegal invalid void voidable or unenforceable for any reason whatsoever;
- (e) any failure to take or to realise (or fully to take or to realise) any release discharge exchange or substitution of any security guarantee or indemnity in respect of the Contract; and
- (f) any other act omission matter or thing which but for this provision might operate to discharge release impair or otherwise exonerate the Surety's obligation and liability under this Bond;

shall not in any way release exonerate or discharge the Surety from any liability under this Bond.

3. The Demand issued by the Council under this Bond shall be sent to the Surety at the address set out above or such other address as may be notified by the Surety to the Council. Such Demand shall be deemed to have been received by the Surety:-

- (a) if sent by mail, on the day after the date of posting; or
- (b) if sent by facsimile, at the time the Surety's facsimile machine acknowledges receipt.

4. This Bond shall operate without prejudice to any other guarantee, undertaking, security or other obligations given or owing to the Council in respect of sums due or liabilities arising pursuant to the terms of the Contract.
5. Within one month of the final determination of any claims which the Council and the Contractor may have had against each other under the Contract (whichever is the later), the Council shall repay to the Surety such sum (if any) as shall be the measure of any outstanding liability of the Council to the Contractor in relation to the Contract. Such sum shall not in any circumstances exceed the sum paid by the Surety to the Council as set out in Clause 1 above.
6. The Surety's liability under this Bond shall cease on *[insert date twelve months after expiry of normal Contract Period (including any possible extension)]* or twelve months after the Contract ends, whichever is the earlier.
7. Nothing in this Bond shall confer any rights on any person which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
8. If any provision of this Bond is held by any competent authority to be invalid unlawful or unenforceable in whole or in part the validity lawfulness and enforceability of the provisions of this Bond and the remainder of the provision on question shall not be affected thereby.
9. This Bond shall be binding upon the Surety's executors or administrators and upon any committee receiver or other person lawfully acting on the Surety's behalf and shall ensure for the benefit of and be enforceable by the Council's successors in title and assigns.
10. The law of England shall apply to this Bond and shall be subject to the exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF this Bond has been executed as a Deed on the date set out above.

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
[insert bank/insurance company name])
in the presence of:-)

.....
Director

.....
Director/Secretary

OR

SIGNED as a DEED by)
[insert bank/insurance company name])
acting by a director and its)
secretary/two directors)

.....
Director

.....
Director/Secretary

Executed as a Deed by affixing)
THE COMMON SEAL)
of the MAYOR AND BURGESSES)
OF THE LONDON BOROUGH OF)
BRENT in the presence of:)

.....
Borough Solicitor