

LONDON BOROUGH OF CAMDEN

**CONTRACT FOR CIVIL PARKING AND TRAFFIC
ENFORCEMENT
AND ASSOCIATED SERVICES**

Dated

1 APRIL

2010

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

- and -

NSL LIMITED

**Contract for Civil Parking and
Traffic Enforcement and
Associated Services**

**(Based upon the British Parking Association
(BPA) Model Contract 2004 Version Three (06-
05) as amended by the London Borough of
Camden)**

Part 1 of 2

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- Schedule 9: Race Relations
- Schedule 10: Target Cost

Legal Services Department
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

ARTICLES OF AGREEMENT

THIS AGREEMENT is made the 1st day of April 2010

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN of
Town Hall, Judd Street, London WC1H 9LP (“the Council”) and

NSL LIMITED (Company Registration Number 6033060) of 4th floor, Westgate
House, Westgate, London W5 1YY (“the Service Provider”).

WHEREAS

1. The Council wishes to have provided the Services set out in the Contract and the Service Provider is willing to perform such Services in accordance with the provisions of the Contract.
2. The Council has invited tenders for the provision of the Services from service providers.
3. The Service Provider has in accordance with the Council’s requirements submitted its tender outlining its proposals for providing the Services.
4. The Council has examined the Service Provider’s tender and being satisfied that it appears to meet the Council’s requirements has accepted the Service Provider’s tender subject to the Service Provider entering into the Contract.

NOW IT IS AGREED between the Council and the Service Provider as follows:

1. This Contract constitutes the sole Contract or agreement between the Council and the Service Provider for the performance by the Service Provider of the Service.
2. The Service Provider shall provide the Services from 1 April 2010 (“Commencement Date”) in accordance with the provisions of the Contract and to the satisfaction of the Council for a period of six years, as may be extended on a two yearly basis for a maximum of a further four years at the sole option of the Council (“the Contract Term”).
3. The Service Provider will upon and subject to the Contract provide the Services briefly described in the first recital as the same are more particularly described and referred to in the Specification, including any changes made to the Service in accordance with the Contract.
4. So long as the Service Provider shall continue to provide the Service in accordance with the provisions of the Contract and to the satisfaction of the

Council, the Council shall make to the Service Provider the payments specified in the Contract in accordance with the provisions of the Contract.

5. The expression "the Agreement " wherever used in these Articles of Agreement shall mean the documents specified in the Schedule hereto collectively and such documents shall form the whole and sole agreement between the parties hereto and shall be deemed to be incorporated in and form part of these Articles of Agreement whether or not annexed hereto.
6. The several documents forming the Contract and all other words and definitions used in these Articles of Agreement shall have the same meanings as those used in the Conditions of Contract.
7. Notwithstanding any other provision of these Articles of Agreement nothing in these Articles of Agreement or the Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

IN WITNESS whereof the parties have executed this Agreement as a deed on the day and year first written above

THE SCHEDULE

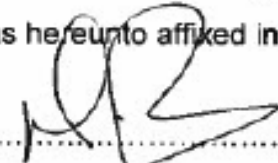
(The documents constituting the "Contract")

1. These Articles of Agreement
2. The Conditions of Contract
3. Schedule of Variables
4. Specification and Appendices to the Specification
5. Payment Mechanism
6. Key Performance Indicators
7. Schedule of Defaults
8. Change Control Procedures
9. Transferring Employees
10. Adjudicator and Expert
11. Race Relations
12. Target Cost
13. Instructions to Tenderers
14. The Service Provider's Tender Response
15. Form of Tender submitted on 20 August 2009 and the declarations signed by the Service Provider
16. Schedule of Rates

17. Letter of Acceptance from the Council to the Service Provider dated 11 December 2009
18. Any other relevant correspondence

**THE COMMON SEAL OF
THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

was hereunto affixed in the presence of:-


.....
Authorised Officer



**EXECUTED AS A DEED by
NSL LIMITED**

acting by:-


.....
Director


.....
Director/Company Secretary

DATED this 1st day of April

2010

**CONTRACT FOR THE PROVISION OF CIVIL PARKING AND TRAFFIC
ENFORCEMENT AND ASSOCIATED SERVICES**

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SCHEDULE 13	Signed Form of Tender submitted on 20 August 2009
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SCHEDULE 15	Letter of Acceptance from the Council to the Service Provider dated 11 December 2009
SCHEDULE 16	Any other relevant correspondence

**CONTRACT FOR THE PROVISION OF CIVIL PARKING AND TRAFFIC
ENFORCEMENT AND ASSOCIATED SERVICES**

DATED this 1st day of April

2010

SECTION A

1. PARTIES AND RECITALS

Parties

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (“**the Council**”); and

(2) NSL LIMITED (Company Registration No. 6033060) of 4TH Floor, Westgate House, Westgate, London, W5 1YY (“**the Service Provider**”).

Recitals

(A) The Council issued its Instructions to Tenderers and the Service Provider responded on the dates set out in the **Schedule of Variables**.

(B) The Council has selected the Service Provider to provide the Services and the Service Provider undertakes to provide the Services on the terms and conditions set out in this Contract.

(C) The Parties acknowledge that a major objective of this Contract is to achieve year on year continuous improvement. In providing the Services, the Service Provider shall have regard throughout the Contract Term to making arrangements in consultation with the Council to secure continuous improvement in the way in which the Services are provided.

(D) The Parties accept that a co-operative and open relationship is needed for success and that the Parties will achieve this when carrying out their obligations under this Contract. The Parties will act fairly towards each other in a spirit of trust and mutual co-operation for the achievement of this objective. A system of regular review meetings as detailed in **Condition 18** (Review Meetings) will be established for this purpose. The Parties shall use these meetings to help to resolve problems which may otherwise prejudice the performance of their respective obligations under this Contract.

(E) The Service Provider’s performance will be monitored using KPIs and the Service Provider’s achievement or non-achievement of the KPIs will determine the level of remuneration received by the Service Provider each month.

(F) The Council encourages the Service Provider to use innovation in the provision of the Services to reduce costs and to share benefits whilst continuing to provide the same level of service or an improved level of Service to the level specified in the Specification.

2. DEFINITIONS AND INTERPRETATION

2.1 The terms and expressions used in this Contract will have the meanings set out below:

“**Appendices**” means the appendices to the Specification forming part of the Contract;

“**Articles of Agreement**” means the Articles of Agreement annexed to this Contract and forming part of the Contract;

“Authorised Officer” means the person appointed and authorised by the Council to represent the Council for the purposes of this Contract, whose details are set out in the **Schedule of Variables**;

“Base Payment” means 1/12 of the Target Cost as set out in the **Schedule of Variables**;

“Best Value Performance Plan” means the best value performance plan which the Council is required to prepare in compliance with its duty to ensure best value in the effectiveness as defined in section 6 of the Local Government Act 1999;

“Bond Undertaking” means an undertaking given to the Council by a bank or reputable insurance company in the form included in the Instructions to Tenderers;

“Calendar Day” means any day including statutory bank holidays;

“Certificate of Costs” has the meaning given to it in **Condition 8.6** (Open Book Accounting);

“Change Control Procedures” means the change control procedures set out in **Schedule 6** (Change Control Procedures) to be used for any changes as specified in **Condition 8.4** to be effected utilising the percentage for share of savings specified in the **Schedule of Variables**;

“Civil Enforcement Officer (CEO)” means civil enforcement officer as defined in the Traffic Management Act 2004;

“Code” means the Code of Practice on workforce matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03;

“Commencement Date” means 1 April 2010;

“Commercially Sensitive Information” means the information agreed between the Parties to be commercially sensitive information with regard to the FOIA;

“Conditions” means these conditions of contract;

“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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

“Contract” means the contract between the Council and the Service Provider for the provision of the Services comprising, the Articles of Agreement, these Conditions and including any Appendices and Schedules attached to the Conditions;

“Contract Manager” means the person appointed and authorised by the Service Provider to represent the Service Provider for the purposes of this Contract, whose details are set out in the **Schedule of Variables**;

“Contract Standard” means such standard as complies in each and every respect with the Specification and with all relevant provisions of the Contract and which is to the reasonable satisfaction of the Authorised Officer;

“Contract Term” means the Initial Contract Term as may be extended on a two (2)-yearly basis for a maximum of a further four (4) years at the sole option of the Council and upon the same terms as this Contract by written notice not later than three (3) months before expiry of the Initial Contract Term or three (3) months before the expiry of any first extension to the Initial Contract Term or reduced by earlier termination of this Contract for whatever reason;

“Default” means any default or defaults specified in **Schedule 5**;

“Deputy Contract Manager” means the senior person appointed and authorised by the Service Provider to represent the Service Provider for the purposes of the Contract in the absence of the Contract Manager;

“Directive” means the EC Acquired Rights Directive 77/187, as amended;

“Dispute Resolution Procedure” means the procedure to deal with disputes as set out at **Condition 29** (Dispute Resolution Procedure);

“Environmental Management System” means the Service Provider’s environmental management systems as set out in the Tender Response;

“Equipment and Materials” means all plant, equipment, materials and consumables to be provided by the Service Provider to provide the Services;

“Fellow Service Provider” means any service provider who is providing services the same as or similar to the Services to the Council at the Locations and/or Premises during the Contract Term;

“Former Council Employee” means an employee of the Service Provider who was previously employed by the Council in the provision of services the same as or similar to the Services prior to the Commencement Date and who previously transferred under the provisions of TUPE to the Former Service Provider;

“Former Service Provider” means any service provider who provided services the same as or similar to the Services to the Council immediately prior to the Commencement Date;

“Force Majeure Event” means any event materially affecting the performance by a Party of its obligations under this Contract arising from any act, event, omission, happening or non-happening beyond its reasonable control;

“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 or relevant government department in relation to such legislation;

“Guarantee Undertaking” means an undertaking given by the ultimate holding company of the Service Provider (if it is a subsidiary company) in the form set out in the Instructions to Tenderers;

“Inclement Weather” means such weather conditions which in the opinion of the Authorised Officer prevent the provision of any part of the Services and agreed by the Parties as not being such as to constitute a Force Majeure Event;

“Information” has the meaning given under section 84 of the FOIA;

“Initial Contract Term” means a term of six (6) years from the Commencement Date;

“Instructions to Tenderers” means the document attached as **Schedule 11**;

“Intellectual Property Rights” means all intellectual and industrial property rights including patents, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

“KPIs” means the key performance indicators as set out in **Schedule 4** (Key Performance Indicators) against which the Service Provider’s performance will be measured;

“Legislation” means any Act of Parliament or subordinate legislation within the meaning of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;

“Local Government Pension Scheme” means the Local Government Pension Scheme made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972, as amended;

“Locations” means the locations or premises to be provided by the Service Provider from where the Services are to be provided as set out in the Specification;

“New Employees” means the new employees to be employed by the Service Provider to provide the Services who will be working alongside the Transferring Employees and Transferring Original Employees;

“On-Board Civil Enforcement Officer (OBCEO)” means a CEO involved in the clamping/removal of any vehicle under this Contract;

“Operational Hours” means the hours during which the Services are to be provided as set out in the Specification;

“Party” means a party to this Contract and “Parties” shall be construed accordingly;

“Payment Period” means the period as set out in the **Schedule of Variables**;

“Premises” means the premises set out in the **Schedule of Variables**;

“Prohibited Act” means:-

(a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:

(b) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or

(c) showing favour or disfavour to any person in relation to this Contract or any other contract with the Council; or

(d) committing any offence:

(i) under the Prevention of Corruption Acts 1889-1916;

(ii) under legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

(iv) defrauding or attempting to defraud or conspiring to defraud the Council;

“Quality Manual” means the Service Provider’s quality manual as set out in the Tender Response;

“Relevant Transfer” means a relevant transfer for the purposes of TUPE;

“Remuneration” means the sums to be paid by the Council to the Service Provider pursuant to **Condition 8** (Remuneration);

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

“RPI” means “All Items of Retail Prices” index published by the Office for National Statistics or any government department upon which duties in connection with the compilation and maintenance of such RPI shall be devolved;

“Schedules” means the documents attached as Schedules to the Conditions forming part of the Contract;

“Schedule of Rates” means the list of supplies and services priced by the Service Provider as part of its Tender Response;

“Schedule of Variables” means **Schedule 1** (Schedule of Variables);

“Service(s)” means the whole or any part of the services to be provided by the Service Provider to the Council under this Contract as set out in the Specification and includes any Variation thereof;

“Specification” means the specification for the Services as set out in **Schedule 2** (Specification and Appendices to the Specification);

“Staff” means the Service Provider’s officers, employees, agents or subcontractors;

“Target Cost” means the target cost to be incurred by the Service Provider as calculated in accordance with **Schedule 10** (Target Cost) and **Schedule 3** (Payment Mechanism);

“Tender Response” means the Service Provider’s proposal to meet the Specification setting out the methods to be used by the Service Provider to provide the Services under this Contract as set out in **Schedule 12** (Service Provider’s Tender Response);

“Transferring Employees” means the employees who will transfer from the employment of the Council to the employment of the Service Provider as a result of the application of TUPE in relation to the Contract;

“Transferring Original Employees” means the employees who previously transferred to the employment of the Former Service Provider and who will transfer to the employment of the Service Provider as a result of the application of TUPE in relation to this Contract;

“Transition Period” means the transition period as set out in the **Schedule of Variables**;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended;

“Variation” means a variation to the Contract including the Specification made by notice given by the Authorised Officer to the Service Provider in accordance with **Condition 11** (Changes to Services and/or the Remuneration);

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

2.2. Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

2.3 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

2.4 References to conditions and schedules are, unless otherwise provided, references to the Conditions and the Schedules to this Contract.

2.5 In the event of any conflict or inconsistency between any provision of the Conditions and any provisions of the Schedules, the Conditions shall prevail. In the event of any conflict or inconsistency between the Schedules, the commitment made by the Service Provider on 1 September 2009, that all of its drivers employed in connection with the housing clamp and removal operation aspect of the Services will hold the appropriate Security Industry Authority licence to facilitate operational flexibility in the clamping and/or removal aspect of the Services, shall take precedence over the other Schedules, followed by the provisions of the Specification, which shall prevail over the provisions of all other Schedules unless and only to the

extent that any other Schedule expressly states that a particular requirement of the Specification shall not apply.

2.6 Except as otherwise expressly provided in this Contract, all remedies available to the Service Provider or to the Council under this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

3. REPRESENTATIVES

3.1 Authorised Officer

The Authorised Officer or such representative of the Council nominated by the Authorised Officer as the authorised representative of the Council for the purposes of this Contract shall liaise with and give instructions to the Service Provider and its Staff in relation to all matters concerning the performance by the Service Provider of its obligations under this Contract and shall determine any matters or issue any notices as may be the function of the Authorised Officer under this Contract.

3.2 Contract Manager

The Contract Manager and/or Deputy Contract Manager shall have the power to act on behalf of the Service Provider in connection with any matter relating to the performance of the Services and to exercise the rights, functions and obligations of the Service Provider under this Contract.

3.3 Changes to Authorised Officer and Contract Manager

Any changes to the identity of the Authorised Officer, the Contract Manager and Deputy Contract Manager shall be communicated in writing to the other Party within fourteen (14) Calendar Days.

4. COMMENCEMENT AND DURATION

4.1 This Contract and the rights and obligations of the Parties shall take effect on the Commencement Date and shall continue for the Initial Contract Term as may be extended on a two (2)-yearly basis for a maximum of a further four (4) years at the sole option of the Council and upon the same terms as this Contract by written notice not later than three (3) months before expiry of the Initial Contract Term or three (3) months before the expiry of any first extension to the Initial Contract Term or reduced by earlier termination of this Contract for whatever reason;

5. TRANSITION ARRANGEMENTS

5.1 During the Transition Period, the Service Provider shall liaise with the Council, and any service provider appointed by the Council to provide the Services following expiry of the Contract or earlier termination of the Contract to ensure an effective and timely handover of the Services, including but without limitation, attending meetings with the Council, and the service provider appointed by the Council as is reasonably required by the Council.

5.2 During the Transition Period, the Service Provider shall prepare and agree an exit plan with the Council, including, but without limitation-:

5.2.1 confirmation that uniforms of Staff containing the Council's name or logo have been collected from Staff and disposed of securely by the Service Provider;

5.2.2 a handover to the Council by the Service Provider of all property, premises and possessions belonging to or provided to the Service Provider by the Council for the purpose(s) of this Contract, including, but without limitation, stationary, information technology equipment, vehicles, furniture, keys, premises, security passes;

5.2.3 confirmation that the radio licence in respect of the radios to be used by CEO and OBCEOs in the provision of Services has been terminated and the authority that issued the radio licence informed of the termination of the radio licence;

5.2.4 a handover of all information related to the provision of Services in a manner agreed between the Parties.

SECTION B

6. THE SERVICES

6.1 The Service Provider shall provide the Services during the Operational Hours for the Contract Term in accordance with the Council's requirements as set out in the Specification and the terms of this Contract.

6.2 In providing the Services, the Service Provider shall comply with and take into account all applicable laws, bye laws, traffic regulation orders, enactments, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

7. PERFORMANCE BONDS AND GUARANTEES

7.1 Prior to the Commencement Date and forthwith upon request by the Council, the Service Provider shall ensure that the bank or insurance company who has executed the Bond Undertaking will execute and deliver to the Council a Bond in the form appended to that Undertaking.

7.2 If by the Commencement Date the Council has not requested the Service Provider to procure such a bond, then the Council shall deduct the amount of the premium for the Bond (referred to in the Bond Undertaking) from the first payment it makes to the Service Provider.

7.3 If applicable, prior to the Commencement Date and forthwith upon request by the Council, the Service Provider shall procure that the Service Provider's ultimate holding or parent company will execute and deliver to the Council a Deed of Guarantee in the form appended to that Undertaking.

7.4 In the event of a change in the Service Provider's ultimate holding or parent company during the period of the Contract, the Service Provider shall notify the Council and shall immediately ensure that the new ultimate holding or parent company enters into a Deed of Guarantee in the same form as the previous holding or parent company and that a copy of the deed will be sent to the Authorised Officer within fourteen (14) Calendar Days.

8. REMUNERATION

8.1 The Remuneration will be paid to the Service Provider in accordance with **Condition 10** (Payment Terms) and **Schedule 3** (Payment Mechanism) for Services provided to the satisfaction of the Authorised Officer.

8.2 The Base Payment

In consideration for the provision of the Services, the Council shall pay to the Service Provider the Base Payment as adjusted in accordance with **Condition 8.3**.

8.3 Adjustment to the Base Payment

The Base Payment shall be adjusted by way of a deduction or an addition dependent on the Service Provider's achievement or non-achievement of the KPIs calculated in accordance with **Schedule 4** (Key Performance Indicators), provided that no deduction shall be made to the Base Payment for the Service Provider's non-achievement of a KPI to the extent that such non-achievement results from:

8.3.1 a breach by the Council of any of its obligations under this Contract; or

8.3.2 a Force Majeure Event

8.3.3 in the case of Inclement Weather in which case the Service Provider will be paid the Remuneration for Services provided during the period the Inclement Weather remains in accordance with the Specification.

8.4 Share of savings

Where the Service Provider has proposed a change (of its own initiative) to the Services which results in a reduction of the Target Cost either through improved efficiency, reduced costs, higher quality of service, or any improvement of a nature that results in financial betterment from the Council's point of view and that change has been accepted by the Council under the Change Control Procedures (as appropriate), the Council will after a trial period as specified by the Council, project the financial benefit for the Council over the period that such improvement is to be applied. The Council will pay to the Service Provider a proportion of the savings achieved directly as a result of the change in accordance with the percentage specified in the **Schedule of Variables** for the duration such financial betterment would apply, as determined by the Council.

8.5 Value Added Tax ("VAT")

8.5.1 The Council shall pay any VAT on the Remuneration at the rate and in the manner prescribed by law from time to time.

8.5.2 The Service Provider shall provide the Council with any information reasonably requested by the Council in relation to the amount of VAT chargeable in accordance with this **Condition 8.5**.

8.5.3 Where any amount is calculated by reference to any sum that has or may be incurred under this Contract, the amount shall include any VAT to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.

8.6 Open Book Accounting

8.6.1 Without prejudice to the rest of this **Condition 8.6**, the Service Provider shall, at the request of the Council, provide to the Council a Certificate of Costs within twenty one (21) Calendar Days of such request, provided that the Council may not request a Certificate of Costs more than once in any month of the Contract Term.

8.6.2 The Certificate of Costs shall set out the Service Provider's direct costs, and overheads in providing the Services over the preceding year of the Contract Term, including details of the following:

(a) the Target Cost;

(b) actual capital expenditure, including capital replacement costs;

(c) actual operating expenditure relating to the provision of the Services, with an analysis showing the costs of staff, consumables, sub-contracted and bought-in services;

(d) all interest, expenses and other third party financing costs incurred in relation to the Services; and

(e) details of the overhead recoveries that have been made in relation to the Services.

8.6.3 Following receipt of the Certificate of Costs, the Service Provider shall provide to the Council such additional information as it may reasonably request so that the Council can verify the accuracy of the Certificate of Costs.

9. REVIEW OF SCHEDULE OF RATES

9.1 At a Contract review meeting in the fourth quarter of each year of the Contract Term following the Commencement Date, the Council shall consider a request from the Service Provider for a change to prices specified in the Schedule of Rates. The proposals for changes to the Schedule of Rates must be submitted in writing by the Service Provider at least two (2) weeks prior to the forthcoming quarterly review meeting and supported by reasons for any changes to the Schedule of Rates. The starting point for such changes will be as specified in **Condition 8.6** (Open Book Accounting).

9.2 In making any decisions about requests for changes, the Council will consider changes in the costs specified in **Condition 8.6.2**. The Council will not agree to any proposed changes to the Schedule of Rates which results in any increase or decrease per annum of the unit price of any single item, by more than the rate of RPI for the previous year.

9.3 The Council shall submit to the Service Provider at a Contract review meeting in the fourth quarter of each year following the Commencement Date, any proposals to reduce prices, with reasons and supporting evidence.

9.4 The Council shall inform the Service Provider of its decision in relation to requests for changes to prices specified in the Schedule of Rates within two (2) weeks of the date of the review meeting where such changes were proposed, however, changes to prices specified in the Schedule of Rates shall only take effect once each in each year of the Contract Term following the Commencement Date. The Council's decision regarding changes in prices specified in the Schedule of Rates shall be final and will be confirmed in writing to the Service Provider.

10. PAYMENT TERMS

10.1 The Council shall pay the Remuneration to the Service Provider in accordance with the procedure set out in the rest of this **Condition 10**.

10.2 For each Payment Period in which Services are to be provided and for Remuneration to be paid to the Service Provider, two separate applications for payment of Remuneration shall be made by the Service Provider to the Authorised Officer in relation to each core service area as specified in the Specification:

Application 1 shall include the following information:

- a) The sum being 90% of the Base Payment;
- b) Any adjustments to the Base Payment by way of volumes; and
- c) Any share of savings

The Service Provider shall submit a request for payment under Application 1 to the Authorised Officer within seven (7) Calendar Days of the end of each Payment Period.

Application 2 shall include the following information:

- a) Any performance related payment or Bits ("Bits" is defined in **Schedule 3** (Payment Mechanism));

The Service Provider shall submit an application for Application 2 for each core service area no less than ninety Calendar (90) days after the end of Payment Period and within seven (7) Calendar Days of being notified to do so by the Authorised Officer.

10.3 The Authorised Officer shall consider and certify an application for any disputed applications for Remuneration made under **Condition 10.2** within seven (7) Calendar Days of receipt of each of the Applications 1 and 2.

10.4 Should the Authorised Officer require an adjustment to any part of the Remuneration set out in the application for payment, the Authorised Officer shall inform the Service Provider in writing of the reason for and effect of any such adjustment at the same time as certifying the application.

10.5 Notwithstanding any adjustment made to the Remuneration as outlined in **Condition 10.4** the part of the Remuneration unaffected by the adjustment will be certified in accordance with **Condition 10.3**.

10.6 The Council shall pay the undisputed Remuneration to the Service Provider within thirty (30) Calendar Days of certification of each of the Applications 1 and 2.

10.7 Interest is payable on late payment of the Remuneration at the rate set out in the **Schedule of Variables**.

10.8 In the event that the Service Provider enters into a sub-contract in connection with this Contract, the Service Provider shall ensure that a term is included in the sub-contract that requires the Service Provider to pay all sums due under the sub-contract to the relevant sub-contractor a specified period, not exceeding thirty (30) Calendar Days, from the date of receipt of a valid invoice as defined by the terms of the sub-contract.

10.9 Any dispute relating to the calculation or payment of the Remuneration under **Condition 8** (Remuneration), **Condition 9** (Review of Schedule of Rates) or this **Condition 10** (Payment Terms) shall be resolved in accordance with the Dispute Resolution Procedure.

11. CHANGE TO THE SERVICES AND/OR THE REMUNERATION

11.1 The Council may from time to time require changes to the Specification and/or the Contract and accordingly the Authorised Officer may upon giving reasonable written notice thereof to the Service Provider issue from time to time to the Service Provider instructions in writing (following reasonable consultation) requiring the Service Provider to do all of the following-:

11.1.1 To omit any part of the Services or to cease to provide any part of the Services permanently or during such times and for such periods as the Authorised Officer may determine;

11.1.2 To reduce or increase the volume or frequency of any part of the Services permanently or during such times and for such period or periods as the Authorised Officer may determine;

11.1.3 To perform the Services or any part thereof in such manner as the Authorised Officer may reasonably require providing that a requirement to provide the Services in accordance with the Specification shall not be a Variation;

11.1.4 To provide such services additional to the Services (including at additional Locations or Premises (as appropriate) as the Authorised Officer may reasonably require provided that such additional services shall be of the same type as or similar to the Services referred to in the Specification; or

11.1.5 To vary temporarily or permanently the Services in any other way.

11.2 No Variation pursuant to this **Condition 11** shall vitiate the Contract.

11.3 All instructions affecting Variations shall be given in writing provided that if for any reason the Authorised Officer shall find it necessary to give any such instruction orally in the first instance the Service Provider shall comply with such oral instruction. Such oral instruction shall be confirmed in writing by the Authorised Officer as soon as possible and agreed by the Service Provider within seven (7) days thereafter. If a Variation to the Specification is significant, as determined by the Authorised Officer in accordance with the Council's Contract Standing Orders, then a Deed of Variation recording the variation will be drawn up by the Council and sealed as a deed by both parties.

11.4 The Authorised Officer shall ascertain the value of all Variations after consultation with the Service Provider in accordance with the following principles:

11.4.1 where services are of similar character and executed under similar conditions to Services priced in the Schedule of Rates, the Variation shall be valued by the Authorised Officer at such rates and prices contained therein as may be applicable;

11.4.2 where the Variation involves work that is not the same or of similar character to or not executed under similar conditions to the Services, the rates and prices in the Schedule of Rates shall be used by the Authorised Officer as the basis for valuing such Variation in so far as may be reasonable;

11.4.3 otherwise a fair valuation shall be made by the Authorised Officer.

11.5 Any dispute as to the value of any Variation or additional work, or as to whether any Variation or additional work should give rise to any increase in the Target Cost or additional payment, the decision may be dealt with in accordance with the provisions of **Condition 29** (Dispute Resolution).

11.6 In the event of a Variation requiring the Service Provider to omit any part of the Services or to cease to provide any part of the Services in accordance with **Condition 11.1**, a Variation in the Target Cost shall also be made in accordance with **Condition 11.4**.

11.7 For the avoidance of doubt no increase in the Target Cost or additional payment shall be made to the Service Provider in respect of the Variation if there is either a compensating reduction or reorganisation of any other part of the Services.

12. LIQUIDATED DAMAGES

12.1 If a Default occurs by the Service Provider, the Council shall immediately give written notice of such Default to the Service Provider. The Service Provider shall pay or allow to the Council liquidated damages calculated in accordance with the formula specified in **Schedule 5**, through the issue of a credit note within fourteen (14) days of the written notice being issued by the Council to the Service Provider.

12.2 The Parties hereto accept that the liquidated damages referred to in this **Condition 12** represent a genuine pre-estimate of the damage likely to be suffered

by the Council in the event of a Default by the Service Provider, which results in a loss to the Council.

12.3 Where the Council is subject to a fine or to pay compensation to any person for failure to comply with its obligations and such failure is caused as a result of a Default by the Service Provider, the Service Provider shall be liable to reimburse the Council the amount of such fine or compensation as soon as it is known and notified to the Service Provider together with all costs, whether legal charges or otherwise. Such reimbursement shall be in addition to the payment of any liquidated damages.

12.4 The Council's right to liquidated damages under this **Condition 12** shall be without prejudice to the other rights of the Council under this Contract.

SECTION C

13. PREMISES

13.1 Premises owned by the Council

13.1.1 On the Commencement Date, the Council shall grant a licence/lease or other similar legal agreement as determined by the Council (referred to as "Form of Legal Agreement" for the purpose of these Conditions) to the Service Provider to use the Premises for the sole purpose of providing the Services.

13.1.2 The Council warrants that the Premises are in a good and suitable condition to enable the Service Provider to provide the Services.

13.1.3 On expiry of the Contract Term, the Form of Legal Agreement granted by the Council to the Service Provider pursuant to **Condition 13.1** shall terminate and the Service Provider shall immediately vacate the Premises.

13.1.4 On termination of the Form of Legal Agreement to use the Premises, the Service Provider shall ensure that the Premises are in the same state as they were in when the Form of Legal Agreement commenced.

13.2 Access to Council premises

13.2.1 The Council shall give access to any premises occupied by or on behalf of the Council (including but not limited to the Premises) any person employed or engaged by the Service Provider or any subcontractor in connection with the provision of the Services, provided that the Council may refuse admission to such a person if such admission would present a security risk.

13.2.2 Any person employed or engaged by the Service Provider or any subcontractor who requires access to any premises occupied by or on behalf of the Council (including but not limited to the Premises) shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside those Premises.

13.3 Premises owned by the Service Provider

Where the Council requires access to premises owned by the Service Provider in order to receive the Services, the Service Provider shall provide such access immediately upon reasonable notice given by the Council.

14. EQUIPMENT AND MATERIALS

14.1 The Service Provider shall be responsible for the costs of providing the Equipment and Materials specified in the Specification.

14.2 The Service Provider shall ensure that all Equipment and Materials that it is responsible for providing are:

14.2.1 suitable for the purposes for which they are intended;

14.2.2 maintained in a safe, serviceable and clean condition and replaced as necessary; and

14.2.3 adequately insured.

14.3 On expiry or earlier termination of the Contract, the Service Provider shall transfer all HHCT equipment (as defined in the Specification) and related IT hardware equipment to the ownership of the Council. Any equipment and materials supplied by the Council to the Service Provider for use by the Service Provider during the Contract Term in connection with the provision of the Services must be returned immediately after the expiry or earlier termination of the Contract to the Council in accordance with **Condition 5** (Transition Arrangements).

15. INTELLECTUAL PROPERTY RIGHTS

15.1 The Council authorises the Service Provider to use the Intellectual Property Rights of the Council for the purposes only of exercising its rights and performing its obligations under the Contract. The Service Provider will have no other rights whatsoever in respect of the Intellectual Property Rights of the Council.

15.2 All Intellectual Property Rights which arise during the Contract Term and (i) are created at the Council's request by or on behalf of the Service Provider in the course of and solely for the purposes of the provision of the Services, (ii) are created on a bespoke basis for the Council, or (iii) are specified in the Contract as being the subject of assignment pursuant to this **Condition 15.2** will belong to the Council. The Service Provider hereby assigns all such Intellectual Property Rights to the Council, by way of assignment of future Intellectual Property Rights, with full title guarantee and without charge to the Council (including all such Intellectual Property Rights arising in respect of any adaptations, modifications and/or enhancements of any of the Council's Intellectual Property Rights). The Service Provider agrees to do or procure the doing of all such acts and things and to execute or procure the execution of all such documents as may be required to vest ownership of all such Intellectual Property Rights in the Council.

15.3 The Service Provider hereby irrevocably and unconditionally waives in favour of the Council any and all moral rights conferred on the Service Provider by virtue of the Copyright Designs and Patents Act 1988 in respect of the Intellectual Property Rights referred to in **Condition 15.2**.

15.4 The Service Provider hereby grants to the Council:

15.4.1 such licence or licences as may be specified in the Contract, including in respect of any output of the Services; and

15.4.2 a perpetual, non-exclusive, sub-licensable, fully assignable, royalty-free licence to use, copy and update any materials or information which are:

15.4.2.1 provided to the Council by the Service Provider; and/or

15.4.2.2 used on or in conjunction with any of the Council's equipment, property or services under or in connection with the Contract.

15.5 The Service Provider will indemnify, keep indemnified and hold harmless the Council from and against all costs (including the costs of enforcement), expenses,

liabilities (including any tax liability), losses, damages, claims, demands, proceedings or reasonable legal costs (on a full indemnity basis) and judgments which the Council incurs or suffers in respect of any claim or action brought against it by any third party during or after the termination of the Contract claiming that possession or use by the Council of anything provided to the Council by or on behalf of the Service Provider or its Staff under or in connection with the Contract infringes a third party's Intellectual Property Rights.

15.6 The Service Provider shall procure that all Staff and all personnel of authorised subcontractors who perform any part of the Services contract with the Service Provider (or, in the case of subcontractors' personnel, with the relevant subcontractor) on terms which ensure that any Intellectual Property Rights arising out of or relating to work done by that person shall vest in, or otherwise be assigned absolutely and with full title guarantee to, the Service Provider in support of the Service Provider's obligations under **Condition 15.2** and that to the extent that any such personnel or subcontractors have any moral rights in any such work, they shall have been unconditionally and irrevocably waived. In the case of Staff the Service Provider shall, if so required by the Council, produce to the Council written evidence of compliance with this **Condition 15.6** signed by members of Staff.

16. TUPE

16.1 Application of TUPE

16.1.1 The Parties agree that the provisions of TUPE may apply to this Contract.

16.1.2 In the event that TUPE does apply, the Parties agree that, where the identity of a provider (including the Council) of any of the Services is changed pursuant to this Contract (including on expiry of the Contract Term), the change shall constitute a Relevant Transfer.

16.1.3 On the occasion of a Relevant Transfer (other than a Relevant Transfer on expiry of the Contract Term), the Service Provider shall and shall procure that any replacement service provider shall comply with its obligations under TUPE and the Directive in respect of the Transferring Employees and the Transferring Original Employees.

16.2 Emoluments and Outgoings

16.2.1 The Council shall be responsible, (only in cases where a service being provided in-house by the Council immediately prior to the Relevant Transfer is outsourced to the Service Provider under this Contract) for all emoluments and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of any Relevant Transfer.

16.2.2 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees and the Transferring Original Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer

16.3 Pensions

16.3.1 The Service Provider shall ensure that all Transferring Employees and any Transferring Original Employees are offered membership of the pension scheme of which they were or were eligible to be members of prior to the date of the Relevant Transfer or are afforded pension rights which are certified by the Government Actuaries Department or by a professional qualified actuary

as being broadly comparable to or better than the terms of their pension scheme of which they were, or were eligible to be, members of prior to the date of the Relevant Transfer.

16.3.2 The Service Provider shall continue to protect the pension rights of all its employees who are Former Council Employees by offering to Former Council Employees membership of the pension scheme of which they were or were eligible to be members of prior to the Commencement Date or are afforded pension rights which are certified by the Government Actuaries Department or by a professional qualified actuary as being broadly comparable to or better than the terms of their pension scheme of which they were, or were eligible to be, members of prior to the Commencement Date.

16.4 Provision of information

16.4.1 The Council warrants that the information set out in **Schedule 7 Part A** (Transferring Employees) is accurate and complete as at the date of this Contract in respect of the Transferring Employees employed by the Council immediately prior to the Relevant Transfer.

16.4.2 The information set out in **Schedule 7 Part B** does not relate to employees immediately employed by the Council prior to the Transfer Date and has been provided by the Former Service Provider, the Council provides no warranty as to the accuracy and/or completeness of the information in **Schedule 7 Part B**.

16.5 Service Provider to inform Council of any measures

The Service Provider shall within fourteen (14) Calendar Days of receiving a request from the Council, provide the Council with any information which is reasonably necessary concerning any measures (within the meaning of TUPE and the Directive) that the Service Provider intends to take in relation to any Transferring Employee and any Transferring Original Employees and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this **Condition 16.5**.

16.6 Indemnities

16.6.1 Subject to **Condition 16.6.4**, the Council shall indemnify the Service Provider from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of any such employee provided that this arises from any act, fault or omission of the Council prior to the date of the Relevant Transfer. This **Condition 16.6.1** shall only apply in connection with information provided under **Condition 16.4.1** in relation to a service being provided in-house by the Council immediately prior to the Relevant Transfer is outsourced to the Service Provider under this Contract.

16.6.2 The Service Provider shall indemnify the Former Service Provider from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Original Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of the Service Provider on or after the date of the Relevant Transfer.

16.6.3 The Service Provider shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of the Service Provider on or after the date of the Relevant Transfer.

16.6.4 The Service Provider shall indemnify and hold harmless the Former Service Provider from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider in respect of all or any of the Transferring Original Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff associated or other employee representative under TUPE or the Directive and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

16.6.5 The Service Provider shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff associated or other employee representative under TUPE or the Directive and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

16.6.6. The Council shall not be liable under this **Condition 16** in the event that:-

- any information provided in **Schedule 7 Part B** for the purpose of TUPE transpires to be inaccurate;

- any employee of the Service Provider who has transferred to the Service Provider's employment under TUPE brings a claim against the Service Provider that relates wholly or partially to his or her employment with the Service Provider

- at the end of the Contract Term, if the Service Provider does not secure a further contract with the Council and there is no transfer to a new service provider of the Service Provider's employees under TUPE.

16.7 TUPE Compliance on Termination

16.7.1 During the twelve (12) months prior to the expiry of the Contract Term or after the Council has given notice to terminate this Contract and within twenty one (21) Calendar Days of being so requested to do so, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Services including:

- (a) a list of employees employed by the Service Provider in the provision of the Services;

- (b) a list of agency workers, agents and independent contractors engaged by the Service Provider in the provision of the Services;

- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons; and
- (d) the terms and conditions of employment of such persons.

16.7.2 During the twelve (12) months prior to expiry of the Contract Term or where notice to terminate this Contract for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) materially increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services.

16.8 Sub-contractors

In the event that the Service Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its subcontractor on the same terms as those imposed on it pursuant to this **Condition 16**.

17. STAFFING

17.1 Staff Training

17.1.1 The Service Provider shall at all times employ in and about the provision of the Services sufficient Staff who are properly and sufficiently trained, qualified, competent, careful, skilled, honest and experienced to ensure that the Services are provided at all times and shall ensure that adequate training is provided and maintained to all such Staff to ensure that they are comprehensively trained to perform to the Contract Standard required especially in regard to:

- (a) the task or tasks to be performed;
- (b) all relevant Council guidelines;
- (c) all relevant provisions of this Contract;
- (d) all statutory requirements relevant to the Services; and
- (e) the need to maintain the highest standards of courtesy and consideration.

17.1.2 The Service Provider shall ensure that within the period set out in the **Schedule of Variables** all CEOs and OBCEOs engaged in the provision of Services that have transferred employment to the Service Provider as a result of a Relevant Transfer taking place shall hold a current certificate as a result of passing the nationally accredited C&G Vocationally Recognised Qualification) Level 2 Award for Civil Enforcement Officers (Parking) (1889-01), or equivalent, with the exception of Staff to engaged in the provision of Services specifically in connection with closed circuit television monitoring.

17.1.3 The Service Provider agrees that:

- (a) where any staffing or skill levels have been agreed as part of the Specification, those levels will be maintained throughout the Contract Term;
- (b) where any named Staff have been agreed to be provided as part the Specification, those Staff will be assigned to work on this Contract;

(c) it has sufficient reserves of trained and competent Staff within each skill level to provide the Services including sufficient reserves to provide cover for staff holidays, staff sickness, emergencies or any other absence; and

(d) it will replace promptly any Staff who are assigned to this Contract and who cease to be in its employment or under its control for whatever reasons and that such replacements shall have the broadly equivalent skill levels and shall in every way be suitable for the performance of the Services.

17.2 Removal of Staff

17.2.1 Where the Council becomes aware of a complaint against a member of Staff who is involved in the provision of the Services or where the Council through its own monitoring activities detects inappropriate behaviour by any member of Staff, the Authorised Officer shall notify the Contract Manager of the nature of the complaint and provide supporting documentation where possible.

17.2.2 On receipt of a notification under **Condition 17.2.1**, the Contract Manager shall meet with the Authorised Officer to discuss measures to resolve the complaint and to avoid future complaints.

17.2.3 Where the Contract Manager and the Authorised Officer agree that the complaint justifies the removal of a member of Staff from the provision of the Services, the Service Provider shall immediately remove or procure the removal of that person from the provision of the Services and shall provide or procure the provision of a suitable replacement.

17.2.4 Any dispute in relation to this **Condition 17.2** shall be resolved in accordance with the Dispute Resolution Procedure.

17.3 Checks on Staff

17.3.1 If the circumstances under which the Services are provided are such that any member of Staff is exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 (for the purposes of this sub-Condition the “**Act**”), by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (for the purposes of this sub-Condition the “**Order**”), then the Service Provider shall use reasonable best endeavours to ensure that that member of Staff shall provide information in accordance with the Act and Order about convictions which would otherwise be spent under the provisions of the Act.

17.3.2 The Service Provider shall disclose to the Authorised Officer the names and addresses and sufficient details of all convictions of any member of Staff to enable proper checks to be made and in the event that such checks reveal that a member of Staff has relevant convictions, the Parties may agree that such persons should be removed from the provision of the Services.

17.4 Abuse of Staff

The Service Provider and the Council shall liaise with the police in relation to the prosecution of any person for abuse of a member of Staff who is involved in the provision of the Services.

SECTION D

18. REVIEW MEETINGS

18.1 The Authorised Officer and the Contract Manager shall hold review meetings at monthly intervals and at any other times as required by the Council.

18.2 The purpose of the monthly review meetings are to:

18.2.1 review the Service Provider's achievement or non-achievement of the KPIs;

18.2.2 in the event that the Service Provider's non-achievement of KPIs to formulate plan for improving performance;

18.2.3 resolve problems which may otherwise prejudice the performance of the Parties' obligations under this Contract;

18.2.4 explore and agree improvement in methods of improving service quality, reducing costs and achieving continuous improvement; and

18.2.5 provide an opportunity for either Party to raise issues which could cause disruption to the provision of the Services or otherwise prejudice this Contract or any part of this Contract.

18.3 In the event that the performance of the Service Provider falls below the zero level as described in **Schedule 3** (Payment Mechanism) or where either Party requests a meeting, senior executives of each Party shall hold a special review meeting to agree an action plan to bring performance to acceptable levels.

18.4 In addition to the review meetings held under **Conditions 18.1 and 18.3**, senior executives of each Party shall hold reviews at mutually agreed intervals but in any event within twelve (12) months of the Commencement Date and subsequently at least once within each twelve (12) month period thereafter to review the Services provided, the KPIs, the Target Cost, the Remuneration, the terms of this Contract and any other relevant matters with a view to deciding on improvements to be made and implemented during the Contract Term. Minutes of such meetings shall be taken by the Service Provider and shall be subject to the approval by the Authorised Officer.

18.5 Any changes resulting from the meetings described in this **Condition 18** shall be effected through the change control procedures or Variation procedures (as appropriate) in accordance with the provisions of this Contract.

19. BEST VALUE

19.1 The Service Provider acknowledges that the Council is subject to a statutory duty pursuant to the Local Government Act 1999 to make arrangements to secure continuous improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness ("the Best Value duty").

19.2 The Service Provider shall co-operate fully and assist the Council so far as reasonably required in relation to all requests for assistance by the Council in connection with the performance of the Council's Best Value duty as it relates to the Contract at no extra charge including, but not limited to:-

19.2.1 complying with all requests for information, including providing access to premises, Staff, documents, data and processes;

19.2.2 providing assistance to enable the Council to undertake best value consultation exercises including undertaking customer or user satisfaction surveys, if required and providing a written report to the Council setting out the results;

19.2.3 providing all assistance and information necessary to include an objective comparison of the quality and standard, performance and delivery of the Service, with other organisations;

19.2.4 maintaining and monitoring performance of all contractual performance measurements and targets and providing a detailed performance management report in writing at Contract review meetings;

19.2.5 participating in the annual review meeting as specified in **Condition 18.4**;

19.2.6 throughout the Contract Term, and not less than annually pro-actively suggest efficiency savings, which shall be considered by the Council as part of a review of the Schedule of Rates as specified in **Condition 9.3** or following a review meeting as specified in **Condition 18.2**.

19.3 The Service Provider shall be subject to a duty to demonstrate continuous improvement in its performance of the Service throughout the Contract Term.

19.4 The requirements of this Condition shall be at no additional cost to the Council.

20. PROVISION OF INFORMATION

20.1 Where specified in the Specification, the Council shall provide the Service Provider with the information set out in the Specification.

20.2 The Council shall promptly notify the Service Provider of any proposed changes to bye-laws, policies or traffic regulation orders which may affect the provision of the Services.

20.3 The Service Provider shall keep and maintain such necessary data and information and shall complete or provide such assistance as the Council may reasonably require by written notice to the Service Provider to enable the Council to complete all official returns, including, but without limitation the following:

20.3.1 returns to any central government body or properly authorised agency of central government; and

20.3.2 information required by any statutory body or compliance with any statute or statutory instrument.

20.4 The Service Provider shall at all times maintain separate records of the following:

20.4.1 full particulars of the costs of performing the Services, including those related to finance, investment and maintenance;

20.4.2 a full record of all incidents relating to health, safety and security which occur during the Contract Term;

20.4.3 a full record of all maintenance procedures carried out during the Contract Term; and

20.4.4 such other records as the Council may reasonably require having regard to the cost to the Service Provider of maintaining and providing such records.

20.5 The records referred to in this **Condition 20** shall be retained for a period of at least six (6) years after the Service Provider's obligations under this Contract have come to an end.

20.6 All information referred to in this **Condition 20** is subject to the obligations set out in **Condition 38** (Confidentiality).

20.7 Upon the expiry or termination of this Contract and in the event that the Council wishes to enter into another contract for the provision of the Services and irrespective of the identity of any replacement provider of the Services, the Service Provider shall comply with all reasonable requests by the Council to provide information relating to this Contract.

21. AUDIT

21.1 The Service Provider shall at all reasonable times (including following termination for whatever reason of this Contract) afford to or procure for any auditor (including any auditor carrying out functions under the Audit Commission Act 1998 or the Local Government Act 1999) conducting an internal audit or an external audit, inspection or an audit of Best Value Performance Plans or to or for the Authorised Officer access to any records, information and data in the possession or control of the Service Provider which in any way relate to or are or have been used in connection with the performance of the Services including (but without limitation) Council data and information stored on a computer system operated by the Service Provider and shall include permission to copy and remove any copies and remove the originals of such documents.

22. MONITORING

22.1 The Service Provider shall provide reasonable assistance to the Council for the purposes of monitoring the provision of the Services at no additional charge to the Council.

23. COMPLAINTS

23.1 Prior to the Commencement Date, the Service Provider shall agree with the Council a complaints procedure in respect of the provision of the Services which enables the Council to respond to complaints by members of the public.

23.2 As a minimum, the complaints procedure referred to in **Condition 23.1** shall include the following requirements:

23.2.1 that the Service Provider shall not enter into any correspondence directly with members of the public relating to the Services;

23.2.2 that any complaint received by the Service Provider from a member of the public shall be logged and passed on to the Council within two (2) Working Days;

23.2.3 that the Service Provider shall assist the Council in responding to complaints from members of the public by providing all information requested by the Council in the timescales set out in the Specification; and

23.2.4 that the Service Provider shall keep a record in a form agreed between the Parties of any complaints received by it and of the action taken by the Service Provider to remedy or fully investigate each such complaint.

23.3 If a complaint is deemed to be caused by any default in the actions or systems operated by the Service Provider, the Service Provider shall take appropriate measures to remedy the default.

23.4 The Service Provider shall, at the request of the Authorised Officer, arrange for notices to be permanently displayed at the Locations and the Premises giving information as to how complaints about the provision of the Services may be made.

SECTION E

24. QUALITY MANAGEMENT

24.1 If the Service Provider is qualified to BS EN ISO 9000:2000 then this Contract shall be performed in accordance with the procedures set out in its Quality Manual.

24.2 In the event that the Service Provider is not qualified to BS EN ISO 9000:2000 then the Service Provider shall at the Commencement Date have in place and throughout the Contract Term, maintain in relation to its performance of the Services a system of quality assurance and improvement to be agreed with the Council.

25. ENVIRONMENTAL MANAGEMENT

25.1 If the Service Provider is qualified to BS ISO 14001 then this Contract shall be performed in accordance with the procedures set out in its Environmental Management System.

25.2 In the event that the Service Provider is not qualified to BS ISO 14001 then the Service Provider shall at the Commencement Date institute and, throughout the Contract Term, maintain in relation to its performance of the Services a system designed to ensure good environment practice incorporating all relevant Council environmental strategies.

25.3 The Service Provider shall endeavour to recycle relevant materials and shall dispose of all waste pursuant to the Environmental Protection Act 1990 and the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 as amended.

25.4 The Service Provider shall ensure that every member of Staff engaged by the Service Provider in the provision of the Services is made aware of the Council's environmental policies and their roles and responsibilities in achieving conformance with the environment policy and good environmental practice.

SECTION F

26. WARRANTIES AND REPRESENTATIONS

26.1 The Parties each warrant and represent that they have full capacity and have taken all steps and obtained all approvals to enable them to lawfully enter into and to perform each of their obligations under this Contract.

26.2 The Service Provider warrants and represents that:

26.2.1 in entering this Contract it has not committed any Prohibited Act; and

26.2.2 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract.

26.3 The Council warrants and represents that it has provided full accurate and up to date information to the Service Provider in relation to the Services to be provided under this Contract.

26.4 Except as expressly stated in this Contract, all warranties, terms and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

27. INDEMNITY

27.1 The Service Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising out of, in respect of or in connection with this Contract during the Contract Term and injury to, or death of, any person howsoever arising whether in contract, tort or otherwise save to the extent that the same is caused by or arises from the negligence, breach of this Contract or any other contract, breach of statutory duty, breach of Legislation or other wrongful act or omission of the Council, its agents, sub-contractors or servants.

27.2 The liability set out in **Condition 27.1** shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to such third parties is the responsibility of the Service Provider.

27.3 In no event shall either Party be liable to the other for loss of profits, business revenue, goodwill or anticipated savings.

27.4 The Service Provider shall notify and keep the Council fully informed and consult with it about the conduct of any claim and shall have due regard to the Council's interests.

28. INSURANCE

28.1 The Service Provider shall take out and maintain the following insurance policies:

28.1.1 employer's liability insurance of not less than ten million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident;

28.1.2 public liability insurance to provide an indemnity of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident. The Service Provider shall ensure that the public liability insurance policies contain an "Indemnity to Principals" provision with regard to the Council for those risks and losses for which the Service Provider is liable under this Contract;

28.1.3 professional indemnity insurance which fully insures the Service Provider in respect of the Service Provider's obligations and liabilities to provide the Services, in an amount of not less than two million pounds sterling (£2,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the date of completion by the Service Provider of its obligations pursuant to the Contract provided that such insurance is available to service providers of the same profession or discipline at commercially reasonable rates. The Service Provider shall immediately inform the Council if such insurance ceases to be available at commercially reasonable rates.

28.1.4 third party liability motor insurance of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident; and

28.1.5 any other insurance that may be required by law.

28.2 The Council may require the Service Provider to name the Council as coinsured (other than employer liability and professional indemnity insurance) with any other Party maintaining the insurance and any other matter that the Council considers reasonable in the circumstances.

28.3 The Service Provider shall provide to the Council on an annual basis evidence and copies of all insurance policies required under this **Condition 28** with evidence of premiums paid by the Service Provider for that year.

28.4 If the Service Provider is in breach of this **Condition 28**, the Council may pay any premia required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Service Provider on written demand.

28.5 The Service Provider shall give the Council notification within thirty (30) Calendar Days after any claim on any of the insurance policies referred to in this **Condition 28** accompanied by full details of the incident giving rise to the claim.

28.6 The Service Provider shall inform the Council of any material changes in the insurances required under this **Condition 28**.

SECTION G

29. DISPUTE RESOLUTION PROCEDURE

29.1 All disputes and differences arising out of or in connection with this Contract (a “**Dispute**”) (whether such disputes are in contract, tort or arise out of or under any rule of the common law or equity or under any statute) shall be resolved pursuant to the terms and conditions of this **Condition 29**.

29.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion between the Contract Manager and the Authorised Officer at the review meetings held under **Condition 18** (Review Meetings).

29.3 In the event that a Dispute is not resolved within seven (7) Calendar Days of it having been referred to a review meeting, then either Party may refer it to the Council’s nominated officer as set out in the **Schedule of Variables** and the Service Provider’s Chief Executive for resolution and the same shall meet for discussion within seven (7) Calendar Days thereafter or such longer period as the Parties may agree.

29.4 If the Dispute is not resolved as a result of the meetings referred to in **Condition 29.3** either Party may propose to the other Party that mediation be entered into with the assistance of the Expert appointed in accordance with **Schedule 8** (Adjudicator and Expert).

29.5 Within fourteen (14) Calendar Days of the appointment of an Expert, the Parties shall meet with the Expert in order to agree in good faith a programme for the exchange of information and the structure to be adopted for the mediation process.

29.6 If the Parties accept the Expert’s recommendations or otherwise reach agreement on the resolution of the Dispute, such agreement shall be put into writing and, once signed by the Authorised Officer and the Contract Manager, shall be binding on the Parties.

29.7 Failing agreement, either Party may refer the Dispute to an Adjudicator appointed in accordance with **Schedule 8** (Adjudicator and Expert).

29.8 Within twenty eight (28) Calendar Days of appointment, the Adjudicator shall communicate his/her decision in writing to the Parties and the Parties shall comply with the Adjudicator’s decision, including any direction for payment of sums of money and the payment/ apportionment of the Adjudicator’s fees.

29.9 All negotiations and meetings connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

29.10 No reference of any Dispute to an Expert or an Adjudicator pursuant to this **Condition 29** shall relieve either Party from any liability for the due and punctual performance of its obligations under this Contract.

29.11 Notwithstanding the foregoing provision of this **Condition 29**, either Party shall have the right to seek appropriate injunctive relief against the other in an appropriate court having jurisdiction in England and Wales and, provided such court is satisfied that the proceedings have not been brought frivolously or vexatiously, all aspects of the Dispute shall be dealt with by such court and not under this **Condition 29**.

30. PART TERMINATION

30.1 The Council may without prejudice to any other remedies by notice in writing to the Service Provider determine any portion of the Services resulting from:-

30.1.1 that portion of the Services not be carried out by the Service Provider in accordance with the Contract; or

30.1.2 changes to the Services to be provided, which have arisen as a result of any changes to Legislation and notified to the Service Provider by the Council;

30.2 The Service Provider shall not be entitled under the Contract to Remuneration for the portion of Services determined under **Condition 30.1** from the date the termination of such portion of Services takes effect.

30.3 If the Council determines any portion of the Services for reasons specified in **Condition 30.1** the Service Provider shall not be entitled under the Contract to payment of any amount by way of compensation.

30.4 Where the Council has determined a portion of the Services under **Condition 30.1.1** the Council may (without prejudice to any other remedies available) obtain that portion of the Services which is so determined by arranging for such portion of services to be carried out by alternative means and the Council shall be entitled to deduct from any account rendered by the Service Provider in respect of unsatisfactory performance such sum as the Council considers appropriate.

30.5 Costs for shall be recoverable from the Service Provider equal to the amount by which the aggregate of the cost of completing that portion of the Services in this way, exceeds the amount which would have been payable to the Service Provider in respect of such portion of the Services if such Services had been carried out in accordance with the Contract.

30.6 On the occurrence of a termination of a portion of the Services, the Service Provider shall, notwithstanding such determination, co-operate in the transfer of that portion of the Services to which the relevant determination relates to any alternative organisation in accordance with arrangements to be notified to it by the Council.

31. DEFAULT AND TERMINATION

31.1 The Council may terminate this Contract on written notice to the Service Provider to take effect immediately if:

31.1.1 a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding-up of the Service Provider is passed;

31.1.2 any receiver or manager in respect of the Service Provider is appointed or possession is taken by or on behalf of any creditor of all or a material part of any property of the Service Provider;

31.1.3 the Service Provider enters into any voluntary arrangement for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 2000, the Companies Act 1985 or the Enterprise Act 2002;

31.1.4 an administration order is made in respect of the Service Provider;

31.1.5 a breach by the Service Provider of its obligation to take out and maintain the required insurances under **Condition 28** (Insurance);

31.1.6 the Service Provider commits any Prohibited Act or commits a fundamental breach of the Contract that is not capable of remedy; or

31.1.7 the Service Provider commits a breach of the health and safety requirements under **Condition 34** (Health and Safety).

31.2 If either Party has committed a fundamental breach of this Contract which is capable of remedy, the other Party may serve a written notice on the Party in specifying:

31.2.1 the type of breach that has occurred giving reasonable details; and

31.2.2 that this Contract will terminate on the day falling forty two (42) Calendar Days after receipt of the notice, unless the Party in breach puts forward an acceptable rectification programme or rectifies the breach within twenty one (21) Calendar Days of receipt of the notice, and, if the Party in breach fails to rectify the breach within the time period specified in the notice or to provide an acceptable rectification programme, the Contract will terminate with immediate effect and without notice.

31.3 The Service Provider may terminate this Contract on written notice if the Council has instructed the Service Provider to temporarily stop provision of the Services or any substantial aspect of the Services and has not instructed the Service Provider to re-commence full provision of the Services for a period of ninety (90) Calendar Days from receipt of the instruction.

32. CONSEQUENCES OF EXPIRY OR TERMINATION

32.1 The Service Provider and the Council shall each carry out their respective responsibilities in accordance with this Contract until expiry or termination of the Contract.

32.2 The Service Provider shall use its best endeavours to give assistance to the Council to effect an orderly continuation of the Services after termination or expiry of this Contract in such a manner as the Council may reasonably require.

32.3 The reasonable costs of any assistance provided by the Service Provider under **Condition 32.2** shall be borne by the Council if termination is as a result of a breach by the Council of any of its obligations under the Contract.

32.4 The expiry or termination of this Contract shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall thereafter accrue to either Party.

32.5 On expiry or termination of this Contract, neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Contract shall not effect the continuing rights and obligations of the Parties under **Conditions 1, 2, 15, 16, 20, 21, 26, 27, 32, 36, 37 and 38** or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.

33. FORCE MAJEURE

33.1 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.

33.2 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

33.3 If no such terms are agreed on or before the date falling one hundred and twenty (120) Calendar Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under

this Contract for a period of more than one hundred and eighty (180) Calendar Days, then, either Party may terminate this Contract by giving thirty (30) Calendar Days written notice to the other Party.

33.4 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

33.5 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Party is prevented from carrying out obligations by that Force Majeure Event.

SECTION H

34. HEALTH AND SAFETY

34.1 The Service Provider shall comply with and shall procure that all Staff engaged in the provision of the Services comply with the requirements of the Health and Safety at Work Etc. Act 1974, and any other acts, regulations and approved codes of practice relating to the health and safety of Staff and others who may be affected by the Service Provider's work activities.

34.2 The Service Provider shall provide to the Authorised Officer any information relating to the Service Provider's compliance with **Condition 34.1** that the Council may reasonably request at any time from the Commencement Date.

34.3 The Authorised Officer shall be permitted to access at any reasonable time any site where the Service Provider is undertaking any Services under this Contract for the purpose of carrying out an inspection of health, safety and welfare standards.

34.4 The Service Provider shall fully co-operate with the reasonable requests of the Council's health and safety adviser and shall provide access to all areas of the Services, health and safety documentation, welfare facilities, accident records, training records and certificates, equipment inspection records, statutory registers and notices, plant and equipment for the purposes of inspection.

34.5 The Service Provider shall provide to the Authorised Officer, within seven (7) Calendar Days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of the Services, which it receives from any statutory body.

35. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

35.1 In the performance of the Services and in its dealings with service users, Council employees and members of the general public, the Service Provider shall comply and shall ensure that its Staff comply with:

35.1.1 the Human Rights Act 1998 as if the Service Provider were a public body as defined in the Human Rights Act 1998;

35.1.2 all legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations and shall in particular comply with the provisions set out in **Schedule 9** (Race Relations); and

35.1.3 the Council's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Service Provider.

35.2 The Service Provider shall inform the Authorised Officer as soon as the Service Provider becomes aware of any legal proceedings or complaint brought or likely to be brought against the Service Provider under the legislation set out in **Condition 35.1**.

35.3 The Service Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's compliance with this **Condition 35**.

36. DATA PROTECTION

36.1 For the purposes of this **Condition 36**, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the same meaning as prescribed under the Data Protection Act 1998 (the "**DPA**").

36.2 The Service Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties shall duly observe all their own obligations under the DPA and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.

36.3 Notwithstanding the general obligation in **Condition 36.1**, where it is processing Personal Data as a Data Processor for the Council, the Service Provider shall:-

36.3.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Council;

36.3.2 comply with all applicable laws;

36.3.3 Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Service Provider's obligations under this Contract or as is required by law or any regulatory body;

36.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss or destruction of, or damage to, alteration or disclosure, including, that obtained during the operation of closed circuit television), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA. These measures shall be appropriate to the harm which might result from any unauthorised loss, destruction or damage to the Personal Data which is to be protected;

36.3.5 take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;

36.3.6 obtain prior written consent from the Council in order to transfer Personal Data to any sub-contractor for the provision of the Services;

36.3.7 not to cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council;

36.3.8 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this **Condition 36**;

36.3.9 ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council; not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and notify the Council (within five (5) Working Days) if it receives:

(a) a request from a Data Subject to have access to that person's Personal Data;

or;

(b) a complaint or request relating to the Council's obligations under the DPA;

The provisions of this **Condition 36** shall apply during the Contract Term and indefinitely after its expiry.

37. FREEDOM OF INFORMATION

37.1 The Service Provider acknowledges that from time to time the Council may receive requests for information relating to the Contract and the Services which but for any right to claim commercial confidentiality the Council will be obliged to disclose pursuant to the Freedom of Information Act 2000 and the Environmental Information Regulations.

37.2 The Service Provider shall ensure that, without prejudice to the generality of its obligations, to provide information that it does all manner of things reasonably necessary to assist the Council in meeting the requirements of the Freedom of Information Act 2000 within the timescales set out therein.

37.3 The Service Provider shall and shall procure that any sub-contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

37.3.1 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's request; and

37.3.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

37.4 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

37.5 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

37.6 The Service Provider acknowledges that (notwithstanding the provisions of **Condition 37** the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the FOI Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Services in certain circumstances:

37.6.1 without consulting the Service Provider; or

37.6.2 following consultation with the Service Provider and having taken their views into account, provided always that where **Condition 37.6.1** applies the Council shall, in accordance with any recommendations of the FOI Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

37.7 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

The Service Provider acknowledges that the Council may be obliged to disclose Commercially Sensitive Information in accordance with this **Condition 37**.

38. CONFIDENTIALITY

38.1 Subject to **Condition 38.2** the Parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to this Contract.

38.2 **Condition 38.1** shall not apply to:

38.2.1 any information which the disclosing Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this **Condition**;

38.2.2 any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority having the force of law;

38.2.3 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

38.2.4 any disclosure by the Council of information relating to the provision of the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed replacement service provider, should the Council decide to re-tender this Contract;

38.2.5 any disclosure of information by the Council to any other department, office or agency of the government; or

38.2.6 any disclosure for the purpose of:

(a) the examination and certification of the Council's accounts; or

(b) any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources.

38.3 Where disclosure is permitted under **Condition 38.2** the disclosing Party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

38.4 Neither Party shall make use of this Contract or any information issued or provided by or on behalf of the other party in connection with this Contract otherwise than for the purpose of performing its obligations under this Contract, except with the written consent of the other Party.

38.5 The Service Provider may only disclose the Council's Confidential Information to Staff members who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

38.6 The Service Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

38.7 Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:

38.7.1 to any Crown Body or any other contracting authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall

be entitled to further disclose the Confidential Information to other Crown Bodies 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 Crown Body or any contracting authority;

38.7.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;

38.7.3 for the purpose of the examination and certification of the Council's accounts; or

38.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

38.8 The Council shall use all reasonable endeavours to ensure that any government department, contracting authority, employee, third party or sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to **Condition 38.9** is made aware of the Council's obligations of confidentiality.

38.9 Nothing in this **Condition 38.9** shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

39. ASSIGNMENT AND SUB-CONTRACTING

39.1 Subject to any express provision of this Contract, the Service Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract any part of the Services.

39.2 Notwithstanding any sub-contracting permitted under this Contract, the Service Provider shall remain responsible for the acts, defaults, omissions or neglect of its sub-contractors as though they were the acts, defaults, omissions or neglect of the Service Provider, its employees or agents and such consent shall not relieve the Service Provider from any liability or obligations under the Contract, notwithstanding that the Council shall require as a condition of giving consent to sub-contract a direct warranty or undertaking from the sub-contractor concerning the provision of the Services and compliance with the Contract in all respects.

39.3 The Council shall be entitled to:

39.3.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or

39.3.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the Council's business.

40. CORRUPT GIFTS AND FRAUD

40.1 As soon as either Party becomes aware of or suspects the commission of any Prohibited Act in the performance of the Services or otherwise, that Party shall notify the other Party.

40.2 The Authorised Officer shall have the right to require that the Service Provider suspend from any further work on this Contract any person reasonably suspected of fraudulent action or malpractice.

41. RIGHTS AND DUTIES RESERVED

41.1 All rights, duties and powers which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved.

42. LOCAL GOVERNMENT OMBUDSMAN

42.1 Where any investigation by a Local Government Ombudsman (the "**Ombudsman**") takes place the Service Provider shall:

42.1.1 provide any information requested in the timescale required by the Ombudsman;

42.1.2 attend any meetings as required by the Ombudsman and permit its personnel so to attend;

42.1.3 promptly allow access to and investigation of any documents deemed by the Ombudsman to be relevant;

42.1.4 allow itself and any employee deemed to be relevant to be interviewed by the Ombudsman;

42.1.5 allow itself and any employee to appear as witness in any ensuing proceedings; and

42.1.6 co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.

42.2 No additional payment shall be made to the Service Provider for performing the requirements set out in **Condition 42.1**.

42.3 Where any financial redress or other compensation is ordered by the Ombudsman in any investigation arising directly or indirectly out of the default or neglect by the Service Provider in connection with provision of the Services or any other action by the Service Provider the Council shall be entitled to recover the cost of that financial redress or other compensation from the Service Provider.

43. CONFLICT OF INTEREST

43.1 Conflicts of interest shall not be permitted in relation to the performance of the Services.

43.2 The Service Provider shall notify the Authorised Officer immediately upon becoming aware of any potential conflict of interest (whether direct or indirect) which may arise between the interests of the Council and any interests of the Service Provider or its other clients.

43.3 If there is a direct conflict of interest (as determined by the Council), the Service Provider shall comply with the Council's directions to remove or avoid such a conflict.

43.4 If there is an indirect conflict of interest, the Service Provider shall satisfy the Council that satisfactory arrangements have been made to ensure that the conflict cannot prejudice the performance of the Services.

43.5 The Council may terminate the Contract in accordance with **Condition 31** (Default and Termination) if the Service Provider breaches this **Condition 43**.

44. ENTIRE AGREEMENT

44.1 The Parties acknowledge that this Contract sets forth the entire agreement between them with respect to provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations,

undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

45. NO PARTNERSHIP OR AGENCY

45.1 Nothing in this Contract shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Council and the Service Provider.

45.2 The Service Provider shall not be, and shall not be deemed to be, an agent of the Council and the Service Provider shall not hold itself out as having authority or power to bind the Council in any way.

46. NO WAIVER

46.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of this Contract or to require performance by the other Party of any of the provisions of this Contract shall not:

46.1.1 constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Contract; nor

46.1.2 affect the validity of the Contract or any part thereof or the right of the Parties to enforce any provision in accordance with its terms.

46.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with **Condition 48** (Notices).

47. SEVERANCE

47.1 Each provision of this Contract is severable and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.

47.2 If any provision of this Contract is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Contract but (except to the extent in the case of that provision) it and all other provisions of this Contract shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this Contract would not negate the commercial intent and purpose of the Parties under this Contract.

47.3 If any provision of this Contract is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the Parties under this Contract.

48. NOTICES

48.1 Any notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the address detailed in the **Schedule of Variables** or such address or fax number as notified to each other.

48.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched.

49. CIVIL CONTINGENCIES ACT 2004

49.1 The Service Provider acknowledges and accepts that the Council has obligations under the Civil Contingencies Act 2004 ("CCA") and hereby agrees:

49.1.1 during and after the Contract Term to provide any information, documentation and assistance that the Council may reasonably require to be able to comply with its obligations under section 2 of the CCA;

49.1.2 to put in place such measures as may be reasonably practicable so that as far as reasonably possible it can continue to undertake its obligations under this Contract in the event of an Emergency (as defined in the CAA) and to notify the Council of such measures;

49.1.3 to obey any instruction of the Council during and in respect of an Emergency, the Council undertakes to remunerate and indemnify the Service Provider against any direct claims, costs or losses directly arising from the Service Provider's compliance with such instructions.

50. EUROPEAN MONETARY UNION

50.1 The Parties to this Contract confirm that the occurrence or nonoccurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of, or discharging or excusing performance under this Contract or any transaction, or give a Party the right unilaterally to alter or terminate this Contract or any transaction.

50.2 The words "an event associated with economic and monetary union in the European Union" shall include without limitation each and any combination of the following:

50.2.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise) in the United Kingdom;

50.2.2 the fixing of conversion rates between an European Union (EU) member state's currency and the new currency or between the currencies of member states;

50.2.3 the substitution of that new currency for the Euro as the unit of account of the EU;

50.2.4 the introduction of that new currency as lawful currency in a member state;

50.2.5 the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states;

50.2.6 the disappearance or replacement of a relevant rate option or other price source for the Euro or the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen; or

50.2.7 the withdrawal of any member state from a single or unified European currency.

51. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

51.1 The Parties agree that this Contract shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

52. LAW AND JURISDICTION

52.1 This Contract shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

**SCHEDULE 1
SCHEDULE OF VARIABLES**

Condition reference	Variable	
Recital A	Date of issue of ITT: Date of submission of Tender:	24/06/2009 20/08/2009
3.1	Authorised Officer Title: Address: Tel: Fax: Email:	Enforcement Manager 100 St Pancras Way London NW1 9GH 020 7974 4670 020 7974 5917 michael.walsh@camden.gov.uk or such representative of the Council nominated by the Enforcement Manager to act as the authorised representative of the Council for the purposes of this Contract
3.2	Contract Manager Title: Address: Tel: Fax: Email: Deputy Contract Manager Title: Address: Tel: Fax: Email:	
4.	Commencement Date Contract Term:	01/04/2010 6 years with provision to extend Initial Contract term on a two yearly basis for a maximum of a further four years at the sole option of the Council
5.	Transition Period:	12 months from the expiry of the Contract or earlier termination
8.2	Base Payment (i.e. percentage of Target Cost to be paid to Service Provider):	1/12
8.4	Share of savings to be paid to Service Provider:	50 %

Condition reference	Variable	
10.2	Payment Period:	Calendar Month
10.7	Rate of interest for late payment of Remuneration:	2% above Bank of England base rate
13.1	Address of Council Premises to be licensed to Service Provider:	<p><u>The Pound:</u> Regis Road, London NW5 3EW</p> <p><u>CCTV suite:</u> 1st Floor, 100 St Pancras Way, London NW1 9NF</p> <p><u>CEO bases:</u></p> <p>199 Belsize Road, Kilburn, NW6 4AA</p> <p>7 - 9 Crowndale Road, Somers Town, NW1 1TU</p> <p>78 Holmes Road, Holmes Rd Depot, Kentish Town, NW5 3AB (entry is via 25 Spring Place)</p> <p>45 Heath Street Hampstead London NW3 6UA</p>
16.1	Application of TUPE	Yes/No *
17.1.2	Date for on-street CEOs who may transfer under TUPE to achieve VRQ (Level 2)	12 months from the Commencement Date
28.3 47.1	Council's nominated officer for dispute resolution: Address for service of notices	<p>Assistant Director (Culture and Environment)</p> <p>Council address: Enforcement Manager 100 St Pancras Way London NW1 9GH</p> <p>Service Provider address: The Contract Manager 25 Spring Place Kentish Town NW5 3AP</p>

**SCHEDULE 2
SPECIFICATION AND APPENDICES TO THE SPECIFICATION**

**SEE CONTRACT FOR CIVIL PARKING AND TRAFFIC ENFORCEMENT – PART 3
OF 3**

SCHEDULE 3

PAYMENT MECHANISM

1. There shall be a Target Cost and a set of KPIs for each core service area within the Contract, these areas being:
 - On-street parking enforcement
 - CCTV monitoring and data transfer
 - Clamping and Removals, and Pound and Payment Centre Operations

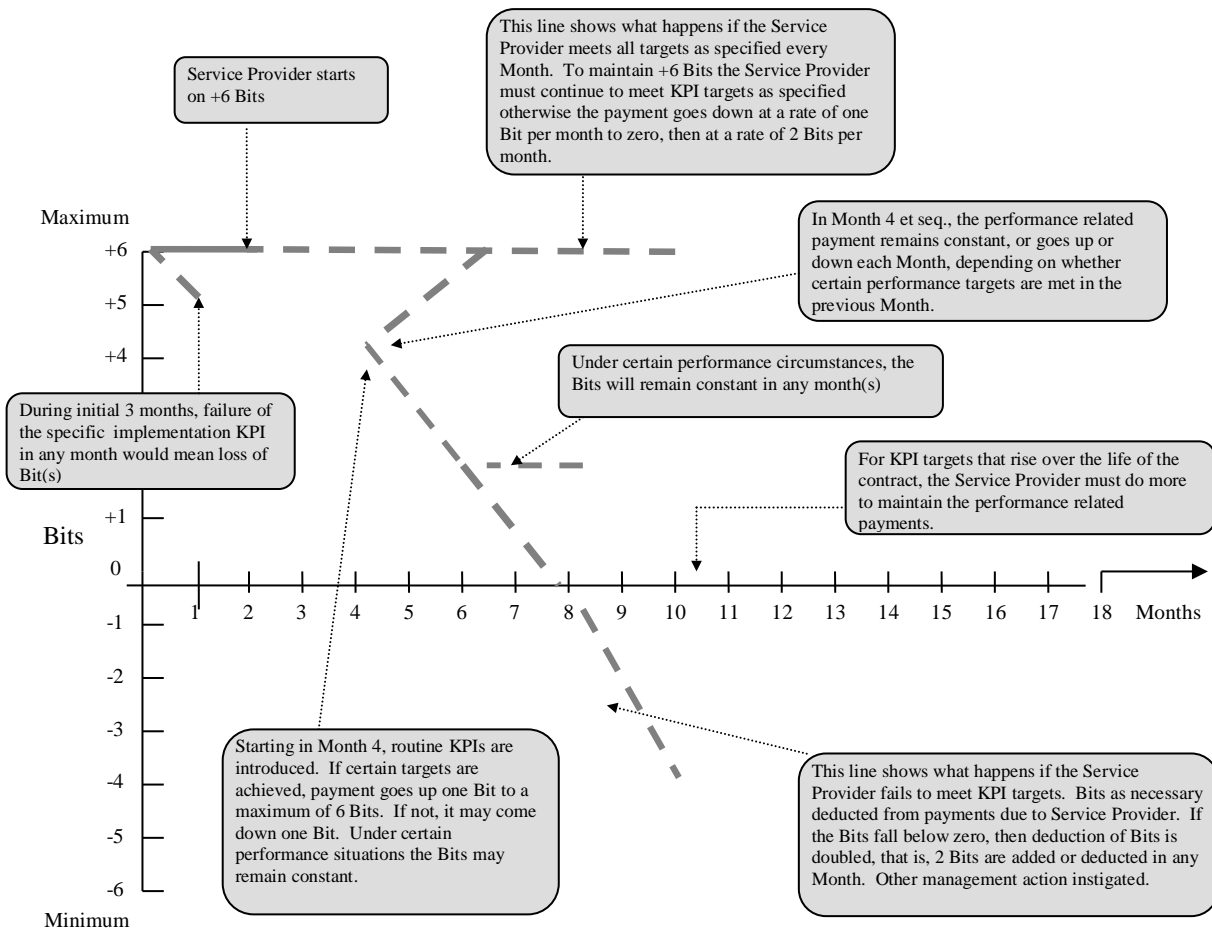
The Target Cost for each year of the Contract Term will be based on the SOR applicable at the beginning of each year of the Contract Term following the Commencement Date, multiplied by the deployment plan figures applicable (as provided by the Council) at the beginning of each year of the Contract following the Commencement Date.

2. An amount of 10% of each of the Target Costs for each core service area will be at risk subject to performance against the applicable KPIs. However, an additional 10%, therefore up to a total of 20% may be at risk if there is a sustained decline in performance (see Point 7 below).

This 10% or part thereof is essentially a performance related payment, with the full amount of 10% being the Maximum Performance Payment (MPP). The remaining 90% of each Base Payment per month per core service area will be referred to as the "The non-MPP Amount". This mechanism is designed to incentivise the Service Provider to deliver a quality service.

3. At the Commencement Date, the annual MPPs for each core service area will be divided into twelve equal parts to produce a maximum amount payable each calendar month. This amount shall be divided by six to provide a Bit. A Bit is therefore a financial value, and represents a 'unit' of Performance Related Payment (PRP). Each month, the number of Bits applied will either remain the same or be increased or decreased by one Bit (or in some circumstances as set out below, two Bits), depending on the Service Provider's performance against KPIs.
4. The operation of the payment mechanism is illustrated below:

Operation of the Performance Related Payment Mechanism Per Service Area



5. Each of the three Target Costs (and hence the MPP as 10% of the Target Cost) will be reviewed in certain circumstances with the objective of carrying out any necessary revisions based on planned deployment requirements. This review will take place on the following occasions:
 - a Annually, to come into effect for each year starting in April.
 - b At a special review meeting held as a result of the Council requiring a significant change to the volumes within any core service area, where that change will be required for a minimum period of three months *and* it would require a variation to Base Payments representing a minimum of a 20% increase or a minimum of a 20% decrease to those Base Payments. In these circumstances this would be an interim revision until the annual revision as in (a) above.

The basis for the review shall be the prices contained within the latest Schedule of Rates.

6. The award or deduction of Bits will be based on the category and proportion of KPIs deemed by the Council to be met by the Service Provider for each core service area each month. Some KPIs have been given a critical status. A Critical KPI is defined as a KPI that must be met if the Service Provider is to avoid a Bit reduction. KPIs may change from being Critical to Non-Critical and vice versa

throughout the Contract Term, at the Council's sole discretion. The number of KPIs to be measured each month will vary as some KPIs will be measured on frequencies other than monthly. They will also vary in terms of specific targets, and in particular, over the Contract Term, KPIs will gradually require improved levels of service to meet the principles of "best value". A maximum deduction of 6 bits would represent 20% of the Base Payment. A full list of the KPIs and specific requirements to achieve each KPI is set out in Schedule 4.

7. The following methodology will be used by the Council when assessing Bit award or deduction for each core service area:
 - i. If all of the Critical KPIs and a more than half of the non-critical KPIs are achieved then there shall be an increase of one Bit
 - ii. If all of the Critical KPIs and half or less of the non-critical KPIs are achieved then there would be no change to the Bit(s) from the preceding month
 - iii. If one or more Critical KPI is failed then the performance related payment shall be reduced by one Bit. If performance continues to decline, once below the zero point the deduction of Bits will be doubled, so that a maximum deduction of six Bits could be reached in only three months of continual decline resulting in remuneration below the Non-MPP Amount(s) (see means of adjustment to the remuneration in the section below entitled 'Application for Payment').

During the Contract Term, Critical KPIs will not represent more than 50% of all KPIs being used in that period, in connection with any of the enforcement services.

8. For the first three months of the Contract Term, due to the unavailability of performance data, the initial performance payment will be set at six Bits per core service area which is the maximum Bit 'level' that may be achieved. The 'Contract Implementation KPI' will apply to those initial three months of the Contract Term for each core service area. Achievement of that KPI in each successive month will result in the full MPP being paid for each of the three months. Non-achievement of the KPI in any one of these three months will result in a deduction of one Bit for each and any one of the three months for each core service area in which the KPI is not achieved.
9. From the commencement of month 4 from the Commencement Date, the routine KPIs outlined in Schedule 4 will be applied and, depending on the performance in month 3, Bits will be potentially added or deducted in subsequent months, depending on performance.
10. This process is intended to allow the Service Provider to show its Staff how performance directly affects contract payments. As the targets increase over time, the Service Provider will be required to manage the Staff more effectively to achieve or retain the performance payment.
11. If KPI performance falls for three consecutive months, the Authorised Officer will require appropriate intervention from the Service Provider. This will be discussed at a special review meeting as specified in **Condition 18.3**.
12. If agreement has been reached on the revision to each Target Cost as a result of innovation or efficiency as detailed in **Conditions** then the application may be amended to recompense the Service Provider for identifying such savings.

APPLICATION FOR PAYMENT

13. It is the Council's view that the Service Provider should be remunerated without undue delay for the services provided. However, because of the time needed to carry out the measurement in connection with the Performance Related Payment, the Service Provider will submit an application for payment of the Performance Related Payment for each core service area no less than 90 days after the end of a Payment Period. For example, data for performance in the first Payment Period which is subject to routine KPIs, i.e., July 2010, will be analysed for a period of time of up to 90 days after the month of August has ended, i.e., until the beginning of November 2010.
14. Therefore, for each Payment Period in which Services are provided and the Service Provider is entitled to remuneration, two applications for payment are required to cover each Service area:
 - Application 1:
 - a) 90% of the Base Payment
 - b) any adjustments to the Base Payment by way of volumes
 - c) any share of savings
 - Application 2:
 - a) Performance Related Payment (Bits)
15. In circumstances where the performance of the Service Provider drops below 0 Bits for a given month, the Service Provider will be required to issue a credit note to the Council by way of adjustment to the minimum 10% Performance Related Payment reduction made from Application 1.
16. The Council will not pay the Service Provider remuneration for any services, including deployed hours that are either not performed in accordance with required quantities as instructed by the Council via a deployment plan, or otherwise not performed to the satisfaction of the Authorised Officer.

EXAMPLE OF PAYMENT MECHANISM APPLICATION

	Total annual cost:	£7,600,000			
	Section: On-street Enforcement ('On-street')	£4,500,000			
	Section: Clamp & Removals , Pound and Payment Centre Operations ('C&R')	£1,600,000			
	Section: CCTV Monitoring ('CCTV')	£1,500,000			
	Percentage of Total cost as MPP	10%			
	Total Contract Value, excl. MPP	£6,840,000			
	Maximum Performance Pay p.a.	£760,000			
	MPP, monthly	£63,333			
	1 "Bit"	£10,556			
Section					
On-street:					
	Value, excl MPP	£4,050,000			
	Maximum Performance Pay p.a.:	£450,000			
	MPP, monthly	£37,500			
	1 "Bit"	£6,250			
C&R					
	Value, excl MPP	£1,440,000			
	Maximum Performance Pay p.a.	£160,000			
	MPP, monthly	£13,333			
	1 "Bit"	£2,222			
CCTV					
	Value, excl MPP	£1,350,000			
	Maximum Performance Pay p.a.	£150,000			
	MPP, monthly	£12,500			
	1 "Bit"	£2,083			
	Illustrative scenario assuming all KPIs are at + 0 level:		On-street	C&R	CCTV
Scenario 1	Service Provider achieves critical KPIs		Y	Y	Y
	Service Provider achieves more than half of non-critical KPIs		Y	Y	Y
	Service Provider only achieves half or less non-critical KPIs				
	OUTCOME:	Monthly PRP due:	Prior month PRP + £6250	Prior month PRP + £2222	Prior month PRP + £2083
Scenario 2	Service Provider achieves critical KPIs		Y	Y	Y
	Service Provider achieves more than half of non-critical KPIs		N	Y	N
	Service Provider only achieves half or less non-critical KPIs		Y		N
	OUTCOME:	Monthly PRP due:	As per prior month	Prior month MPP + £2222	Prior month MPP less £2083

Scenario 3	Service Provider achieves critical KPIs		N	N	Y
	Service Provider achieves more than half of non-critical KPIs		N	N	N
	Service Provider only achieves half or less non-critical KPIs		Y	N	N
	OUTCOME:	Monthly PRP due:	Prior month MPP less £6250	Prior month MPP less £2222	Prior month MPP less £2083

**SCHEDULE 4
KEY PERFORMANCE INDICATORS**

Core Service Area	Group	KPI	Objective	Measure	Year 1 Target	Year on Year Continuous Improvement	Critical KPI	Responsibility for Measurement	Measurement Frequency				
									Daily	Monthly	Quarterly	Six Monthly	Annually
On-Street	Enforcement Performance	Actual deployed hours	100% deployment as per deployment plan	Actual daily deployment against planned daily deployment	100%	No	Yes	Service Provider		X			
		CEO activity level	Efficiency in deployed resource	PCN issue rate by deployed hour	1.3	Yes	No	Service Provider		X			
		Compliance levels	Minimum compliance levels are met	Actual compliance against target compliance	To be applied from month 7	Yes	Yes	Council				X	
	Quality	Staff Retention	Staff with a minimum of six month's experience	% of experienced staff of all staff	80%	No	No	Service Provider		X			
		Training Plan	Evidence of training and development needs being addressed	Relevance of training and development in the measurement period	100%	No	No	Service Provider		X			
		CEO errors	Quality PCNs	% error PCNs of all PCNs	3%	Yes	Yes	Council		X			
		Public complaints (upheld)	Upheld complaints will not exceed the agreed number per period	Count of complaints upheld	2	Yes	No	Council			X		

Core Service Area	Group	KPI	Objective	Measure	Year 1 Target	Year on Year Continuous Improvement	Critical KPI	Responsibility for Measurement	Measurement			Frequency	
									Daily	Monthly	Quarterly	Six Monthly	Annually
		PCN Image Quality	Quality images to support PCN issue	% compliance to photo protocol	95%	Yes	Yes	Council		X			
		Customer Service	Minimum customer service standards are met	Mystery shopping score against pre-defined criteria and scoring	90%	Yes	No	Council				X	
	Management information and routine reporting	Reporting	Timeliness , completeness, and accuracy of reports	All required reports are complete and submitted by deadline	100%	No	Yes	Council	X	X	X	X	X
CCTV	Enforcement Performance	Actual Deployment	100% deployment as per deployment plan	Actual deployment against planned deployment	100%	No	Yes	Service Provider		X			
		CEO activity level	Efficiency in deployed resource	PCN issue rate by deployed hour	2.5	Yes	No	Service Provider		X			
		Compliance levels	Minimum compliance levels are met	Actual compliance against target compliance	80%	Yes	Yes	Council				X	
	Quality	Staff Retention	Staff with a minimum of six month's experience	% minimum of experienced staff of all staff	80%	No	No	Service Provider		X			
		Training Plan	Evidence of training and development needs being addressed	Relevance to the measurement period	100%	No	No	Service Provider		X			
		CEO errors	Quality PCNs	% error PCNs of all PCNs	3%	Yes	Yes	Service Provider		X			

Core Service Area	Group	KPI	Objective	Measure	Year 1 Target	Year on Year Continuous Improvement	Critical KPI	Responsibility for Measurement	Measurement			Frequency	
									Daily	Monthly	Quarterly	Six Monthly	Annually
	Management information and routine reporting	Reporting	Timeliness , completeness and accuracy of reports	All required reports are complete and submitted by deadline	100%	No	Yes	Council	X	X	X	X	X
Clamping and Removals, Pound and Payment Centre Operations	Enforcement Performance	Actual Deployment	100% deployment as per deployment plan	Actual deployment against planned deployment	100%	No	Yes	Service Provider		X			
		Decanting and recanting of vehicles	Compliance with decant/recant instructions within 24 hours	% achievement against instructions	90%	Yes	No	Service Provider		X			
		De-clamping of vehicles	Vehicles are de-clamped within one hour	% of vehicles de-clamped within i) one hour ii) two hours	80% - 1 hour 20% - 2 hours	No	Yes	Service Provider		X			
	Quality	Staff Retention	Staff with a minimum of six month's experience	% of experienced staff of all staff	80%	No	No	Service Provider		X			
		Training Plan	Evidence of training and development needs being addressed	Relevance to the measurement period	100%	No	No	Service Provider		X			
		Public complaints (upheld)	Upheld complaints will not exceed the agreed number per period	Count of complaints upheld	2	No	No	Council			X		
		C&R errors	Full adherence to the Council procedures and policies	% error clamps and removals of all clamps and removals	3%	Yes	Yes	Council		X			

Core Service Area	Group	KPI	Objective	Measure	Year 1 Target	Year on Year Continuous Improvement	Critical KPI	Responsibility for Measurement	Measurement Frequency				
									Daily	Monthly	Quarterly	Six Monthly	Annually
		Customer Service	Minimum customer service standards are met	Mystery shopping score against pre-defined criteria and scoring	90%	Yes	No	Council				X	
		Telephone responsiveness	Achievement of corporate standards	% achievement of all calls received	95%	No	No	Council		X			
	Management information and routine reporting	Reporting	Timeliness, completeness and accuracy of reports	All required reports are complete and submitted by deadline	100%	No	Yes	Council	X	X	X	X	X
All core service areas	Contract Implementation		Operational readiness in initial 3 months of Contract Term	% achievement against defined requirements	See explanatory notes	No	Yes	Council		X			
	Pre-termination		Full adherence to the exit plan in the last month of Contract Term	Exit plan checklist	100%	No	Yes	Council		X			

Explanatory Notes

Actual Deployed Hours

The Service Provider is required to fulfill the requirements outlined in the deployment plan which shall be provided after Contract award. Definitions of what constitutes 'deployed' in the various Services are outlined in the Specification. The deployment requirements are daily requirements that will be measured monthly. In the first year of the Contract, the expectation is that 100% of daily deployment requirements will be met on at least 28 of the days in any one month.

CEO Activity Level

An on-going dialogue will be in place between the Service Provider and the Council that involves discussion, analysis and review of the relationship between deployment hours, patterns and frequencies with trends in compliance to parking and traffic regulations. The Service Provider has a degree of freedom in which allocated resources may be focused and this KPI is intended to be a measure of the Service Provider's efficiency in managing the allocated resources for carrying out enforcement by PCN issue. The Council will refer to activity reports based on data provided by the Service Provider to analyse and verify performance statistics. PCN issue rates per deployed hour must be achieved or exceeded to have met this KPI.

CEO Errors

For avoidance of doubt, an on-street CEO error would arise in (but would not be limited to) the following circumstances:

- Incorrect recording of factual information (e.g., street name, street location, VRM, tax disc number), including circumstances where the information recorded in the HHCT contradicts information recorded in the pocketbook
- An incorrect issue of a PCN, i.e., where the PCN has been issued contrary to instructions issued by the Council
- A failure to adequately record primary and secondary PCN information in the pocketbook and/or HHCT, as appropriate. e.g., information such as the contravention code, destination of notice, PCN number, distance to the time-plate and time-plate information, conversation with a driver, details of parking documents on display, etc)
- Illegible handwriting
- A PCN is issued in a location where enforcement is not permitted (e.g., in a borough other than LBC, in a private street, in a location designated for CCTV enforcement, or where the lines and/or signs are inadequate)
- A failure to provide the appropriate digital images of the vehicle and contravention, or a failure to adequately document the reason for an absence of digital images within the case records
- A failure to provide a sufficiently accurate diagram to support the issue of PCN codes 24, 26, 62, and 99 (and any other codes as instructed by the Council)
- A failure for the PCN to be uploaded into the Council's PCN processing software
- An incorrect use of abbreviations
- Where an additional PCN(s) has been issued on the same day to an unmoved vehicle
- The issue of a PCN in a location monitored by CCTV enforcement operators
- A failure to void a PCN as appropriate
- Any other circumstances that clearly constitute poor judgement on the part of the CEO in deciding to issue a PCN
- Evidence relating to the issue of that PCN is marked with 'void'.

A CCTV CEO error would arise in (but would not be limited to) the following circumstances:

- Incorrect recording of factual information (e.g., street name, street location, VRM)
- Incorrect issue of a PCN, i.e., where the PCN has been issued contrary to instructions issued by the Council
- A failure to provide the appropriate digital footage of the vehicle and contravention
- A failure to provide a witness statement to support PCN issue
- Where an additional PCN(s) has been issued on the same day to an unmoved vehicle
- An issue of a PCN in a location where enforcement is not permitted (e.g., in a borough other than LBC, in a private street, in a location designated for on-street enforcement, or where the lines and/or signs are inadequate)
- Any other circumstances that clearly constitute poor judgement on the part of the CEO in deciding to issue a PCN

The Service Provider must meet the target for quality PCNs in providing the Service to have met this KPI.

Clamp/Removal Error

For avoidance of doubt, a C&R error would arise in (but would not be limited to) the following circumstances:

- The vehicle is clamped or removed contrary to instructions issued by the Council
- A CEO error occurred and it was reasonable to expect that the OBCEO had sufficient opportunity to identify the CEO error prior to the vehicle subsequently being clamped or removed
- The OBCEO incorrectly records factual information (e.g., street name, street location, VRM, tax disc number), including circumstances where the information recorded by the CEO contradicts information recorded by the issuing CEO
- The OBCEO fails to adequately record primary and secondary PCN information in the pocketbook and/or HHCT, as appropriate. e.g., information such as the contravention code, PCN number, distance to the time-plate and time-plate information, conversation with a driver, etc)
- Illegible handwriting
- The OBCEO incorrectly applies the use of abbreviations
- A vehicle is clamped or removed in a location where enforcement is not permitted (e.g., in a borough other than LBC, in a private street, or where the lines and/or signs are inadequate)
- A failure to provide the appropriate digital images of the vehicle and contravention or a failure to adequately document the reason for an absence of digital images within the case records
- TRACE were not notified manually of a vehicle removal where manual notification was required
- The audit trail, and where appropriate, events in connection with the clamp or removal and vehicle release have not been correctly or adequately carried out and/or recorded within pre-defined timescales
- Any other circumstances that clearly constitute poor judgement on the part of the OBCEO in deciding to clamp or remove a vehicle

NB: The reference to the role of the OBCEO may be interchanged with the role of a driver or co-driver who may be responsible for the same or similar duties as a OBCEO in the course of the Contract.

For the purpose of measurement against KPI, errors may be identified up to (and including) 66 Calendar days from the end of the month in which they were issued.

The Service Provider must not exceed the threshold in relation to errors in providing the Service to have met this KPI.

Compliance Levels

The Service Provider has a significant role to play in influencing the levels of compliance of drivers to parking and traffic regulations in LBC. The Council will define compliance and the methodology for surveys of compliance which will be carried out by third parties commissioned by the Council. The Council will set and regularly review an accepted minimum level of compliance. The Service Provider will have met this KPI if at the time of measurement those compliance levels are observed to be the same or higher compared to that minimum. The compliance level KPI will not be a Critical KPI until after the initial 6 months of the Contract Term.

Contract Implementation

This KPI is deemed critical and will be applied in each month of the first quarter of the Contract Term (months 1 – 3). No other KPI outlined in this **Schedule 4** will apply in the first quarter.

It is expected that from the first day of the Contract Term 100% of hardware supplied by the Service Provider for deployment purposes will be fully functional for PCN issue, and 100% of all staff will be in the prescribed uniform whilst on duty. It is also expected that in the first three months the mean average CEO deployment for each service area that month will be met, or will exceed, the following thresholds:

month 1: 85%

month 2: 90%

month 3: 95%

in relation to the requirements outlined in the deployment plan to achieve against this indicator.

The Council will be using resources such as client officers and reports from both the Service Provider and the parking enforcement software to analyse the Service Provider's performance.

Customer Service

The Council expects that the Service Provider's Staff will provide a satisfactory level of customer service to the general public. This will be formally measured as a KPI through mystery shopping exercises that involve checks against pre-determined criteria with minimum standards against which the Service Provider's performance will be assessed by Council officers or by a third party commissioned by the Council. The criteria shall address factors such as, but not limited to, staff appearance, accuracy of advice provided in response to basic enquiries, and interpersonal skills in relating to a customer. The Service Provider must achieve a pass mark to have met this KPI.

Decanting and Recanting Vehicles

The Council will issue decanting and recanting instructions. The number of decant/recants per shift/hour will be reasonable and agreed with the Service Provider post-award based on the distance between the decant pound and the Pound. Decanting/recanting must occur only in the hours specified by the Council, which will typically be outside of the hours required for enforcement by clamping and removal. The Council will expect that the instructions will be complied with within 24 hours of them being issued. The Council will refer to activity reports based on data provided by the Service Provider to analyse and verify performance statistics. The Service Provider must achieve or exceed the pre-determined minimum threshold to have met this KPI.

De-clamping of Vehicles

It is expected that a minimum of 80% of vehicles that have been clamped will be de-clamped within one hour from payment of the release fee, with the remaining 20% of vehicles being de-clamped within two hours from payment of the release fee. The Council will consider mitigating circumstances where for example, criminal activity prevents this from happening. The Council will refer to activity reports based on data provided by the Service Provider to analyse and verify performance statistics. The Service Provider must achieve or exceed the pre-determined minimum threshold to have met this KPI.

Management Information and Routine Reporting

It is expected that 100% of all management information and reporting requirements will have been delivered for the Service Provider to have met this KPI. This means that information the Service Provider is responsible for providing to the Council is complete, accurate, and received within the agreed timescales. Certain reports may need to run at specific times of the day, and if this is the case, procedures will be agreed between the Council and Service Provider as to how this process would be best managed, taking into account the data source and technologies available. Even where the Council is responsible for the means of the reporting, the Service Provider is responsible for the accuracy of the inputs for which they are responsible. Council officers will be tasked with carrying out verification of report completeness, accuracy and delivery. An initial list of management information requirements is outlined in Appendix 2 of the Specification.

PCN Image Quality

The requirements in terms of photographic content to support on-street PCN issue will be outlined in the Council's 'Photograph Protocol' which will be issued to the Service Provider prior to the Commencement Date. This will detail the photograph requirements in a variety of circumstances, e.g., for certain categories of contraventions and for vehicle drive-aways. It is anticipated that Council officers investigating appeals against PCNs will measure this KPI, using a quality rating system within PCN processing software. The rating system is at Appendix 9 to the Specification. For this KPI to be achieved, the target percentage of cases must have a minimum rating of 3 or 4 stars.

Cases where the CEO was prevented by the driver from serving the PCN will not be applicable for measurement.

The Council's contingency plan, should this rating facility not be available for Council officers investigating appeals, is for Council officers to rate photographs from a sample of on-street issued PCNs.

Pre-termination

This KPI is deemed critical and will be applied in the month prior to Contract termination (and/or expiry of the Contract) in addition to other routine KPIs.

It is expected that by the last day of the last month of the Contract Term the Service Provider will have fully complied with an exit plan for this KPI to be met. The exit plan shall have been agreed prior to the commencement of this month.

Public Complaints (Upheld)

The Council thoroughly investigates complaints from members of the public, on the basis of all available evidence, before arriving at the decision to uphold or not uphold the complaint. The Council's internal complaints procedures are recognised by the Local Government Ombudsman.

Staff Retention

The Council hold the view that the relevant experience held by operatives contributes significantly to quality in providing the Services. The objective is for the majority of Staff, including supervisory staff and management, to have a minimum of six month's relevant experience at any given point in the Contract Term. Staff who are dismissed as a result of poor work performance or as a consequence of disciplinary action shall not be included in the calculation. Staff with six months' relevant parking enforcement experience from other local authority contracts may be discretionally accepted as 'experienced' for the purposes of inclusion in the measurement against this KPI, subject to certain training requirements as detailed in the Specification, and the Council's approval.

Telephone Responsiveness

Staff at the Pound will be required to accept phone calls from the public. All telephone calls made to a telephone number made available to the public must be answered within 15 seconds (equivalent of 5 rings). This is the Council's corporate standard and one that the Service Provider is expected to adhere to during Operational Hours to have met this KPI. The Council will be using electronic reports to analyse the Service Provider's performance and carry out measurement for this KPI.

Training Plan

The Service Provider is required to submit a Training Plan each month. The Training Plan will show evidence of the Service Provider's efforts to train and develop staff. All training delivered, e.g., successful completion of training courses, buddy training, one-to-one training with a Supervisor, etc, shall be included in the Training Plan. The Plan must have clear development targets built in for each individual. Upon the Service Provider or the Council identifying any training need, the need shall be recorded by the Service Provider and be dealt with to a timescale to be agreed with the aim of preventing any reoccurrence of conduct below the agreed standard.

Training needs may be identified as a result of numerous circumstances, which may include, but not be limited to:

- routine recruitment
- the introduction of a new policy
- the identification of CEO errors
- an upheld poor customer service complaint
- succession planning
- compliance with health and safety legislation

Council officers will check all details provided in the Training Plan and make a judgement as to whether the KPI has been met based on the level of satisfaction with the quality of training and the Training Plan as a training document in an overall sense. For example, Council officers will:

- Carry out checks to see if the Plan has entries relating to specific training needs raised by the Council. If specific concerns have been raised but there is no evidence of dealing with these concerns, then the Council will consider the indicator as not met.
- Monitor the training provided to verify its delivery, and to ensure it is being delivered to a reasonable standard in line with what has been agreed between the Council and Service Provider. If the Council can demonstrate that there are re-occurring concerns regarding the quality of training delivery and/or the accuracy of training records, the Council will consider the indicator as not having been met.
- Carry out checks to see if the same training needs with the same individual continue to arise, e.g., if a CEO continues to make the same type of error after

being the subject of training on more than one occasion, then the Council will consider the indicator as not met.

**SCHEDULE 5
DEFAULTS**

Ref	Service Breach	Unit of Measure	Means of Quantifying the Default
1	Failure to take appropriate enforcement action against a vehicle in contravention of applicable regulations.	Per occurrence	Recovery rate % x average PCN payment amount
2	Failure of any member of staff to appear at a court or an adjudication hearing.	Per occurrence	Applicable PCN charge, including any applicable clamp, removal, or storage charges + the amount charged by the Parking and Traffic Appeals Service
3	Failure to submit a signed worksheet of completed suspensions when required	Per occurrence	Recovery rate % x average payment amount x the no. of AWS and Suspensions placements on the sheet
4	Failure to sign a parking suspension application in accordance with agreed procedures and timescales	Per occurrence, per day (or part thereof) the signage is late/incorrectly signed, per parking space affected	Suspension administration charge (applied once) + the daily rate per space
5	Failure to carry out a reasonable request for special enforcement (clamping)	Per occurrence	Clamp release charge
6	Failure to carry out a reasonable request for special enforcement (removals)	Per occurrence	Pound release charge
7	Failure to have adequate stock of PCNs resulting in inability to issue PCNs.	Per CEO, per hour	Average CEO activity level (per hour) x recovery rate x average payment rate
8	Failure to report to Meter Maintenance a faulty Pay and Display machine or meter	Per occurrence	P&D or meter charge x time (in hours) between the device being checked by a CEO and being reported as out of order

For the purposes of applying defaults, the following items will be recalculated by the Council in the month of March each year, with the revised rates to be applied in the following financial year: recovery rate, average payment amount. Otherwise, formulas will be based on the current information at the time the default is being applied.

SCHEDULE 6

CHANGE CONTROL PROCEDURES

1. PRINCIPLES

1.1 Neither the Council nor the Service Provider shall unreasonably withhold its agreement to any change.

1.2 The obligations of the Parties to this Contract shall not be effected until a change control note in the form specified in this **Schedule 6** (a “**Change Control Note**”) has been signed by the authorised signatory of both Parties.

1.3 The Council shall not be responsible for the cost of any services provided, work undertaken or goods or materials ordered by the Service Provider or its subcontractors which has not been authorised in advance by a change control note.

2. PROCEDURE

2.1 The Council and the Service Provider shall discuss changes proposed by either Party to this Contract and such discussion shall result in:

- a) Decision not to proceed further; or
- b) A written request for a change by the Council; or
- c) A recommendation for a change by the Service Provider.

2.2 Where a written request for a change is received from the Council, the Service Provider shall submit two signed copies of a Change Control Note to the Council within seven (7) Days of such request.

2.3 A recommendation to amend this Contract by the Service Provider shall be submitted direct to the Council in the form of two copies of a Change Control Note signed by the Service Provider.

2.4 Each Change Control Note shall contain details of the change including, where applicable:

- a) The title of the change;
- b) The originator and the date of the request or recommendation for the change;
- c) The reason for the change;
- d) Full details of the change including any specifications;
- e) Details of additions / savings to the Target Cost if any, as a consequence of the change;
- f) A timetable for implementation together with any proposals for acceptance of the change;
- g) A schedule of payments, if applicable;
- h) The impact, if any, of the change on other aspects of the Contract;
- i) The date of expiry of validity of the Change Control Note;
- j) Provision for signature by the Council if the change is agreed.
- k) The timescales within which the change is required

2.5 For each Change Control Note submitted to the Council, the Authorised Officer shall, within the period of the validity of the Change Control Note evaluate the Change Control Note and, as appropriate:

a) request further information from the Service Provider in which case the Service Provider shall provide such information as soon as reasonably practicable and in any event within seven Calendar Days or such other period as may be agreed, the request for information and the information once provided shall be deemed to be part of the Change Control Note, and the Council may approve or reject the Change Control Note upon receipt of the new information; or

b) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by both Parties shall constitute a variation to this Contract in accordance with the change control provisions of this Contract.

2.7 Authorised Signatories

2.7.1 Where the change made under the change control provisions of this Contract incurs no additional charges for the Council the authorised representatives for both Parties will act as authorised signatories.

2.7.2 The authorised signatory for the Council will be the Authorised Officer and such person as set out in the Council's own constitution and any contract standing orders for changes;

2.7.3 The authorised signatory for the Service Provider shall be deemed to be the Contract Manager in the absence of any written notification to the contrary from the Service Provider to the Council.

**SCHEDULE 7
TRANSFERRING EMPLOYEES**

PART A (COUNCIL)

PART B (SERVICE PROVIDER OTHER THAN THE COUNCIL)

SCHEDULE 8
ADJUDICATOR AND EXPERT

The Adjudicator shall be the Centre for Dispute Resolution or, if they are unable to act for any reason, such other person as the Council and the Service Provider agree or, failing agreement, such other person as may be chosen by the President or Vice-President of the Chartered Institute of Arbitrators or such other nominating body as shall be agreed between the Parties.

The Expert shall be a neutral adviser appointed with the agreement of the Council and the Service Provider or, failing agreement, such other person as may be chosen by the President or Vice-President of the Chartered Institute of Arbitrators or such other nominating body as shall be agreed between the Parties.

SCHEDULE 9 RACE RELATIONS

1.1 The Service Provider shall not:

1.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the Field of Employment) of the Race Relations Act 1976, as amended (the “**1976 Act**”)²; and/or

1.1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II of the 1976 Act (Discrimination in Other Fields); and/or

1.1.3 contravene Part IV of the 1976 Act (Other Unlawful Acts).

1.2 The Service Provider shall, for purposes of ensuring compliance with Points 1.1.1 and 1.1.3, in relation to all persons employed by the Service Provider in the provision of the Services:

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

1.2.2. Comply with the provisions of section 71(1) of the Act as if the Service Provider were a body within the meaning of Schedule 1A to the 1976 Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups).

1.3 Where in connection with this Contract, the Service Provider, its Staff are required to carry out work on the Council’s premises or alongside the Council’s employees on any other premises, the Service Provider shall comply with the Council’s own employment policy and

1.4 The Service Provider shall monitor the representation among the Service Provider’s employees engaged in the provision of the Services of persons of different racial groups (which shall mean groups of persons classified as ‘ethnic groups’ in the most recent official census by the Office of National Statistics or successor body), having regard to the Council’s procedures for monitoring representation among its own employees.

1.5 Where it appears to the Service Provider in relation to particular work of its employees, either that the employees include no members of group are underrepresented amongst employees doing that work compared to their representation in the employees as a whole or in the population from which Staff are normally recruited, undertake the following action as may be appropriate and reasonably practicable:

1.5.1 The placing and use of jobs advertisements to reach members of such racial groups and to encourage their applications;

1.5.2 The use of employment agencies and careers offices in areas where members of such racial groups live and work;

1.5.3 The promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such racial groups; and

1.5.4 The provision of appropriate training and the encouragement of members of Staff from such racial groups to apply for promotion or transfer to do work in such racial groups that are under-represented.

1.6 The Service Provider shall twelve (12) months from the Commencement Date and annually thereafter submit a report statement to the Council demonstrating its compliance with Points 1.1, 1.2 and 1.3.

1.7 In addition to the report statement referred to in Point 1.4, the Service Provider shall provide such additional information as the Council may reasonably require for the purpose of assessing the Service Provider's compliance with Point 1.1, 1.2 and 1.3.

1.8 The Service Provider shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under the Act.

1.9 In the event that the Service Provider enters into any subcontract in connection with this Contract, it shall impose obligations on its subcontractors in terms substantially similar to those imposed on it pursuant to this **Schedule 9**.

SCHEDULE 10

TARGET COST

This Schedule shall specify the Schedule of Rates as provided by the Service Provider in its Tender Response as well as the Council's initial deployment plan (to be provided by the Council to the Service Provider prior to the Commencement Date), giving the ability, annually, to calculate the Target Cost as a consequence of multiplying one by the other using the agreed values at the commencement of each year of the Contract Term.