



DATED 30th April 2012

THE LONDON BOROUGH OF BARNET

and

NSL LIMITED

**CONTRACT FOR THE PROVISION OF
PARKING ENFORCEMENT AND RELATED SERVICES**



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THE LONDON BOROUGH OF BARNET

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**CONTRACT FOR THE PROVISION OF
PARKING ENFORCEMENT AND RELATED SERVICES**

CONTENTS

SECTION A

- Clause 1 PARTIES AND RECITALS
- Clause 2 DEFINITIONS AND INTERPRETATION
- Clause 3 REPRESENTATIVES
- Clause 4 COMMENCEMENT AND DURATION
- Clause 5 TRANSITION ARRANGEMENTS

SECTION B

- Clause 6 THE SERVICES
- Clause 7 REMUNERATION
- Clause 8 PAYMENT TERMS
- Clause 9 CHANGE TO SERVICES AND/OR THE REMUNERATION

SECTION C

- Clause 10 PREMISES
- Clause 11 EQUIPMENT AND MATERIALS
- Clause 12 INTELLECTUAL PROPERTY
- Clause 13 TUPE
- Clause 14 STAFFING

SECTION D

- Clause 15 REVIEW MEETINGS
- Clause 16 PROVISION OF INFORMATION
- Clause 17 AUDIT
- Clause 18 MONITORING
- Clause 19 COMPLAINTS

SECTION E

Clause 20 QUALITY MANAGEMENT

Clause 21 NOT USED

SECTION F

Clause 22 WARRANTIES AND REPRESENTATIONS

Clause 23 INDEMNITY

Clause 24 INSURANCE

SECTION G

Clause 25 DISPUTE RESOLUTION PROCEDURE

Clause 26 DEFAULT AND TERMINATION

Clause 27 CONSEQUENCES OF EXPIRY OR TERMINATION

Clause 28 FORCE MAJEURE

Clause 29 RELIEF EVENTS

SECTION H

Clause 30 HEALTH AND SAFETY

Clause 31 EQUAL OPPORTUNITIES AND HUMAN RIGHTS

Clause 32 DATA PROTECTION

Clause 33 FREEDOM OF INFORMATION

Clause 34 CONFIDENTIALITY

Clause 35 ASSIGNMENT AND SUB-CONTRACTING

Clause 36 CORRUPT GIFTS AND FRAUD

Clause 37 RIGHTS AND DUTIES RESERVED

Clause 38 LOCAL GOVERNMENT OMBUDSMAN

Clause 39 ENTIRE AGREEMENT

Clause 40 NO PARTNERSHIP OR AGENCY

Clause 41 NO WAIVER

Clause 42 SEVERANCE

Clause 43 VARIATION

Clause 44 NOTICES

Clause 45 EMU CONTINUITY

Clause 46 PARENT COMPANY GUARANTEE AND PERFORMANCE BOND

Clause 47 CONTRACTS (RIGHTS OF THIRD PARTY) ACT 1999

Clause 48 LAW AND JURISDICTION

SCHEDULES

SCHEDULE 1 Schedule of Variables

SCHEDULE 2 Specification

SCHEDULE 3 Payment Mechanism

SCHEDULE 4 Key Performance Indicators

SCHEDULE 5 Change Control Procedures

SCHEDULE 6 Transferring Employees

SCHEDULE 7 Parking Plan

SCHEDULE 8 Adjudicator and Expert

SCHEDULE 9 Invitation to Tender

SCHEDULE 10 Intellectual Property

SCHEDULE 11 Target Cost

SCHEDULE 12 Contract Plan

SCHEDULE 13 Executed Form of Tender, Certificate of Confidentiality, Non-collusion and Non-carcassing, Insurance Cover Form and Completed Tender Submission Checklist

SCHEDULE 14 Form of Licence

SCHEDULE 15 Bulk Transfer Terms

SCHEDULE 16 Transfer of Employees from the London Borough of Barnet

SCHEDULE 17 Formula for calculating contribution to Trade Union Fund

**CONTRACT FOR THE PROVISION OF PARKING ENFORCEMENT
AND RELATED SERVICES**

DATE20...

SECTION A

1. PARTIES AND RECITALS

Parties

- (1) The Mayor and Burgesses of the London Borough of Barnet whose address is at North London Business Park, Oakleigh Road South, London N11 1NP (the "**Council**"); and
- (2) NSL Limited whose registered number is 06033060 and whose registered office/principal place of business is at 4th Floor Westgate House, Westgate, London W5 1YY (the "**Service Provider**").

Recitals

- (A) The Council issued its Invitation to Tender 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 partnering 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 **Clause 15 (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.

2. DEFINITIONS AND INTERPRETATION

2.1 The terms and expressions used in this Contract (including the recitals and Schedules hereto) will have the meanings set out below (unless the context otherwise requires):

“Adjudicator”

means the adjudicator appointed to resolve disputes in accordance with Clause 25 and Schedule 8;

“Administration Regulations”

means the Local Government Pension Scheme (Administration) Regulations 2008;

“Administering Authority”

means the Council;

“Admission Agreement”

means an admission agreement entered into in accordance with Regulation 6 of the Administration Regulations by the Council and the Service Provider or any sub-contractor;

“Admission Body”

means a transferee admission body for the purposes of regulation 6 of the LGPS Regulations;

“Base Payment”

means the proportion of the Target Cost set out in the Schedule of Variables;

“Benefit Regulations”

means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;

“Bits”

has the meaning given in paragraph 1.4 of Part B of Schedule 3;

“Budget Change”

means a change required by the Council to the Target Cost as a result of a reduction or increase in the Council's annual budget for the relevant expenditure or the performance of the Service Provider over the preceding year of the Contract Term;

“Budget Change Proposal”

has the meaning given to it in **Clause 9.3.6**;

“Calendar Day”

means any day including statutory bank holidays;

“Certificate of Costs”

has the meaning given to it in **Clause 7.6** (Open Book Accounting);

“Cessation Date”

means any date on which the Service Provider or any sub-contractor ceases to be an Admission Body other than as a result of the termination of this Contract or because it ceases to employ any Eligible Employees;

“Compensation Regulations”

means the Local Government (Discretionary Payments) Regulations 1996 (as amended) and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulation 2006;

“Change Control Procedures”

means the change control procedures set out in **Schedule 5** (Change Control Procedures);

“Commencement Date”

means the date set out in the Schedule of Variables;

“Contract”

means this contract including the Schedules;

“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, the identity of whom will be subject to the prior written approval of the Council (such approval not to be unreasonably withheld or delayed);

“Contract Plan”

means the plan and method statements setting out the methods to be used by the Service Provider to provide the Services under this Contract as set out in **Schedule 12 (Contract Plan)**;

“Contract Term”

means the Initial Contract Term as may be extended in accordance with **Clause 4 (Commencement and Duration)** or reduced by earlier termination of this Contract for whatever reason;

“Council’s Representative”

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;

“Council Software”

means the software, if any, owned by the Council and licensed to the Service Provider under **Clause 12 (Intellectual Property)** as set out in **Schedule 10 (Intellectual Property)**;

“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 **Clause 25 (Dispute Resolution Procedure)**;

“Direct Losses”

means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law.

“Eligible Employees”

means

the Transferring Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date

for so long as they are employees in connection with the provision of the Services or part of such Services as set out in the Admission Agreement.

“Equipment and Materials”

means all plant, equipment, materials and consumables to be used by the Service Provider to provide the Services;

“Exit Period”

means the exit period as set out in the Schedule of Variables;

“Expert”

means the expert appointed to resolve disputes in accordance with Clause 25 and Schedule 8;

“External Software”

means the software, if any, owned by an external provider and licensed to the Council as set out in Schedule 10 (Intellectual Property);

“Force Majeure Event”

means any event consisting of any of: acts of God, war, riot, fire, flood, or any disaster affecting either Party which materially affects the performance by a Party of its obligations under this Contract;

“Guarantor”

means any person granting a parent company guarantee pursuant to Clause 46 (Parent Company Guarantee and Performance Bond);

“Initial Contract Term”

means the period set out in the Schedule of Variables;

“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;

“LGPS Regulations”

means The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and The Local Government Pension Scheme (Administration) Regulations 2008;

“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 from where the Services are to be provided as set out in the Specification;

“New Service Provider”

means a contractor selected to provide services, similar to the Services or part thereof, whether upon appointment by the Service Provider or upon termination or expiry of this Contract and for the avoidance of doubt can include the Council;

“Options Proposal”

has the meaning given to it in **Clause 9.3.3**;

“Parent Company Guarantee”

means the parent company guarantee substantially in the form set out in **Schedule I (2)** of the Invitation to Tender (Draft Deed of Guarantee);

“Parking Plan”

means the Council's plan relating to on-street and off-street parking and traffic and parking enforcement, a copy of which is set out in **Schedule 7** (Parking Plan);

“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;

“Performance Bond”

means a bond substantially in the form set out in **Schedule I (1)** of the Invitation to Tender (Form of Bond);

“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:
 - (i) for 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
 - (ii) for showing favour or disfavour to any person in relation to this Contract or any other contract with the Council; or
- (b) entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and or the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; or
- (c) committing any offence:

- (i) under the Bribery Act 2010;
 - (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
- (d) defrauding or attempting to defraud or conspiring to defraud the Council;
- (e) obtaining or receiving by whatever means any information which gives or is intended or is likely to give an unfair advantage over any other tender (including the Council's own workforce) in relation to this Contract;

“Redundancy Costs”

means: all costs, expenses, losses and any liabilities arising under an Admission Agreement to the extent that such liabilities operate by virtue of Regulation 38(2) of the Administration Regulations or represent strain costs arising under Regulation 19 of the Benefits Regulations or represent terminal/cessation liabilities, ill health or early retirement liabilities (including reasonable legal costs incurred by the Service Provider or sub-contractor save where the Service Provider or any sub-contractor (as relevant) has acted negligently or in breach of its legal or contractual obligations in which case such legal costs shall not be recoverable) which are payable by the Service Provider or any sub-contractor and which arise as a result of the dismissal of any Redundancy Transferring Employees by reason of:

- (a) redundancy;
- (b) any restructure amounting to "some other substantial reason" under section 98(1) of the Employment Rights Act 1996; or
- (c) any other economic technical or organisational reason entailing changes in the workforce pursuant to Regulations 7(2) and 7(3) of TUPE,

where the dismissals take effect within the period of 90 days following the Commencement Date and provided that any redundancy payment is calculated in accordance with the Council's managing organisational change policy in place on the Commencement Date.

“Redundancy Transferring Employees”

means those Transferring Employees identified by the parties as Policy and Projects Manager, Information Manager, Parking Infrastructure Officers, Control Desk Operator, Information Officers (CCTV) Senior

Information Officers, Information Officers, (Information) Team Leaders and Post Team and Payment Team as being at risk of redundancy following the Commencement Date.

“Relevant Employees”

means all those employees subject to a Relevant Transfer on a Relevant Transfer Date;

“Relevant Transfer”

means a relevant transfer for the purposes of TUPE;

“Relevant Transfer Date”

means a date on which the provision of the Services changes (save for the Commencement Date);

“Relief Event”

means any of the following events to the extent that the event does not constitute a Force Majeure Event and provided that the event does not arise (directly or indirectly) as a result of any wilful act, default or breach of the Service Provider:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local council (excluding the Council) or other body to carry out works or provide services;
- (c) any failure or shortage of power, fuel or transport;
- (d) any official or unofficial strike, lock-out, go-slow or other dispute generally affecting the parking enforcement sector;
- (e) delays in granting any permissions or consents which may be necessary in respect of the provision of the Services;
- (f) delays caused by any act or omission of the Council; or
- (g) the imposition of restrictions or limits by the Council on parking tariffs or parking fines at the Locations;

“Remuneration”

means the sums to be paid by the Council to the Service Provider pursuant to **Clause 7** (Remuneration);

“Schedule of Variables”

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

“Service Provider Software”

means the software owned by the Service Provider and licensed to the Council under **Clause 12** (Intellectual Property) as set out in **Schedule 10** (Intellectual Property);

“Service Provider Scheme”

means the retirement benefits scheme or schemes established or to be established under paragraph 13.3.7;

“Services”

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;

“Specification”

means the specification for the Services as set out in **Schedule 2** (Specification);

“Target Cost”

means the target cost to be incurred by the Service Provider as calculated on an annual basis in accordance with **Schedule 11** (Target Cost);

“Transferring Employees”

means the employees of the Council who will transfer from the employment of Council to the employment of the Service Provider or any sub-contractor as a result of the application of TUPE in relation to the 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;

“Working Hours”

means the hours during which the Services are to be provided as set out in the Specification; and

“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 Clauses and Schedules are, unless otherwise provided, references to the Clauses and the Schedules to this Contract.
- 2.5 In the event of any conflict or inconsistency between any provision of the Clauses and any provisions of the Schedules, the Clauses shall prevail. In the event of any conflict or inconsistency between the Schedules, the provisions of the Specification 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 Council's Representative

The Council's Representative shall liaise with and give instructions to the Service Provider and its officers, employees, agents or sub-contractors 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 Council's Representative under this Contract.

3.2 Contract Manager

The 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. The Service Provider warrants that the Contract Manager has authority to bind the Service Provider.

3.3 Changes to Council's Representative and Contract Manager

Any changes to the identity of the Council's Representative and/or the Contract Manager shall be communicated in writing to the other Party within fourteen (14) Calendar Days of the change.

3.4 Changes to the Contract Manager

The Council may at any time during the Contract Term (by providing the Service Provider with ten (10) Calendar Days written notice) require the Service Provider to appoint a new Contract Manager, to replace the existing Contract Manager.

4. COMMENCEMENT AND DURATION

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 as set out in the Schedule of Variables.

5. TRANSITION ARRANGEMENTS

- 5.1 During the Transition Period, the Service Provider shall liaise with the Council to ensure an effective and timely handover of the Services, including but without limitation, attending meetings with the Council and any other individuals or organisations of new Service Providers as are reasonably required by the Council. This shall be free of charge to the Council.
- 5.2 During the Exit Period, the Service Provider shall liaise with the Council to ensure an effective and timely handover of the Services, including but without limitation, attending meetings with the Council and any other individuals or organisations of new Service Providers as are reasonably

required by the Council. Such handover shall include details as to work in progress, costs of transferring ownership of assets, Equipment and Materials, data and records. This shall also include information to enable the Council to meet its duties in relation to re-tendering the Contract. This shall be free of charge to the Council.

SECTION B

6. THE SERVICES

- 6.1 The Service Provider shall provide the Services at the Locations during the Working 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 the Parking Plan.
- 6.3 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 supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union including but without limitation any bodies specified in the Schedule of Variables.

7. REMUNERATION

- 7.1 The Remuneration will be paid to the Service Provider in accordance with **Clause 8** (Payment Terms) and **Schedule 3** (Payment Mechanism).
- 7.2 **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 **Clause 7.3**.

- 7.3 **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:

- 7.3.1 a breach by the Council of any of its obligations under this Contract;

7.3.2 a Force Majeure Event; or

7.3.3 a Relief Event.

7.4 Share of savings

Where the Service Provider has proposed a change to the Services which results in a reduction of the Target Cost and that change has been accepted by the Council under the Change Control Procedures, the Council will pay to the Service Provider a proportion of the savings achieved directly as a result of the change calculated in accordance with the Schedule of Variables.

7.5 Value Added Tax ("VAT")

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

7.5.2 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 **Clause 7.5**.

7.5.3 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.

7.6 Open Book Accounting

7.6.1 Without prejudice to the rest of this **Clause 7.6**, the Service Provider shall, at the request of the Council, provide to the Council a certificate of costs (the "**Certificate of Costs**") within twenty one (21) Calendar Days of such request, provided that the Council will not request a Certificate of Costs more than once in any year of the Contract Term, or with such other frequency as the Council may reasonably request.

7.6.2 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.

7.6.3 Following receipt of the Certificate of Costs, the Service Provider shall provide to the Council such additional information as it may reasonably request (within twenty one (21) Calendar Days of such request having been made (or such other time frame as may be reasonably agreed between the parties)) so that the Council can verify the accuracy of the Certificate of Costs.

8. PAYMENT TERMS

8.1 The Council shall pay the Remuneration to the Service Provider in accordance with the procedure set out in the rest of this **Clause 8**.

8.2 The Service Provider shall submit an application for payment of the Remuneration to the Council's Representative within seven (7) Calendar Days of the end of each Payment Period.

8.3 The application for payment of the Remuneration shall be in the form of a pro-forma invoice (the form of which shall be agreed in advance with the Council's Representative) in three (3) distinct parts covering:

8.3.1 the Base Payment;

8.3.2 any adjustment to the Base Payment in accordance with **Clause 7.3** (Adjustment to the Base Payment) and/or as a result of a change introduced under **Clause 9**;

8.3.3 any share of savings in accordance with **Clause 7.4** (Share of Savings).

8.4 The Council's Representative shall consider and (subject to **Clauses 8.5** and **8.6**) certify an application for payment made under **Clause 8.2** within fourteen (14) Calendar Days of receipt of the application.

8.5 Should the Council's Representative require an adjustment to any part of the Remuneration set out in the application for payment, the Council's Representative 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 (in accordance with **Clause 8.6**).

8.6 Notwithstanding any adjustment made to the Remuneration as outlined in **Clause 8.5** the part of the Remuneration unaffected by the adjustment will be certified in accordance with **Clause 8.4**.

8.7 The Council shall pay the Remuneration to the Service Provider within fourteen (14) Calendar Days of certification of the application.

- 8.8 Interest is payable on late payment of the Remuneration at the rate set out in the Schedule of Variables.
- 8.9 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 within 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.
- 8.10 Any dispute relating to the calculation or payment of the Remuneration under **Clause 7** (Remuneration) or **this Clause 8** (Payment Terms) shall be resolved in accordance with the Dispute Resolution Procedure.

9. CHANGE TO THE SERVICES AND/OR THE REMUNERATION

- 9.1 Either Party may request a change to the Services and/or the Remuneration in accordance with the Change Control Procedures.
- 9.2 Where a change in law occurs which directly affects the provision of the Services under this Contract, either Party may request any necessary change to the Services and/or the Remuneration to deal with the change in law in accordance with the Change Control Procedures.
- 9.3 **Budget control**
- 9.3.1 If the Council requires a Budget Change it will notify the Service Provider in writing no later than 1st April of the year of the Contract Term from which the Budget Change is to apply (or such later date as the Parties may otherwise agree), setting out the level of the reduction or increase to the Base Payment payable to the Service Provider and identifying the affected Services.
- 9.3.2 The Council may not propose a Budget Change before 1st April 2013.
- 9.3.3 The Service Provider shall provide the Council within fifteen (15) Working Days of receipt of a notice from the Council pursuant to **Clause 9.3.1** an outline proposal setting out the Council's options in order to achieve the reduction or increase to the Base Payment payable to the Service Provider and the estimated change in costs for each option (the "**Options Proposal**").
- 9.3.4 In preparing the Options Proposal the Service Provider shall consider (without limitation) in the following order of precedence:

- (a) changes to improve the efficiency of the provision, performance or delivery of the Services or particular part of the Services;
 - (b) adjustments to KPIs;
 - (c) relief from compliance with its obligations under this Contract,
- as may be proportionate to the required reduction or increase to the sums payable to the Service Provider.

9.3.5 The Options Proposal shall include:

- (a) a comprehensive range of options which address different aspects of the Services with the adoption of one or more options enabling the Services to be delivered to the proposed Budget Change; and
- (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services.

9.3.6 No later than thirty (30) Working Days after the Council receives the Options Proposal, the Council shall notify the Service Provider as to the Council's preferred option and the Service Provider shall within ten (10) Working Days provide a detailed proposal for that option which shall include:

- (a) the change in Target Cost and Base Payment;
- (b) any amendments required to this Contract (including without limitation the Specification),

(the "**Budget Change Proposal**").

9.3.7 As soon as practicable after the Council receives the Budget Change Proposal the Parties shall discuss and agree the issues set out in the Budget Change Proposal.

9.3.8 If the Parties cannot agree on the contents of the Budget Change Proposal then the dispute will be determined in accordance with **Clause 25** provided that such determination shall not require the Council to increase the sum payable to the Service Provider.

9.3.9 After a Budget Change Proposal has been agreed or otherwise determined the Parties shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both Parties (and in the absence of agreement the form of such documentation shall be determined in accordance with

Clause 25) and thereafter the Parties shall promptly sign or execute (as appropriate) such documentation.

SECTION C

10. PREMISES

10.1 No premises owned by the Council will be utilised by the Service Provider.

10.2 Access to Council premises

10.2.1 The Council shall give access to its premises for the purpose of attending monthly and other meetings arranged by the Council, to any person employed or engaged by the Service Provider or any sub-contractor required to attend the meetings, provided that the Council may refuse admission to such a person if such admission would present a security risk.

10.2.2 Any person employed or engaged by the Service Provider or any sub-contractor who requires access to any premises occupied by or on behalf of the Council 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.

10.3 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 Parties shall agree suitable licensing, financial and servicing arrangements.

11. EQUIPMENT AND MATERIALS

11.1 The Service Provider shall provide all Equipment and Materials necessary for the provision of the Services and shall be responsible for the costs of providing such Equipment and Materials.

11.2 The Service Provider shall ensure that all Equipment and Materials are:

11.2.1 suitable for the purposes for which they are intended;

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

11.2.3 adequately insured.

- 11.3 On expiry of the Contract Term, the Council may purchase the Equipment and Materials or any part of the Equipment and Materials which are used exclusively in the provision of the Services at the price calculated in accordance with the Schedule of Variables.

12. INTELLECTUAL PROPERTY

12.1 Council Software

- 12.1.1 The Council hereby grants to the Service Provider from the Commencement Date a non-exclusive, non-transferable licence to use and maintain the Council Software (and related technical, user and other documentation) as detailed in **Schedule 10** (Intellectual Property) for the sole purpose of providing the Services.

- 12.1.2 The Council will use reasonable endeavours to request that the provider of any External Software grants to the Service Provider from the Commencement Date a non-exclusive, non-transferable licence to use and maintain the External Software as detailed in **Schedule 10** (Intellectual Property) for the sole purpose of providing the Services. All costs associated with such a licence shall be payable by the Service Provider.

12.2 Service Provider Software

The Service Provider hereby grants to the Council from the Commencement Date a non-exclusive, non-transferable licence to use the Service Provider Software (and related technical, user and other documentation) as detailed in **Schedule 10** (Intellectual Property) for the purpose set out in the Schedule of Variables.

12.3 Termination of software licences

The licence(s) granted under this **Clause 12** shall terminate immediately on expiry of the Contract Term.

12.4 Intellectual Property Rights

- 12.4.1 All intellectual property rights in any material produced during the Contract Term and in all reports submitted under this Contract shall vest in the Council unless otherwise expressly agreed.

- 12.4.2 Such materials shall not be used, reproduced or disseminated for any other purposes without the prior written permission of the Council's Representative.

13. TUPE

13.1 Application of TUPE

- 13.1.1 The Parties agree that the provisions of TUPE may apply to this Contract as indicated in the Schedule of Variables.
- 13.1.1 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.
- 13.1.2 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.

13.2 Emoluments and Outgoings

- 13.2.1 The Council shall be responsible 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.
- 13.2.2 Notwithstanding clause 13.2A below, the Service Provider shall be or shall procure that any sub-contractor shall be responsible for all emoluments and outgoings in respect of the Transferring 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.
- 13.2A Subject to clause 13.2C below, the Council shall reimburse the Service Provider or any relevant sub-contractor for any Redundancy Costs provided that the Service Provider provides or procures that any relevant sub-contractor provides to the Council such evidence of the Redundancy Costs as the Council shall reasonably require.
- 13.2B The Service Provider shall and shall procure that any sub-contractor shall use all reasonable endeavours to minimise the Redundancy Costs including conducting a full and fair consultation process in accordance with any obligation under the Employment Rights Act 1996, section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, and TUPE (as amended from time to time).

13.2C The Council will not reimburse the Service Provider or any relevant sub-contractor for any costs, expenses, losses or liabilities arising out of:

a) any discriminatory act or omission of the Service Provider or sub-contractor as applicable; and/or

b) any late or non-payment of amounts due to the Transferring Employees by the Service Provider or sub-contractor as applicable; and/or

c) any additional or enhanced payments agreed between the Service Provider or the sub-contractor as applicable and any Redundant Transferring Employee pursuant to any compromise agreement or COT3, without the prior written agreement of the Council.

13.3 Pensions

13.3.1 Service Provider to Become an Admission Body

Where the Service Provider or any sub-contractor (which for the purposes of this Clause 13 shall include any subsequent or replacement sub-contractor) employs any Eligible Employees on the occasion of a Relevant Transfer and wishes to offer those Eligible Employees membership of the Local Government Pension Scheme, the Service Provider shall procure and shall procure that any sub-contractor shall procure that it shall become an Admission Body. The Service Provider shall before the Relevant Transfer execute and shall procure that any sub-contractor shall execute an Admission Agreement which will have effect from and including the occasion of a Relevant Transfer.

13.3.2 Service Provider Admission Agreement

The Council shall before the occasion of a Relevant Transfer execute the Admission Agreement referred to in **Clause 13.3.1** (Service Provider to Become an Admission Body).

13.3.3 Indemnity for a Breach of the Service Provider Admission Agreement

Without prejudice to the generality of this **Clause 13**, the Service Provider hereby indemnifies and shall procure that any sub-contractor hereby indemnifies the Council and/or any future service provider on

demand from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Service Provider or any sub-contractor of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

13.3.4 **Indemnity or Bond**

Without prejudice to the generality of the requirements of this **Clause 13**, the Service Provider shall procure that it and each relevant sub-contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Admission Agreement.

13.3.5 **Right of Set-Off**

The Council shall have a right to set off against any payments due to the Service Provider or any sub-contractor under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Service Provider or any sub-contractor under the Admission Agreement.

13.3.6 **Service Provider Ceases to be an Admission Body**

If the Service Provider or any sub-contractor employs any Eligible Employees on the occasion of a Relevant Transfer and the Council and the Service Provider or any sub-contractor (as appropriate) are both of the opinion that it is not possible to operate the provisions of **Clauses 13.3.1 (Service Provider to Become an Admission Body) to 13.3.5 (Right of Set Off)** inclusive then the provisions of **Clauses 13.3.1 (Service Provider to Become an Admission Body) to 13.3.5 (Right of Set Off)** inclusive shall not apply (without prejudice to any rights of the Council under those **Clauses**) and the provisions of **Clause 13.3.7 (Service Provider Scheme)** shall apply.

13.3.7 **Service Provider Scheme**

Where this **Clause 13.3.7 (Service Provider Scheme)** applies pursuant to **Clause 13.3.6 (Service Provider Ceases to be an Admission Body)**, the following shall apply:

- (a) The Service Provider shall and shall procure that any sub-contractor shall not later than on the occasion of the Relevant Transfer or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or

schemes which it or any sub-contractor proposes shall be the **Service Provider Scheme** for the purposes of this **Clause 13.3.7 (Service Provider Scheme)**. Such pension scheme or schemes must be:

- i established within three (3) months of the Relevant Transfer or Cessation Date (as the case may be) and maintained until any payment to be made under Schedule 15 (Bulk Transfer Terms) is made;
- ii reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
- iii registered under section 153 of the Finance Act 2004; and
- iv certified by an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS,

(b) **The Service Provider undertakes and shall procure that any sub-contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it or any sub-contractor shall procure that:**

- i the Eligible Employees shall by three (3) months before the occasion of the Relevant Transfer or such other date as the Council may propose or the Cessation Date (as the case may be) be offered membership of the Service Provider Scheme with effect from and including the Relevant Transfer or Cessation Date (as the case may be);
- ii the Service Provider Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the occasion of the Relevant Transfer or Cessation Date (as the case may be) which the actuary nominated by the Council in accordance with relevant

guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the Local Government Pension Scheme had they continued in membership of the Local Government Pension Scheme;

- iii if the Service Provider Scheme is terminated or the Service Provider's or any sub-contractor's participation in the Service Provider Scheme terminates, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Service Provider or any sub-contractor. The replacement scheme must comply with this **Clause 13.3.7 (Service Provider Scheme)** as if it were the Service Provider Scheme;
 - iv before the occasion of the Relevant Transfer or Cessation Date (as the case may be) the trustees of the Service Provider Scheme shall undertake by deed to the Council that they shall comply with the provisions of **Clauses 13.3.7(a)i to (a)iv (Service Provider Scheme), 13.3.8(a)i, 13.3.8(a)ii and 13.3.8(a)iv (Undertaking from the Service Provider) and Schedule 15 (Bulk Transfer Terms);** and
 - v where the Service Provider Scheme has not been established at the occasion of the Relevant Transfer or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service benefits provided by the Local Government Pension Scheme immediately before the occasion of the Relevant Transfer or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Service Provider Scheme.
- (c) The parties shall use best endeavours to agree the terms of Schedule 15 (Bulk Transfer Terms) which shall apply in relation to the terms for bulk transfers from the Local Government Pension Scheme to the Service Provider's Scheme following

the Relevant Transfer and any subsequent bulk transfers on termination or expiry of this Contract.

13.3.8 Undertaking from the Service Provider

- (a) The Service Provider undertakes and shall procure that any sub-contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:
- i all information which the Council or their respective professional advisers may reasonably request from the Service Provider or any sub-contractor for the administration of the Local Government Pension Scheme or concerning any other matters raised in **Clause** 13.3.7 (Service Provider Scheme), **Clause** 13.3.8 (Undertaking from the Service Provider) or **Schedule** 15 (Bulk Transfer Terms) shall be supplied to them as expeditiously as possible;
 - ii the Service Provider or any sub-contractor shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Service Provider or any sub-contractor of such reasonable costs as the Council may require) consent to instigate, encourage or assist any event which could impose on the Local Government Pension Scheme or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
 - iii until the occasion of the Relevant Transfer, the Service Provider or any sub-contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in **Clauses** 13.3.1 (Service Provider to Become an Admission Body) to 13.3.6 (Service Provider ceases to be an Admission Body) inclusive without the consent in writing of the Council (not to be unreasonably withheld or delayed);

- iv the Service Provider or any sub-contractor shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Service Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Service Provider or any sub-contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

13.3.9 Discretionary Benefits

- (a) Where the Service Provider or any sub-contractor is an Admission Body, the Service Provider shall and shall procure that any sub-contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- (b) Where the award of benefits in **Clause 13.3.9(a)** (Discretionary Benefits) is not permitted under the Compensation Regulations and/or the Local Government Pension Scheme or the Service Provider or any sub-contractor is not an Admission Body, the Service Provider shall and shall procure that any sub-contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- (c) Under **Clause 13.3.9 (a) and (b)** (Discretionary Benefits), where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer (which the Council shall provide upon request). Where the payment of

such benefits is not, for whatever reason, possible, the Service Provider shall and shall procure that any relevant sub-contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

13.3.10 Claims from Eligible Employees or Trade Unions

(a) The Service Provider hereby indemnifies and shall procure that any sub-contractor shall indemnify the Council and/or any future service provider and, where relevant, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Service Provider or any sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- i relate to pension rights in respect of periods of employment on and after the Relevant Transfer until the date of termination or expiry of this Contract; or
- ii arise out of the failure of the Service Provider or as appropriate any sub-contractor's failure to comply with the provisions of this **Clause 13** before the date of termination or expiry of this Contract,

and the Council and the Service Provider or any sub-contractor agree that **Clause 47** (Contracts (Rights Third Party)) of this Contract shall not apply to this **Clause 13.3.10**

13.3.11 Liability for Costs

The costs of the Council necessarily and reasonably incurred in connection with the Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with **Clause 13.3.7 (a)** (Service Provider Scheme) shall be borne by the Service Provider or any sub-contractor.

13.3.12 Transfer to Another Employer

(a) Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Service Provider shall and shall procure that any sub-contractor shall:

- i consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- ii procure that the employer to which the Eligible Employees are transferred (the **New Employer**) complies with the provisions of this **Clause 13** (Pensions) provided that references to the Service Provider or any sub-contractor will become references to the New Employer, references to Relevant Transfer will become references to the date of the transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer.

13.3.13 Pension Issues on Expiry or Termination

The Service Provider shall and shall procure that any sub-contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in **Clause (a)** (Pension Issues on Expiry or Termination) which the Council may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully co-operate (and procure that the trustees of the Service Provider Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any sub-contractor in the provision of the Services on the expiry or termination of this Contract.

13.4 Provision of information

The Council warrants that the information set out in **Schedule 6 (Transferring Employees)** is accurate and complete as at the date of this Contract and that the Transferring Employees were employed by the Council immediately prior to the Transfer Date.

13.5 Service Provider to inform Council of any measures

The Service Provider shall or shall procure that any sub-contractor 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 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 **Clause 13.5**.

13.6 Indemnities

- 13.6.1 The Council shall indemnify and keep indemnified 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.
- 13.6.2 The Service Provider shall indemnify and keep indemnified 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 or any sub-contractor on or after the date of the Relevant Transfer.
- 13.6.3 The Service Provider shall indemnify and keep indemnified 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:
- (a) 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 or any sub-contractor 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;
- (b) any step or measure envisaged by the Service Provider and/or any sub-contractor in relation to employees affected by this Contract; and
- (c) the change of identity of the employer.

13.7 TUPE Compliance on Termination

- 13.7.1 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 or any sub-contractor in the provision of the Services;
 - (b) a list of agency workers, agents and independent contractors engaged by the Service Provider or any sub-contractor 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 or other contract with such persons.
- 13.7.2 The Service Provider shall notify the Council as soon as reasonably practicable of any variation in the information provided under **Clause 13.7.1** above and shall provide the Council with the revised and accurate information.
- 13.7.3 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 and shall procure that any sub-contractor 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 or assign or re-deploy any employee employed to carry out duties unconnected with the Services to the duties connected with the Services.

13.8 Obligations on Termination

- 13.8.1 The Service Provider shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Relevant Transfer Date.
- 13.8.2 The Service Provider shall indemnify and keep indemnified the Council against any loss caused to the Council or any New Service Provider by any inaccuracy or incompleteness in such information as is provided under 13.7.1 above or by any changes in the information which have not been communicated to the Council (whether relating to the number, identity or details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date.
- 13.8.3 The Service Provider shall indemnify the Council in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Council and/or any New Service Provider incurs arising from:
 - (a) any act or omission of the Service Provider or any sub-contractor in relation to the Relevant Employees,
 - (b) any claim by an employee or former employee of the Service Provider or any sub-contractor, and
 - (c) any representations made by the Service Provider or any sub-contractor in relation to employment by the Council and/or any New Service Provider.
- 13.8.4 The Council shall indemnify the Service Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Service Provider incurs arising from any act or omission of the Council in relation to the Relevant Employees.

13A TUPE Plus

- 13 A.1 The Service Provider agrees that it will not vary the terms and conditions of employment of any Transferring Employee for the first 12 months immediately following the Commencement Date. If the Service Provider seeks to vary the terms and conditions of employment of any Transferring Employee after the expiry of 12 months following the Commencement Date, it shall comply with its consultation obligations as the employer of the Transferring Employees and conduct all

reasonable negotiations with any recognised trade unions. The Parties agree that the Service Provider may make such changes to the Transferring Employees' terms and conditions of employment as are reasonably necessary to effectively manage the organisational structure of its workforce.

- 13 A.2 During the first 12 months following Commencement Date, the Service Provider shall apply job evaluation schemes to Transferring Employees similar to those applied by the Council as at the Commencement Date. If the Service Provider seeks to apply different job evaluation schemes to those applied by the Council as at the Commencement Date, it shall comply with its consultation obligations as the employer of the Transferring Employees and conduct all reasonable negotiations with any recognised trade unions.
- 13 A.3 The Parties agree that the Council shall provide the Service Provider with HR policies and procedures, including but not limited to those relating to equality, health and safety and whistle blowing, and a Trade Union and Employee Relations Framework, that apply to the Transferring Employees and are in force as at the Commencement Date.
- 13 A.4 The Service Provider shall apply to the Transferring Employees such workplace policies as are broadly similar to those provided by the Council in accordance with clause 13A.3 above.
- 13 A.5.1 The Authority will provide the Service Provider with details of the Trade Union and Employee Relations Framework and the Service Provider agrees to consider those details and discuss how the details provided can be utilised in setting up a comparable framework between any recognised trade unions and the Service Provider. The Service Provider agrees to provide access and facilities, where practicable, to recognised trade unions at the Service Provider's premises. The Service Provider will contribute an amount to the Authority's fund for trade union release time calculated in accordance with the formula in Schedule 17 (Formula for calculating contributions to Trade Union Fund). The Authority agrees to allow the Service Provider to claim the reasonable costs calculated in accordance with Schedule 17 (Formula for calculating contributions to Trade Union Fund) incurred by agreed trade union release time from normal duties from the Authority's central fund. The Service Provider agrees and acknowledges that there will be no mark up, enhancement or other increase to the amount calculated in accordance with the formula set out in Schedule 17 (Formula for calculating contributions to Trade Union Fund).

13 A.5.2 To the extent that the Service Provider recognises any trade unions, it shall provide a facility for the deduction of trade union subscriptions from the salaries of any applicable Transferring Employees.

13 A.5.3 The Service Provider agrees to recognise any Trade Union which the Authority recognises in respect of the Transferring Employees to the same extent as the Authority does at the point immediately before the Commencement Date. The Service Provider's obligation under this clause shall continue for as long as the Transferring Employees continue to work exclusively on the Services provided under this Agreement.

13 A.6 The Parties agree, that they shall use their reasonable endeavors to act in accordance with the principles set out in schedule 16 (save for those that relate to pensions), as applicable to each party.

14. STAFFING

14.1 Staff Training

14.1.1 The Service Provider shall ensure that there are at all times employed 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 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.

14.1.2 The Service Provider shall ensure that within the period set out in the Schedule of Variables all civil enforcement officers engaged in the provision of the Services shall hold a current certificate as a result of passing the nationally accredited VRQ for civil enforcement officers (level 2) or hold the NVQ for civil enforcement officers (level 2).

14.1.3 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.

14.1.4 The Service Provider shall employ and/or train staff in accordance with all relevant Legislation and industry best practice, and where applicable, shall ensure that staff are members of the Institute of Parking Professionals (IPP) or European equivalent and are trained in accordance with the recommendations of the BPA Skills and IPP Board.

14.2 Removal of Staff

14.2.1 Where the Council becomes aware of a complaint against a member of the Service Provider's staff, agents or sub-contractors who is involved in the provision of the Services, the Council's Representative shall notify the Contract Manager of the nature of the complaint and provide supporting documentation where possible.

14.2.2 Within ten (10) Calendar Days of receipt of a notification under **Clause 14.2.1**, the Contract Manager shall meet with the Council's Representative to discuss measures to resolve the complaint and to avoid future complaints.

14.2.3 Where the Contract Manager and the Council's Representative agree that the complaint justifies the removal of a member of the Service Provider's or sub-contractor's 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.

14.2.4 Any dispute in relation to this **Clause** 14.2 shall be resolved in accordance with the **Dispute Resolution Procedure**.

14.3 **Checks on Staff**

14.3.1 If the circumstances under which the Services are provided are such that the Service Provider's officers, employees, agents or sub-contractors are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 (for the purposes of this sub-Clause the "**Act**"), by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (for the purposes of this sub-Clause the "**Order**"), then the Service Provider shall use reasonable endeavours to ensure that the Service Provider's officers, employees, agents or sub-contractors shall provide information in accordance with the Act and Order about convictions which would otherwise be spent under the provisions of the Act and shall undertake checks of the appropriate level with the Criminal Records Bureau, in respect of all such individuals ("**CRB Checks**").

14.3.2 The Service Provider shall disclose to the Council's Representative the details of all convictions and CRB Checks of the Service Provider's officers, employees, agents or sub-contractors and in the event that such checks reveal that members of the Service Provider's officers, employees, agents or sub-contractors have relevant convictions or other relevant Criminal Record(s), the Council may direct that such persons should be removed from the provision of the Services.

14.4 **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 the Service Provider's staff, agents or sub-contractors who is involved in the provision of the Services.

SECTION D

15. REVIEW MEETINGS

- 15.1 The Council's Representative and the Contract Manager shall hold review meetings at monthly intervals and at any other times as required by the Council.
- 15.2 The purpose of the monthly review meetings are to:
- 15.2.1 review the Service Provider's achievement or non-achievement of the KPIs;
 - 15.2.2 address the Service Provider's non-achievement of KPIs and formulate a plan for improving performance;
 - 15.2.3 resolve problems which may otherwise prejudice the performance of the Parties' obligations under this Contract or the Council's obligations under the Contract;
 - 15.2.4 explore and agree methods of improving service quality, reducing costs and achieving continuous improvement; and
 - 15.2.5 provide an opportunity for either Party to raise issues which could cause disruption to the provision of the Services or otherwise prejudice this Contract.
- 15.3 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 within ten (10) Calendar Days of such occurrence/request hold a special review meeting to agree an action plan to bring performance to acceptable levels.
- 15.4 In addition to the review meetings held under **Clauses** 15.1 and 15.3, senior executives of each Party shall hold reviews at mutually agreed intervals but in any event within six (6) 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 whether any improvements can be made and implemented during the Contract Term. Minutes of such meetings shall be taken by the Service Provider and approved by the Council's Representative.

15.5 Any changes resulting from the meetings described in this **Clause 15** shall be effected through the Change Control Procedures.

16. PROVISION OF INFORMATION

16.1 The Council shall provide the Service Provider with the information set out in the Specification.

16.2 The Council shall use reasonable endeavours to notify the Service Provider of any proposed changes to bye-laws, policies or traffic regulation orders which in its reasonable opinion may affect the provision of the Services.

16.3 The Service Provider shall keep and maintain such necessary data and information and shall complete or provide (within ten (10) Calendar Days of any Council Request) 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:

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

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

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

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

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

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

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

16.5 The records referred to in this **Clause 16** shall be retained for a period of at least six (6) years (or such longer period as may be specified by the Council from time to time) after the Service Provider's obligations under this Contract have come to an end.

- 16.6 All information referred to in this **Clause** 16 is subject to the obligations set out in **Clause** 34 (Confidentiality).
- 16.7 Upon the expiry or termination of this Contract, or 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.

17. AUDIT

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, or to or for the Council's Representative 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. The Service Provider shall allow auditor access to the Service Provider's premises for the purposes of carrying out the above audit.

18. MONITORING

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

19. COMPLAINTS

- 19.1 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.
- 19.2 As a minimum, the complaints procedure referred to in **Clause** 19.1 shall include the following requirements:

- 19.2.1 that the Service Provider shall not enter into any correspondence directly with members of the public relating to the Services;
 - 19.2.2 that any complaint received by the Service Provider from a member of the public shall be logged and passed on to the Council within three (3) Calendar Days;
 - 19.2.3 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 complaints procedure; and
 - 19.2.4 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.
- 19.3 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.
- 19.4 The Service Provider shall, at the request of the Council's Representative, arrange for notices to be permanently displayed at the Locations giving information as to how complaints about the provision of the Services may be made.

SECTION E

20. QUALITY MANAGEMENT

- 20.1 If the Service Provider is qualified to BS EN ISO 9001 2008 then this Contract shall be performed in accordance with the procedures set out in its Quality Manual.
- 20.2 In the event that the Service Provider is not qualified to BS EN ISO 9001 2008 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.

21. NOT USED

SECTION F

22. WARRANTIES AND REPRESENTATIONS

- 22.1 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.
- 22.2 The Service Provider warrants and represents that:
- 22.2.1 in entering this Contract it has not committed any Prohibited Act; and
- 22.2.2 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract.
- 22.3 The Service Provider warrants and represents that it has provided full, accurate and up to date information to the Council in relation to the Services to be provided under this Contract.
- 22.4 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.

23. INDEMNIFY

- 23.1 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 save to the extent that the same is caused by or arises from the negligence, breach of this Contract, breach of statutory duty, or breach of Legislation of the Council.
- 23.2 Subject to the provisions of **Clauses** 13 and 23.6, the aggregate liability of the Service Provider, whether for damages, payments of compensation or by way of indemnity or of any nature whatsoever arising under or in relation to this Contract or the Services (including as a result of negligence) shall in relation to:
- 23.2.1 any claim for which the Service Provider has insurance cover or should have insurance cover available under the policies of insurance which it is required to maintain pursuant to **Clause** 24 (Insurance), be limited to the maximum sum insured (or which should have been insured) under the relevant policy of insurance;
- 23.2.2 all breaches of this Contract resulting in direct loss of or damage to any kind of property, be limited to five million pounds (£5,000,000); and
- 23.2.3 all other liability for all breaches or non-performance of this Contract whether in contract, tort or otherwise be limited to the percentage of the Remuneration payable (or in the event of early termination, would have been payable had the Contract not been terminated) during the twelve (12) months in which the breach occurs as set out in the Schedule of Variables.
- 23.3 In no event shall either Party be liable to the other for loss of profits, business revenue, goodwill or anticipated savings.
- 23.4 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 at all times.
- 23.5 The Service Provider shall not settle or pay any claim without the prior consent of the Council.
- 23.6 Nothing in this **Clause** 23 shall limit or exclude the liability of the Service Provider for death, personal injury, fraud or fraudulent misrepresentation.

24. INSURANCE

- 24.1 The Service Provider shall take out and maintain the following insurance policies:
- 24.1.1 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;
 - 24.1.2 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;
 - 24.1.3 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
 - 24.1.4 any other insurance that may be required by law.
- 24.2 The Council may require the Service Provider to name the Council as co-insured (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.
- 24.3 The Service Provider shall on request provide to the Council evidence and copies of all insurance policies required under this **Clause 24** within twenty one (21) Calendar Days of such request.
- 24.4 If the Service Provider is in breach of this **Clause 24**, the Council may pay any premia required to keep such insurance in force or itself procure such insurance and shall in either case recover such amounts (together with any administrative expenses reasonably incurred) from the Service Provider on written demand.
- 24.5 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 **Clause 24** accompanied by full details of the incident giving rise to the claim.
- 24.6 The Service Provider shall inform the Council of any material changes in the insurances required under this **Clause 24**.
- 24.7 The Service Provider shall not take any action or fail to take any reasonable action, or insofar as it is reasonably within its power permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy under which it is insured.

SECTION G

25. DISPUTE RESOLUTION PROCEDURE

- 25.1 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 **Clause 25**.
- 25.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion between the Contract Manager and the Council's Representative at the review meetings held under **Clause 15** (Review Meetings).
- 25.3 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.
- 25.4 If the Dispute is not resolved as a result of the meetings referred to in **Clause 25.3** 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). The costs of referral of the Dispute to the Expert shall be apportioned equally between the Parties, or as otherwise directed by the Expert.
- 25.5 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.
- 25.6 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 Council's Representative and the Contract Manager, shall be binding on the Parties.
- 25.7 Failing agreement, either Party may refer the Dispute to an Adjudicator appointed in accordance with **Schedule 8** (Adjudicator and Expert).
- 25.8 Within twenty eight (28) Calendar Days of appointment, the Adjudicator shall communicate his 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 or apportionment of the Adjudicator's fees.

- 25.9 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.
- 25.10 No reference of any Dispute to an Expert or an Adjudicator pursuant to this **Clause 25** shall relieve either Party from any liability for the due and punctual performance of its obligations under this Contract.
- 25.11 Notwithstanding the foregoing provision of this **Clause 25**, 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 **Clause 25**.

26. DEFAULT AND TERMINATION

- 26.1 The Council may terminate this Contract on written notice to the Service Provider if:
- 26.1.1 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;
- 26.1.2 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;
- 26.1.3 the Service Provider enters into any voluntary arrangement for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986, the Companies Act 2006 or the Enterprise Act 2002;
- 26.1.4 an administration order is made or administrator is appointed in respect of the Service Provider;
- 26.1.5 a breach by the Service Provider of its obligation to take out and maintain the required insurances under **Clause 24 (Insurance)**;
- 26.1.6 the Service Provider commits any Prohibited Act that is not capable of remedy;

- 26.1.7 the Service Provider commits a breach of the health and safety requirements under **Clause 30** (Health and Safety); or
- 26.1.8 the Service Provider's performance falls below the zero level described in **Clause 15.3** (above) and paragraph 1.11 of the Payment Mechanism, and following such occurrence, the Service Provider's performance level continues to fall for a further three (3) consecutive months.
- 26.2 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:
- 26.2.1 the type of breach that has occurred giving reasonable details; and
- 26.2.2 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.
- 26.3 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.

27. CONSEQUENCES OF EXPIRY OR TERMINATION

- 27.1 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.
- 27.2 The Service Provider shall, at its own cost, 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.

- 27.3 The Council may recover from the Service Provider the amount of any direct and/or indirect losses suffered by the Council resulting from termination.
- 27.4 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.
- 27.5 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 **Clauses** 1, 2, 5, 12, 13, 16, 22, 23, 25, 27, 32, 46 and 48 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.

28. FORCE MAJEURE

- 28.1 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.
- 28.2 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.
- 28.3 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.
- 28.4 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.

28.5 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 its obligations as a direct result of the Force Majeure Event.

29. RELIEF EVENTS

29.1 If and to the extent that a Relief Event adversely affects the ability of the Service Provider to provide the Services in accordance with the KPIs and the terms of this Contract, the Service Provider is entitled to apply for relief in accordance with **Clause 29.2** from any rights the Council may assert under this Contract.

29.2 To obtain relief, the Service Provider must as soon as practicable, and in any event within fourteen (14) Calendar Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its obligations, give to the Council a notice of its claim for relief from its obligations under this Contract, including details of the nature of the Relief Event, the date of occurrence and its likely duration.

29.3 Within fourteen (14) Calendar Days of receipt by the Council of the notice referred to in **Clause 29.2** above, the Service Provider shall give full details of the relief claimed and demonstrate to the reasonable satisfaction of the Council that:

29.3.1 it could not reasonably have foreseen the occurrence or consequences of the relevant Relief Event and could not have avoided such occurrence or consequences by steps which it might reasonably be expected to have taken, without incurring additional expenditure;

29.3.2 the Relief Event directly caused or substantially contributed to the need for relief from obligations under this Contract;

29.3.3 the relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with good industry practice, without incurring additional expenditure; and

29.3.4 the Service Provider is using reasonable endeavours to perform its obligations under this Contract.

- 29.4 Where the Service Provider has complied with its obligations under **Clauses 29.1 and 29.2**, the Council shall not be entitled to exercise its rights to terminate this Contract under **Clause 26** (Default and Termination) and, subject to **Clause 29.6** below, shall give such other relief as has been requested by the Service Provider.
- 29.5 In respect of any unconnected event nothing in **Clause 29** shall affect any entitlement of the Council to make deductions under **Clause 7** (Remuneration) during the period in which the Relief Event is subsisting.
- 29.6 In the event that information required by **Clause 29.2 and/or 29.3** above is not provided by the dates referred to in that Clause, then the Service Provider shall not be entitled to any relief in respect of the period for which the information is delayed.
- 29.7 The Service Provider shall notify the Council if at any time it receives or becomes aware of any relevant further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 29.8 If the Parties cannot agree the extent of the relief required, or the Council disagrees that a Relief Event has occurred or that the Service Provider is entitled to relief from its obligations under this Contract, the Parties or either of them shall refer the matter to the Dispute Resolution Procedure.

SECTION H

30. HEALTH AND SAFETY

- 30.1 The Service Provider shall comply with and shall procure that all staff, agents and sub-contractors engaged in the provision of the Services comply with the requirements of the Health and Safety at Work Etc. Act 1974, and any other Legislation, 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.
- 30.2 The Service Provider shall provide to the Council's Representative any information relating to the Service Provider's compliance with **Clause 30.1** that the Council may reasonably request at any time from the Commencement Date.
- 30.3 The Council's Representative 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.
- 30.4 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.
- 30.5 The Service Provider shall provide to the Council's Representative, 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 he receives from any statutory body.

31. EQUALITIES

- 31.1 The Service Provider (including its agents and employees) shall and shall procure that any sub-contractor shall in the provision of the Services:
- 31.1.1 not discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of race, age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex or sexual orientation contrary to part 5 of the Equality Act 2010;

- 31.1.2 not discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of race, age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex or sexual orientation contrary to any of the applicable provisions of the Equality Act 2010 which are or may come in to force and any codes of practice issued thereunder.
- 31.1.3 take appropriate and lawful steps to advance equality of opportunity between persons who share a relevant protected characteristic (as defined in section 149(7) of the Equality Act 2010) and persons who do not share it, as directed by the Council from time to time;
- 31.1.2 take appropriate and lawful steps to foster good relations between persons who share a relevant characteristic (as defined in section 149(7) of the Equality Act 2010) and persons who do not share it, as directed by the Council from time to time; and
- 31.1.4 notify the Council if it becomes aware of any action which the Council could take to comply with or further its duties under section 149 of the Equality Act 2010 and/or the Council's equality objectives as notified to the Service Provider from time to time.
- 31.2 Where, in connection with this Contract, the Service Provider (including its agents and employees) or any sub-contractor is required to carry out work on the Council's premises or along side the Council's employees on any other premises they shall comply with the Council's own employment policy and codes of practice relating to equality.
- 31.3 The Service Provider shall, and/or shall procure that any sub-contractor shall, notify the appropriate representative at the Council in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider and/or any sub-contractor under the Equality Act 2010.
- 31.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Providers performance of its obligations under this Contract being in contravention of the Equality Act 2010, the Service Provider shall, and shall procure that any sub-contractor shall, free of charge:
 - 31.4.1 provide any information reasonably requested by the Council, as soon as reasonably practicable;
 - 31.4.2 attend any meetings as required and permit any of the Council's staff to attend;

- 31.4.3 promptly allow the Council and/or any person conducting an investigation access to any documents or data deemed by the Council to be relevant;
- 31.4.4 allow itself or any of its staff to appear as witnesses in any ensuing proceedings; and
- 31.4.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 31.5 The Service Provider (including its agents and employees) shall, and shall procure that any sub-contractor shall, have due regard to the Council's equality objectives as notified to the Service Provider from time to time.
- 31.6 The Service Provider (including its agents and employees) shall, and shall procure that any sub-contractor shall, ensure that none of its employees or applicants receive less favourable treatment because of a protected characteristic (as defined in the Equality Act 2010) and that wherever reasonable, the employee/applicant is given any help they need to obtain their full potential for the benefit of themselves or the Service Provider or the Council.
- 31.7 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 **Clause 31**.
- 31.8 The Service Provider shall monitor the representation among its employees engaged in the provision of the Services of persons of different protected characteristics, having regard to the Council's procedures for monitoring representation among its own employees.
- 31.9 Where it appears to the Service Provider that there are groups of persons with a particular protected characteristic who are underrepresented in the Service Provider's workforce engaged in the provision of the Services in comparison with the population as a whole, the Service Provider shall take such steps as are lawful under the Equality Act 2010 to improve the relevant representation.
- 31.10 The Service Provider shall twelve months from the Commencement Date and annually thereafter provide a written report to the Council detailing its compliance with this **Clause 31**.

32. DATA PROTECTION

- 32.1 The Service Provider shall comply with its obligations under the Data Protection Act 1998 (the “1998 Act”) and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.
- 32.2 Notwithstanding the general obligation in **Clause 32.1**, where it is processing personal data (as defined by the 1998 Act) as a data processor for the Council (as defined by the 1998 Act) the Service Provider shall:
- 32.2.1 ensure that it has in place appropriate technical and organisational measure to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data including that obtained during the operation of Closed Circuit Television), as required under the Seventh Data Protection Principle in Schedule 1 to the 1998 Act;
- 32.2.2 adhere to any instructions or policies of the Council in relation to the processing of personal data as are communicated to the Service Provider from time to time during the term of this Contract.
- 32.3 The Service Provider shall:
- 32.3.1 provide the Council with such information as the Council may require to satisfy itself that the Service Provider is complying with its obligations under the 1998 Act and this **Clause 32**;
- 32.3.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to **Clause 32.2.1**;
- 32.3.3 notify the Council (within 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 Data Protection Act 1998
- 32.3.4 provide full cooperation and assistance to the Council in relation to any complaint or request made; and
- 32.3.5 ensure that it does nothing knowingly or negligently which places the Council in breach of the Council's obligations under the 1998 Act.

- 32.4 The Service Provider shall ensure that from the date it is acquired all information held on behalf of the Council is retained for disclosure for the duration of the term of this Contract and shall permit the Council to inspect such information as requested from time to time. All such information shall be transferred by the Service Provider to the Council upon expiry of the term.

33. FREEDOM OF INFORMATION

- 33.1 The Service Provider acknowledges that the Council is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"), and 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 FOIA or the EIR, as the case may be.
- 33.2 The Service Provider shall ensure that it does and shall procure that its sub-contractors shall do all manner of things necessary to assist the Council in meeting the requirements of the FOIA or the EIA within the timescales set out therein.
- 33.3 The Service Provider shall:
- (a) transfer a request for information to the Council as soon as practicable after receipt and in any event within three (3) Calendar Days of receiving a request for information;
 - (b) provide the Council with a copy of all information in its possession or power in the form that the Council requires within seven (7) Calendar Days (or such other period as the Council may specify) of the Council requesting that information; and
 - (c) provide all necessary assistance as reasonable requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
- 33.4 The Council shall be responsible for determining at its absolute discretion whether information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR, as the case may be;

- (b) is to be disclosed in response to a request for information, and in no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.

33.5 In this **Clause 33** "information" has the meaning given to it under section 84 of the FOIA.

33.6 No additional payment shall be made to the Service Provider for performing the requirements set out in this **Clause 33**.

34. CONFIDENTIALITY

34.1 Subject to **Clause 34.2** and **Clause 34.5** 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.

34.2 **Clause 34.1** shall not apply to:

34.2.1 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 clause;

34.2.2 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;

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

34.2.4 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;

34.2.5 any disclosure of information by the Council to any other department, office or agency of the government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Contract; or

34.2.6 any disclosure for the purpose of:

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

- (b) any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (c) the Local Government Finance Act 1982 or the Local Government Act 1999.

34.3 Where disclosure is permitted under **Clause 34.2** 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.

34.4 Subject to **Clause 34.5** 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.

34.5 Notwithstanding any other provision of this **Clause 34** the Council may publish details of any payment made to the Service Provider pursuant to this Contract including but not limited to: the Service Provider's full name, the Service Provider's company house or charity registration number (if any), the Contract identification number, the date of payment, the net amount paid to the Service Provider, the transaction number and a description confirming the nature of the transaction.

35. ASSIGNMENT AND SUB-CONTRACTING

35.1 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 of the Services.

35.2 Notwithstanding any sub-contracting permitted under this Contract, the Service Provider shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

35.3 The Council shall be entitled to:

- 35.3.1 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
- 35.3.2 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.

36. CORRUPT GIFTS AND FRAUD

- 36.1 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.
- 36.2 The Council's Representative shall have the right to require that the Service Provider suspend from any further work on this Contract any person reasonably suspected of a Prohibited Act, fraudulent action or malpractice.

37. RIGHTS AND DUTIES RESERVED

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.

38. LOCAL GOVERNMENT OMBUDSMAN

- 38.1 Where any investigation by a Local Government Ombudsman (the "Ombudsman") takes place the Service Provider shall:
 - 38.1.1 provide any information requested in the timescale required by the Ombudsman;
 - 38.1.2 attend any meetings as required by the Ombudsman and permit its personnel to so attend;
 - 38.1.3 promptly allow access to and investigation of any documents deemed by the Ombudsman to be relevant;
 - 38.1.4 allow itself and any employee deemed to be relevant to be interviewed by the Ombudsman;

- 38.1.5 allow itself and any employee to appear as witness in any ensuing proceedings; and
- 38.1.6 co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.
- 38.2 No additional payment shall be made to the Service Provider for performing the requirements set out in **Clause 38.1**.
- 38.3 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.

39. ENTIRE AGREEMENT

- 39.1 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.

40. NO PARTNERSHIP OR AGENCY

- 40.1 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.
- 40.2 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.

41. NO WAIVER

- 41.1 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:

- 41.1.1 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
- 41.1.2 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.
- 41.2 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 **Clause 44** (Notices).

42. SEVERANCE

- 42.1 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.
- 42.2 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.
- 42.3 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.

43. VARIATION

Subject to **Clause 9** (Change to Services and /or the Remuneration), this Contract can only be varied if any such variation is agreed in writing by both Parties.

44. NOTICES

- 44.1 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.

- 44.2 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.

45. EUROPEAN MONETARY UNION

- 45.1 The Parties to this Contract confirm that the occurrence or non-occurrence 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.
- 45.2 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:
- 45.2.1 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;
 - 45.2.2 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;
 - 45.2.3 the substitution of that new currency for the Euro as the unit of account of the EU;
 - 45.2.4 the introduction of that new currency as lawful currency in a member state;
 - 45.2.5 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;
 - 45.2.6 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

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

46. PARENT COMPANY GUARANTEE AND PERFORMANCE BOND

46.1 The Service Provider shall procure the execution and delivery to the Council on or before the Commencement Date of a Parent Company Guarantee by the Guarantor in favour of the Council in the form set out in **Schedule 1 (2)** of the Invitation to Tender (Draft Deed of Guarantee) to secure the due performance of the Service Provider of its obligations to the Council.

46.2 Unless and until otherwise agreed by the parties, the form of guarantee set out in **Schedule 1 (2)** of the Invitation to Tender (Draft Deed of Guarantee) shall be the relevant specified form for the purposes of this Contract.

46.2.1 The Council may annually review the sum of the guarantee set out in **Schedule 1 (2)** of the Invitation to Tender (Draft Deed of Guarantee) to ensure that it provides for an adequate level of protection and the Council in its sole discretion may require the sum of the bond to be varied.

46.3 In the event that the Service Provider does not have a parent company and cannot procure a Parent Company Guarantee pursuant to **Clause 46.1**, the Service Provider shall procure the execution and delivery to the Council on or before the Commencement Date of a Performance Bond in favour of the Council.

46.4 The Performance Bond shall operate according to the principles specified in **Schedule 1 (1)** of the Invitation to Tender (Form of Bond).

47. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

48. LAW AND JURISDICTION

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the Parties have executed this Contract as a deed and delivered it on the date first written.

Signed as a deed by)
acting by)

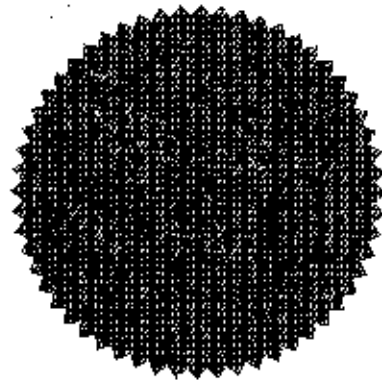
[Redacted signature]

Director

[Redacted signature]

Director/Secretary

The common seal of)
The Mayor and Burgesses of the)
London Borough of Barnet)
was affixed in the presence of)



Authorised Signatory

[Redacted signature]
Acting Head of Legal
[Redacted signature]
Head of Governance



SCHEDULE 1

SCHEDULE OF VARIABLES

Clause reference	Variable	
Recital A	Date of issue of ITT: Date of return of Tender:	26 th July 2011 6 th September 2011, 12.00 noon
3.1	Council's Representative Name: Address: Tel: Fax: Email:	 [REDACTED] North London Business Park, Building 4, Oakleigh Road South, London N11 1NP [REDACTED] [REDACTED] [REDACTED]
3.2	Contract Manager Job Title: Address: Tel: Fax: Email:	 [REDACTED] Manager – Network Manager North London Business Park, Building 4, Oakleigh Road South, London N11 1NP [REDACTED] [REDACTED] [REDACTED]
4.	Commencement Date Initial Contract Term Fixed extension period: Notice required to extend for fixed extension period:	1 st May 2012 5 years 2 years 6 (six) months
5.1	Transition Period:	4 months prior to the Commencement Date.
5.2	Exit Period	3 months prior to, and 3 months after, the expiry or termination of the Contract.

Clause reference	Variable	
6.3	Bodies or agencies whose requirements must be complied with:	Driver and Vehicle Licensing Agency, Parking and Traffic Appeals Service, London Councils, Traffic Enforcement Centre
7.2	Base Payment (i.e. percentage of Target Cost to be paid to Service Provider):	1/12 each calendar month
7.4	Share of savings to be paid to Service Provider:	50 %
8.1	Payment Period:	monthly
8.8	Rate of interest for late payment of Remuneration:	1 % above Bank of England base rate
10.1	Address of Council Premises to be licensed to Service Provider:	N/A
11.3	Price for purchase of Equipment and Materials on expiry:	Price to be agreed
12.2	Purpose of use of Service Provider Software:	Provision of services in scope as defined in the specification document.
13.1	Application of TUPE	Yes
14.1	Date for civil enforcement officers to achieve VRQ (level 2) or NVQ (level 2):	0 months (must be fully trained prior to commencing enforcement duties)
23.2	Liability cap:	100 %
25.3	Council's nominated officer for dispute resolution:	Pam Wharfe Director of Environment, Planning and Regeneration

**SCHEDULE 2
SPECIFICATION**



**SPECIFICATION
(SCHEDULE B)**

For the Provision of

**PARKING ENFORCEMENT
AND RELATED SERVICES**

For the

LONDON BOROUGH OF BARNET

COPYRIGHT

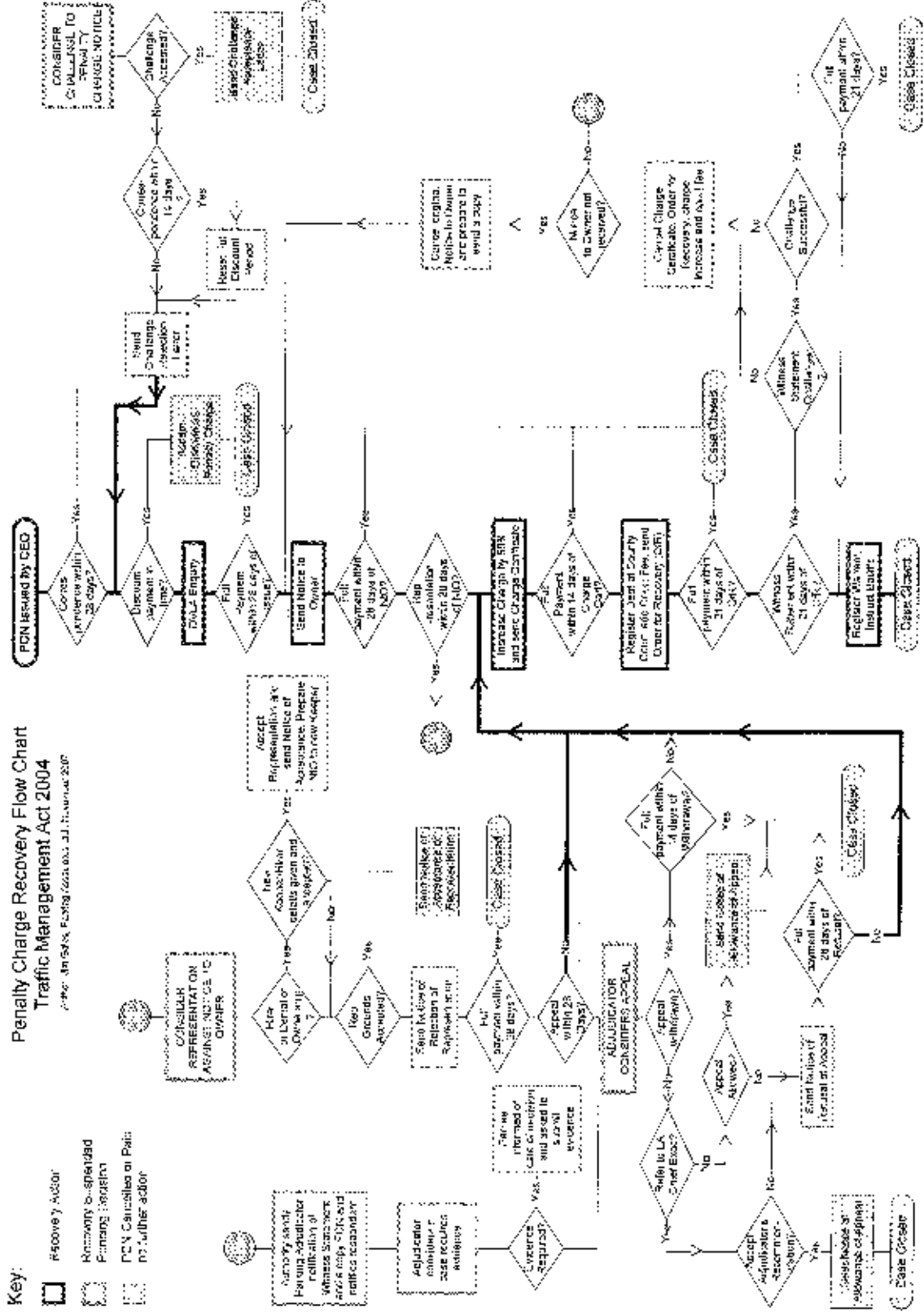
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The Copyright Holder for this work is defined jointly as Parking Associates Limited and the London Borough of Barnet.

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The Parking Specification is joint copyright of the Parking Associates Limited and London Borough of Barnet. Parking Associates do not agree to the release of the Parking Specification as the company believes that to do so would prejudice their commercial interests. Parking Associates claim that the document is commercially sensitive and believe that its release, and therefore potential reproduction, would seriously undermine their ability to successfully participate and compete fairly in the market. Further, they believe that release would present a significant risk to their consultancy activities by presenting advantages to rival companies in the market. To this end, London Borough of Barnet is withholding this section of the contract excluding the appendices.

APPENDIX 1: PCN PROCESSING FLOWCHART



APPENDIX 2: CONTRAVENTION CODES AND OBSERVATION PERIODS

Contravention Code	Short Description	Observation period
80	Parked for longer than the maximum period permitted	5 mins
81	Parked in a restricted area in a car park	n/a
82	Parked after the expiry of paid for time	5 mins
85	Parked in a permit bay without clearly displaying a valid permit	5 mins
86	Parked beyond the bay markings	n/a
87	Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner	n/a
91	Parked in a car park or area not designated for that class of vehicle	n/a
99	Stopped on a pedestrian crossing or crossing area marked by zigzags	n/a

Schedule B: Specification for Parking Enforcement

1	Parked in a restricted street during prescribed hours	Only if a commercial vehicle is observed loading
2	Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force	n/a
5	Parked after the expiry of paid for time	5 mins
11	Parked without payment of the parking charge	3 mins
12	Parked in a residents' or shared use parking place or zone without clearly displaying either a permit or voucher or pay and display ticket issued for that place	Observed for period taken to issue PCN
16	Parked in a permit space without displaying a valid permit	Observed for period taken to issue PCN
18	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	n/a
19	Parked in a residents' or shared use parking place or zone displaying an invalid permit, an invalid voucher or an invalid pay & display ticket	3 mins
21	Parked in a suspended bay or space or part of bay or space	n/a

Schedule B: Specification for Parking Enforcement

23	Parked in a parking place or area not designated for that class of vehicle	n/a
24	Not parked correctly within the markings of the bay or space	n/a
25	Parked in a loading place during restricted hours without loading	5 minutes depending on the vehicle class
26	Parked in a special enforcement area more than 50cm (or other specified distance) from the edge of the carriageway and not within a designated parking place	n/a
27	Parked in a special enforcement area adjacent to a dropped footway	n/a
30	Parked for longer than permitted	5 mins
34	being in a bus lane	n/a
40	Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner	n/a
45	Parked on a taxi rank	n/a

Schedule B: Specification for Parking Enforcement

47	Stopped on a restricted bus stop or stand	n/a
48	Stopped in a restricted area outside a school when prohibited	n/a
55	A commercial vehicle parked in a restricted street in contravention of the Overnight Waiting Ban	n/a
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways	n/a
62	Parked with one or more wheels on or over a footpath or any part of a road other than a carriageway	n/a
73	Parked without payment of the parking charge	3 mins
74	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	n/a

APPENDIX 3: CAMERA LOCATIONS

CAMERA NUMBER	LOCATION
U1 (601)	A5 Cricklewood Broadway / Junc/W Depot Approach NW2
U2 (613)	A5 Edgware Road / Cricklewood Broadway O/S no. 400
U3 (603)	West Hendon Broadway J/W Milton Road / 40m Nth of Stanely Rd NW9
U4 (604)	West Hendon Broadway Opposite Telford Road NW9
U5 (610)	The Hyde/West Hendon Broadway
U6 (612)	A5 The Hyde / 20m North of J/W Hyde Estate Road NW9
U7 (611)	A5 The Hyde / Southside of J/W Rushgrove Avenue
U8 (608)	A5 The Hyde / 40m Nth of Colindale Avenue NW9
U9 (609)	A5 Burnt Oak Broadway / Southside of J/W Barnfield Road HA8

APPENDIX 4: CAR PARK INFORMATION

London Borough of Barnet Car Parks	Status	Duration of restricted parking	Is this car park restricted by entrance barriers?	No. of P&D spaces	No. of free parking spaces	No. of Disabled bays	Motorcycle bay	Resident bays	Business bays	Ward bays	Reserved	Totals
Watling Car Park & Market, Barnfield Road, Edg	P&D	Long Stay	NO	221		5	1					227
Lodge Lane car park, Finchley N12	P&D	Long Stay	NO	221		9	2					232
Burns Lane Car Park NW7	P&D	Long Stay	NO	178		4	2					184
Daws Lane car park NW7	Free	Free	NO		93	5				4		102
Perrysfield Way (Car Park) NW9	P&D	Up to 3 hours max	NO	66		2	1					69
Perrysfield Way (Car Park) NW9	Permit holders	Permit holders only	NO			2				19		21
Fitzjohn Avenue car park EN5	P&D	Long Stay	NO	87		2						89

Schedule B: Specification for Parking Enforcement

Stapylton Road car park	NO	Long Stay	NO	61	2						63
Barnet EN5 Moxon Street car park	P&D	Long Stay	NO	58	3				1		62
Church Hill Car Park	P&D	Long Stay	NO								
no 9-49 Church Hill Road	Free	Free	NO	68	2						70
Stanhope Road Car Park (2-10)	P&D	Long Stay Up to 4 hours	NO	50	2						52
N12 MAIN Castle Road Car park	P&D	Long Stay	NO	49		1					50
The Burroughs Car Park (17-23)	P&D	Short Stay Up to 2 hours	NO	18							18
Hendon NW4 Osidge Lane car park	Free	Free	NO		1						34
Quakers Course car park	Free	Free	NO	43							43
NW9 East Barnet Road Car Park											
North (87-81) EN4	P&D	Long Stay	NO	37	2						39
Egerton Gardens	Free	Free	YES - Manage by	28	1						29

Schedule B: Specification for Parking Enforcement

Car Park, NW4	Town hall											
New Brent Street car park NW4	Free	NO	26								26	
Brunswick Park Road car park N11 (See notes)	Free	NO	20								20	
East Barnet Road Car Park South (120-126) EN4	P&D Long Stay	NO	20		2							22
The Burroughs Car Park (S1-41) Hendon NW4	Permit holders only Permit holders only	NO			2				24		20	46
Woodhouse Road 14-18, Cal Park, N12	P&D Long Stay	NO		10				1				11
Stafford Road Car Park, EN5	Permit holders only Permit holders only	NO								7		7
Slanhope Road Car Park adj. 7	Long Stay Up to 4 hours	NO										32
N12 TOP	P&D	NO		31				1				
Slanhope Road Car Park adj. 25												
N12 9DT LOWER	P&D Long Stay	NO		31				1				32
												1580

APPENDIX 5: HEALTH AND SAFETY CLAUSES FOR STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SUPPLIERS OF SERVICES

General Health and Safety clauses:

1. The Service Provider shall ensure the health and safety of its employees and any other person who may come into contact with, or be affected by, its activities and ensure the provision of welfare and first aid facilities for its employees.
2. The Service Provider shall comply with the requirements of all Legislation and codes of practice relating to health, safety and fire, which may apply to staff and other persons in the performance of its obligations under the Contract.
3. The Service Provider shall carry out all necessary statutory tests and inspections and shall provide the Council's Representative with details on request.
4. The Service Provider shall employ, or have arrangements for access to, 'Competent' health and safety advice and shall notify the Council's Representative of these arrangements. The Service Provider will also be required to nominate a representative to liaise with the Authorised Officer on all Health and Safety matters.
5. The Service Provider shall have a written Health and Safety Policy which must be at least equivalent to the Councils Policy in scope and effectiveness and shall ensure that employees are aware of and comply with this Health and Safety Policy.
6. The Service Provider shall have in place health and safety management systems that comply with the guidance contained in HSG 65, or equivalent, to include assessing and controlling risk for any activity that may affect staff or any other person who may come into contact with those activities. The Service Provider shall also produce Method Statements for high risk activities, as requested by the Council's Representative, and provide that information on request.
7. The Service Provider shall have in place procedures and arrangements for emergencies and notify the Council's Representative of these on request.
8. The Service Provider will inform the Council's Representative of any subcontractors employed to carry out any functions in the performance of its obligations under the contract. The Service Provider shall be responsible for managing and reporting on these sub-contractual arrangements and any changes to those arrangements.

9. The Service Provider shall keep its health and safety policies, procedures and risk assessments under review and comply with any changes, amendments or further lawful instructions reasonably requested or issued by the Council in connection with the Service Providers health and safety policies, procedures or working methods. The Service Provider shall notify the Council of any changes made.
10. The Service Provider shall ensure that all equipment installed, used and maintained to meet statutory requirements, appropriate standards and manufacturers recommendations.
11. The Service Provider must ensure that any equipment supplied or loaned to them by the Council is properly maintained and that their employees are competent to use this equipment.
12. The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall notify the Service Provider of any health and safety hazards which may exist or arise and which may affect the Service Provider in the performance of its obligations under the Contract.
13. The Service Provider shall ensure that all its employees are notified and adhere to all health and safety rules, including emergency procedures and means of escape, when working on Council premises.
14. The Service Provider shall inform the Council's Representative, within 24 hours, of any Major Injury, Reportable Disease or Reportable Dangerous Occurrence that occurs in the performance of its obligations under the Contract.
15. In all instances, the Service Provider shall ensure the Council's Representative has reasonable access to the Service Provider's premises, sites and activities and co-operate and provide such reasonable assistance as may be necessary to facilitate monitoring. Failure to provide such reasonable assistance shall be deemed a "Serious Breach" of the conditions of this contract.
16. The Council's Representative shall be empowered to suspend the provision of the services in the event of non-compliance by the Contactor with the health and safety requirements of the contract or for breaches of health and safety legislation or Council policy. The Service Provider shall not resume provision of the services until the Council's Representative is satisfied that the non-compliance has been satisfied.
17. No payment will be made for any part of the Services omitted as a result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Council's Representative requires the Service Provider to take to remedy the breaches of the health and safety requirements.

H&S Performance

18. The Service Provider will provide the Council's Representative with an annual report on the previous year's health and safety performance and health and safety performance targets for the subsequent twelve (12) months to include indicators agreed with the Council's Representative.
19. The Council may require the Service Provider to provide the Council's Representative with more regular health and safety performance reports or additional health and safety performance indicators dependant on the nature and level of risk.
20. The Council's Representative may periodically undertake spot checks to ensure that the Service Provider is complying with its health and safety obligations under this Contract and the Service Provider shall co-operate fully, at its own cost, with the Council.

APPENDIX 6: REPRESENTATIONS AND APPEALS PROCESS

Correspondence Type	Responsibility for Investigation	Responsibility to draft Response or Case Summary	Evidence collated by	Who can sign off	Signature Required	Post Responsibility
Informal Correspondence	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider
Formal Representations						
Change of Kasper	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider
Other	Service Provider	Service Provider	Service Provider	Council Representative	Service Provider Council Representative	Service Provider
Appeals	Service Provider	Service Provider	Service Provider	Council Representative	Council Representative	Service Provider
Charge Certificate	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider
After Charge Certificate	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider	Service Provider

APPENDIX 7: SAMPLE DOCUMENTS

PENALTY CHARGE NOTICE (PCN) ROAD TRAFFIC REGULATION ACT 1984 (as amended) LONDON LOCAL AUTHORITIES ACT 1996 (as amended)

«KEEPER_COMPANYADDRESS»	Penalty Charge Notice Number:
«KEEPER_OWNERNAME»	«NOTICES_PCNI»
«KEEPER_COMPANYNAME»	Vehicle Registration Number: «VEHICLE_REG»
«KEEPER_FLATFLOORNUMBER»	Date of this Notice: «NOTICES_PRTDATE»
«KEEPER_BUILDINGNUMBER»	
«KEEPER_STREET»	
«KEEPER_LOCALITY»	

This Notice is issued by the London Borough of Barnet ('the Council') under the above Acts.

The Council believes that a Penalty Charge is payable with respect to the above vehicle for the following alleged traffic contravention: «NOTICES_OFFENCECODE» Being in a Bus Lane in «NOTICES_STREETADDRESS» «NOTICES_POSTCODE» on «NOTICES_ISSUEDATE» at «NOTICES_ISSUETIME»

This alleged contravention was seen and recorded by a camera operator who was observing real time pictures from a road side camera at the time stated.

DO NOT IGNORE THIS NOTICE

The full amount of the penalty charge is £«NOTICES_BUSLANEFULLCHGAMT»
The Penalty Charge of £«NOTICES_BUSLANEFULLCHGAMT» must be paid before the end of the period of 28 days beginning with the date of this notice.

A reduced charge of £«NOTICES_BALOS» is payable

If the penalty charge is paid before the end of the period of 14 days beginning with the date of this notice a reduced amount of £«NOTICES_BALOS» is payable. Payment should be sent to the payment address detailed in the "How to Pay" section of this document.

If the Penalty Charge is not paid before the end of the 28 day period, an Enforcement Notice may be served by the Council on the person appearing to be the owner of the vehicle. The Enforcement Notice will allow formal representations on the following grounds:

That the recipient never was the owner of the vehicle in question;

That the recipient had ceased to be the owner of the vehicle before the date on which the penalty charge was alleged to have become payable;

That the recipient became the owner of the vehicle after that date;

That at the time that the alleged breach of the bus lane regulations took place, the person who was in control of the vehicle was in control of the vehicle without the consent of the owner;

That there was no breach of the bus lane regulations.

Please see the relevant sections for more details of how to pay (“How to Pay”) and what to do if you think that this PCN should not have been issued (“How to Challenge”).

Data Protection statement

The London Borough of Barnet will use any data collected through the issuing of this Penalty Charge Notice for the enforcement of traffic contraventions and other associated purposes. This data may also be disclosed to London Councils and other enforcement agencies. All processing of this data will be in accordance with the Data Protection Act 1998.

HOW TO CHALLENGE

If you do not think this penalty charge notice should have been issued, you should write to us at: London Borough of Barnet, Parking Team, PO Box 27284, London, N11 1YB, e-mail us at parking@barnet.gov.uk or fax us on 0870 889 6796. Please quote your penalty charge notice number and include any available supporting evidence.

If you write to us within 14 days and we do not accept your challenge, we will give you the chance to pay the reduced rate £«NOTICES_BALOS» for another 14 days from when we write back to you.

If the penalty charge remains unpaid, an Enforcement Notice will be sent to the owner of the vehicle, who will then have 28 days to make formal representations against liability for payment of the penalty charge.

If you wish to arrange to view a recording of this alleged contravention, obtain still images from the recording, or if you have any other query about this penalty charge notice, please telephone our helpline on 020 8359 7446. Please note that we can only provide advice on the telephone. If you want to challenge the Penalty Charge Notice, then you must write to us at the address provided above.

HOW TO PAY

Telephone payment: Call our 24 hour automated payment line on 08453 010 206, on any day and follow the instructions. Our system will confirm the amount payable.

Online payment: <http://www.barnet.gov.uk/online-services/online-payments.htm> the system will prompt the amount payable.

By post: Cheques and postal orders can be sent by post. All cheques and postal orders must be payable to "London Borough of Barnet". Ensure cheques are correctly signed and dated. We will not accept post-dated cheques. Ensure postal orders are stamped by the Post Office. Write the PCN number (the "AG number" on the notice) and the vehicle registration number on the back of the cheque or postal order. Ensure the amount in figures is the same as the amount in words.

Postal credit or debit card payments can no longer be made. Please use the automated payment line or the online payment facility to make a payment using your credit or debit card. We accept Visa, Mastercard, Switch, Maestro, Delta, & Solo card payments.

All postal payments should be sent to: London Borough of Barnet, Parking Process, P.O. Box 27284, London N11 1YB. Payment cannot be made by instalments. If insufficient payment is made the balance will be pursued as if the penalty was not paid.

Do not send cash in the post. Please do not send any payment if you want to challenge this penalty charge notice.

CHARGE CERTIFICATE
ROAD TRAFFIC REGULATION ACT 1984 (as amended)
LONDON LOCAL AUTHORITIES ACT 1996 (as amended)

«KEEPER_COMPANYADDRESSE
E»
«KEEPER_OWNERNAME»
«KEEPER_COMPANYNAME»
«KEEPER_FLATFLOORNUMBER»
«KEEPER_BUILDINGNUMBERNA
ME» «KEEPER_STREET»
«KEEPER_LOCALITY»

Date:
«NOTICES_PRTDAT
E»

Penalty Charge Notice Number: «NOTICES_PCNID»
Date of Contravention: «NOTICES_ISSUEDATE»
Location of Contravention: «NOTICES_STREETADDRESS»
«NOTICES_POSTCODE»

We issued an Enforcement Notice on «EN_PRINTEDDATE» which explained that as the person we believe is the owner of the vehicle, registration number «VEHICLE_REG», you had to pay a penalty charge, or write to us explaining why you believed you did not have to pay it.

We are now sending you this Charge Certificate because the penalty charge has not been paid and one of the following applies:

1. You did not make representations as specified on the Enforcement Notice
2. You made representations as specified on the Enforcement Notice and the Council served a notice of rejection, but no appeal was made against the notice of rejection
3. Your appeal against a notice of rejection to the adjudicator was unsuccessful
4. You appealed against a notice of rejection but it was withdrawn before the decision of the adjudicator was made

As a result, the penalty charge has now increased by 50% to £«NOTICES_BALOS» You must pay this increased amount before the end of the period of 14 days, beginning with the date this certificate was served. Please refer to the "How to Pay" section.

If we do not receive payment before the end of the 14 day period, we may register the charge as a debt at the county court (which incurs a further charge of £7.00) and ultimately we may pass the case to bailiffs to recover the debt.

We strongly advise that you deal with this matter now as if it is passed to bailiffs they will add their costs, which may significantly increase the amount that will need to be paid.

If you have any questions about this Charge Certificate, please telephone our helpline on 020 8359 7446

HOW TO PAY

Telephone payment: Call our 24 hour automated payment line on 08453 010 206, on any day and follow the instructions. Our system will confirm the amount payable.

Online payment: <http://www.barnet.gov.uk/online-services/online-payments.htm> the system will prompt the amount payable.

By post: Cheques and postal orders can be sent by post. All cheques and postal orders must be payable to "London Borough of Barnet". Ensure cheques are correctly signed and dated. We will not accept post-dated cheques. Ensure postal orders are stamped by the Post Office. Write the PCN number (the "AG number" on the notice) and the vehicle registration number on the back of the cheque or postal order. Ensure the amount in figures is the same as the amount in words.

Postal credit or debit card payments can no longer be made. Please use the automated payment line or the online payment facility to make a payment using your credit or debit card. We accept Visa, Mastercard, Switch, Maestro, Delta, & Solo card payments.

All postal payments should be sent to: London Borough of Barnet, Parking Process, P.O. Box 27284, London N11 1YB. Payment cannot be made by instalments. If insufficient payment is made the balance will be pursued as if the penalty was not paid.

Do not send cash in the post. Please do not send any payment if you want to challenge this penalty charge notice (see over).

APPENDIX 8: ENVIRONMENTAL RESPONSIBILITY

Strategic objective	Owned by	Initiatives, projects and work streams (Work Description)	Key partners	Deadline	Outcomes or targets aimed for in 2011/12	Monitored via
Work with residents to reduce CO2 emissions in Barnet SCS Links: Environmentally Responsible	Planning, Environment & Regeneration Assistant Director	Initiative: Work with partners to identify ways in which the council can reduce carbon emissions across the Borough	All Planning, Environment & Regeneration Contractors namely GLL, Volker Highways, Greenspaces	31 st March 2012	Performance target: Reducing our own emissions by 1% for LBB fleet usage and ensure similar compliance from suppliers through our contracts	SMB

SCHEDULE 3

PAYMENT MECHANISM

A1. Payment Mechanism

Payment will be made against the certified amount approved by the Council's Representative each month. The certified amount will consist of three parts:

- Monthly proportion of the annual Target Cost as defined in Schedule 11.
- Any changes authorised by the Council's Representative due to variations or Special Events undertaken by the Service Provider.
- Performance Related Payment against Key Performance Indicators as described in paragraph B below.

If agreement has been reached on the revision to the Target Cost as a result of the innovation or efficiency then the certificate may be amended to recompense the Service Provider for identifying such savings.

A2. Target Costs

- 2.1 The Target Cost of the Services will be shown against individual items in Schedule 11. The following shall be included:
- 2.2 Labour and staff, including all direct costs in connection with these.
- 2.3 Supply and administration of materials, goods, storage and costs in connection with the Services.
- 2.4 Accommodation costs including all cost of utilities and insurance for each of the premises as outlined in the Specification.
- 2.5 All equipment and transport costs in connection with the Services provided.
- 2.6 I.T. Systems costs (where applicable), consumables, telecommunications costs and staff costs associated and provided by the Service Provider.

B. Performance Related Payment

- 1.1 Payment will be dependent on the Service Provider meeting the key performance indicators (KPIs) as detailed in Schedule 4. The mechanism is designed to measure the service delivery items that the Council considers essential to the Services. The performance related element of payment will be calculated in accordance with and subject to the provisions of this Schedule

and, where payable, shall be not exceed the maximum percentage set out in the Target Cost Schedule ("**Maximum Performance Payment**").

- 1.2 Overheads will be deemed to cover all costs incurred by the Service Provider in carrying out the Service and include but not be limited to the following:
 - Headquarters and corporate charge
 - General Insurance including Employers Liability, Public Liability and all risks
 - Training, recruitment, HR and all Financial Charges
 - General obligations, liabilities and risks involved in the provision of the Services
- 1.3 During the duration of the contract the sum calculated for the Maximum Performance Payment shall be paid or deducted in whole or in part as set out below.
- 1.4 The annual Maximum Performance Payment will be divided into twelve equal parts to produce a maximum amount payable each calendar month. This amount shall be divided by six to produce a Bit. Each month, one Bit (or in some circumstances as set out below, two Bits) will be added or deducted from the amount paid to the Service Provider, depending on whether or not the KPIs have been met. The operation of the payment mechanism is illustrated in Table 1 overleaf. The Maximum Performance Payment is subject to any adjustment as outlined in item A1 above and Table 2 below.
- 1.5 All KPIs will be measured on the basis of whether they have been met or not met.
- 1.6 The Service Provider will provide the Council with monthly KPI performance reports, in the format agreed.
- 1.7 For the first two months from the Commencement Date, due to the unavailability of performance data, the initial performance payment will be set as two Bits. After the second month from the Commencement Date, performance over each month will be reviewed as per **Clause 15** of the Contract and if the Service Provider has achieved the four KPIs, then a bit will be added. If the Service Provider has not achieved the four KPIs, a Bit will be deducted. Bits will be added or deducted in subsequent months, depending on performance.
- 1.8 If the Service Provider achieves four months of good performance from the Commencement Date (not counting the first 2 months from the Commencement Date) he will achieve the maximum set at six Bits. To

continue to achieve the maximum the Service Provider must maintain its performance at the specified level.

- 1.9. If Performance targets are not met, there will be a reduction in the Performance Payment. Given that the initial payment is set at two Bits for the first two months only, if there are two months of decline from the start of the measurement process, the Performance Payment will fall to zero. If performance continues to decline; once below the zero point deduction of Bits will be doubled, so that a maximum deduction of Bits can be reached in only three months of continual decline resulting in a payment significantly below cost.
- 1.10. This process is intended to allow the Service Provider to show its staff how performance directly affects contract payments. As the targets may increase over time, the Service Provider will be required to manage its staff more effectively to achieve or retain the performance payment.
- 1.11. If performance falls for three consecutive months (the "zero level"), the Council's Representative will require appropriate intervention from the Service Provider. This will be discussed at a Special Review Meeting in accordance with the provisions of **Clause 15.3**.

Table 1

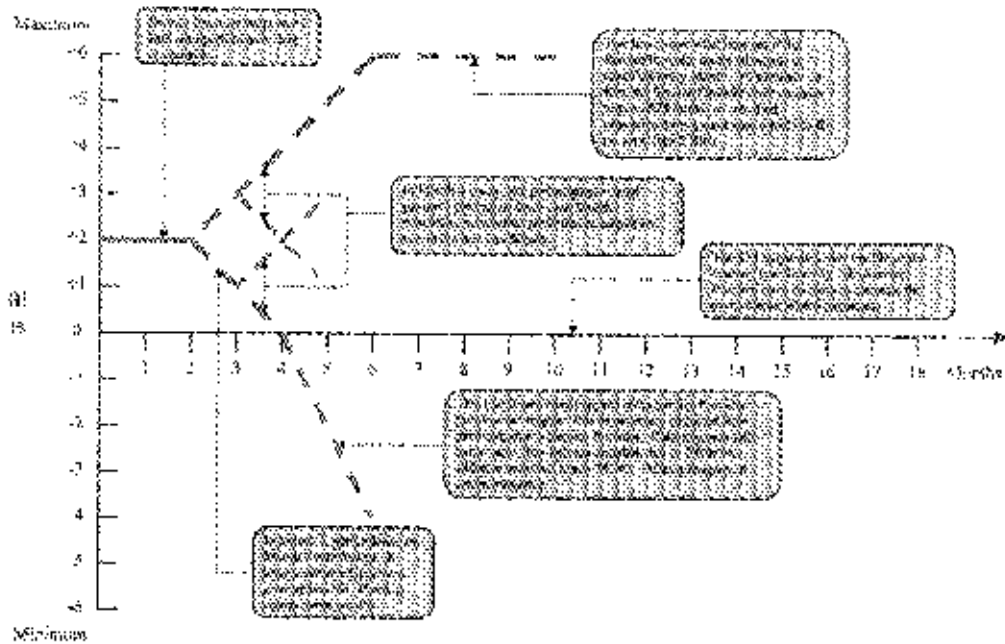


Table 2

Months	3-12	13-25	26 on
Target number of indicators to be met.	6	11	15
	<u>must include:</u> KPI 2 KPI 3 KPI 9 KPI 10 KPI 11 KPI 15	<u>must include:</u> Target KPIs for months 3 – 12 and KPI 1 KPI 4 KPI 5 KPI 6 KPI 7	<u>must include:</u> All 15 KPIs

SCHEDULE 4

KEY PERFORMANCE INDICATORS

1. Measurement, Records and Monitoring

- 1.1 The Service Provider will submit monthly reports of performance against KPIs in the format specified by otherwise agreed with the Council from time to time
- 1.2 The Council reserves the right to check records as is considered appropriate in order to ascertain the Service Provider's performance is to the required standards. In addition, it is anticipated the Council will conduct more detailed checks on a quarterly basis including 'reality spot checks' at regular intervals. Irrespective of actual performance a deduction of three 'Bits' will be made for that particular month in the event these checks prove the Service Provider has misrepresented its performance against the KPI's.
- 1.3 Such a matter would be considered a serious breach within the relationship of trust this Contract is intended to foster between the Council and Service Provider. In such a case, the Council may consider that the Service Provider is unable to continue fulfilling his contractual obligations and it would therefore be necessary to consider termination unless the Council can be satisfied that performance can be recovered and raised to an acceptable standard within an agreed period of time.

2. KPI Introduction

- 2.1 The following section outlines each KPI in detail and highlights the areas that the Council will expect to be incorporated within any measurement whether the KPI has been met or not.
- 2.2 It is the Council's intention to achieve realistic and workable KPI's, all of which can be measured properly and accurately. The Service Provider will be expected to outline as to how the KPI is to be achieved together with any levels of tolerance within which it will operate for each KPI except where levels have been specified or where there can be no tolerance.
- 2.3 It is acknowledged that the Services may undergo a series of changes during the life of this Contract Term due to the potential change of parking patterns and as other factors materialise which may affect the

Council's Parking Plan and/or the enforcement operation. There may be performance measures which will require variation as the enforcement operation matures. The Change Control Procedures outlined in Schedule 5 will be applicable in any such event. Additionally, the Council may review the tolerance levels in the KPIs throughout the Contract Term, in discussion with the Service Provider, and these may be amended as considered appropriate.

3. Changes to KPIs

The Council and the Service Provider may at any time request a change to any part or all of the Key Performance Indicators set out in this schedule. Any such amendments to the Key Performance Indicators shall be implemented in accordance with Schedule 5 (Change Control Request Procedure).

4. KPI's

Effective Parking Enforcement

Measurement Summary	Details	Information Sources
<p>Coverage of Patrol requirements and responsiveness to enforcement requests</p> <p>The Schedule of Enforcement Patrols will be agreed between the Service Provider and the Council and may be subject to variation from time to time.</p> <p>There is a tolerance level of 10%, which is likely to be adjusted during the life of the Contract.</p> <p>The Service Provider should note that the Council may limit any perceived levels of over-patrolling, e.g. to compensate for under-patrolling.</p>	<p>The Schedule of Enforcement Patrols will be agreed between the Service Provider and the Council. The Service Provider will be expected to meet at least 90% of the scheduled patrols for each individual road or car park, unless previously agreed with the Council.</p> <p>The Service Provider will carry out all patrols according to the Specification (Schedule 2) and check all vehicles in the road, identifying contraventions and issuing PCNs according to Council Guidelines.</p> <p>The Service Provider will self-assess their performance and report to the Council who will then inspect and verify the information.</p> <p>Note – visits to streets that are broken by detours into adjoining streets count as one visit. There must be a distinct time difference between visits. In cases where two or more CEOs are present in one street, this will count as one visit.</p> <p>It is acknowledged that CEOs may walk through part of beats that are not allocated to them when travelling to their allocated beats and they must enforce on those</p>	<p>The Service Provider will self-monitor and provide the Council with a report of the patrols met.</p> <p>The Council may access information from the I.T. system to verify the Service Provider's report.</p> <p>GPS tracking facilities will collate information and confirm that the logged patrols agree with the actual patrols performed.</p>

Measurement Summary	Details	Information Sources
<p>KPI2 The volume and effectiveness of input resources</p> <p>The Service Provider should note that the Council may limit any perceived levels of over-deployment, e.g. to compensate for under-deployment.</p> <p>There is a tolerance level of 5% which is likely to be adjusted during the life of the Contract.</p>	<p>beats against any vehicles that are found in contravention. However, merely walking through such a beat does not constitute a visit to that beat for statistical purposes.</p> <p>Enforcement requests sent to the Service Provider will be recorded by the Council. The Service Provider will keep records of deployment requests and response times.</p>	<p>The Service Provider will self-monitor and provide the Council with a report of the number of CEOs deployed and their effectiveness. This must also include the percentage of deployed hours against employed hours and the amount of overtime worked by individual CEOs, showing a breakdown of effectiveness.</p> <p>The number of deployed CEOs will be obtained from the I.T. system based on the number of CEOs who have logged into a hand held computer and completed a full shift. This information will be used to verify the Service Provider's report, in addition to details recorded in CEOs hand written pocket-books (if applicable).</p>
<p>The minimum number of effectively deployed CEOs and the percentage of deployed/employed hours will be as set out in the Contract Plan included in the Service Provider's tender submission. To satisfy the KPI, the ratio between the deployed and employed hours must be as set out in the Contract Plan. The Service Provider will self-assess their performance and report to the Council who will then verify the information.</p> <p>Effectiveness will be assessed by activity levels to include:</p> <ul style="list-style-type: none"> • Street Visits • Vehicles logs • PCNs issued • Fault reports • Abandoned vehicle reports <p>The Service Provider will be expected to</p>	<p>The Service Provider will self-monitor and provide the Council with a report of the number of CEOs deployed and their effectiveness. This must also include the percentage of deployed hours against employed hours and the amount of overtime worked by individual CEOs, showing a breakdown of effectiveness.</p> <p>The number of deployed CEOs will be obtained from the I.T. system based on the number of CEOs who have logged into a hand held computer and completed a full shift. This information will be used to verify the Service Provider's report, in addition to details recorded in CEOs hand written pocket-books (if applicable).</p>	<p>The Service Provider will self-monitor and provide the Council with a report of the number of CEOs deployed and their effectiveness. This must also include the percentage of deployed hours against employed hours and the amount of overtime worked by individual CEOs, showing a breakdown of effectiveness.</p> <p>The number of deployed CEOs will be obtained from the I.T. system based on the number of CEOs who have logged into a hand held computer and completed a full shift. This information will be used to verify the Service Provider's report, in addition to details recorded in CEOs hand written pocket-books (if applicable).</p>

Measurement Summary	Details	Information Sources
	meet 95% of the agreed activity levels.	

Good Quality, Motivated and Informed staff

Measurement Summary	Details	Information Sources
<p>KPI 3 Initial CEO training and accreditation (BPA/City & Guilds certificate)</p> <p>Initial processing staff training and accreditation (BPA/City & Guilds certificate)</p> <p>There is a zero tolerance level associated with this KPI.</p>	<p>This element of the KPI is considered achieved when all CEOs meet the training requirements (as per the specification, including training in local modules). The Service Provider shall provide copies of all training related certificates to the Council.</p> <p>The Service Provider shall confirm that a module has been completed in providing information on the Council's policies.</p> <p>No CEO shall commence work duties until the training has been certified.</p> <p>This element of the KPI is considered achieved when all processing staff meet the training requirements (as per the specification, including training in local modules).</p> <p>The Service Provider shall confirm that a module has been completed in providing information on the Council's policies.</p>	<p>The Service Provider shall provide copies of all training related certificates to the Council and a monthly update of which CEOs have been accredited. No CEO shall commence work duties until the training has been certified and agreed with the Council's Representative.</p>
<p>KPI 4 Regular assessments and delivery of on-going training</p> <p>There is a zero tolerance level associated with this KPI.</p>	<p>A performance management plan will need to be set at the beginning of each year and the Service Provider will be required to demonstrate how this is achieved.</p> <p>An individual assessment format shall be agreed between the Service Provider and</p>	<p>The Service Provider shall provide copies of all training related certificates and assessments to the Council at monthly meetings. The assessments shall be evaluated against the agreed format and all certificates shall be checked to substantiate</p>

Measurement Summary	Details	Information Sources
<p>KPI5 Staff Retention</p> <p>There is a tolerance level of 5% which is likely to be adjusted during the life of the Contract.</p>	<p>the Council.</p> <p>This KPI will be considered met once all staff in post have received their assessments in the agreed format and timescale and have received the required ongoing training.</p> <p>At the request of the Council details of staff assessments and training shall be provided by the Service Provider.</p> <p>The Service Provider will be required to ensure that staff turnover shall not exceed an annual mean of 10%.</p> <p>This will include all staff employed on the contract including CEOs, processing and administrative staff and the Contract Manager.</p>	<p>they are to the required standard.</p> <p>The Service Provider will submit reports showing the employees in post at the end of each month and the level of staff turnover.</p>
<p>KPI6 The level of complaints & complaints handling</p> <p>The Council receives an average of 150 customer complaints related to the Parking Service annually. The Service Provider will be required to maintain the volume of complaints below this level.</p> <p>There is a tolerance level of 5% on both the level of complaints and the complaint handling, which is likely to be adjusted during the life of the Contract.</p> <p>A Customer Complaint is defined as a complaint by a Customer regarding an aspect of the Service Provider's performance where there is evidence of one of the</p>	<p>Any written complaints received by the Service Provider about a member of staff must be investigated and the Service Provider is expected to respond to at least 95% of these within ten (10) working days. A copy of the complaint and the reply must be sent to the Council's Representative.</p> <p>Any written complaint about a CEO received by the Council will be copied to the Service Provider.</p> <p>An acceptable level of complaints will be agreed between the Service Provider and the Council's Representative and the Council will expect this level to remain within an agreed percentage tolerance during the life of the contract. The Council</p>	<p>The Service Provider must keep records of all complaints.</p> <p>The Service Provider may be required to produce information to assist in monitoring this indicator.</p> <p>Resolution will be defined as achieved if no further correspondence relating to the complaint is received by either the Service provider or the Council directly.</p>

Measurement Summary	Details	Information Sources
<p>following:</p> <ul style="list-style-type: none"> • the provision of incorrect information; or • failures to take account of relevant matters in coming to a decision; or • offensive/insensitive behaviour; or 	<p>will expect resolution to be achieved using the 'right first time' methodology.</p>	
<p>failure to respond to the customer, by the Service Provider or its Personnel, where the Customer has made a complaint to the Council, the Service Provider, their local ward Councillor or the Local Government Ombudsman (stage 2 complaint), because the Service Provider has not responded appropriately to the Customer under the terms of the Council's complaints procedure for the Schemes.</p>		

Issue of Good Quality PCNs

The definition of a good quality PCN is one which has not been cancelled for any one of the reasons listed below (Details column).

Measurement Summary	Details	Information Sources
<p>1007 PCNs cancelled due to CEO Error</p> <p>The Service Provider will be required to ensure that PCNs cancelled as a result of a CEO error are minimised and actively work towards decreasing this value annually.</p>	<p>The Service Provider will be expected to meet a standard such that no more than 3% of all PCNs issued are cancelled due to a CEO error as a result of:</p> <ul style="list-style-type: none"> • Incorrect factual information (e.g. street name/location error, no record of VRM or VEL). • Input error on handheld computer (HHC) or 	<p>The Service Provider will provide the Council with performance information. This information will be compared with data sourced from the I.T. system.</p>

Measurement Summary	Details	Information Sources
<p>There is a tolerance level of 1% which is likely to be adjusted during the life of the Contract.</p>	<p>pocket book</p> <ul style="list-style-type: none"> • Failure to provide appropriate diagrams (where applicable) • Illegible or poor quality supplementary evidence • PCN cancelled as a result of misconduct or a result of proven/upheld complaint against a member of the Service Providers staff (does not include benefit of doubt cases). • Incorrect issue of PCN, i.e. failure to issue according to Council guidelines. 	
<p>Void Tickets</p> <p>The Service Provider will be required to ensure that voided PCNs are minimised and actively work towards decreasing this value annually.</p> <p>There is a tolerance level of 1% which is likely to be adjusted during the life of the Contract.</p>	<p>The Service Provider will be expected to meet a standard such that no more than 3% of all PCNs issued are voided due to CEO action or request after printing.</p> <ul style="list-style-type: none"> • A PCN will not be classified as a void if the CEO issues a substitute PCN. 	<p>See above</p>

Other Services.

The measurements listed below relate to the provision of efficient and effective services.

Measurement Summary	Details	Information Sources
<p>PCN Processing Services There is a zero tolerance level for this indicator.</p>	<ul style="list-style-type: none"> • Failures to log, scan, process or correctly allocate any correspondence within the required timescales. 	<p>Performance information will be provided by the Service Provider.</p>
<p>PCN Response Services There is a tolerance level of 1% which is likely to be adjusted during the life of the Contract.</p>	<ul style="list-style-type: none"> • Failure to issue/re-issue a bus lane PCN • Failure to despatch any other statutory/recovery documentation within the required timescales; including Orders for Recovery and Warrants of Execution. 	<p>The Council will input into the assessment of this indicator based on the responses to challenges where it receives complaints; representations, appeals and witness statements.</p>
<p>The Council's Representative may assess individual instances of failure based on the effect on the PCN processing operation, e.g. whether or not the failure to reply properly to a challenge has resulted in the loss of a PCN at appeal or cancellation at the representations stage.</p>	<ul style="list-style-type: none"> • Failure to issue Bus Lane Penalty Charge Notices within the required timescales. • The conversion of captured contraventions from the automated incident capture system must be maintained at current capture rates of approximately 90%. If the Service Provider determines that compliance has resulted in a decrease in incident capture and the resulting PCNs, this must be flagged at the monthly meetings so that the conversion rate could be adjusted or the Council may seek to relocate the relevant camera. 	<p>The Council will also use the IT system to identify cases where the Service Provider fails to scan relevant documentation onto the associated case or has failed to follow the statutory process.</p>
<p>The question of whether a Penalty Charge cancellation is due to "Service Provider Error" shall be determined by reference to a list of reason codes</p>	<ul style="list-style-type: none"> • Failure to take the required action to update the IT system as required, or to record case details correctly, within the appropriate timescales. 	<p>Performance information will be provided by Service Provider.</p> <p>The Council will input into the assessment of this indicator based on the responses to challenges where it receives complaints; representations; appeals and witness statements.</p>

	<p>for Penalty Charge cancellation corresponding to the reasons set out but not be limited to below, and as may be further determined by the Council from time to time.</p> <ul style="list-style-type: none"> • Failure to respond to both statutory and non statutory correspondence within specified timescales. • Failure to respond accurately and fully to challenges and other non-statutory correspondence within the required timescales. • Failure to process Representations and Appeals within required timescales or accurately • Appeals non-contested or refused due to poor or incorrect Representation response; or • Failure on the Service Provider and their subcontractors to deliver a compliant statutory and customer service to the PCN recipient. <p>The Service Provider will be expected to meet a standard such that no more than 1% of all PCNs issued are cancelled as a result of an error made by the Service Provider.</p>	
<p>KPI#1 Banking and Financial There is a zero tolerance level for this indicator (except the last item where a tolerance level may be agreed) although individual failures may be considered on their own merits.</p>	<p>The Service Provider will maintain the weekly collection rate in line with budget expectations as well as maintain the industry average for the recovery of a PCN at £45 and work to increase the value of this recovery rate for the duration of this contract. This element of the KPI will be considered met if monthly revenue summary information demonstrates that agreed activity levels are being met across all work streams.</p>	<p>Performance information will be provided by Service Provider.</p> <p>The Council will also agree activity levels with the Service Provider at the monthly meetings and monitor information using the IT and SAP systems.</p> <p>Note – notwithstanding the requirements of this KPI, where any errors in banking have</p>

	<ul style="list-style-type: none"> Failure to account for monies taken on behalf of the Council. Failure to provide the necessary level of facilities for cashless payment as outlined in the specification. Late/delayed banking of monies unless otherwise agreed with the Council's Representative. Failure to carry out adequate reconciliation of monies and/or errors in banking and accounting processes. (Tenderers are invited to suggest a tolerance level for this item). 	<p>incurred a financial loss to the Council, the amount lost will be deducted from the performance payment.</p>
<p>KPI12 Lines and Signs Maintenance</p> <p>This indicator relates to the maintenance of lines and signs as outlined in the specification.</p>	<ul style="list-style-type: none"> Failure to report defects or to attend to any reported defect and effect the necessary repair within the required timescales. Cases where a PCN has been cancelled as a result of a defect with either lines or signs must have an associated works order to rectify the defect. 	<p>Performance information will be provided by Service Provider.</p> <p>The Council may verify this information from its own observations, representations and appeals data.</p> <p>The Council will also use information provided at the monthly meetings to confirm whether remedial work has taken place against all instances of repair requests and/or identification.</p>
<p>KPI13 Abandoned Vehicles</p>	<ul style="list-style-type: none"> The Service Provider is to report all suspected abandoned or nuisance vehicles, observed during enforcement patrols. A description of an "abandoned or nuisance vehicle" is to be agreed between the Council and the Service Provider. The Service Provider is to report how many vehicles have been removed after investigation. 	<p>The Service Provider will self-monitor and provide the Council with a report of the number of abandoned or nuisance vehicles that they have reported and removed.</p> <p>The Council may use information relating to complaints about this service to assess this KPI.</p>
<p>KPI14 Other</p>	<ul style="list-style-type: none"> Failure to provide information required to deal with FOI requests within an agreed timescale. 	<p>This indicator will be monitored by the Service Provider through quality checks and</p>

	<ul style="list-style-type: none"> Breaches of the Data Protection Act by the Service Provider or a member of the Service Provider's staff. Compliance with Health & Safety legislation, Council policies and procedures. Equalities Act 	<p>by the Council through monitoring of complaints.</p> <p>The Service provider will also be required to provide such relevant information that may be required at the monthly meetings as agreed with the Council.</p>
<p>10.15 Cashless Service</p> <p>There is a tolerance of 5% on elements of this service not associated with financial management and service availability.</p>	<p>The Service Provider will be required to provide a cashless parking system for on and off street parking.</p> <p>As it is the intention of the Council to remove all Pay and Display machines, the Service Provider will also be required to offer an alternative payment mechanism.</p> <ul style="list-style-type: none"> Payments taken on behalf of the Council must be banked within 48 hours in a format agreed with the Council. The Service Provider will provide reports to the Council on a weekly basis in a format agreed with the Council. This will include but is not limited to the number of transactions, charges related to additional services, VAT (including VAT on services) and service availability. The Service Provider will ensure that service information is available to service users in a manner that complies with relevant legislation, the Council's priorities and the design principles of the One Barnet Programme. 	<p>This indicator will be monitored by the Service Provider through quality checks and reports provided by the Service Provider.</p> <p>The Council will require access to any relevant reporting system to verify such reports from the Service Provider and to undertake any additional reporting that may be required to monitor this contract.</p> <p>The Council will also undertake associated risk audit activity to verify transaction data.</p>

SCHEDULE 5

CHANGE CONTROL PROCEDURES

1. PRINCIPLES

- 1.1 Where the Council or the Service Provider see a need for a change to the Services or the Contract, then either Party may at any time request a change and propose an amendment to this Contract in accordance with the procedure set out in paragraph 2 below.
- 1.2 Neither the Council nor the Service Provider shall unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties to this Contract shall not be effected until a change control note in the form attached to this **Schedule 5** (a "**Change Control Note**") has been signed by the authorised signatory of both Parties.
- 1.4 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 sub-contractors 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) 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 Council Representative 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 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 terms of the Contract.

2.7 **Authorised Signatories**

2.7.1 Where the change 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 Council's Representative for changes up to the value set out in the Schedule of Variables and such person as set out in the Council's own constitution and any contract standing orders for changes above this value;

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

Change Control Note

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Addition or deduction from the Target Cost:

Service Provider:

Signed:

Council Response: Accept/Reject

Signed:

Valid Until Date:

Note: The format of the Change Control Note may vary from time to time in circumstances where additional information is deemed necessary by the Council of the Service Provider in order to accurately reflect the nature of the change.

SCHEDULE 6

TRANSFERRING EMPLOYEES

The Council provided this information to the Service Provider on Monday 16th April 2012 at 11:28 am.

1. Personnel.No.
2. New Employer
3. Project Name
4. Code Identifier
5. Personnel Number
6. Salutation
7. Forename
8. Personnel Subarea
9. Organisational Unit
10. FTE
11. Position No
12. Position Name
13. Contract type
14. Fixed Term Contract End Date
15. Term-Time Only Working
16. Normal Place Of Work
17. Min SCP
18. Max SCP
19. Actual SCP
20. Bar Point
21. Salary Range From
22. Salary Range To
23. Annual salary
24. Work Pattern
25. Contractual Weekly Hours
26. Number of days worked per week
27. Shift allowance
28. Contractual Night Work T/S
29. Contractual Sat Work
30. Contractual Sat Work Hours Per Month
31. Off Scale Payment T/S
32. Contractual bonus arrangement
33. Contractual Overtime 1.5 T/S
34. Hours Per Month
35. Contractual Overtime Rate
36. Call Out Allowance (Annual)
37. Standby Allowance T/S
38. First Aid Allowance (monthly)
39. Essential Car Allowance (Annual)
40. Birth date
41. London Borough of Barnet Start Date
42. LBB Length of Service to Date 05.04.2012
43. LBB Length of Service at Point of Transfer (01.05.2012)

44. Continuous Service Start Date
45. CS Length of Service to Date 05.04.2012
46. CS Length of Service at Point of Transfer (01.05.2012)
47. Pension Scheme (LGP)
48. Employee Pension Contribution (%)
49. AVC
50. NI Number
51. NI category (GB)
52. Does Employee Hold NI Exemption Certificate? (if yes, give details)
53. Tax Code
54. Gender
55. Salary Sacrifice Type
56. Any Other Addition to Salary e.g. Acting up, Secondment, Honoraria
57. Any Other Deduction from Salary including Loans and Court Order
58. Student Loan Start Date
59. Student Loan End Date
60. Absence Quota Type
61. Carry Forward Annual Leave From Last Year (01.04.2011-31.03.2012)
(Days/Hrs)
62. Annual Leave Entitlement (including carried over from last year)
63. Annual Leave Deduction to Date (03.04.2012)
64. Untaken Annual Leave to Point of Transfer (01.05.2012)
65. Sick Absence Days in Last 12 Months (03.04.2011-03.04.2012)
66. Previously TUPE Transferred From Another Organisation That is
Relevant to LBB contract
67. Paternity/Maternity Leave
68. Paternity/Parental/Maternity Leave Days
69. Manager's name
70. Pay Protection PS Group as at 01.04.2012
71. Actual SCP as at 01.04.2012
72. Protected SCP
73. Current SCP Monthly Amount
74. Protected SCP Monthly Amount
75. Protected Pay Monthly Amount
76. Pay Protection Start Date
77. Pay Protection End Date
78. Increments
79. SCP as at 01.04.2012
80. London Weighting
81. Address Record Type
82. Street and House Number
83. 2nd address line
84. Town/County
85. Town
86. Post Code
87. Pay Frequency
88. Payment Method
89. Pay Date
90. Bank sort code
91. Bank name
92. Post bank no

93. Bank Account
94. Working Time Directive Opt Out (Yes-give Details)
95. Outstanding Claims for Work-Related Injuries
96. Conduct /Capability/Grievance in Progress
97. Unspent Warning
98. Disciplinary Action Taken Against Employee in Last 2 Years
99. Grievance Action Raised by Employee in The Last 2 Years
100. Legal Action Brought Against LBB By the Employee in Last 2 Years
101. Potential Legal Action To Be Brought Against LBB By the Employee
102. DDA Adjustments in Place
103. Comments
104. Right to Work in UK (Yes/No) to Work in UK
105. Work Permit Expires

SCHEDULE 7

PARKING PLAN

Planning, Environment & Regeneration Parking Service

***Team Plan
2011 -12***

Parking Service Team Plan, 2011/12

1. Introduction

1.1 Purpose / Mission of Team

Efficient transport provision within the borough is vital to the local economy and quality of life of both residents and visitors and the Parking Service has an essential role to play in the maintenance of order on the highway. Within Barnet, effective control of parking is essential in combating the negative impact of parking on traffic movement, road safety, and essential servicing.

The Parking Service is responsible for providing and managing on and off-street parking services, enforcing on-street parking controls throughout Barnet. The on-street service comprises installation and maintenance of lines, signs, and pay and display machines, patrolling the streets and enforcing the parking regulations through the issue of penalty charge notices (PCNs). In addition it is responsible for managing permissions and suspensions of its on-street space. Off-street, Barnet operates car parks across the borough, managing their marketing, pricing, maintenance and development. There is also a significant administration function which deals with the processing of over 150,000 PCNs per year.

1.2 Setting the Scene

2010/11 saw completion of the implementation of the Civica CE system which extended the digital platform. The main challenge during this period has been organisational as a structure introduced in April was changed again before it had been fully implemented.

Changes in both the economic and political climate have also had an influence as the service has struggled to reach the required income levels. Ambitious targets have been set for 2011/12 and the focus will be on delivering these and completing the Parking Option project.

2. Team Priorities – 2011/12

The table below outlines the key activity that the team will deliver in 2010/11 under each of the Council's three new corporate priorities.

Corporate Priority – Better services with less money

Strategic Objective	Owned Initiatives, Projects and Workstreams	Key Projects	Heading	Outcomes of Services aimed for in 2011/12	Monitored via
<p>Focus services around the customer to achieve a better customer experience and better value for money through bundling and commissioning services differently and through service transformation. (VFM)</p> <p>SCS Links: No obvious links</p>	<p>Parking Recovery Plan (1) Collection of fees for permitted casual parking both on the street and in car parks (Pay and Display and Pay by Phone) Ensuring continuing revenue stream whilst removing machines</p>	<p>Verrus PayPoint Parkeon Metric Cale BriParc Traffic & development</p>	<p>All machines to be taken out of service by September 2011</p>	<p>Q1 Cale machines to be removed (40) Maintenance arrangements to be put in place for Parkeon (160) and Metric (250) machines to hold availability at 80% PayPoint arrangements for cash payments to be put in place Work to commence on rewriting TMOs Schedule and plan to be prepared for replacing all timeplates and signs Equalities Impact Assessment to be completed</p> <p>Q2 Revised TMOs to be made All timeplates and signs to be changed Machine removal to commence Monitoring of impact on revenue to be initiated Cash collection service by Finance to be wound up</p>	<p>Parking Service Management Team (PSMT)</p>

Strategic objective	Owned by	Initiatives, projects and work streams (Work Description)	Key partners	Deadline	Outcomes or targets aimed for in 2011/12	Monitored via
					<p>Q3 Machine removal to be completed Monitoring of impact on revenue to continue and be reported Maintenance Team to be wound up</p> <p>Q4 Cashless payment methods now Business as Usual (BAU) Monitoring of impact on revenue to continue and be reported</p> <p>Q1 Report to be prepared showing outcomes of 2010 pilot at selected sites Mechanism to be developed for Enforcement to report faulty signs or lines that prevent a PCN being issued Mechanism to be developed for reporting on PCNs cancelled because of defective signs or lines System to be developed for reviewing reports and ensuring an appropriate level of maintenance Investment project to be closed down</p> <p>Q2, 3, 4 Reporting on signs and lines issues to be incorporated into BAU</p>	Parking Service Management Team (PSMT)
	Enforcement Manager	Parking Recovery Plan (2) Investment in repairs to signs and lines to generate additional income by enabling the issue of more Penalty Charge Notices (PCNs) Project to be closed down as unproductive but an ongoing maintenance level to be set	All within service	Project to be closed by May 2011		
	Enforcement Manager	Parking Recovery Plan (3) Civil Enforcement Officer activity levels Ensuring that sufficient enforcement hours are deployed, that productivity	All within service	To continue throughout the year	<p>Q1 Input hours to be matched to the weekly profile underpinning an annual issue of c140,000 PCNs at an issue rate of 2 per hour Use of overtime to continue whilst</p>	Parking Service Management Team (PSMT)

Strategic objective	Owned by	Initiatives, projects and work streams	Key parameters	Deadline	Outcomes or targets subject for monitoring	Monitored by
	<p>Work Reception</p>	<p>levels are maintained, and that PCNs are of sufficient quality to ensure an acceptable payment level</p>			<p>return on investment remains favourable</p> <p>Use of agency CEOs to continue whilst report is prepared on the impact of legislative changes regarding agency workers</p> <p>PCN quality to be maintained so that the proportion cancelled due to CEO errors is less than 3%.</p> <p>PCN quality to be maintained so that the proportion paid at discount is greater than 3%.</p> <p>Performance management of CEOs to be undertaken to ensure that the above levels are maintained</p> <p>Q2</p> <p>Recommendations from report on agency staff to be implemented</p> <p>Review to be undertaken of the appropriateness on resource levels, organisation, and deployment of enforcement staff</p> <p>BAU activities to continue as in Q1</p> <p>Q3</p> <p>Recommendations from report on resource levels, organisation, and deployment to be implemented</p> <p>BAU activities to continue as in Q1</p> <p>Q4</p> <p>BAU activities to continue as in Q1</p>	

Strategic objective	Owned by	Initiatives, projects and work streams	Key partners	Timeline	Outcomes or impacts aimed for in 2011/12	Monitored by
Maintenance Manager	<p>Parking Recovery Plan (4) Introduction of controls on free bays within Controlled Parking Zones and the introduction of charges in free car parks</p>	Traffic & Development	All work to be completed by March 2012	<p>Q1, Q2, Q3, Q4 To monitor progress and report on impacts</p>	Parking Service Management Team (PSMT)	
Parking Manager	<p>Parking Recovery Plan (5) Fees and Charges Review Although the revised fees and charges are being introduced on 21 March 2011 (within 2010/12) no modelling was done and there will be a need to monitor impacts and make in-year adjustments</p>	All within service	To continue throughout the year	<p>Q1, 2, 3, 4 Activity levels and income on each revenue stream to be monitored weekly Mitigating action to be taken as necessary</p>	Parking Service Management Team (PSMT)	
Parking Manager	<p>Parking Recovery Plan (6) Reorganisation Project The introduction of lean processes into the parking back office, deletion of the Quality and Customer Service Team, and discontinuance of active CCTV enforcement was largely undertaken in 2010/11 Some final implementation together with monitoring and review will be carried over into 2011/12</p>	JTW and Highways Correspondence Civica Possible third party provider	May 2011	<p>Q1 Arrangements to be put in place for all incoming CCU / FOI for parking to be combined with core directorate activity Systems for processing of ANPR captured PCNs in Bus Lanes to be finalised and bedded in Review to be undertaken and implemented for handling of incoming and outgoing mail</p> <p>Q2 Review to be undertaken of the first quarter on the new structure and any necessary changes made</p> <p>Q3, 4 Ongoing operation of new structure to be monitored</p>	Parking Service Management Team (PSMT)	

Strategic Objective	Owned by	Initiatives, projects and work streams (Work description)	Key partners	Deadline	Outcomes or targets aimed for in 2011/12	Monitored by
	Parking Manager	Parking Recovery Plan (7) Parking Options Outsourcing of the parking operation	Major Projects Finance Procurement	April 2012	Q1 Issue OJEU Notice Issue ITT Q2 Receive bids Q3 Select delivery partner Q4 Mobilise for April 2012	Parking Options Project Board
	Information Manager	Improving the Back Office Making the administration of the service more efficient and effective	Civica Bailiffs (JBW, CCS Enforcement, Equitor, Jacobs)	April 2012	Q1 Complete upgrade of Civica system from PES to CE for all newly issued PCNS Review systems for processing Resident Permit applications and implement recommendations Develop systems to ensure that the back office can keep pace with enforcement activity Q2 Implement process to allow motorists to view Bus Lane evidence packs online Q3 Migrate all data from PES to CE and close down PES	Parking Service Management Team (PSMIT)

Strategic objective	Owned by	Initiative, projects and work streams (Work Description)	Key priorities	Deadline	Outcomes or targets aimed for in 2011/12	Responsible
Make sure we get best value from resources across the public sector including our people and assets (VFM) SCS Links: No obvious links	Enforcement Manager	Performance Management (Productivity) Ensure that the productivity of Civil Enforcement Officers is maintained at the necessary levels through rigorous performance management and the application of the Council's policies and procedures	HR	Ongoing	Q4 Develop a publication scheme to reduce the burden of requests for information Q1, 2, 3, 4 Overall activity levels to be matched at an issue rate of 2 per hour PCN quality to be maintained to so that the proportion cancelled due to CEO errors is less than 1% PCN quality to be maintained to so that the proportion paid at discount is greater than 48%	Parking Service Management Team (PSMT)
	Information Manager	Performance Management (Productivity) Ensure that the productivity of Information Officers is maintained at the necessary levels through rigorous performance management and the application of the Council's policies and procedures	HR	Ongoing	Q1 Systems of individual targets to be developed and implemented so that overall activity levels match enforcement levels System to be developed and implemented to ensure quality of output is maintained without reliance on exhaustive checking Q2, 3, 4 Target activity levels to be maintained	Parking Service Management Team (PSMT)
	Parking Manager	Performance Management (Attendance) Ensure that the attendance of all parking staff is raised to and maintained at the necessary levels through rigorous performance	HR	Ongoing	Targets to be set Directorate-wide	SMB

Strategic objective	Owned by	Initiatives, projects and work streams (Work Description)	Key partners	Deadline	Outcomes or targets aimed for in 2011/12	Monitored via
		management and the application of the Council's policies and procedures				

Corporate Priority – A Successful London Suburb

Strategic objective	Owned by	Initiatives, projects and work streams (Work Description)	Key partners	Deadline	Outcomes or targets aimed for in 2011/12	Monitored via
Ensure that our town centres are vibrant places where business can thrive Work with all strategic partners (particularly the Police) to ensure Barnet is a safe place	Enforcement Manager	Target Parking Enforcement Undertake enforcement activities in town centres to ensure that loading and unloading can take place and that parking bays are used properly	PayPoint	Ongoing	Q1 Undertake research to match streets / patrol beats to town centres Establish appropriate input levels for each town centre Initiate monitoring Ensure provision of at least one PayPoint option in each town centre Q2, 3 Review monitoring to establish suitability and effectiveness	Parking Service Management Team
SCS Links: Supporting Enterprise (including Town Centres)						

						<p>Q4 Research and prepare report, into effectiveness and acceptability of this strategy Consult on ways to engage with community</p>	
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3. Use of Resources – 2011/12

Description	Plan value
Employee Expenses	3,189,050
Premises Expenses	205,660
Vehicle Expenses	49,710
Other Services	1,105,280
Recharges	2,199,370
Total Expenditure	6,749,070

4. Key Legislation

There are a range of legislative and statutory obligations that impact on the running of the service. These are outlined below:

Key legislation impacting on service	Impact on service
Traffic Management Act 2004 (TMA)	The issue, enforcement and recovery of payment in relation to Penalty Charge Notices is subject to stringent guidelines. Certain restrictions are placed on recovery which limits externalisation of certain functions within the processing of appeals against penalty charge notices. Additionally, tight timeframes on response times and regulations related

	to the content of documentation, reporting and transparency means that the section needs to ensure that resources are allocated to meet legislative demands. There are requirements under this act for the LA to publish figures on income, expenditure and the number of contraventions issued.
London Local Authorities Act	Before enforcement of any Civil Enforcement Area can take place, the design team need to ensure that all Traffic Management Orders are approved and are in place.
	The recovery of bus lane contraventions falls under this legislation whereas the approval of the devices used to undertake such enforcement falls under the realm of the TMA. Changes in this are forthcoming from London Councils and need to be fed back to staff regularly – especially changes to Codes of Practice.
Road Traffic Regulations Act	As above
Any initiatives coming from the DfT that impact on transport and related services	The service needs to anticipate changes and implement accordingly in line with changes to statutory requirements, legislation etc.

5. National/Regional Issues

A number of national and regional issues also have an impact on the service. These are outlined below

	National/Regional issues or pressures impacting on service	Impact on Service
Carbon Emissions Reduction	The removal of pay and display machines will lead to reductions in emissions as there will be no need for vehicle travel associated with cash collection or maintenance.	
Economic climate	A decrease in economic activity has led to a consequential decrease in traffic volumes and a downturn in parking income.	

6. Key Strategies/Policies

The service has a range of key policies and strategies in place that guide operations.

Name of key strategy/policy	Brief description	Date published/period covered	Offical Responsible
Permit Policy	A policy underlying the rules underlying the types of permits issued by the parking section, the costs, terms & conditions and legislative requirements	Review to be complete by May 2011	Information Manager
Parking Enforcement Policy	Manual which outlines and specifies all regulations governed by legislation and internal policy relating to the enforcement and issue of penalty charge notices issued by Civil Enforcement Officers using HHCs.	Review completed and publication due end of August 2011	Enforcement Manager
PCN Cancellation Procedure	Guidelines for process staff on the decision making process involved to cancel a penalty charge notice at any stage of the recovery process. Specific reasons are included for the various contravention codes. Additionally, the procedure looks at mitigation and how it should be qualified and quantified in terms of making the decision to cancel a PCN.	October 2008 to March 2010 Review and publication by August 2011	Information Manager

7. Customer Profile – including any Equality and Diversity Considerations

Out of all of the different boroughs in England, Barnet has the 20th most ethnically varied population and the 2nd most religiously varied population.

The parking service recognises that discrimination and inequalities affect people in many different ways and as such aim to continue to provide equal service levels and outcomes to residents by engaging with customers at all levels, other members of the public and staff as a whole. This commitment can be summarised as follows:

- Regular review and publication of procedures to provide guidelines to staff on how to consider appeals against penalty charge notices, especially the consideration of mitigation.
- Due care to ensure that all templates, paragraphs and responses to correspondence are in line with the Council's plain English standards.
- The extension of on-line facilities to provide greater access to members of the public to pay for services.
- The introduction of community permits which are available to religious heads who make home visits to provide services (to the infirm and elderly) has been a success in terms of the service's E&D considerations and the review of the permit and footway parking policies will involve customer engagement and input.
- The parking service continues to boast a diverse workforce which meets equality standards in the workplace.

8. Forth coming Consultation

An EIA is to be carried out into Cashless Parking early in the year.
 Consultation will be undertaken in relation to any proposed changes to Traffic Management Orders.

9. Key Partnership Arrangements / Contracts

a) Partnerships

Partner	Eng. description of purpose	Organisations involved
British Parking Association (BPA)	To keep abreast of changes in regulations, new IT systems and technology and other newsworthy events etc	Other LAs, contractors and suppliers
Department for Transport (DfT)	Provide support on sign and line requirements and queries.	
London Councils	Support and guidelines for all LAs on parking related matters including legislation.	London Councils and all LAs
Metropolitan Police Service	In conjunction with information from the bailiffs regarding persistent evaders, untaxed and abandoned vehicles, the service assists in eradicating cars from the borough thereby providing a safer environment.	
Highways	Implementation of and extension of CPZs in addition to	Parking Design

CAFT	bus lane layouts require team liaison to ensure good working practices and resolution of problems. Working closely to promote and improve community safety by sharing information and implementing a co-ordinated communications plan to report on unlicensed / unregistered vehicles, persistent evaders, permit and disabled badge misuse.	Parking and the Corporate Anti Fraud Team
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b) Contracts

Contract	Brief description of purpose	Contract length	Contract value	SLA in place? (Y/N)	Officer Responsible
Framework contract with 4 bailiff companies (Equita, CCS, Jacobs and JBW)	To assist with the recovery of unpaid penalty charge notices after all avenues of appeal have been exhausted by the motorist.	2 years (until 2012)	N/A contractors are paid by the debtors rather than the Council.	Y	Information Manager
Civica	Old PES system and new CE system which is a managed service	Extension of original contract until 31/03/2014	£2, 023, 500	Y	Information Manager
Cash Collection from P&D machines	Use of Council cash collection team to collect cash from P&D machines	Ongoing arrangement	£220,000 per annum	N	Maintenance Manager
Verrus (Pay by Phone)	Service to allow payment of parking fees by mobile phone	Being extended until April 2012	£173,805	Y	Parking Manager
Neo-post	Parking payments envelope	Rolling contract	£4,308 per annum	N	Information

Contract	Brief description of purpose	Contract length	Contract value	SLA in place? (Y/N)	Officer Responsible
Fleet Comm	machine Two way radio system	Rolling contract	£23,115	Y	Manager Maintenance Manager
GPL	Enforcement motorcycles	Two years	£12,143	Y	Maintenance Manager

10. Audits / outstanding action plans

Audits Due	Date Due
Review of the Directorates Arrangements for contract management.	Quarter 3
On-going follow up work to ensure identified weaknesses from previous reviews have been followed up and actioned.	Quarter 2
Planning, Environment and Regeneration Risk that the Council will not take full advantage of the new home bonus: risks that contracts will not be managed appropriately: risk that the parking service will not delivery an recovery plan.	Total Annual Planned days 45
Outstanding Audit Action Plans	
None	

Appendices

Appendix A: Performance Indicators

Description		Baseline 2010/11	Year End Target 2011/12
To meet the financial targets in the Parking Recovery Plan			
Increase in the recovery rate for Penalty Charge Notices		N/A	£12.4 million
Respond to all correspondence received by the parking section in relation to Penalty Charge Notices within 10 working days (Legislative timescales allow for responses to formal representations to be within 56 days of receipt of the correspondence which represents our longest timescale)		72%	75%
To respond to all permit related enquiries within 5 days of receipt		65%	70%
To reduce levels of sickness in line with corporate targets		85%	90%
		12 days per person/annum	6 days per person/annum

Appendix B: Risks

a) Risk Register

The risks associated with delivery against objectives and priority improvement initiatives are managed via the directorate Risk Register and the underpinning teams' risk registers. The high risks associated with the delivery of the teams objectives, local performance indicators and priority improvement projects have been identified as:

Risk Assessment Form

Organisations/Department/Function/Project: **Parking**

Objective: **Full Staff and Structure in Place**

Manager: **John McAville**

Date: **13 June, 2011**

Risk (Threat to achievement of business objective)	Assessment of Unmitigated Risk (Assuming NO controls in place)		Risk Rating	Risk Actions	Assigned To	Target Date (If Any)	Assessment of Controlled Risk: (With controls in place)		
	Impact	Probability					Impact	Probability	Risk Rating
PROBABLE - Nothing to Culture Lack of Resources preventing Service Delivery	Major 5	Likely 4	 20	<ul style="list-style-type: none"> Personnel Staff to fill gaps information Manager appointed, start date 14 September 2010 	John McAville		Major 4	Unlikely 2	 8

b) Internal Control Checklist (ICC)

The aim of the ICC is to test and prove the Internal Control Environment of the Council. Internal controls are managed via the directorate Internal Control Checklist and the underpinning team's ICCs. The high risks of non compliance within the team have been identified as:

QUESTION	AGREED ACTION/COMMENT
2.01 Have all nominated managers who attended CAFT Fraud Awareness Training (which also covers Whistleblowing Policy) disseminated the information to their staff.	Training still to be arranged.
2.04 Have relevant staff from your service been nominated to receive specialised training in the prevention & detection of Money Laundering and the Councils Anti Money Laundering Framework, which includes the reporting procedures and applicable offences.	Training still to be arranged.
7.02 A current Scheme of Delegation is in place, published on the intranet and all staff are aware of the responsibility within it.	Still in development.

ⁱ See Planning term definitions

ⁱⁱ Enter name of lead members and lead officer/s

ⁱⁱⁱ Please provide content in the following way – Initiative: xxxxxxxx, Project: xxxxxxxx and Work stream: xxxxxxxx. See Planning term definitions for the distinctions between the three.

^{iv} Include all bodies structurally independent of the council, including suppliers, voluntary organisations and public sector agencies.

^v Many projects will not complete within 2011-12 so the ultimate deadline should be included alongside any 2011-12 delivery deadlines.

^{vi} See Planning term definitions

^{vii} It may be monitored by one than one management team or board. Enter the one or two highest monitoring bodies – for example, the Children's Trust Board and the One Barnet Programme Board. All outcomes in the One Barnet Forward Plan that are shared between partners will ultimately be reported at a summary level to the One Barnet Partnership Board.

SCHEDULE 8

ADJUDICATOR AND EXPERT

- 1 The Adjudicator and/or Expert nominated to consider a dispute referred to him shall be jointly selected by both Parties.
- 2 Where the Council and the Service Provider are unable to agree on the identity of the Adjudicator and/or Expert to be appointed, the President for the time being of the Chartered Institute of Arbitrators shall make such appointment as he sees fit bearing in mind the nature and scope of this Contract within twenty (20) Calendar Days of any application for such appointment by either Party.

SCHEDULE 9

INVITATION TO TENDER



LONDON BOROUGH OF BARNET

INVITATION TO TENDER

**TENDER FOR THE PROVISION OF PARKING
ENFORCEMENT AND RELATED SERVICES**

CONTRACT REFERENCE NO 50352

CONTENTS

1. DEFINITIONS	3
2. GENERAL	5
3. PROCUREMENT TIMETABLE	6
4. TENDER REQUIREMENTS	7
5. TENDER SUBMISSION	12
6. EVALUATION	14
7. NOTIFICATION	17
8. WARRANTIES AND DISCLAIMERS	18
9. CLARIFICATION AND QUERIES	19
10. CONFIDENTIALITY	20
11. COSTS	21
12. FREEDOM OF INFORMATION ACT 2000 (FOIA)	22
13. PARENT COMPANY GUARANTEE / PERFORMANCE BOND	23
14. TENDER SUBMISSION CHECKLIST	24
SCHEDULE A – FORM OF TENDER	25
SCHEDULE B – THE SPECIFICATION	27
SCHEDULE C - TARGET COST SCHEDULE	28
SCHEDULE D - CERTIFICATE OF CONFIDENTIALITY, NON-COLLUSION AND NON-CANVASSING	29
SCHEDULE E – THE CONTRACT	30
SCHEDULE F – ITT QUESTIONNAIRE	31
SCHEDULE G - CONTRACT PLAN	36
SCHEDULE H - INSURANCE COVER FORM	37
SCHEDULE I (1) - FORM OF BOND	38
SCHEDULE I (2) - DRAFT DEED OF GUARANTEE	40
SCHEDULE J – TUPE SCHEDULE AND ORGANISATION CHART	42
SCHEDULE K – PENSION FUND ACTUARIAL REPORT	43

1. DEFINITIONS

“Certificate of Confidentiality, Non-Collusion and Non-Canvassing”
means a certificate to be signed by the Tenderer in the form set out in **Schedule D** (Certificate of Confidentiality, Non-Collusion and Non-Canvassing) of this ITT;

“Code”
means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D;

“Commencement Date”
means the date set out in the Schedule of Variables;

“Contract”
means the contract including the Schedules for the provision of parking services to be awarded by the Council to the successful Tenderer in the form set out in **Schedule E** (Contract) of this ITT;

“Contract Plan”
means the plan setting out the methods proposed by the Service Provider to provide the Services under the Contract contained in **Schedule G** of this ITT;

“Council”
means The Mayor and Burgesses of the London Borough of Barnet;

“Council’s Representative”
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

“Form of Tender”
means the tender in the form set out in **Schedule A** (Form of Tender) of this ITT;

“ITT”
means this Invitation to Tender;

“PQQ”
means the pre-qualification questionnaire issued by the Council on 6th April 2011;

“Services”
means the services required by the Council as set out in the Specification;

“Specification”
means the specification for the Services as set out in **Schedule B** (Specification) of this ITT;

“Target Cost Schedule”
means the Target Cost Schedule to be completed by the Tenderer and submitted as part of its Tender in the form set out in **Schedule C** (Target Cost Schedule) of this ITT;

"Tender"

means the completed and signed Form of Tender, together with all accompanying documents and information requested by the Council to be submitted by the Tenderer;

"Tender Documents"

means the Form of Tender, the Contract, the Specification and **Schedules A to K** to the Invitation to Tender

"Tenderer"

means the person, firm, company or organisation who has been invited by the Council to submit a Tender; and

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

2. GENERAL

- 2.1 This ITT is being issued by the Council to Tenderers who have been selected following assessment at PQQ stage.
- 2.2 The Council invites Tenderers to submit Tenders for the provision of the Services in accordance with this ITT and on the terms and conditions set out in the Contract.
- 2.3 The Tenderer will be required to comply with the principles of the Data Protection Act 1998 in relation to the employee information provided and not to use the information for any purpose other than in respect of this tender.

3. PROCUREMENT TIMETABLE

- 3.1 The Council intends to award the Contract on 1st April 2012 (subject to Council approval) and reserves the right to award the Contract at a later date or not at all.
- 3.2 The intended duration of the Contract is 5 years with a possible extension of a further 2 years (subject to Council approval).
- 3.3 The Council proposes the following timetable for the award of the Contract:

Activity	Date
Short-list and dispatch of Invitation to Tender	26.07.11
Last date for raising points of clarification on the ITT (date and time)	17.00 hrs 31.08.11
Return of Tenders	12.00 noon 06.09.11
Commence Evaluation of Tenders	07.09.11
Clarification meetings with Tenderers	WC 03.10.11
Selection of successful Tenderer	12.10.11
Report Recommendation to Council Committee	08.11.11
Award of Contract	09.01.12
Implementation / Transition phase begins	10.01.12
Service commencement	01.04.12

- 3.4 The Council reserves the right to alter the above timetable and Tenderers will be notified accordingly where any changes are made.

4. TENDER REQUIREMENTS

4.1 The Services

- 4.1.1 The Council wishes to ensure that the Service Provider is committed to quality and to achieving the key performance indicators, as well as securing continuous improvement to the enforcement operation. The Council's objective is to secure the most economically advantageous solution for the provision of the Services.
- 4.1.2 The successful Tenderer will be required to provide the Services in accordance with the Specification and on the terms and conditions set out in the Contract.
- 4.1.3 The Services must meet the standards and key performance indicators as set out in the Specification and Tenderers are required to consider the standards required and set out proposals in their Tenders as to how a high quality of service provision can be achieved and also to enhance service delivery.
- 4.1.4 Monitoring of performance shall be carried out in accordance with the key performance indicators set out in the Contract.
- 4.1.5 Tenders are required to respond to the detailed requests for information specified in **Schedule F**.

4.2 TUPE

- 4.2.1 At the date of issue of this ITT, the Council has formed the view that TUPE will apply to the Contract in respect of current Council employees.
- 4.2.2 Tenderers are advised to seek independent professional advice on the effect of TUPE.
- 4.2.3 Tenderers must be prepared to accept all liabilities which may arise as a consequence of the application of TUPE.
- 4.2.4 When submitting a Tender, Tenderers are requested to indicate in the Form of Tender whether the Tender is based on TUPE applying or not.
- 4.2.5 On data currently available, it is expected that the members of staff as detailed in **Schedule J (1)** would transfer to the successful Tenderer.

4.2A PENSIONS

4.2A.1 Pensions – Transferring Employees

4.2A.1.1 Staff of the Council who are transferred under TUPE and are either active members of, or eligible to be active members of, the Local Government Pension Scheme (LGPS) are the relevant employees (**Relevant Employees**).

4.2A.1.2 The Council requires that the Tenderer shall comply with the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 and HM Treasury guidance "A Fair Deal for Staff Pensions" (as updated) (**Fair Deal**) currently in force and provide Relevant Employees with:

- a) the opportunity to join, or remain in, the LGPS by means of the Tenderer seeking to become a transferee admission body within the LGPS; or
- b) membership of an alternative pension scheme which is actuarially certified as providing pension benefits that are broadly comparable to, the same as or better than those benefits provided by the LGPS.

4.2A.1.3 The Council wishes to emphasise that it has no expressed preference as to whether the Tenderer offers Relevant Employees pension provision through continued access to the LGPS through attaining admission body status to the LGPS or through a "broadly comparable" pension arrangement.

4.2A.1.4 For the avoidance of doubt, if a Tenderer intends to offer Relevant Employees an actuarially certified broadly comparable scheme, it must be clearly stated in the bid submission to be broadly comparable to the LGPS and to have incorporated amendments made to that scheme from 1 April 2008. The Council encourages Tenderers who intend to offer Relevant Employees from the existing Service Provider access to a broadly comparable scheme, to liaise with the GAD as soon as possible in order to ensure that it is able to obtain the necessary certificate with reference to the changes made to the LGPS from 1 April 2008. For the avoidance of doubt, the cost of obtaining a certificate of broad comparability is to be borne by the Tenderer.

4.2A.2 Admission Body requirements

4.2A.2.1 Where the option of becoming a transferee admission body within the LGPS is to be followed:

- a) the Tenderer shall where requested by the Council be required to obtain an indemnity or bond in compliance with Regulation 6 of the Administration Regulations 2008.
- b) the Tenderer shall be required to tender their bid on the basis that upon the expiry of the contract, or the determination of the Tenderer's admission agreement with the Council, to ensure that it is responsible for meeting any deficit funding arising in accordance with the LGPS Regulations in the first instance.
- c) where benefits arising upon the early termination of employment or through redundancy are awarded, the Tenderer shall confirm in its bid that it will comply with LGPS Regulations as appropriate. Where such benefits are of a discretionary nature, the discretion shall be exercised in keeping with the written policy of the Council.
- d) The Tenderer shall be required to confirm in its bid that it will be responsible for the payment of employer contributions in compliance with the LGPS Regulations
- e) Tenderers are required to confirm in their bid that the following pension costs set out in (f) to (k) will remain their responsibility and cost.
- f) Granting early retirement requests from Relevant Employees or deferred members of the LGPS.
- g) Augmentation of benefits in relation to a Relevant Employee.
- h) Reducing or waiving any contributions due from a Relevant Employee.
- i) Terminating the employment of a Relevant Employee aged 55 or over on the grounds of redundancy or efficiency of the service.
- j) Terminating the employment of a Relevant Employee on the grounds of ill-health.
- k) Bringing the deferred benefit of a Relevant Employee into payment on the grounds of ill-health.

4.2A.3 Broadly Comparable Scheme requirements

4.2A.3.1 Where a broadly comparable pension scheme is to be provided the Tenderer's bid submission will be required to demonstrate:

- a) Relevant Employees will be given the option to transfer any accrued benefits in the LGPS to the new broadly comparable scheme by means of a bulk transfer. The terms of the bulk transfer

agreement shall be in line with requirements relating to bulk transfer terms contained in Fair Deal.

- b) if Relevant Employees are later compulsorily transferred to another employer with another pension scheme because of the termination and re-tendering of the Contract, then subject of the Council's tender document, or because of sub-contracting which is integral to the contract, such Relevant Employees will be given the option to move any accrued benefits in the broadly comparable scheme to the new employer's pension scheme by means of a bulk transfer on terms which are no less favourable than the original bulk transfer terms from the LGPS.
- c) any Relevant Employees will be offered the same levels of pension benefit (or, where this is not possible, broadly comparable or equivalent in cash terms) as available under the LGPS following dismissal by reason of redundancy, termination of employment on the grounds of business efficiency, or termination of employment on the ground of ill-health or infirmity of mind or body.

4.2A.3.2 Where such benefits are of a discretionary nature, the discretion shall be exercised in keeping with the written policy of the Council, such written policy to be the policy in place at the time the decision to exercise the discretion is taken.

4.2A.4 Pensions – new starters

4.2A.4.1 The Council requires that the Tenderer confirm that in respect to new employees who are recruited to work alongside Relevant Employees it shall adhere to the Principles of Good Employment Practice issued by the Cabinet Office in December 2010.

4.2A.5 Changes of employer and subsequent contracts

4.2A.5.1 The Tenderer shall be required to confirm that staff of the Council who are transferred under TUPE to the Tenderer and are then transferred under TUPE (either by means of an intervening subsequent contract with the Council or otherwise) to a subsequent contractor, shall be provided with the right to acquire pension benefits as set out in this tender. The Tenderer shall be required to confirm that any subsequent contractor shall comply with the requirements of this Tender.

4.2A.6 Pensions – general

4.2A.6.1 Tenderers will be required to provide a statement indicating which pension option they have chosen, as to both (a) Relevant Employees and (b) new starters, at the time of submitting their tender.

4.2A.6.2 Please see **Schedule K**, pensions report.

4.3 Tenderer Structure

- 4.3.1 Where the Tenderer is a consortium, the Tenderer must include within its Tender details of the structure and composition of the consortium and indicate whether there have been any changes in the structure or composition of the consortium since the PQQ response.
- 4.3.2 Where the composition of a Tenderer's consortium changes, the continued participation of that Tenderer in the procurement process shall be at the discretion of the Council and, where the Council exercises its discretion in favour of continued participation, all other Tenderers shall be deemed to have consented to the change. The Council reserves the right to accept changes proposed by any of the Tenderers to the composition of their consortia, subject to such changes resulting in satisfactory arrangements for their continued participation in the procurement process and for the delivery of the Services.
- 4.3.3 Where a Tenderer which is a consortium intends to change its composition, this must be notified immediately in writing to the Council and the Council reserves the right to vet the new member in respect of financial and economic standing and technical capacity and ability in accordance with the PQQ.

5. TENDER SUBMISSION

- 5.1 Tenders must be submitted for the whole of the Services. Tenders for only part of the Services will be rejected.
- 5.2 The Tenderer must provide the documents and information listed below written in English:
- 5.2.1 The Form of Tender;
 - 5.2.2 The Target Cost Schedule;
 - 5.2.3 The Contract Plan - **Schedule G**
 - 5.2.4 Response to the information requested in **Schedule F** and any other information detailed in the Contract and Specification;
 - 5.2.5 Certificate of Confidentiality, Non-Collusion and Non-Canvassing;
 - 5.2.6 An undertaking to provide a Parent Company Guarantee and (if applicable) a performance bond; and
 - 5.2.7 A completed Insurance Cover Form (see Schedule H).
- 5.3 ITT submissions are to be emailed only to the following email box, **parkingITT@4projectsmail.com**, no later than **12.00 noon 6th September 2011**. Submissions received after this deadline will **NOT** be considered. The last date for raising points of clarification on the tender will be 17.00 hrs 31st August 2011.
- 5.4 Bidders will be provided with a unique reference number prior to the submission of their tenders.
- 5.5 The Council may in its absolute discretion refrain from considering any Tender if:
- 5.5.1 it is not in accordance with the ITT and any provisions of the Tender Documents or it is in breach of any condition contained in the Contract; or
 - 5.5.2 the Tenderer makes or attempts to make any qualification or variation to the terms of the Contract, the Specification or the other Tender Documents save where a variation or alteration is invited or permitted by the Council; or
 - 5.5.3 the Tender contains material gaps or omissions.
- 5.6 Should any additions or deletions to the Tender Documents be considered necessary prior to the date for submission of Tenders, these will be issued by the Council to Tenderers and will be deemed to form part of the Tender Documents. The Council reserves the right to extend any date for submission of the Tenders accordingly.

5.7 A Tenderer shall be deemed to have satisfied itself before submitting a Tender as to the accuracy and sufficiency of the prices and rates as stated in the Target Cost Schedule which shall (except in so far as it is otherwise provided in the Contract) cover all obligations under the Contract. A Tenderer will also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its Tender.

5.8 Any Tender in respect of which the Tenderer:

5.8.1 has directly or indirectly canvassed any official of the Council or obtained information from any other person who has been contracted to supply goods or provide services or works to the Council concerning the award of the Contract or who has directly or indirectly obtained or attempted to obtain information from any such member or official concerning any other Tenderer; or

5.8.2 fixes or adjusts the prices shown in the Target Cost Schedule by or in accordance with any agreement or arrangement with any other person other than a member of its consortium for the purposes of the Tender; or

5.8.3 communicates to any person other than the Council the amount or approximate amount of the prices shown in the Target Cost Schedule except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or for the purposes of insurance or financing; or

5.8.4 enters into any agreement with any other person that such other person shall refrain from submitting a Tender or shall limit or restrict the prices to be shown or referred to by another Tenderer; or

5.8.5 offers to agree to pay to any person having direct connection with the procurement process or does pay or give any sum of money, inducement or valuable consideration, directly or indirectly, for doing or having done or causing or having caused to be done in relation to any other Tenderer or any other person's proposed Tender, any act or omission; or

5.8.6 in connection with the award of the Contract commits an offence under the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972,

shall not be considered and shall accordingly be rejected by the Council provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Council or any criminal liability which such conduct by a Tenderer may attract.

6. EVALUATION

6.1 The Contract shall be awarded on the basis of the most economically advantageous tender according to the criteria and corresponding weightings set out in the tables below. Evaluation criteria will be based on a combination of Quality and Price. The ratio of the Quality/Price evaluation criteria is 60/40. Table 1 details the quality evaluation criteria along with the corresponding sub weightings.

Table 1

1	Ability to deliver an effective enforcement service	Weighting
1.1	The quality of the implementation plan	2
1.2	The quality and sustainability of the proposed enforcement plan	10
1.3	Understanding of the local environment	4
1.4	Management of the public interface	1
1.5	Management of the administrative support services	8
		25
2	Performance management and monitoring arrangements	
2.1	Financial management and monitoring	4
2.2	Staff supervision and monitoring	4
2.3	Reporting structures and reports	2
2.4	Liaison with client	2
2.5	Liaison with third parties	1
2.6	KPIs, quality measures and monitoring arrangements	4
		17
3	Effective HR practices & professional development and location issues	
3.1	A strong commitment to compliance with current and future employment law, regulations, codes of practice and good HR practice going forward e.g. TUPE and mobilisation arrangements	2
3.2	Any HR performance data provided is in line with best practice, for example, CIPD	1

3.3	A description of effective recruitment, reward, training, development, retention and performance management processes, including identifying internal talent and future leaders	2
3.4	An effective individual and collective employee communication and engagement approach throughout the organisation, including collective Industrial Relations.	2
3.5	Able to provide a suitable pension and gives assurances for all necessary payments	1
3.6	Proposals for operational base and any other premises	1
3.7	Skills and knowledge of Contract Manager, senior staff and support structures	1
		10

4	Service Change and Development	
4.1	Proposals for maximising service and financial performance	1
4.2	Understanding and evidence of partnership working	1
4.3	Recognition of Council objectives and ability to align with these	1
4.4	Commitment to continuous improvement and change implementation process	1
4.5	Commitment to service flexibility, development and diversification	1
4.6	Understanding of parking policies, legislation and ethos of Council enforcement	2
4.7	Community engagement	1
		8

Total		60
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6.1.1 Each of the above quality criteria will be scored out of 0 to 5 points prior to applying each weighting. The following section details the scoring mechanism.

TOTAL FAILURE = 0 POINTS: No response provided or totally fails to address the requirement.

VERY POOR RESPONSE = 1 POINT: In most key areas there is a failure by the bidders to demonstrate an understanding of the requirement.

POOR RESPONSE = 2 POINTS: In key areas the evidence is limited. The overall response casts doubt on the bidder's ability to deliver the requirement.

SATISFACTORY RESPONSE = 3 POINTS: The bidder has demonstrated a satisfactory understanding of the requirement. The evidence is clear and convincing with minor reservations in key areas.

GOOD RESPONSE = 4 POINTS: The bidder has demonstrated a good understanding of the requirement. The evidence is clear and convincing with minor reservation(s).

VERY GOOD RESPONSE = 5 POINTS: The bidder's response is comprehensive and demonstrates full understanding of the requirement. It has supplied clear, detailed information and the evidence is unequivocal. The evaluation team is fully satisfied about the bidder's ability to meet the detailed

- 6.1.2 Evaluation scores for price will be awarded a maximum score of 40 points. The lowest tender price will be awarded 40 points and each tendered price above the lowest will be awarded points on a reducing scale from 40. An example of the calculation for price scoring follows:

Example

Lowest Tendered Price (Tenderer 1) £1,000,000

Tenderer 2 Price £1,100,000

% increase in price compared to Tenderer 1 = 10%

$$\text{Tenderer 2 Score} = \frac{10 \times 40}{100} = 4$$

$$40 - 4 = 36$$

Tenderer 2 Score = 36

- 6.2 Tenderers may be required to demonstrate their ability to carry out the Services and it may be necessary for officers of the Council to visit the Tenderer's offices and/or interview the Tenderer during the tender evaluation process and the Tenderer may therefore be required to:
- 6.2.1 attend meetings with the Council to clarify details of its Tender and/or to provide a presentation of its Tender submission to officers/ members/ stakeholders;
 - 6.2.2 provide any other information reasonably required by the Council to enable a detailed evaluation of the Tender; and
 - 6.2.3 arrange visits to other clients of the Tenderer or provide references.
- 6.3 The Tender shall remain open for acceptance for a period of 150 calendar days from the closing date for the receipt of Tenders set out in paragraph 5.3.

7. NOTIFICATION

- 7.1 Following evaluation of Tenders the Council will make a decision as to which, if any, Tender shall be accepted.
- 7.2 The successful Tenderer will be notified by the Council in writing.
- 7.3 The unsuccessful Tenderers will be notified by the Council in writing and the Council may, on request, grant a debrief meeting to the unsuccessful Tenderers to give feedback on their Tenders.
- 7.4 Upon formal written acceptance of a Tender by the Council, the successful Tenderer shall, on request by the Council, execute a formal contract in the form of the Contract.

8. WARRANTIES AND DISCLAIMERS

8.1 TENDERER'S WARRANTIES

In submitting a Tender the Tenderer warrants, represents and undertakes to the Council that:

- 8.1.1 it has complied in all respects with this ITT;
- 8.1.2 it has not done any of the acts or matters referred to in paragraph 5.8;
- 8.1.3 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer or its employees, officers, agents or advisers in connection with or arising out of the Tender are true, complete and accurate in all respects;
- 8.1.4 it has made its own investigations and research and has satisfied itself in all matters relating to this ITT and the Tender Documents;
- 8.1.5 it has full power and authority to enter into the Contract and provide the Services and will, if requested, produce evidence of such to the Council;
- 8.1.6 it is of sound financial standing and the Tenderer and its directors, officers and employees are not aware of any circumstances (other than such circumstances that may be disclosed in the audited accounts or other financial statements of the Tenderer submitted to the Authority) that may adversely affect such financial standing in the future; and
- 8.1.7 it has, and has made arrangements to ensure that it will continue to have, sufficient working capital, skilled staff, equipment, machinery and other resources available to carry out the Services in accordance with the Contract from the Commencement Date and thereafter for the Contract Term.

8.2 COUNCIL'S DISCLAIMER

- 8.2.1 The Tenderer shall have no claim whatsoever against the Council in respect of its Tender whether or not it is successful. In particular but without limitation, save as expressly provided for in the Contract, the Council shall not make any payments to the successful Tenderer and no compensation or remuneration shall be payable by the Council to the successful Tenderer in respect of the Services by reason of the scope of the Services being different to that envisaged by the successful Tenderer or otherwise.

9. CLARIFICATION AND QUERIES

- 9.1 There will not be any negotiation of the substantive terms of the Tender Documents. Only points of clarification relating to the Tender Documents will be answered.
- 9.2 All points of clarification relating to the Tender Documents should be addressed by email to the Council's Procurement Representative: [REDACTED] **TELEPHONE ENQUIRIES WILL NOT BE ACCEPTED.**
- 9.3 All points of clarification must be made no later than 17.00 hours on 31st August 2011
- 9.4 All requests for clarification received, together with the answers given, shall be circulated on an anonymous basis to all Tenderers.
- 9.5 Except in so far as may be authorised in writing by the Council's Representative, no other person or agent has any authority to make any representation or explanation to Tenderers as to this ITT or any of the Tender Documents or as to any other matter so as to bind the Council.

10. CONFIDENTIALITY

- 10.1 This ITT and all information supplied by the Council in connection with this ITT shall be treated as confidential by Tenderer except that such information may be disclosed, subject to obligations of confidentiality corresponding to those which bind the Tenderer and only so far as is necessary for the purpose of obtaining sureties, guarantees, quotations and professional advice necessary for the preparation and submission of a Tender.
- 10.2 All materials, specifications and data supplied by the Council to the Tenderers shall, at all times, be and remains the exclusive property of the Council, but shall be held by the Tenderer in safe custody. They shall not be disposed of or used other than for the preparation and submission of a Tender or in accordance with the Council's written instructions or authorisation.

11. COSTS

- 11.1 The Tenderer acknowledges that it (and not the Council) is wholly responsible for any costs it may incur in connection with its Tender, whether the Tender is successful or not.

12. FREEDOM OF INFORMATION ACT 2000 (FOIA)

- 12.1 Tenderers should note that the Council is under a legal obligation under the FOIA to disclose information relating to this tender process and any resultant contract upon request, unless an exemption listed in the FOIA applies.
- 12.2 Exemptions under the FOIA include, but are not limited to, confidentiality, trade secrets and prejudice to commercial interests ("Exempt Information").
- 12.3 Tenderers should state clearly any information contained in, or portions of, their submission that they believe to be exempt from disclosure under the FOIA together with the exemption within the FOIA upon which this belief is based. It is not acceptable to treat an entire submission as Exempt Information, simply for reasons of convenience. Tenderers should note that the Council will not treat as confidential any such information if it believes that it is bound by the FOIA to disclose it.
- 12.4 In the event that the Council receives a request for information under the FOIA (or any other applicable legislation governing access to information), the Council shall be entitled to disclose all such information and documentation (in whatever form) as is necessary to comply with the FOIA (or other applicable legislation). The Council shall use all reasonable endeavours to consult with Tenderers as soon as reasonably practicable after receipt of such a request where it considers that the requested information may include information considered Exempt Information by the Tenderer.
- 12.5 Where the Council consults with Tenderers in accordance with paragraph 12.4 above, Tenderers are required to make their written representations as to whether they believe the information is Exempt Information within 14 days of the Council's request for consultation.
- 12.6 The decision on what is, or is not, Exempt Information shall be determined by the Council having considered the representations and any detriment, however caused, and arising from any disclosure of information under the FOIA or other applicable legislation governing access to information.

13. PARENT COMPANY GUARANTEE / PERFORMANCE BOND

- 13.1 Tenderers shall undertake to provide, at their own expense, on signature of the Contract a parent company guarantee (from the Contractor's ultimate parent company) and/or a performance bond substantially in the form shown in **Schedule I**. The Council will not be obliged to make any payments under the Contract until the requested parent company guarantee and/or performance bond has been provided in a form satisfactory to the Authority. If requested, the Contractor shall also provide a legal opinion, in a form acceptable to the Council, signed by a qualified lawyer from the country in which the parent company/bank is resident and certifying the valid execution of the guarantee/bond.

14. TENDER SUBMISSION CHECKLIST

Name of Tenderer:

The Tenderer has submitted the following information with its Tender:

Document	Please tick if enclosed
Form of Tender (Schedule A)	
Target Cost Schedule (Schedule C)	
Certificate of Confidentiality, Non-Collusion and Non-Canvassing (Schedule D)	
Contract Plan (Schedule G in response to questions in Schedule F)	
Insurance Cover Form (Schedule H)	

SCHEDULE A – FORM OF TENDER

LONDON BOROUGH OF BARNET

1. For the provision of parking services (the “**Services**”).

To: The Mayor and Burgesses the London Borough of Barnet (the “**Council**”)

[]¹ whose registered office is at
[]² and whose registered number is
[]³ (the “**Tenderer**”), having received an Invitation to Tender from the Council wishes to tender to provide the Services subject to the terms and conditions set out in the Invitation to Tender, the Contract, the Specification and the Target Cost Schedule.

1. CONSIDERATION OF THE TENDER

- 1.1 The Tenderer confirms that it understands that the Council is not bound to accept the lowest Tender, this Tender or any Tender it may receive, and understands that the Council reserves the right to invite fresh Tenders should it be considered necessary.
- 1.2 The Tenderer confirms that the insertion of any conditions qualifying this Tender or any unauthorised alteration to any of the Tender Documents may cause the Tender to be rejected and confirms that the Tenderer has not inserted any conditions qualifying this Tender or made any unauthorised alteration to any of the Tender Documents.
- 1.3 The Tenderer confirms that the terms of this Tender have not been adjusted in accordance with any agreement or arrangement with any other person or company.
- 1.4 The Tenderer agrees that this Tender shall remain open to be accepted or rejected by the Council and shall not be withdrawn for a period of 150 days from the date for return of Tenders as set out in the Invitation to Tender.
- 1.5 The Tenderer confirms that to the best of its knowledge and belief it has complied with all the relevant provisions of the Health and Safety at Work Act 1974 and any Regulations made under it.
- 1.6 The Tenderer confirms that it will comply with all current, relevant British Standard Specification or Code of Practice or equivalent European Union or international standards offering guarantees of safety, reliability and fitness for purpose.
- 1.7 The Tenderer confirms that it will not try to obtain or receive by whatever means any information which gives or is intended or likely to give the Tenderer or another party any unfair advantage over any other Tenderer (including the Council's own workforce) in relation to the tendering for and award of the Contract.

¹ Insert the Tenderer's name.

² Insert the Tenderer's address.

³ Insert the Tenderer's registered number.

2. TUPE

- 2.1 The Tenderer confirms that it has taken legal advice on the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
- 2.2 The Tenderer further confirms that, in its view, TUPE is/is not [delete as appropriate] likely to apply to the Contract and that this is reflected in the Target Cost Schedule.

3. THE CONTRACT

In the event that the Tender is successful, the Tenderer undertakes to execute the Contract as soon as possible.

4. CONFIDENTIALITY

The Tenderer confirms that the details of this Tender have not been passed on to any person, except as authorised in the Invitation to Tender.

5. COSTS

The Tenderer acknowledges that the Council will not pay or be liable for any expenses or costs incurred by the Tenderer in connection with the preparation and submission of this Tender.

6. PARENT COMPANY GUARANTEE / PERFORMANCE BOND

The Tenderer acknowledges that an undertaking to provide a Parent Company Guarantee (if applicable) and/or a performance bond will be required.

Signed by the Tenderer's authorised representative

.....

Name:

Position:

Address:

Telephone number:

Email address:

Date:

SCHEDULE B – THE SPECIFICATION

SEE ATTACHED DOCUMENT

(London Borough of Barnet – Parking Specification.doc)

SCHEDULE C - TARGET COST SCHEDULE

SEE ATTACHED DOCUMENT

Please note that the Service Provider, in their tender sum, shall include a % (up to 20%) applied to the annual sum of costs.

(London Borough of Barnet - Target Cost Schedule.xls)

**LONDON BOROUGH OF BARNET
TENDER FOR PARKING ENFORCEMENT AND RELATED SERVICES**

Note to Tenderers - This Target Cost Schedule forms Schedule 11 to the Contract.

Schedule 11 Target Cost Schedule					
Item	Type	Description	Quantity	Annual Rate	Annual Target Cost
	1	Contract Manager			
	2	Assistant Contract Manager			
	3	Supervisor			
	4	CEOs - Senior			
	5	CEOs - Basic			
	6	CEOs - Mobile			
	7	Radio Controller			
	8	Correspondence Staff			
	9	Administrative staff including Quality and monitoring			
	10	Payment Processing Staff			
	11	Enforcement Support Staff			
	12	Other - specify			
	1	Premises/Bases			
	2	Telecommunications			
	3	Data Communication			
	4	Other specify			
	1	IT - Hand Held Equipment			
	2	Radios/Telecoms, cameras			
	3	General office equipment			
	4	Uniforms and associated equipment			
	5	Vehicles - Trucks			
	6	Vehicles - Vans			
	7	Vehicles - Cars			
	8	Vehicles - Two wheelers			

Labour and Staff
Rates to cover all on-costs including but not limited to benefits, NI, fares, accommodation where necessary etc.

Premises
including all associated costs

Equipment
to include all costs leasing, repair, maintenance, consumables, losses, replacements

9	<p>IT system - Initial costs should include comms lines for access to the IT system from the Managed Service site to the Service Provider sites and a back up internet facility</p> <p>IT system - Costs for the provision from April 2014 and should include servers, comms lines for access to the IT system from the Managed Service site to the Service Provider sites and a back up internet facility. The Service Provider will need to consider the cost of access for other relevant third party users including the Council and other Council contractors.</p>		
10			
Materials including delivery/distribution and removal as necessary	1	Stationery, Postage and Documentation	
	2	Fuels/Oils/Greases	
	3	Cleaning	
Services	1	Provision of a cashless parking service by telephone	
	2	Provision of a cashless parking service by other means	
Miscellaneous Provisional items	1	Provision of a Bond	
	2	Start up costs	
			Annual Target Cost
			0.00
			0
			%
			CONTRACT SUM
			0.00

Maximum (up to 20 %) addition for Performance related Payment

SCHEDULE D - CERTIFICATE OF CONFIDENTIALITY, NON-COLLUSION AND NON-CANVASSING

LONDON BOROUGH OF BARNET

1. UNDERTAKINGS

In consideration of the Council having invited the Tenderer to tender for the provision of parking services, the Tenderer undertakes as follows:

- 1.1 to accept the restrictions concerning the confidentiality of information provided to the Tenderer set out in paragraph 10 of the Invitation to Tender;
- 1.2 to accept the warranties and disclaimers set out paragraph 8 of the Invitation to Tender; and
- 1.3 to comply with the conditions of non-collusion and non-canvassing as set out in paragraph 5.8 of the Invitation to Tender.

2. APPLICATION

- 2.1 The Tenderer accepts that the undertakings set out in paragraph 1 above apply to all parties within its consortium and its constituent companies, advisers, potential sub-service providers and any other person or body to which it may pass all or part of any information relating to the procurement process.
- 2.2 The Tenderer undertakes to ensure that all of the persons and bodies mentioned in paragraph 2.1 are made aware of the restrictions set out in paragraph 1 and to comply with them.

3. BREACH

The Tenderer understands that a breach of the conditions set out in paragraph 1 and paragraph 2 above may result in the Council excluding it from further consideration in the procurement process.

Signed by the Tenderer's authorised representative

.....

Name:

Position:

Date:

SCHEDULE E – THE CONTRACT

SEE ATTACHED DOCUMENT

(London Borough of Barnet – Parking Contract.doc)



DATED _____

THE LONDON BOROUGH OF BARNET

and

**CONTRACT FOR THE PROVISION OF
PARKING ENFORCEMENT AND RELATED SERVICES**

CONTENTS

SECTION A

- Clause 1 PARTIES AND RECITALS
- Clause 2 DEFINITIONS AND INTERPRETATION
- Clause 3 REPRESENTATIVES
- Clause 4 COMMENCEMENT AND DURATION
- Clause 5 TRANSITION ARRANGEMENTS

SECTION B

- Clause 6 THE SERVICES
- Clause 7 REMUNERATION
- Clause 8 PAYMENT TERMS
- Clause 9 CHANGE TO SERVICES AND/OR THE REMUNERATION

SECTION C

- Clause 10 PREMISES
- Clause 11 EQUIPMENT AND MATERIALS
- Clause 12 INTELLECTUAL PROPERTY
- Clause 13 TUPE
- Clause 14 STAFFING

SECTION D

- Clause 15 REVIEW MEETINGS
- Clause 16 PROVISION OF INFORMATION
- Clause 17 AUDIT
- Clause 18 MONITORING
- Clause 19 COMPLAINTS

SECTION E

Clause 20 QUALITY MANAGEMENT

Clause 21 NOT USED

SECTION F

Clause 22 WARRANTIES AND REPRESENTATIONS

Clause 23 INDEMNITY

Clause 24 INSURANCE

SECTION G

Clause 25 DISPUTE RESOLUTION PROCEDURE

Clause 26 DEFAULT AND TERMINATION

Clause 27 CONSEQUENCES OF EXPIRY OR TERMINATION

Clause 28 FORCE MAJEURE

Clause 29 RELIEF EVENTS

SECTION H

Clause 30 HEALTH AND SAFETY

Clause 31 EQUAL OPPORTUNITIES AND HUMAN RIGHTS

Clause 32 DATA PROTECTION

Clause 33 FREEDOM OF INFORMATION

Clause 34 CONFIDENTIALITY

Clause 35 ASSIGNMENT AND SUB-CONTRACTING

Clause 36 CORRUPT GIFTS AND FRAUD

Clause 37 RIGHTS AND DUTIES RESERVED

Clause 38 LOCAL GOVERNMENT OMBUDSMAN

Clause 39 ENTIRE AGREEMENT

Clause 40 NO PARTNERSHIP OR AGENCY

Clause 41 NO WAIVER

Clause 42 SEVERANCE

Clause 43 VARIATION

Clause 44 NOTICES

Clause 45 EMU CONTINUITY

Clause 46 PARENT COMPANY GUARANTEE AND PERFORMANCE BOND

Clause 47 CONTRACTS (RIGHTS OF THIRD PARTY) ACT 1999

Clause 48 LAW AND JURISDICTION

SCHEDULES

SCHEDULE 1 Schedule of Variables

SCHEDULE 2 Specification

SCHEDULE 3 Payment Mechanism

SCHEDULE 4 Key Performance Indicators

SCHEDULE 5 Change Control Procedures

SCHEDULE 6 Transferring Employees

SCHEDULE 7 Parking Plan

SCHEDULE 8 Adjudicator and Expert

SCHEDULE 9 Not Used

SCHEDULE 10 Intellectual Property

SCHEDULE 11 Target Cost

SCHEDULE 12 Contract Plan

SCHEDULE 13 Not Used

SCHEDULE 14 Form of Licence

SCHEDULE 15 Bulk Transfer Terms

**CONTRACT FOR THE PROVISION OF PARKING ENFORCEMENT
AND RELATED SERVICES**

DATE20...

SECTION A

1. PARTIES AND RECITALS

Parties

- (1) The Mayor and Burgesses of the London Borough of Barnet

whose address is at North London Business Park, Oakleigh Road South,
London N11 1NP

(the "**Council**"); and

- (2)

whose registered number is (if a registered company)

and whose registered office/principal place of business is at

(the "**Service Provider**").

Recitals

- (A) The Council issued its Invitation to Tender 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 partnering 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 **Clause 15 (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.

2. DEFINITIONS AND INTERPRETATION

2.1 The terms and expressions used in this Contract (including the recitals and Schedules hereto) will have the meanings set out below (unless the context otherwise requires):

“Adjudicator”

means the adjudicator appointed to resolve disputes in accordance with Clause 25 and Schedule 8;

“Administration Regulations”

means the Local Government Pension Scheme (Administration) Regulations 2008;

“Administering Authority”

means the Authority;

“Admission Agreement”

means an admission agreement entered into in accordance with Regulation 6 of the Administration Regulations by the Council and the Service Provider;

“Admission Body”

means a transferee admission body for the purposes of regulation 6 of the LGPS Regulations;

“Base Payment”

means the proportion of the Target Cost set out in the Schedule of Variables;

“Benefit Regulations”

means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;

“Bits”

has the meaning given in paragraph 1.4 of Part B of Schedule 3;

“Budget Change”

means a change required by the Council to the Target Cost as a result of a reduction or increase in the Council's annual budget for the relevant expenditure or the performance of the Service Provider over the preceding year of the Contract Term;

“Budget Change Proposal”

has the meaning given to it in Clause 9.3.6;

“Calendar Day”

means any day including statutory bank holidays;

“Certificate of Costs”

has the meaning given to it in Clause 7.6 (Open Book Accounting);

“Cessation Date”

means any date on which the Service Provider ceases to be an Admission Body other than as a result of the termination of this Contract or because it ceases to employ any Eligible Employees;

“Compensation Regulations”

means the Local Government (Discretionary Payments) Regulations 1996 (as amended) and the Local Government (Early Termination of

Employment) (Discretionary Compensation) (England and Wales) Regulation 2006;

“Change Control Procedures”

means the change control procedures set out in **Schedule 5** (Change Control Procedures);

“Commencement Date”

means the date set out in the Schedule of Variables;

“Contract”

means this contract including the Schedules;

“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, the identity of whom will be subject to the prior written approval of the Council (such approval not to be unreasonably withheld or delayed);

“Contract Plan”

means the plan and method statements setting out the methods to be used by the Service Provider to provide the Services under this Contract as set out in **Schedule 12** (Contract Plan);

“Contract Term”

means the Initial Contract Term as may be extended in accordance with **Clause 4** (Commencement and Duration) or reduced by earlier termination of this Contract for whatever reason;

“Council’s Representative”

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;

“Council Software”

means the software, if any, owned by the Council and licensed to the Service Provider under **Clause 12** (Intellectual Property) as set out in **Schedule 10** (Intellectual Property);

“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 **Clause 25** (Dispute Resolution Procedure);

“Direct Losses”

means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges, whether arising under statute, contract or at common law.

“Eligible Employees”

means the Transferring Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date for so long as they are employees in connection with the provision of the Services or part of such Services as set out in the Admission Agreement.

“Equipment and Materials”

means all plant, equipment, materials and consumables to be used by the Service Provider to provide the Services;

“Exit Period”

means the exit period as set out in the Schedule of Variables;

“Expert”

means the expert appointed to resolve disputes in accordance with **Clause 25** and **Schedule 8**;

“External Software”

means the software, if any, owned by an external provider and licensed to the Council as set out in **Schedule 10 (Intellectual Property)**;

“Force Majeure Event”

means any event consisting of any of: acts of God, war, riot, fire, flood, or any disaster affecting either Party which materially affects the performance by a Party of its obligations under this Contract;

“Guarantor”

means any person granting a parent company guarantee pursuant to Clause 46 (Parent Company Guarantee and Performance Bond);

“Initial Contract Term”

means the period set out in the Schedule of Variables;

“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;

“LGPS Regulations”

means The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and The Local Government Pension Scheme (Administration) Regulations 2008;

“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 from where the Services are to be provided as set out in the Specification;

“New Service Provider”

means a contractor selected to provide services, similar to the Services or part thereof, whether upon appointment by the Service Provider or upon termination or expiry of this Contract and for the avoidance of doubt can include the Council;

“Options Proposal”

has the meaning given to it in **Clause 9.3.3**;

“Parent Company Guarantee”

means the parent company guarantee substantially in the form set out in **Schedule I (2)** of the Invitation to Tender (Draft Deed of Guarantee);

“Parking Plan”

means the Council’s plan relating to on-street and off-street parking and traffic and parking enforcement, a copy of which is set out in **Schedule 7** (Parking Plan);

“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;

“Performance Bond”

means a bond substantially in the form set out in **Schedule I (1)** of the Invitation to Tender (Form of Bond);

“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:
 - (i) for 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
 - (ii) for showing favour or disfavour to any person in relation to this Contract or any other contract with the Council; or
- (b) entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and or the terms and

conditions of any such contract for the payment thereof have been disclosed in writing to the Council; or

- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (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
- (d) defrauding or attempting to defraud or conspiring to defraud the Council;
- (e) obtaining or receiving by whatever means any information which gives or is intended or is likely to give an unfair advantage over any other tender (including the Council's own workforce) in relation to this Contract;

“Relevant Employees”

means all those employees subject to a Relevant Transfer on a Relevant Transfer Date;

“Relevant Transfer”

means a relevant transfer for the purposes of TUPE;

“Relevant Transfer Date”

means a date on which the provision of the Services changes (save for the Commencement Date);

“Relief Event”

means any of the following events to the extent that the event does not constitute a Force Majeure Event and provided that the event does not arise (directly or indirectly) as a result of any wilful act, default or breach of the Service Provider:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local council (excluding the Council) or other body to carry out works or provide services;

- (c) any failure or shortage of power, fuel or transport;
- (d) any official or unofficial strike, lock-out, go-slow or other dispute generally affecting the parking enforcement sector;
- (e) delays in granting any permissions or consents which may be necessary in respect of the provision of the Services;
- (f) delays caused by any act or omission of the Council; or
- (g) the imposition of restrictions or limits by the Council on parking tariffs or parking fines at the Locations;

“Remuneration”

means the sums to be paid by the Council to the Service Provider pursuant to **Clause 7** (Remuneration);

“Schedule of Variables”

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

“Service Provider Software”

means the software owned by the Service Provider and licensed to the Council under **Clause 12** (Intellectual Property) as set out in **Schedule 10** (Intellectual Property);

“Service Provider Scheme”

means the retirement benefits scheme or schemes established or to be established under paragraph 13.3.7;

“Services”

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;

“Specification”

means the specification for the Services as set out in **Schedule 2** (Specification);

“Target Cost”

means the target cost to be incurred by the Service Provider as calculated on an annual basis in accordance with **Schedule 11** (Target Cost);

“Transferring Employees”

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

“Working Hours”

means the hours during which the Services are to be provided as set out in the Specification; and

“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 Clauses and Schedules are, unless otherwise provided, references to the Clauses and the Schedules to this Contract.
- 2.5. In the event of any conflict or inconsistency between any provision of the Clauses and any provisions of the Schedules, the Clauses shall prevail. In the event of any conflict or inconsistency between the Schedules, the provisions of the Specification 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 Council's Representative

The Council's Representative shall liaise with and give instructions to the Service Provider and its officers, employees, agents or sub-contractors 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 Council's Representative under this Contract.

3.2 Contract Manager

The 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. The Service Provider warrants that the Contract Manager has authority to bind the Service Provider.

3.3 Changes to Council's Representative and Contract Manager

Any changes to the identity of the Council's Representative and/or the Contract Manager shall be communicated in writing to the other Party within fourteen (14) Calendar Days of the change.

3.4 Changes to the Contract Manager

The Council may at any time during the Contract Term (by providing the Service Provider with ten (10) Calendar Days written notice) require the Service Provider to appoint a new Contract Manager, to replace the existing Contract Manager.

4. COMMENCEMENT AND DURATION

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 as set out in the Schedule of Variables.

5. TRANSITION ARRANGEMENTS

- 5.1 During the Transition Period, the Service Provider shall liaise with the Council to ensure an effective and timely handover of the Services, including but without limitation, attending meetings with the Council and any other individuals or organisations of new Service Providers as are reasonably required by the Council. This shall be free of charge to the Council.
- 5.2 During the Exit Period, the Service Provider shall liaise with the Council to ensure an effective and timely handover of the Services, including but without limitation, attending meetings with the Council and any other individuals or organisations of new Service Providers as are reasonably required by the Council. Such handover shall include details as to work in progress, costs of transferring ownership of assets, Equipment and Materials, data and records. This shall also include information to enable the Council to meet its duties in relation to re-tendering the Contract. This shall be free of charge to the Council.

SECTION B

6. THE SERVICES

- 6.1 The Service Provider shall provide the Services at the Locations during the Working 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 the Parking Plan.
- 6.3 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 supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union including but without limitation any bodies specified in the Schedule of Variables.

7. REMUNERATION

- 7.1 The Remuneration will be paid to the Service Provider in accordance with **Clause 8** (Payment Terms) and **Schedule 3** (Payment Mechanism).
- 7.2 **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 **Clause 7.3**.

- 7.3 **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:

- 7.3.1 a breach by the Council of any of its obligations under this Contract;

7.3.2 a Force Majeure Event; or

7.3.3 a Relief Event.

7.4 **Share of savings**

Where the Service Provider has proposed a change to the Services which results in a reduction of the Target Cost and that change has been accepted by the Council under the Change Control Procedures, the Council will pay to the Service Provider a proportion of the savings achieved directly as a result of the change calculated in accordance with the Schedule of Variables.

7.5 **Value Added Tax ("VAT")**

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

7.5.2 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 **Clause 7.5**.

7.5.3 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.

7.6 **Open Book Accounting**

7.6.1 Without prejudice to the rest of this **Clause 7.6**, the Service Provider shall, at the request of the Council, provide to the Council a certificate of costs (the "**Certificate of Costs**") within twenty one (21) Calendar Days of such request, provided that the Council will not request a Certificate of Costs more than once in any year of the Contract Term, or with such other frequency as the Council may reasonably request.

7.6.2 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.

7.6.3 Following receipt of the Certificate of Costs, the Service Provider shall provide to the Council such additional information as it may reasonably request (within twenty one (21) Calendar Days of such request having been made (or such other time frame as may be reasonably agreed between the parties)) so that the Council can verify the accuracy of the Certificate of Costs.

8. PAYMENT TERMS

- 8.1 The Council shall pay the Remuneration to the Service Provider in accordance with the procedure set out in the rest of this **Clause 8**.
- 8.2 The Service Provider shall submit an application for payment of the Remuneration to the Council's Representative within seven (7) Calendar Days of the end of each Payment Period.
- 8.3 The application for payment of the Remuneration shall be in the form of a pro-forma invoice (the form of which shall be agreed in advance with the Council's Representative) in three (3) distinct parts covering:
- 8.3.1 the Base Payment;
 - 8.3.2 any adjustment to the Base Payment in accordance with **Clause 7.3** (Adjustment to the Base Payment) and/or as a result of a change introduced under **Clause 9**;
 - 8.3.3 any share of savings in accordance with **Clause 7.4** (Share of Savings).
- 8.4 The Council's Representative shall consider and (subject to **Clauses 8.5** and **8.6**) certify an application for payment made under **Clause 8.2** within fourteen (14) Calendar Days of receipt of the application.
- 8.5 Should the Council's Representative require an adjustment to any part of the Remuneration set out in the application for payment, the Council's Representative 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 (in accordance with **Clause 8.6**).
- 8.6 Notwithstanding any adjustment made to the Remuneration as outlined in **Clause 8.5** the part of the Remuneration unaffected by the adjustment will be certified in accordance with **Clause 8.4**.
- 8.7 The Council shall pay the Remuneration to the Service Provider within fourteen (14) Calendar Days of certification of the application.

- 8.8 Interest is payable on late payment of the Remuneration at the rate set out in the Schedule of Variables.
- 8.9 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 within 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.
- 8.10 Any dispute relating to the calculation or payment of the Remuneration under **Clause 7** (Remuneration) or this **Clause 8** (Payment Terms) shall be resolved in accordance with the Dispute Resolution Procedure.

9. CHANGE TO THE SERVICES AND/OR THE REMUNERATION

- 9.1 Either Party may request a change to the Services and/or the Remuneration in accordance with the Change Control Procedures.
- 9.2 Where a change in law occurs which directly affects the provision of the Services under this Contract, either Party may request any necessary change to the Services and/or the Remuneration to deal with the change in law in accordance with the Change Control Procedures.
- 9.3 **Budget control**
- 9.3.1 If the Council requires a Budget Change it will notify the Service Provider in writing no later than 1st April of the year of the Contract Term from which the Budget Change is to apply (or such later date as the Parties may otherwise agree), setting out the level of the reduction or increase to the Base Payment payable to the Service Provider and identifying the affected Services.
- 9.3.2 The Council may not propose a Budget Change before 1st April 2013.
- 9.3.3 The Service Provider shall provide the Council within fifteen (15) Working Days of receipt of a notice from the Council pursuant to **Clause 9.3.1** an outline proposal setting out the Council's options in order to achieve the reduction or increase to the Base Payment payable to the Service Provider and the estimated change in costs for each option (the "**Options Proposal**").
- 9.3.4 In preparing the Options Proposal the Service Provider shall consider (without limitation) in the following order of precedence:

- (a) changes to improve the efficiency of the provision, performance or delivery of the Services or particular part of the Services;
 - (b) adjustments to KPIs;
 - (c) relief from compliance with its obligations under this Contract,
- as may be proportionate to the required reduction or increase to the sums payable to the Service Provider.

9.3.5 The Options Proposal shall include:

- (a) a comprehensive range of options which address different aspects of the Services with the adoption of one or more options enabling the Services to be delivered to the proposed Budget Change; and
- (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services.

9.3.6 No later than thirty (30) Working Days after the Council receives the Options Proposal, the Council shall notify the Service Provider as to the Council's preferred option and the Service Provider shall within ten (10) Working Days provide a detailed proposal for that option which shall include:

- (a) the change in Target Cost and Base Payment;
- (b) any amendments required to this Contract (including without limitation the Specification),

(the "**Budget Change Proposal**").

9.3.7 As soon as practicable after the Council receives the Budget Change Proposal the Parties shall discuss and agree the issues set out in the Budget Change Proposal.

9.3.8 If the Parties cannot agree on the contents of the Budget Change Proposal then the dispute will be determined in accordance with **Clause 25** provided that such determination shall not require the Council to increase the sum payable to the Service Provider.

9.3.9 After a Budget Change Proposal has been agreed or otherwise determined the Parties shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both Parties (and in the absence of agreement the form of such documentation shall be determined in accordance with

Clause 25) and thereafter the Parties shall promptly sign or execute (as appropriate) such documentation.

SECTION C

10. PREMISES

10.1 No premises owned by the Council will be utilised by the Service Provider.

10.2 Access to Council premises

10.2.1 The Council shall give access to its premises for the purpose of attending monthly and other meetings arranged by the Council, to any person employed or engaged by the Service Provider or any sub-contractor required to attend the meetings, provided that the Council may refuse admission to such a person if such admission would present a security risk.

10.2.2 Any person employed or engaged by the Service Provider or any sub-contractor who requires access to any premises occupied by or on behalf of the Council 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.

10.3 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 Parties shall agree suitable licensing, financial and servicing arrangements.

11. EQUIPMENT AND MATERIALS

11.1 The Service Provider shall provide all Equipment and Materials necessary for the provision of the Services and shall be responsible for the costs of providing such Equipment and Materials.

11.2 The Service Provider shall ensure that all Equipment and Materials are:

11.2.1 suitable for the purposes for which they are intended;

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

11.2.3 adequately insured.

- 11.3 On expiry of the Contract Term, the Council may purchase the Equipment and Materials or any part of the Equipment and Materials which are used exclusively in the provision of the Services at the price calculated in accordance with the Schedule of Variables.

12. INTELLECTUAL PROPERTY

12.1 Council Software

- 12.1.1 The Council hereby grants to the Service Provider from the Commencement Date a non-exclusive, non-transferable licence to use and maintain the Council Software (and related technical, user and other documentation) as detailed in **Schedule 10** (Intellectual Property) for the sole purpose of providing the Services.

- 12.1.2 The Council will use reasonable endeavours to request that the provider of any External Software grants to the Service Provider from the Commencement Date a non-exclusive, non-transferable licence to use and maintain the External Software as detailed in **Schedule 10** (Intellectual Property) for the sole purpose of providing the Services. All costs associated with such a licence shall be payable by the Service Provider.

12.2 Service Provider Software

The Service Provider hereby grants to the Council from the Commencement Date a non-exclusive, non-transferable licence to use the Service Provider Software (and related technical, user and other documentation) as detailed in **Schedule 10** (Intellectual Property) for the purpose set out in the Schedule of Variables.

12.3 Termination of software licences

The licence(s) granted under this **Clause 12** shall terminate immediately on expiry of the Contract Term.

12.4 Intellectual Property Rights

- 12.4.1 All intellectual property rights in any material produced during the Contract Term and in all reports submitted under this Contract shall vest in the Council unless otherwise expressly agreed.

- 12.4.2 Such materials shall not be used, reproduced or disseminated for any other purposes without the prior written permission of the Council's Representative.

13. TUPE

13.1 Application of TUPE

- 13.1.1 The Parties agree that the provisions of TUPE may apply to this Contract as indicated in the Schedule of Variables.

- 13.1.1 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.

- 13.1.2 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.

13.2 Emoluments and Outgoings

- 13.2.1 The Council shall be responsible 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.

- 13.2.2 The Service Provider shall be or shall procure that any sub-contractor shall be responsible for all emoluments and outgoings in respect of the Transferring 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.

13.3 Pensions

13.3.1 Service Provider to Become an Admission Body

Where the Service Provider employs any Eligible Employees on the occasion of a Relevant Transfer and wishes to offer those Eligible Employees membership of the Local Government Pension Scheme, the Service Provider shall procure that it shall become an Admission

Body. The Service Provider shall before the Relevant Transfer execute an Admission Agreement which will have effect from and including the occasion of a Relevant Transfer.

13.3.2 Service Provider Admission Agreement

The Council shall before the occasion of a Relevant Transfer execute the Admission Agreement referred to in **Clause 13.3.1** (Service Provider to Become an Admission Body).

13.3.3 Indemnity for a Breach of the Service Provider Admission Agreement

Without prejudice to the generality of **this Clause 13**, the Service Provider hereby indemnifies the Council and/or any future service provider on demand from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Service Provider of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

13.3.4 Indemnity or Bond

Without prejudice to the generality of the requirements of **this Clause 13**, the Service Provider shall procure that it shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Admission Agreement.

13.3.5 Right of Set-Off

The Council shall have a right to set off against any payments due to the Service Provider under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Service Provider under the Admission Agreement.

13.3.6 Service Provider Ceases to be an Admission Body

If the Service Provider employs any Eligible Employees on the occasion of a Relevant Transfer and:

- (a) the Service Provider does not wish to offer those Eligible Employees membership of the Local Government Pension Scheme; or

- (b) the Council and the Service Provider are both of the opinion that it is not possible to operate the provisions of **Clauses 13.3.1 (Service Provider to Become an Admission Body) to 13.3.5 (Right of Set Off) inclusive**; or
- (c) if for any reason after the Relevant Transfer the Service Provider ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of **Clauses 13.3.1 (Service Provider to Become an Admission Body) to 13.3.5 (Right of Set Off) inclusive** shall not apply (without prejudice to any rights of the Council under those **Clauses**) and the provisions of **Clause 13.3.7 (Service Provider Scheme)** shall apply.

13.3.7 **Service Provider Scheme**

Where this **Clause 13.3.7 (Service Provider Scheme)** applies pursuant to **Clause 13.3.6 (Service Provider Ceases to be an Admission Body)**, the following shall apply:

- (a) The Service Provider shall not later than on the occasion of the Relevant Transfer or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be the **Service Provider Scheme** for the purposes of this **Clause 13.3.7 (Service Provider Scheme)**. Such pension scheme or schemes must be:
 - i established within three (3) months of the Relevant Transfer or Cessation Date (as the case may be) and maintained until any payment to be made under Schedule 15 (Bulk Transfer Terms) is made;
 - ii reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
 - iii registered under section 153 of the Finance Act 2004; and
 - iv certified by an actuary nominated by the Council in accordance with relevant guidance produced by the

Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS,

- (b) The Service Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall procure that:
- i the Eligible Employees shall by three (3) months before the occasion of the Relevant Transfer or such other date as the Council may propose or the Cessation Date (as the case may be) be offered membership of the Service Provider Scheme with effect from and including the Relevant Transfer or Cessation Date (as the case may be);
 - ii the Service Provider Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the occasion of the Relevant Transfer or Cessation Date (as the case may be) which the actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the Local Government Pension Scheme had they continued in membership of the Local Government Pension Scheme;
 - iii if the Service Provider Scheme is terminated or the Service Provider's participation in the Service Provider Scheme terminates, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Service Provider. The replacement scheme must comply with this **Clause 13.3.7 (Service Provider Scheme)** as if it were the Service Provider Scheme;
 - iv before the occasion of the Relevant Transfer or Cessation Date (as the case may be) the trustees of the Service Provider Scheme shall undertake by deed to the Council that they shall comply with the provisions of **Clauses**

13.3.7(a)i to (a)iv (Service Provider Scheme), 13.3.8(a)i, 13.3.8(a)ii and 13.3.8(a)iv (Undertaking from the Service Provider) and **Schedule 15 (Bulk Transfer Terms)**; and

v where the Service Provider Scheme has not been established at the occasion of the Relevant Transfer or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service benefits provided by the Local Government Pension Scheme immediately before the occasion of the Relevant Transfer or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Service Provider Scheme.

(c) The parties shall use best endeavours to agree the terms of **Schedule 15 (Bulk Transfer Terms)** which shall apply in relation to the terms for bulk transfers from the Local Government Pension Scheme to the Service Provider's Scheme following the Relevant Transfer and any subsequent bulk transfers on termination or expiry of this Contract.

13.3.8 Undertaking from the Service Provider

(a) The Service Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

i all information which the Council or their respective professional advisers may reasonably request from the Service Provider for the administration of the Local Government Pension Scheme or concerning any other matters raised in **Clause 13.3.7 (Service Provider Scheme)**, **Clause 13.3.8 (Undertaking from the Service Provider)** or **Schedule 15 (Bulk Transfer Terms)** shall be supplied to them as expeditiously as possible;

ii it shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Service Provider of such reasonable costs as the Council may require) consent to instigate, encourage or assist

any event which could impose on the Local Government Pension Scheme or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- iii until the occasion of the Relevant Transfer, it shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in **Clauses 13.3.1 (Service Provider to Become an Admission Body) to 13.3.6 (Service Provider ceases to be an Admission Body)** inclusive without the consent in writing of the Council (not to be unreasonably withheld or delayed);
- iv it shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Service Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Service Provider will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

13.3.9 Discretionary Benefits

- (a) Where the Service Provider is an Admission Body, the Service Provider shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- (b) Where the award of benefits in **Clause 13.3.9(a) (Discretionary Benefits)** is not permitted under the Compensation Regulations and/or the Local Government Pension Scheme or the Service Provider is not an Admission Body, the Service Provider shall award benefits to the Eligible Employees which are identical to

the benefits the Eligible Employees would have received under the Compensation Regulations and/or the Local Government Pension Scheme in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

- (c) Under **Clause 13.3.9** (a) and (b) (Discretionary Benefits), where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Service Provider shall and/or shall procure that any relevant sub-Service Provider shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

13.3.10 Claims from Eligible Employees or Trade Unions

- (a) The Service Provider hereby indemnifies the Council and/or any future service provider and, where relevant, their sub-Service Providers from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Service Provider or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
 - i relate to pension rights in respect of periods of employment on and after the Relevant Transfer until the date of termination or expiry of this Contract; or
 - ii arise out of the failure of the Service Provider to comply with the provisions of this **Clause 13** before the date of termination or expiry of this Contract,

and the Council and the Service Provider agree that **Clause 47** (Contracts (Rights Third Party)) of this Contract shall not apply to this **Clause 13.3.10**

13.3.11 **Liability for Costs**

The costs of the Council necessarily and reasonably incurred in connection with the Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with **Clause 13.3.7 (a) (Service Provider Scheme)** shall be borne by the Service Provider.

13.3.12 **Transfer to Another Employer**

- (a) Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Service Provider shall:
- i consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
 - ii procure that the employer to which the Eligible Employees are transferred (the **New Employer**) complies with the provisions of this **Clause 13 (Pensions)** provided that references to the sub-Service Provider will become references to the **New Employer**, references to Relevant Transfer will become references to the date of the transfer to the **New Employer** and references to Eligible Employees will become references to the Eligible Employees so transferred to the **New Employer**.

13.3.13 **Pension Issues on Expiry or Termination**

The Service Provider shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in **Clause (a) (Pension Issues on Expiry**

or Termination) which the Council may reasonably request in advance of the expiry or termination of this Contract; and

- (c) fully co-operate (and procure that the trustees of the Service Provider Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider in the provision of the Services on the expiry or termination of this Contract.

13.4 Provision of Information

The Council warrants that the information set out in **Schedule 6 (Transferring Employees)** is accurate and complete as at the date of this Contract and that the Transferring Employees were employed by the Council immediately prior to the Transfer Date.

13.5 Service Provider to inform Council of any measures

The Service Provider shall or shall procure that any sub-contractor 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 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 **Clause 13.5**.

13.6 Indemnities

- 13.6.1 The Council shall indemnify and keep indemnified 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.
- 13.6.2 The Service Provider shall indemnify and keep indemnified 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 or any sub-contractor on or after the date of the Relevant Transfer.

13.6.3 The Service Provider shall indemnify and keep indemnified 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:

- (a) 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 or any sub-contractor 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;
- (b) any step or measure envisaged by the Service Provider and/or any sub-contractor in relation to employees affected by this Contract; and
- (c) the change of identity of the employer.

13.7 TUPE Compliance on Termination

13.7.1 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 or any sub-contractor in the provision of the Services;
- (b) a list of agency workers, agents and independent contractors engaged by the Service Provider or any sub-contractor 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 or other contract with such persons.

13.7.2 The Service Provider shall notify the Council as soon as reasonably practicable of any variation in the information provided under **Clause**

13.7.1 above and shall provide the Council with the revised and accurate information.

13.7.3 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 and shall procure that any sub-contractor 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 or assign or re-deploy any employee employed to carry out duties unconnected with the Services to the duties connected with the Services.

13.8 **Obligations on Termination**

13.8.1 The Service Provider shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Relevant Transfer Date.

13.8.2 The Service Provider shall indemnify and keep indemnified the Council against any loss caused to the Council or any New Service Provider by any inaccuracy or incompleteness in such information as is provided under 13.7.1 above or by any changes in the information which have not been communicated to the Council (whether relating to the number, identity or details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date.

13.8.3 The Service Provider shall indemnify the Council in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Council and/or any New Service Provider incurs arising from:

- (a) any act or omission of the Service Provider or any sub-contractor in relation to the Relevant Employees,
- (b) any claim by an employee or former employee of the Service Provider or any sub-contractor, and
- (c) any representations made by the Service Provider or any sub-contractor in relation to employment by the Council and/or any New Service Provider.

- 13.8.4 The Council shall indemnify the Service Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Service Provider incurs arising from any act or omission of the Council in relation to the Relevant Employees.

14. STAFFING

14.1 Staff Training

- 14.1.1 The Service Provider shall ensure that there are at all times employed 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 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.

- 14.1.2 The Service Provider shall ensure that within the period set out in the Schedule of Variables all civil enforcement officers engaged in the provision of the Services shall hold a current certificate as a result of passing the nationally accredited VRQ for civil enforcement officers (level 2) or hold the NVQ for civil enforcement officers (level 2).

- 14.1.3 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.

14.1.4 The Service Provider shall employ and/or train staff in accordance with all relevant Legislation and industry best practice, and where applicable, shall ensure that staff are members of the Institute of Parking Professionals (IPP) or European equivalent and are trained in accordance with the recommendations of the BPA Skills and IPP Board.

14.2 Removal of Staff

14.2.1 Where the Council becomes aware of a complaint against a member of the Service Provider's staff, agents or sub-contractors who is involved in the provision of the Services, the Council's Representative shall notify the Contract Manager of the nature of the complaint and provide supporting documentation where possible.

14.2.2 Within ten (10) Calendar Days of receipt of a notification under **Clause 14.2.1**, the Contract Manager shall meet with the Council's Representative to discuss measures to resolve the complaint and to avoid future complaints.

14.2.3 Where the Contract Manager and the Council's Representative agree that the complaint justifies the removal of a member of the Service Provider's or sub-contractor's 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.

14.2.4 Any dispute in relation to this **Clause 14.2** shall be resolved in accordance with the Dispute Resolution Procedure.

14.3 Checks on Staff

14.3.1 If the circumstances under which the Services are provided are such that the Service Provider's officers, employees, agents or sub-contractors are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 (for the purposes of this sub-Clause the "**Act**"), by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (for the purposes of this sub-Clause the "**Order**"), then the Service Provider shall use reasonable endeavours to ensure that the Service Provider's officers, employees, agents or

sub-contractors shall provide information in accordance with the Act and Order about convictions which would otherwise be spent under the provisions of the Act and shall undertake checks of the appropriate level with the Criminal Records Bureau, in respect of all such individuals ("**CRB Checks**").

- 14.3.2 The Service Provider shall disclose to the Council's Representative the details of all convictions and CRB Checks of the Service Provider's officers, employees, agents or sub-contractors and in the event that such checks reveal that members of the Service Provider's officers, employees, agents or sub-contractors have relevant convictions or other relevant Criminal Record(s), the Council may direct that such persons should be removed from the provision of the Services.

14.4 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 the Service Provider's staff, agents or sub-contractors who is involved in the provision of the Services.

SECTION D

15. REVIEW MEETINGS

- 15.1 The Council's Representative and the Contract Manager shall hold review meetings at monthly intervals and at any other times as required by the Council.
- 15.2 The purpose of the monthly review meetings are to:
- 15.2.1 review the Service Provider's achievement or non-achievement of the KPIs;
 - 15.2.2 address the Service Provider's non-achievement of KPIs and formulate a plan for improving performance;
 - 15.2.3 resolve problems which may otherwise prejudice the performance of the Parties' obligations under this Contract or the Council's obligations under the Contract;
 - 15.2.4 explore and agree methods of improving service quality, reducing costs and achieving continuous improvement; and
 - 15.2.5 provide an opportunity for either Party to raise issues which could cause disruption to the provision of the Services or otherwise prejudice this Contract.
- 15.3 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 within ten (10) Calendar Days of such occurrence/request hold a special review meeting to agree an action plan to bring performance to acceptable levels.
- 15.4 In addition to the review meetings held under **Clauses** 15.1 and 15.3, senior executives of each Party shall hold reviews at mutually agreed intervals but in any event within six (6) 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 whether any improvements can be made and implemented during the Contract Term. Minutes of such meetings shall be taken by the Service Provider and approved by the Council's Representative.

15.5 Any changes resulting from the meetings described in this **Clause 15** shall be effected through the Change Control Procedures.

16. PROVISION OF INFORMATION

16.1 The Council shall provide the Service Provider with the information set out in the Specification.

16.2 The Council shall use reasonable endeavours to notify the Service Provider of any proposed changes to bye-laws, policies or traffic regulation orders which in its reasonable opinion may affect the provision of the Services.

16.3 The Service Provider shall keep and maintain such necessary data and information and shall complete or provide (within ten (10) Calendar Days of any Council Request) 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:

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

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

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

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

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

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

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

16.5 The records referred to in this **Clause 16** shall be retained for a period of at least six (6) years (or such longer period as may be specified by the Council from time to time) after the Service Provider's obligations under this Contract have come to an end.

- 16.6 All information referred to in **this Clause 16** is subject to the obligations set out in **Clause 34 (Confidentiality)**.
- 16.7 Upon the expiry or termination of this Contract, or 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.

17. AUDIT

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, or to or for the Council's Representative 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. The Service Provider shall allow auditor access to the Service Provider's premises for the purposes of carrying out the above audit.

18. MONITORING

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

19. COMPLAINTS

- 19.1 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.
- 19.2 As a minimum, the complaints procedure referred to in **Clause 19.1** shall include the following requirements:

- 19.2.1 that the Service Provider shall not enter into any correspondence directly with members of the public relating to the Services;
 - 19.2.2 that any complaint received by the Service Provider from a member of the public shall be logged and passed on to the Council within three (3) Calendar Days;
 - 19.2.3 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 complaints procedure; and
 - 19.2.4 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.
- 19.3 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.
- 19.4 The Service Provider shall, at the request of the Council's Representative, arrange for notices to be permanently displayed at the Locations giving information as to how complaints about the provision of the Services may be made.

SECTION E

20. QUALITY MANAGEMENT

- 20.1 If the Service Provider is qualified to BS EN ISO 9001 2008 then this Contract shall be performed in accordance with the procedures set out in its Quality Manual.
- 20.2 In the event that the Service Provider is not qualified to BS EN ISO 9001 2008 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.

21. NOT USED

SECTION F

22. WARRANTIES AND REPRESENTATIONS

- 22.1 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.
- 22.2 The Service Provider warrants and represents that:
- 22.2.1 in entering this Contract it has not committed any Prohibited Act; and
- 22.2.2 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract.
- 22.3 The Service Provider warrants and represents that it has provided full, accurate and up to date information to the Council in relation to the Services to be provided under this Contract.
- 22.4 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.

23. INDEMNITY

- 23.1 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 save to the extent that the same is caused by or arises from the negligence, breach of this Contract, breach of statutory duty, or breach of Legislation of the Council.
- 23.2 Subject to the provisions of **Clauses** 13 and 23.6, the aggregate liability of the Service Provider, whether for damages, payments of compensation or by way of indemnity or of any nature whatsoever arising under or in relation to this Contract or the Services (including as a result of negligence) shall in relation to:
- 23.2.1 any claim for which the Service Provider has insurance cover or should have insurance cover available under the policies of insurance which it is required to maintain pursuant to **Clause** 24 (Insurance), be limited to the maximum sum insured (or which should have been insured) under the relevant policy of insurance;
- 23.2.2 all breaches of this Contract resulting in direct loss of or damage to any kind of property, be limited to five million pounds (£5,000,000); and
- 23.2.3 all other liability for all breaches or non-performance of this Contract whether in contract, tort or otherwise be limited to the percentage of the Remuneration payable (or in the event of early termination, would have been payable had the Contract not been terminated) during the twelve (12) months in which the breach occurs as set out in the Schedule of Variables.
- 23.3 In no event shall either Party be liable to the other for loss of profits, business revenue, goodwill or anticipated savings.
- 23.4 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 at all times.
- 23.5 The Service Provider shall not settle or pay any claim without the prior consent of the Council.
- 23.6 Nothing in this **Clause** 23 shall limit or exclude the liability of the Service Provider for death, personal injury, fraud or fraudulent misrepresentation.

24. INSURANCE

- 24.1 The Service Provider shall take out and maintain the following insurance policies:
- 24.1.1 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;
 - 24.1.2 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;
 - 24.1.3 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
 - 24.1.4 any other insurance that may be required by law.
- 24.2 The Council may require the Service Provider to name the Council as co-insured (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.
- 24.3 The Service Provider shall on request provide to the Council evidence and copies of all insurance policies required under this **Clause 24** within twenty one (21) Calendar Days of such request.
- 24.4 If the Service Provider is in breach of this **Clause 24**, the Council may pay any premia required to keep such insurance in force or itself procure such insurance and shall in either case recover such amounts (together with any administrative expenses reasonably incurred) from the Service Provider on written demand.
- 24.5 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 **Clause 24** accompanied by full details of the incident giving rise to the claim.
- 24.6 The Service Provider shall inform the Council of any material changes in the insurances required under this **Clause 24**.
- 24.7 The Service Provider shall not take any action or fail to take any reasonable action, or insofar as its is reasonably within its power permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy under which it is insured.

SECTION G

25. DISPUTE RESOLUTION PROCEDURE

- 25.1 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 Clause 25**.
- 25.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion between the Contract Manager and the Council's Representative at the review meetings held under **Clause 15 (Review Meetings)**.
- 25.3 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.
- 25.4 If the Dispute is not resolved as a result of the meetings referred to in **Clause 25.3** 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)**. The costs of referral of the Dispute to the Expert shall be apportioned equally between the Parties, or as otherwise directed by the Expert.
- 25.5 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.
- 25.6 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 Council's Representative and the Contract Manager, shall be binding on the Parties.
- 25.7 Failing agreement, either Party may refer the Dispute to an Adjudicator appointed in accordance with **Schedule 8 (Adjudicator and Expert)**.
- 25.8 Within twenty eight (28) Calendar Days of appointment, the Adjudicator shall communicate his 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 or apportionment of the Adjudicator's fees.

- 25.9 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.
- 25.10 No reference of any Dispute to an Expert or an Adjudicator pursuant to this **Clause 25** shall relieve either Party from any liability for the due and punctual performance of its obligations under this Contract.
- 25.11 Notwithstanding the foregoing provision of this **Clause 25**, 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 **Clause 25**.

26. DEFAULT AND TERMINATION

- 26.1 The Council may terminate this Contract on written notice to the Service Provider if:
- 26.1.1 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;
 - 26.1.2 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;
 - 26.1.3 the Service Provider enters into any voluntary arrangement for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986, the Companies Act 2006 or the Enterprise Act 2002;
 - 26.1.4 an administration order is made or administrator is appointed in respect of the Service Provider;
 - 26.1.5 a breach by the Service Provider of its obligation to take out and maintain the required insurances under **Clause 24 (Insurance)**;
 - 26.1.6 the Service Provider commits any Prohibited Act that is not capable of remedy;

- 26.1.7 the Service Provider commits a breach of the health and safety requirements under **Clause 30** (Health and Safety); or
- 26.1.8 the Service Provider's performance falls below the zero level described in **Clause 15.3** (above) and paragraph 1.11 of the Payment Mechanism, and following such occurrence, the Service Provider's performance level continues to fall for a further three (3) consecutive months.
- 26.2 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:
- 26.2.1 the type of breach that has occurred giving reasonable details; and
- 26.2.2 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.
- 26.3 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.

27. CONSEQUENCES OF EXPIRY OR TERMINATION

- 27.1 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.
- 27.2 The Service Provider shall, at its own cost, 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.

- 27.3 The Council may recover from the Service Provider the amount of any direct and/or indirect losses suffered by the Council resulting from termination.
- 27.4 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.
- 27.5 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 **Clauses 1, 2, 5, 12, 13, 16, 22, 23, 25, 27, 32, 46 and 48** 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.

28. FORCE MAJEURE

- 28.1 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.
- 28.2 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.
- 28.3 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.
- 28.4 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.

28.5 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 its obligations as a direct result of the Force Majeure Event.

29. RELIEF EVENTS

29.1 If and to the extent that a Relief Event adversely affects the ability of the Service Provider to provide the Services in accordance with the KPIs and the terms of this Contract, the Service Provider is entitled to apply for relief in accordance with **Clause** 29.2 from any rights the Council may assert under this Contract.

29.2 To obtain relief, the Service Provider must as soon as practicable, and in any event within fourteen (14) Calendar Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its obligations, give to the Council a notice of its claim for relief from its obligations under this Contract, including details of the nature of the Relief Event, the date of occurrence and its likely duration.

29.3 Within fourteen (14) Calendar Days of receipt by the Council of the notice referred to in **Clause** 29.2 above, the Service Provider shall give full details of the relief claimed and demonstrate to the reasonable satisfaction of the Council that:

29.3.1 it could not reasonably have foreseen the occurrence or consequences of the relevant Relief Event and could not have avoided such occurrence or consequences by steps which it might reasonably be expected to have taken, without incurring additional expenditure;

29.3.2 the Relief Event directly caused or substantially contributed to the need for relief from obligations under this Contract;

29.3.3 the relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with good industry practice, without incurring additional expenditure; and

29.3.4 the Service Provider is using reasonable endeavours to perform its obligations under this Contract.

- 29.4 Where the Service Provider has complied with its obligations under **Clauses 29.1 and 29.2**, the Council shall not be entitled to exercise its rights to terminate this Contract under **Clause 26 (Default and Termination)** and, subject to **Clause 29.6** below, shall give such other relief as has been requested by the Service Provider.
- 29.5 In respect of any unconnected event nothing in **Clause 29** shall affect any entitlement of the Council to make deductions under **Clause 7 (Remuneration)** during the period in which the Relief Event is subsisting.
- 29.6 In the event that information required by **Clause 29.2** and/or **29.3** above is not provided by the dates referred to in that Clause, then the Service Provider shall not be entitled to any relief in respect of the period for which the information is delayed.
- 29.7 The Service Provider shall notify the Council if at any time it receives or becomes aware of any relevant further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 29.8 If the Parties cannot agree the extent of the relief required, or the Council disagrees that a Relief Event has occurred or that the Service Provider is entitled to relief from its obligations under this Contract, the Parties or either of them shall refer the matter to the Dispute Resolution Procedure.

SECTION H

30. HEALTH AND SAFETY

- 30.1 The Service Provider shall comply with and shall procure that all staff, agents and sub-contractors engaged in the provision of the Services comply with the requirements of the Health and Safety at Work Etc. Act 1974, and any other Legislation, 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.
- 30.2 The Service Provider shall provide to the Council's Representative any information relating to the Service Provider's compliance with **Clause 30.1** that the Council may reasonably request at any time from the Commencement Date.
- 30.3 The Council's Representative 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.
- 30.4 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.
- 30.5 The Service Provider shall provide to the Council's Representative, 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 he receives from any statutory body.

31. EQUALITIES

- 31.1 The Service Provider (including its agents and employees) shall and shall procure that any sub-contractor shall in the provision of the Services:
- 31.1.1 not discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of race, age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex or sexual orientation contrary to part 5 of the Equality Act 2010;

- 31.1.2 not discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of race, age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex or sexual orientation contrary to any of the applicable provisions of the Equality Act 2010 which are or may come in to force and any codes of practice issued thereunder.
- 31.1.3 take appropriate and lawful steps to advance equality of opportunity between persons who share a relevant protected characteristic (as defined in section 149(7) of the Equality Act 2010) and persons who do not share it, as directed by the Council from time to time;
- 31.1.2 take appropriate and lawful steps to foster good relations between persons who share a relevant characteristic (as defined in section 149(7) of the Equality Act 2010) and persons who do not share it, as directed by the Council from time to time; and
- 31.1.4 notify the Council if it becomes aware of any action which the Council could take to comply with or further its duties under section 149 of the Equality Act 2010 and/or the Council's equality objectives as notified to the Service Provider from time to time.
- 31.2 Where, in connection with this Contract, the Service Provider (including its agents and employees) or any sub-contractor is required to carry out work on the Council's premises or along side the Council's employees on any other premises they shall comply with the Council's own employment policy and codes of practice relating to equality.
- 31.3 The Service Provider shall, and/or shall procure that any sub-contractor shall, notify the appropriate representative at the Council in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider and/or any sub-contractor under the Equality Act 2010.
- 31.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Providers performance of its obligations under this Contract being in contravention of the Equality Act 2010, the Service Provider shall, and shall procure that any sub-contractor shall, free of charge:
 - 31.4.1 provide any information reasonably requested by the Council, as soon as reasonably practicable;
 - 31.4.2 attend any meetings as required and permit any of the Council's staff to attend;

- 31.4.3 promptly allow the Council and/or any person conducting an investigation access to any documents or data deemed by the Council to be relevant;
- 31.4.4 allow itself or any of its staff to appear as witnesses in any ensuing proceedings; and
- 31.4.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 31.5 The Service Provider (including its agents and employees) shall, and shall procure that any sub-contractor shall, have due regard to the Council's equality objectives as notified to the Service Provider from time to time.
- 31.6 The Service Provider (including its agents and employees) shall, and shall procure that any sub-contractor shall, ensure that none of its employees or applicants receive less favourable treatment because of a protected characteristic (as defined in the Equality Act 2010) and that wherever reasonable, the employee/applicant is given any help they need to obtain their full potential for the benefit of themselves or the Service Provider or the Council.
- 31.7 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 **Clause 31**.
- 31.8 The Service Provider shall monitor the representation among its employees engaged in the provision of the Services of persons of different protected characteristics, having regard to the Council's procedures for monitoring representation among its own employees.
- 31.9 Where it appears to the Service Provider that there are groups of persons with a particular protected characteristic who are underrepresented in the Service Provider's workforce engaged in the provision of the Services in comparison with the population as a whole, the Service Provider shall take such steps as are lawful under the Equality Act 2010 to improve the relevant representation.
- 31.10 The Service Provider shall twelve months from the Commencement Date and annually thereafter provide a written report to the Council detailing its compliance with this **Clause 31**.

32. DATA PROTECTION

- 32.1 The Service Provider shall comply with its obligations under the Data Protection Act 1998 (the “1998 Act”) and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.
- 32.2 Notwithstanding the general obligation in **Clause 32.1**, where it is processing personal data (as defined by the 1998 Act) as a data processor for the Council (as defined by the 1998 Act) the Service Provider shall:
- 32.2.1 ensure that it has in place appropriate technical and organisational measure to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data including that obtained during the operation of Closed Circuit Television), as required under the Seventh Data Protection Principle in Schedule 1 to the 1998 Act;
- 32.2.2 adhere to any instructions or policies of the Council in relation to the processing of personal data as are communicated to the Service Provider from time to time during the term of this Contract.
- 32.3 The Service Provider shall:
- 32.3.1 provide the Council with such information as the Council may require to satisfy itself that the Service Provider is complying with its obligations under the 1998 Act and this **Clause 32**;
- 32.3.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to **Clause 32.2.1**;
- 32.3.3 notify the Council (within 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 Data Protection Act 1998
- 32.3.4 provide full cooperation and assistance to the Council in relation to any complaint or request made; and
- 32.3.5 ensure that it does nothing knowingly or negligently which places the Council in breach of the Council’s obligations under the 1998 Act.

- 32.4 The Service Provider shall ensure that from the date it is acquired all information held on behalf of the Council is retained for disclosure for the duration of the term of this Contract and shall permit the Council to inspect such information as requested from time to time. All such information shall be transferred by the Service Provider to the Council upon expiry of the term.

33. FREEDOM OF INFORMATION

- 33.1 The Service Provider acknowledges that the Council is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"), and 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 FOIA or the EIR, as the case may be.
- 33.2 The Service Provider shall ensure that it does and shall procure that its sub-contractors shall do all manner of things necessary to assist the Council in meeting the requirements of the FOIA or the EIA within the timescales set out therein.
- 33.3 The Service Provider shall:
- (a) transfer a request for information to the Council as soon as practicable after receipt and in any event within three (3) Calendar Days of receiving a request for information;
 - (b) provide the Council with a copy of all information in its possession or power in the form that the Council requires within seven (7) Calendar Days (or such other period as the Council may specify) of the Council requesting that information; and
 - (c) provide all necessary assistance as reasonable requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
- 33.4 The Council shall be responsible for determining at its absolute discretion whether information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR, as the case may be;

- (b) is to be disclosed in response to a request for information, and in no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.

33.5 In this **Clause 33** "information" has the meaning given to it under section 84 of the FOIA.

33.6 No additional payment shall be made to the Service Provider for performing the requirements set out in this **Clause 33**.

34. CONFIDENTIALITY

34.1 Subject to **Clause 34.2** and **Clause 34.5** 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.

34.2 **Clause 34.1** shall not apply to:

34.2.1 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 clause;

34.2.2 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;

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

34.2.4 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;

34.2.5 any disclosure of information by the Council to any other department, office or agency of the government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Contract; or

34.2.6 any disclosure for the purpose of:

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

- (b) any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (c) the Local Government Finance Act 1982 or the Local Government Act 1999.

34.3 Where disclosure is permitted under **Clause 34.2** 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.

34.4 Subject to **Clause 34.5** 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.

34.5 Notwithstanding any other provision of this **Clause 34** the Council may publish details of any payment made to the Service Provider pursuant to this Contract including but not limited to: the Service Provider's full name, the Service Provider's company house or charity registration number (if any), the Contract identification number, the date of payment, the net amount paid to the Service Provider, the transaction number and a description confirming the nature of the transaction.

35. ASSIGNMENT AND SUB-CONTRACTING

35.1 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 of the Services.

35.2 Notwithstanding any sub-contracting permitted under this Contract, the Service Provider shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

35.3 The Council shall be entitled to:

- 35.3.1 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
- 35.3.2 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.

36. CORRUPT GIFTS AND FRAUD

- 36.1 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.
- 36.2 The Council's Representative shall have the right to require that the Service Provider suspend from any further work on this Contract any person reasonably suspected of a Prohibited Act, fraudulent action or malpractice.

37. RIGHTS AND DUTIES RESERVED

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.

38. LOCAL GOVERNMENT OMBUDSMAN

- 38.1 Where any investigation by a Local Government Ombudsman (the "**Ombudsman**") takes place the Service Provider shall:
 - 38.1.1 provide any information requested in the timescale required by the Ombudsman;
 - 38.1.2 attend any meetings as required by the Ombudsman and permit its personnel to so attend;
 - 38.1.3 promptly allow access to and investigation of any documents deemed by the Ombudsman to be relevant;
 - 38.1.4 allow itself and any employee deemed to be relevant to be interviewed by the Ombudsman;

- 38.1.5 allow itself and any employee to appear as witness in any ensuing proceedings; and
- 38.1.6 co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.
- 38.2 No additional payment shall be made to the Service Provider for performing the requirements set out in **Clause 38.1**.
- 38.3 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.

39. ENTIRE AGREEMENT

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.

40. NO PARTNERSHIP OR AGENCY

- 40.1 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.
- 40.2 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.

41. NO WAIVER

- 41.1 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:

- 41.1.1 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
- 41.1.2 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.
- 41.2 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 **Clause 44** (Notices).

42. SEVERANCE

- 42.1 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.
- 42.2 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.
- 42.3 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.

43. VARIATION

Subject to **Clause 9** (Change to Services and /or the Remuneration), this Contract can only be varied if any such variation is agreed in writing by both Parties.

44. NOTICES

- 44.1 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.

- 44.2 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.

45. EUROPEAN MONETARY UNION

- 45.1 The Parties to this Contract confirm that the occurrence or non-occurrence 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.
- 45.2 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:
- 45.2.1 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;
 - 45.2.2 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;
 - 45.2.3 the substitution of that new currency for the Euro as the unit of account of the EU;
 - 45.2.4 the introduction of that new currency as lawful currency in a member state;
 - 45.2.5 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;
 - 45.2.6 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

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

46. PARENT COMPANY GUARANTEE AND PERFORMANCE BOND

- 46.1 The Service Provider shall procure the execution and delivery to the Council on or before the Commencement Date of a Parent Company Guarantee by the Guarantor in favour of the Council in the form set out in **Schedule I (2)** of the Invitation to Tender (Draft Deed of Guarantee) to secure the due performance of the Service Provider of its obligations to the Council.
- 46.2 Unless and until otherwise agreed by the parties, the form of guarantee set out in **Schedule I (2)** of the Invitation to Tender (Draft Deed of Guarantee) shall be the relevant specified form for the purposes of this Contract.
- 46.3 In the event that the Service Provider does not have a parent company and cannot procure a Parent Company Guarantee pursuant to **Clause 46.1**, the Service Provider shall procure the execution and delivery to the Council on or before the Commencement Date of a Performance Bond in favour of the Council.
- 46.4 The Performance Bond shall operate according to the principles specified in **Schedule I (1)** of the Invitation to Tender (Form of Bond).

47. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

48. LAW AND JURISDICTION

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the Parties have executed this Contract as a deed and delivered it on the date first written.

Signed as a deed by)
)
acting by)

Director

Director/Secretary

The common seal of)
)
The Mayor and Burgesses of the)
London Borough of Barnet)
was affixed in the presence of)

Authorised Signatory

SCHEDULE 1:**SCHEDULE OF VARIABLES**

Clause reference	Variable	
Recital A	Date of issue of ITT: Date of return of Tender:	26 th July 2011 6 th September 2011, 12.00 noon
3.1	Council's Representative Name: Address: Tel: Fax: Email:	John McArdle North London Business Park, Building 4, Oakleigh Road South, London N11 1NP 0208 359 7576 John.mcardle@barnet.gov.uk
3.2	Contract Manager Name: Address: Tel: Fax: Email:	
4.	Commencement Date Initial Contract Term Fixed extension period: Notice required to extend for fixed extension period:	1 st April 2012 5 years 2 years 6 (six) months
5.1	Transition Period:	3 months prior to the Commencement Date.
5.2	Exit Period	3 months prior to, and 3 months after, the expiry or termination of the Contract.
6.3	Bodies or agencies whose requirements must be	Driver and Vehicle Licensing

Clause reference	Variable	
	complied with:	Agency, Parking and Traffic Appeals Service, London Councils, Traffic Enforcement Centre
7.2	Base Payment (i.e. percentage of Target Cost to be paid to Service Provider):	1/12 each calendar month
7.4	Share of savings to be paid to Service Provider:	50 %
8.1	Payment Period:	monthly
8.8	Rate of interest for late payment of Remuneration:	1 % above Bank of England base rate
10.1	Address of Council Premises to be licensed to Service Provider:	N/A
11.3	Price for purchase of Equipment and Materials on expiry:	Price to be agreed
12.2	Purpose of use of Service Provider Software:	Provision of services in scope as defined in the specification document.
13.1	Application of TUPE	Yes
14.1	Date for civil enforcement officers to achieve VRQ (level 2) or NVQ (level 2):	0 months (must be fully trained prior to commencing enforcement duties)
23.2	Liability cap:	100 %
25.3	Council's nominated officer for dispute resolution:	Pam Wharfe Director of Environment, Planning and Regeneration

**SCHEDULE 2
SPECIFICATION**

[DN: Please see specification attached to Schedule B of the ITT]

SCHEDULE 3

PAYMENT MECHANISM

A1. Payment Mechanism

Payment will be made against the certified amount approved by the Council's Representative each month. The certified amount will consist of three parts:

- Monthly proportion of the annual Target Cost as defined in Schedule 11.
- Any changes authorised by the Council's Representative due to variations or Special Events undertaken by the Service Provider.
- Performance Related Payment against Key Performance Indicators as described in paragraph B below.

If agreement has been reached on the revision to the Target Cost as a result of the innovation or efficiency then the certificate may be amended to recompense the Service Provider for identifying such savings.

A2. Target Costs

- 2.1 The Target Cost of the Services will be shown against individual items in Schedule 11. The following shall be included:
- 2.2 Labour and staff, including all direct costs in connection with these.
- 2.3 Supply and administration of materials, goods, storage and costs in connection with the Services.
- 2.4 Accommodation costs including all cost of utilities and insurance for each of the premises as outlined in the Specification.
- 2.5 All equipment and transport costs in connection with the Services provided.
- 2.6 I.T. Systems costs (where applicable), consumables, telecommunications costs and staff costs associated and provided by the Service Provider.

B. Performance Related Payment

- 1.1 Payment will be dependent on the Service Provider meeting the key performance indicators (KPIs) as detailed in Schedule 4. The mechanism is designed to measure the service delivery items that the Council considers essential to the Services. The performance related element of payment will be calculated in accordance with and subject to the provisions of this Schedule

and, where payable, shall be not exceed the maximum percentage set out in the Target Cost Schedule ("**Maximum Performance Payment**").

- 1.2 Overheads will be deemed to cover all costs incurred by the Service Provider in carrying out the Service and include but not be limited to the following:
 - Headquarters and corporate charge
 - General Insurance including Employers Liability, Public Liability and all risks
 - Training, recruitment, HR and all Financial Charges
 - General obligations, liabilities and risks involved in the provision of the Services
- 1.3 During the duration of the contract the sum calculated for the Maximum Performance Payment shall be paid or deducted in whole or in part as set out below.
- 1.4 The annual Maximum Performance Payment will be divided into twelve equal parts to produce a maximum amount payable each calendar month. This amount shall be divided by six to produce a Bit. Each month, one Bit (or in some circumstances as set out below, two Bits) will be added or deducted from the amount paid to the Service Provider, depending on whether or not the KPIs have been met. The operation of the payment mechanism is illustrated in Table 1 overleaf. The Maximum Performance Payment is subject to any adjustment as outlined in item A1 above and Table 2 below.
- 1.5. All KPIs will be measured on the basis of whether they have been met or not met.
- 1.6. The Service Provider will provide the Council with monthly KPI performance reports, in the format agreed.
- 1.7. For the first two months from the Commencement Date, due to the unavailability of performance data, the initial performance payment will be set as two Bits. After the second month from the Commencement Date, performance over each month will be reviewed as per **Clause 15** of the Contract and if the Service Provider has achieved the four KPIs, then a bit will be added. If the Service Provider has not achieved the four KPIs, a Bit will be deducted. Bits will be added or deducted in subsequent months, depending on performance.
- 1.8. If the Service Provider achieves four months of good performance from the Commencement Date (not counting the first 2 months from the Commencement Date) he will achieve the maximum set at six Bits. To

continue to achieve the maximum the Service Provider must maintain its performance at the specified level.

- 1.9. If Performance targets are not met, there will be a reduction in the Performance Payment. Given that the initial payment is set at two Bits for the first two months only, if there are two months of decline from the start of the measurement process, the Performance Payment will fall to zero. If performance continues to decline; once below the zero point deduction of Bits will be doubled, so that a maximum deduction of Bits can be reached in only three months of continual decline resulting in a payment significantly below cost.
- 1.10. This process is intended to allow the Service Provider to show its staff how performance directly affects contract payments. As the targets may increase over time, the Service Provider will be required to manage its staff more effectively to achieve or retain the performance payment.
- 1.11. If performance falls for three consecutive months (the "zero level"), the Council's Representative will require appropriate intervention from the Service Provider. This will be discussed at a Special Review Meeting in accordance with the provisions of **Clause 15.3**.

Table 1

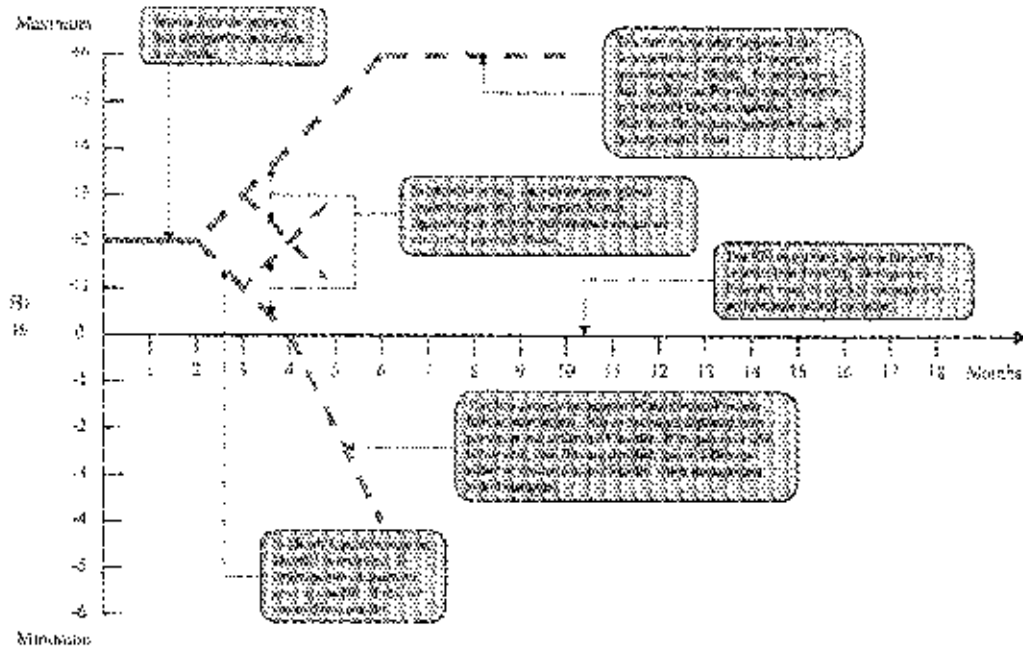


Table 2

Months	3-12	13-25	26 on
Target number of indicators to be met.	6	11	15
	<u>must include:</u> KPI 2 KPI 3 KPI 9 KPI 10 KPI 11 KPI 15	<u>must include:</u> Target KPIs for months 3 – 12 and KPI 1 KPI 4 KPI 5 KPI 6 KPI 7	<u>must include:</u> All 15 KPIs

SCHEDULE 4

KEY PERFORMANCE INDICATORS

1. Measurement, Records and Monitoring

- 1.1 The Service Provider will submit monthly reports of performance against KPIs in the format specified by otherwise agreed with the Council from time to time
- 1.2 The Council reserves the right to check records as is considered appropriate in order to ascertain the Service Provider's performance is to the required standards. In addition, it is anticipated the Council will conduct more detailed checks on a quarterly basis including 'reality spot checks' at regular intervals. Irrespective of actual performance a deduction of three 'Bits' will be made for that particular month in the event these checks prove the Service Provider has misrepresented its performance against the KPI's.
- 1.3 Such a matter would be considered a serious breach within the relationship of trust this Contract is intended to foster between the Council and Service Provider. In such a case, the Council may consider that the Service Provider is unable to continue fulfilling his contractual obligations and it would therefore be necessary to consider termination unless the Council can be satisfied that performance can be recovered and raised to an acceptable standard within an agreed period of time.

2. KPI Introduction

- 2.1 The following section outlines each KPI in detail and highlights the areas that the Council will expect to be incorporated within any measurement whether the KPI has been met or not.
- 2.2 It is the Council's intention to achieve realistic and workable KPI's, all of which can be measured properly and accurately. The Service Provider will be expected to outline as to how the KPI is to be achieved together with any levels of tolerance within which it will operate for each KPI except where levels have been specified or where there can be no tolerance.
- 2.3 It is acknowledged that the Services may undergo a series of changes during the life of this Contract Term due to the potential change of parking patterns and as other factors materialise which may affect the

Council's Parking Plan and/or the enforcement operation. There may be performance measures which will require variation as the enforcement operation matures. The Change Control Procedures outlined in Schedule 5 will be applicable in any such event. Additionally, the Council may review the tolerance levels in the KPIs throughout the Contract Term, in discussion with the Service Provider, and these may be amended as considered appropriate.

3. Changes to KPIs

The Council and the Service Provider may at any time request a change to any part or all of the Key Performance Indicators set out in this schedule. Any such amendments to the Key Performance Indicators shall be implemented in accordance with Schedule 5 (Change Control Request Procedure).

4.

KPI's

Effective Parking Enforcement

Measurement Summary	Details	Information Sources
<p>KPI 1 Coverage of Patrol requirements and responsiveness to enforcement requests</p> <p>The Schedule of Enforcement Patrols will be agreed between the Service Provider and the Council and may be subject to variation from time to time.</p> <p>There is a tolerance level of 10%, which is likely to be adjusted during the life of the Contract.</p> <p>The Service Provider should note that the Council may limit any perceived levels of over-patrolling, e.g. to compensate for under-patrolling.</p>	<p>The Schedule of Enforcement Patrols will be agreed between the Service Provider and the Council. The Service Provider will be expected to meet at least 90% of the scheduled patrols for each individual road or car park, unless previously agreed with the Council.</p> <p>The Service Provider will carry out all patrols according to the Specification (Schedule 2) and check all vehicles in the road, identifying contraventions and issuing PCNs according to Council Guidelines.</p> <p>The Service Provider will self-assess their performance and report to the Council who will then inspect and verify the information.</p> <p>Note – visits to streets that are broken by detours into adjoining streets count as one visit. There must be a distinct time difference between visits. In cases where two or more CEOs are present in one street, this will count as one visit.</p> <p>It is acknowledged that CEOs may walk through part of beats that are not allocated to them when travelling to their allocated beats and they must enforce on those</p>	<p>The Service Provider will self-monitor and provide the Council with a report of the patrols met.</p> <p>The Council may access information from the I.T. system to verify the Service Provider's report.</p> <p>GPS tracking facilities will collate information and confirm that the logged patrols agree with the actual patrols performed.</p>

Measurement Summary	Details	Information Sources
<p>KPI 2 The volume and effectiveness of input resources</p> <p>The Service Provider should note that the Council may limit any perceived levels of over-deployment, e.g. to compensate for under-deployment.</p> <p>There is a tolerance level of 5% which is likely to be adjusted during the life of the Contract.</p>	<p>beats against any vehicles that are found in contravention. However, merely walking through such a beat does not constitute a visit to that beat for statistical purposes.</p> <p>Enforcement requests sent to the Service Provider will be recorded by the Council. The Service Provider will keep records of deployment requests and response times.</p>	
<p>KPI 3 The volume and effectiveness of input resources</p> <p>The Service Provider should note that the Council may limit any perceived levels of over-deployment, e.g. to compensate for under-deployment.</p> <p>There is a tolerance level of 5% which is likely to be adjusted during the life of the Contract.</p>	<p>The minimum number of effectively deployed CEOs and the percentage of deployed/employed hours will be as set out in the Contract Plan included in the Service Provider's tender submission. To satisfy the KPI, the ratio between the deployed and employed hours must be as set out in the Contract Plan. The Service Provider will self-assess their performance and report to the Council who will then verify the information.</p> <p>Effectiveness will be assessed by activity levels to include:</p> <ul style="list-style-type: none"> • Street Visits • Vehicles logs • PCNs issued • Fault reports • Abandoned vehicle reports <p>The Service Provider will be expected to</p>	<p>The Service Provider will self-monitor and provide the Council with a report of the number of CEOs deployed and their effectiveness. This must also include the percentage of deployed hours against employed hours and the amount of overtime worked by individual CEOs, showing a breakdown of effectiveness.</p> <p>The number of deployed CEOs will be obtained from the I.T. system based on the number of CEOs who have logged into a hand held computer and completed a full shift. This information will be used to verify the Service Provider's report, in addition to details recorded in CEOs hand written pocket-books (if applicable).</p>

Measurement Summary	Details	Information Sources
	meet 95% of the agreed activity levels.	

Good Quality, Motivated and Informed staff

Measurement Summary	Details	Information Sources
<p>KPI3 Initial CEO training and accreditation (BPA/City & Guilds certificate)</p> <p>Initial processing staff training and accreditation (BPA/City & Guilds certificate)</p> <p>There is a zero tolerance level associated with this KPI.</p>	<p>This element of the KPI is considered achieved when all CEOs meet the training requirements (as per the specification, including training in local modules). The Service Provider shall provide copies of all training related certificates to the Council.</p> <p>The Service Provider shall confirm that a module has been completed in providing information on the Council's policies.</p> <p>No CEO shall commence work duties until the training has been certified.</p> <p>This element of the KPI is considered achieved when all processing staff meet the training requirements (as per the specification, including training in local modules).</p> <p>The Service Provider shall confirm that a module has been completed in providing information on the Council's policies.</p>	<p>The Service Provider shall provide copies of all training related certificates to the Council and a monthly update of which CEOs have been accredited. No CEO shall commence work duties until the training has been certified and agreed with the Council's Representative.</p>
<p>KPI4 Regular assessments and delivery of on-going training</p> <p>There is a zero tolerance level associated with this KPI.</p>	<p>A performance management plan will need to be set at the beginning of each year and the Service Provider will be required to demonstrate how this is achieved.</p> <p>An individual assessment format shall be agreed between the Service Provider and</p>	<p>The Service Provider shall provide copies of all training related certificates and assessments to the Council at monthly meetings. The assessments shall be evaluated against the agreed format and all certificates shall be checked to substantiate</p>

Measurement Summary	Details	Information Sources
	<p>the Council.</p> <p>This KPI will be considered met once all staff in post have received their assessments in the agreed format and timescale and have received the required ongoing training.</p> <p>At the request of the Council details of staff assessments and training shall be provided by the Service Provider.</p>	<p>they are to the required standard.</p>
<p><u>KPI 5</u> Staff Retention</p> <p>There is a tolerance level of 5% which is likely to be adjusted during the life of the Contract.</p>	<p>The Service Provider will be required to ensure that staff turnover shall not exceed an annual mean of 10%.</p> <p>This will include all staff employed on the contract including CEOs, processing and administrative staff and the Contract Manager.</p>	<p>The Service Provider will submit reports showing the employees in post at the end of each month and the level of staff turnover.</p>
<p><u>KPI 6</u> The level of complaints & complaints handling</p> <p>The Council receives an average of 150 customer complaints related to the Parking Service annually. The Service Provider will be required to maintain the volume of complaints below this level.</p> <p>There is a tolerance level of 5% on both the level of complaints and the complaint handling, which is likely to be adjusted during the life of the Contract.</p> <p>A Customer Complaint is defined as a complaint by a Customer regarding an aspect of the Service Provider's performance where there is evidence of one of the</p>	<p>Any written complaints received by the Service Provider about a member of staff must be investigated and the Service Provider is expected to respond to at least 95% of these within ten (10) working days. A copy of the complaint and the reply must be sent to the Council's Representative.</p> <p>Any written complaint about a CEO received by the Council will be copied to the Service Provider.</p> <p>An acceptable level of complaints will be agreed between the Service Provider and the Council's Representative and the Council will expect this level to remain within an agreed percentage tolerance during the life of the contract. The Council</p>	<p>The Service Provider must keep records of all complaints.</p> <p>The Service Provider may be required to produce information to assist in monitoring this indicator.</p> <p>Resolution will be defined as achieved if no further correspondence relating to the complaint is received by either the Service provider or the Council directly.</p>

Measurement Summary	Details	Information Sources
<p>following:</p> <ul style="list-style-type: none"> the provision of incorrect information; or failures to take account of relevant matters in coming to a decision; or offensive/insensitive behaviour; or <p>failure to respond to the customer, by the Service Provider or its Personnel, where the Customer has made a complaint to the Council, the Service Provider, their local ward Councillor or the Local Government Ombudsman (stage 2 complaint), because the Service Provider has not responded appropriately to the Customer under the terms of the Council's complaints procedure for the Schemes.</p>	<p>will expect resolution to be achieved using the 'right first time' methodology.</p>	

Issue of Good Quality PCNs

The definition of a good quality PCN is one which has not been cancelled for any one of the reasons listed below (Details column).

Measurement Summary	Details	Information Sources
<p>PCN 7 PCNs cancelled due to CEO Error</p> <p>The Service Provider will be required to ensure that PCNs cancelled as a result of a CEO error are minimised and actively work towards decreasing this value annually.</p>	<p>The Service Provider will be expected to meet a standard such that no more than 3% of all PCNs issued are cancelled due to a CEO error as a result of:</p> <ul style="list-style-type: none"> Incorrect factual information (e.g. street name/location error, no record of VRM or VEL). Input error on handheld computer (HHC) or 	<p>The Service Provider will provide the Council with performance information. This information will be compared with data sourced from the I.T. system.</p>

Measurement Summary	Details	Information Sources
<p>There is a tolerance level of 1% which is likely to be adjusted during the life of the Contract.</p>	<p>pocket book</p> <ul style="list-style-type: none"> • Failure to provide appropriate diagrams (where applicable) • Illegible or poor quality supplementary evidence • PCN cancelled as a result of misconduct or a result of proven/unproven complaint against a member of the Service Providers staff (does not include benefit of doubt cases). • Incorrect issue of PCN, i.e. failure to issue according to Council guidelines. 	
<p>KT08 Void Tickets</p> <p>The Service Provider will be required to ensure that voided PCNs are minimised and actively work towards decreasing this value annually.</p> <p>There is a tolerance level of 1% which is likely to be adjusted during the life of the Contract.</p>	<p>The Service Provider will be expected to meet a standard such that no more than 3% of all PCNs issued are voided due to CEO action or request after printing.</p> <ul style="list-style-type: none"> • A PCN will not be classified as a void if the CEO issues a substitute PCN. 	<p>See above</p>

Other Services.

The measurements listed below relate to the provision of efficient and effective services.

Measurement Summary	Details	Information Sources
<p>PCN Processing Services There is a zero tolerance level for this indicator.</p>	<ul style="list-style-type: none"> ▪ Failures to log, scan, process or correctly allocate any correspondence within the required timescales. 	<p>Performance information will be provided by the Service Provider.</p>
<p>PCN Response Services There is a tolerance level of 1% which is likely to be adjusted during the life of the Contract.</p>	<ul style="list-style-type: none"> • Failure to issue/re-issue a bus lane PCN • Failure to despatch any other statutory/recovery documentation within the required timescales; including Orders for Recovery and Warrants of Execution. 	<p>The Council will input into the assessment of this indicator based on the responses to challenges where it receives complaints, representations, appeals and witness statements.</p>
<p>The Council's Representative may assess individual instances of failure based on the effect on the PCN processing operation, e.g. whether or not the failure to reply properly to a challenge has resulted in the loss of a PCN at appeal or cancellation at the representations stage.</p>	<ul style="list-style-type: none"> • Failure to issue Bus Lane Penalty Charge Notices within the required timescales. • The conversion of captured contraventions from the automated incident capture system must be maintained at current capture rates of approximately 90%. If the Service Provider determines that compliance has resulted in a decrease in incident capture and the resulting PCNs, this must be flagged at the monthly meetings so that the conversion rate could be adjusted or the Council may seek to relocate the relevant camera. 	<p>The Council will also use the IT system to identify cases where the Service Provider fails to scan relevant documentation onto the associated case or has failed to follow the statutory process.</p>
<p>The question of whether a Penalty Charge cancellation is due to "Service Provider Error" shall be determined by reference to a list of reason codes</p>	<ul style="list-style-type: none"> • Failure to take the required action to update the IT system as required, or to record case details correctly, within the appropriate timescales. 	<p>Performance information will be provided by Service Provider. The Council will input into the assessment of this indicator based on the responses to challenges where it receives complaints, representations, appeals and witness statements.</p>

<p>KPI11 Banking and Financial</p> <p>There is a zero tolerance level for this indicator (except the last item where a tolerance level may be agreed) although individual failures may be considered on their own merits.</p>	<p>for Penalty Charge cancellation corresponding to the reasons set out but not be limited to below, and as may be further determined by the Council from time to time.</p> <ul style="list-style-type: none"> ▪ Failure to respond to both statutory and non statutory correspondence within specified timescales. • Failure to respond accurately and fully to challenges and other non-statutory correspondence within the required timescales. • Failure to process Representations and Appeals within required timescales or accurately • Appeals non-contested or refused due to poor or incorrect Representation response; or • Failure on the Service Provider and their subcontractors to deliver a compliant statutory and customer service to the PCN recipient. <p>The Service Provider will be expected to meet a standard such that no more than 1% of all PCNs issued are cancelled as a result of an error made by the Service Provider.</p>	
	<p>The Service Provider will maintain the weekly collection rate in line with budget expectations as well as maintain the industry average for the recovery of a PCN at £45 and work to increase the value of this recovery rate for the duration of this contract. This element of the KPI will be considered met if monthly revenue summary information demonstrates that agreed activity levels are being met across all work streams.</p>	<p>Performance information will be provided by Service Provider.</p> <p>The Council will also agree activity levels with the Service Provider at the monthly meetings and monitor information using the IT and SAP systems.</p> <p>Note – notwithstanding the requirements of this KPI, where any errors in banking have</p>

	<ul style="list-style-type: none"> • Failure to account for monies taken on behalf of the Council. Failure to provide the necessary level of facilities for cashless payment as outlined in the specification. • Late/delayed banking of monies unless otherwise agreed with the Council's Representative. • Failure to carry out adequate reconciliation of monies and/or errors in banking and accounting processes. (Tenders are invited to suggest a tolerance level for this item). 	<p>incurred a financial loss to the Council, the amount lost will be deducted from the performance payment.</p>
<p>KPI12 Lines and Signs Maintenance</p> <p>This indicator relates to the maintenance of lines and signs as outlined in the specification.</p>	<ul style="list-style-type: none"> • Failure to report defects or to attend to any reported defect and effect the necessary repair within the required timescales. • Cases where a PCN has been cancelled as a result of a defect with either lines or signs must have an associated works order to rectify the defect. 	<p>Performance information will be provided by Service Provider.</p> <p>The Council may verify this information from its own observations, representations and appeals data.</p> <p>The Council will also use information provided at the monthly meetings to confirm whether remedial work has taken place against all instances of repair requests and/or identification.</p>
<p>KPI13 Abandoned Vehicles</p>	<ul style="list-style-type: none"> • The Service Provider is to report all suspected abandoned or nuisance vehicles, observed during enforcement patrols. A description of an "abandoned or nuisance vehicle" is to be agreed between the Council and the Service Provider. • The Service Provider is to report how many vehicles have been removed after investigation. 	<p>The Service Provider will self-monitor and provide the Council with a report of the number of abandoned or nuisance vehicles that they have reported and removed.</p> <p>The Council may use information relating to complaints about this service to assess this KPI.</p>
<p>KPI14 Other</p>	<ul style="list-style-type: none"> • Failure to provide information required to deal with FOI requests within an agreed timescale. 	<p>This indicator will be monitored by the Service Provider through quality checks and</p>

	<ul style="list-style-type: none"> • Breaches of the Data Protection Act by the Service Provider or a member of the Service Provider's staff. ▪ Compliance with Health & Safety legislation, Council policies and procedures. ▪ Equalities Act 	<p>by the Council through monitoring of complaints.</p> <p>The Service provider will also be required to provide such relevant information that may be required at the monthly meetings as agreed with the Council.</p>
<p><u>KPI 15: Cashless Service</u></p> <p>There is a tolerance of 5% on elements of this service not associated with financial management and service availability.</p>	<p>The Service Provider will be required to provide a cashless parking system for on and off street parking.</p> <p>As it is the intention of the Council to remove all Pay and Display machines, the Service Provider will also be required to offer an alternative payment mechanism.</p> <ul style="list-style-type: none"> • Payments taken on behalf of the Council must be banked within 48 hours in a format agreed with the Council. • The Service Provider will provide reports to the Council on a weekly basis in a format agreed with the Council. This will include but is not limited to the number of transactions, charges related to additional services, VAT (including VAT on services) and service availability. • The Service Provider will ensure that service information is available to service users in a manner that complies with relevant legislation, the Council's priorities and the design principles of the One Barnet Programme. 	<p>This indicator will be monitored by the Service Provider through quality checks and by the Council through weekly monitoring of reports provided by the Service Provider.</p> <p>The Council will require access to any relevant reporting system to verify such reports from the Service Provider and to undertake any additional reporting that may be required to monitor this contract.</p> <p>The Council will also undertake associated risk audit activity to verify transaction data.</p>

SCHEDULE 5

CHANGE CONTROL PROCEDURES

1. PRINCIPLES

- 1.1 Where the Council or the Service Provider see a need for a change to the Services or the Contract, then either Party may at any time request a change and propose an amendment to this Contract in accordance with the procedure set out in paragraph 2 below.
- 1.2 Neither the Council nor the Service Provider shall unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties to this Contract shall not be effected until a change control note in the form attached to this **Schedule 5** (a "**Change Control Note**") has been signed by the authorised signatory of both Parties.
- 1.4 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 sub-contractors 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) 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 Council Representative 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 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 terms of the Contract.

2.7 **Authorised Signatories**

2.7.1 Where the change 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 Council's Representative for changes up to the value set out in the Schedule of Variables and such person as set out in the Council's own constitution and any contract standing orders for changes above this value;

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

Change Control Note

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Addition or deduction from the Target Cost:

Service Provider:

Signed:

Council Response: Accept/Reject

Signed:

Valid Until Date:

Note: The format of the Change Control Note may vary from time to time in circumstances where additional information is deemed necessary by the Council of the Service Provider in order to accurately reflect the nature of the change.

SCHEDULE 6

TRANSFERRING EMPLOYEES

(To be completed following employee transfer)

SCHEDULE 7

PARKING PLAN

See separate document (Schedule 7 - Parking Plan.doc)

SCHEDULE 8

ADJUDICATOR AND EXPERT

- 1 The Adjudicator and/or Expert nominated to consider a dispute referred to him shall be jointly selected by both Parties.
- 2 Where the Council and the Service Provider are unable to agree on the identity of the Adjudicator and/or Expert to be appointed, the President for the time being of the Chartered Institute of Arbitrators shall make such appointment as he sees fit bearing in mind the nature and scope of this Contract within twenty (20) Calendar Days of any application for such appointment by either Party.

SCHEDULE 9

Not Used

SCHEDULE 10

INTELLECTUAL PROPERTY

Council Software

External Software

Contact with Civica plc as detailed in paragraph 1.9 of **Schedule 2** (Specification).

Service Provider Software

SCHEDULE 11

TARGET COST

The main principle of Target Cost Contracts is that the Service Provider receives a share of any savings and pays any excess when the final cost is compared to the Target Cost. The provision is designed to motivate the Service Provider to investigate and propose changes in the way the Services are provided that will reduce the Actual Cost while maintaining or improving the service levels defined by the Key Performance Indicators.

- If the Service Provider proposes a change to the Services by way of innovation or efficiency that the Council's Representative accepts as a proposal for a change to the Services in accordance with Schedule 4 the Target Cost is altered to reflect the Change Control Note.
- Any saving resulting from the above is shared by the Council and the Service Provider as set out in the Schedule of Variables.
- The amount resulting from the agreed share will be included by the Service Provider in the next application for payment.
- Payment will be made in accordance with **Clause 8**.
- The new Target Cost resulting from the Change becomes effective from the next payment period as defined in Schedule 3.
- Performance Related Payments are not affected by these provisions.

Target Cost

2.1 The Target Cost of the Services will be shown against individual items in Schedule 11. The following shall be included:

- 2.1.1 Labour and staff, including all costs in connection therewith;
- 2.1.2 Supply and administration of materials, goods, storage, and costs in connection therewith;
- 2.1.3 Accommodation including all rates, Rents, cost of Utilities and Insurance for each location;
- 2.1.4 Equipment and transport costs in connection therewith
- 2.1.5 I.T. System costs and all installation and maintenance charges, telecommunications costs and staffing costs associated therewith;
- 2.1.6 All banking charges and arrangements for credit/debit card facilities related to the Service, where supplied by the Service Provider.

A sample of a Target Cost Schedule is set out below. This may be varied by alteration or expansion depending on the Services required.

Item	Type	Description	Quantity	Annual Rate	Annual Target Cost
	1	Contract Manager			
	2	Assistant Contract Manager			
	3	Supervisor			
	4	CEOs - Senior			
	5	CEOs - Basic			
	6	CEOs - Mobile			
	7	Radio Controller			
	8	Correspondence Staff			
Labour and Staff	9	Administrative staff including Quality and monitoring			
Rates to cover all on-costs including but not limited to benefits, NI, fares, accommodation where necessary etc.	10	Payment Processing Staff			
	11	Enforcement Support Staff			
	12	Other - specify			
Premises including all associated costs	1	Premises/Bases			
	2	Telecommunications			
	3	Data Communication			
	4	Other specify			
Equipment to include all costs leasing, repair, maintenance, consumables, losses, replacements	1	IT - Hand Held Equipment			
	2	Radios/Telecoms, cameras			
	3	General office equipment			
	4	Uniforms and associated equipment			
	5	Vehicles - Trucks			
	6	Vehicles - Vans			
	7	Vehicles - Cars			
	8	Vehicles - Two wheelers			
	9	IT system - initial costs should include comms lines for access to the IT system from the Managed Service site to the Service Provider sites and a back up internet facility			

	10	IT system - Costs for full provision from April 2014 and should include servers, comms lines for access to the IT system from the Managed Service site to the Service Provider sites and a back up internet facility. The Service Provider will need to consider the cost of access for other relevant third party users including the Council and other Council contractors.		
Materials including delivery, distribution and removal as necessary	1	Stationery, Postage and Documentation		
	2	Fuels/Oils/Greases		
	3	Cleaning		
Services	1	Provision of a cashless parking service by telephone		
	2	Provision of a cashless parking service by other means		
Miscellaneous	1	Provision of a Bond		
Provisional items	2	Start up costs		
			Annual Target Cost	
				0
			Maximum (up to 20 %) addition for Performance related Payment	%
			CONTRACT SUM	0.00

SCHEDULE 12

CONTRACT PLAN

SEE ATTACHED DOCUMENT

(London Borough of Barnet - Contract Plan.doc)

SCHEDULE 13

Not Used

SCHEDULE 14

FORM OF LICENCE

Not Required

SCHEDULE 15

BULK TRANSFER TERMS

1 Interpretation and definitions

In this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

Actuary's Letter means the letter from the Authority's Actuary, a copy of which has been attached to this Schedule;

Authority's Actuary means Barnett Waddingham LLP of 163 West George Street, Glasgow G2 2JJ, appointed by the Authority for the purposes of this Schedule;

AVCs means AVCs or SCAVCs as defined in the LGPS Regulations;

Due Date means the date agreed between the Fund and the Service Provider's Scheme once the last of the conditions in paragraph 3.6 of this Appendix has been satisfied;

Fund means The London Borough of Barnet Local Government Pension Scheme Fund within the LGPS;

Service Provider's Actuary means [name of actuary] of [name of firm], or another actuary appointed by the Service Provider for the purposes of this Schedule;

Service Provider's Scheme means the pension scheme or schemes nominated by the Service Provider in accordance with paragraph 13.3.7 of Schedule 15;

Transfer Amount means the amount or amounts referred to in paragraph 3.1 of this Schedule;

Transferring Member means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Service Provider's Scheme under paragraph 2 of this Schedule.

2 The Service Provider's Scheme

The Service Provider shall invite each Eligible Employee who joins the Service Provider's Scheme in accordance with **Clause** 13.3.7 of this Contract to consent to a transfer of benefits being made for him from the Fund to the Service Provider's Scheme. The Service Provider and/or relevant Sub-Service Provider must issue this invitation no later than one (1) month after the Relevant Transfer.

The invitation must be in a form acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed by the Authority) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the Service Provider of this consent in writing no later than three (3) months after the date of the invitation. The Service Provider shall provide the Authority with the names of the Transferring Members no later than four (4) months after the Relevant Transfer Date.

3 Transfer payment from the Fund

3.1 The Authority shall use reasonable endeavours to ensure that it transfers from the Fund to the Service Provider's Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Fund before the Relevant Transfer calculated in accordance with the Actuary's Letter and the LGPS Regulations.

3.2 As soon as reasonably practicable following the Relevant Transfer, the Service Provider shall promptly provide all data within its possession or under its control which the Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.

3.3 As soon as reasonably practicable following the Relevant Transfer, the Authority shall promptly provide all data within their possession or under their control which the Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.

3.4 The Authority shall use their reasonable endeavours to procure that:

3.4.1 as soon as reasonably practicable after the Authority's Actuary has been provided with the necessary data and information, the Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and

3.4.2 within one (1) week of completing this calculation, the Authority's Actuary shall notify the Service Provider's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

3.4.3 The Service Provider's Actuary will then have one (1) month (or such longer period as the parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary's Letter. The calculation shall be final and binding on the

parties if the Service Provider's Actuary raises no objection within this stated period.

- 3.5 If the Service Provider's Actuary objects in writing under paragraph 3.4 of this Schedule and the Authority's Actuary and the Service Provider's Actuary cannot subsequently agree the Transfer Amount within one (1) month (or such longer period as shall be agreed between the parties) of the objection, then the amount shall be determined by an independent actuary to be nominated by the Authority and the Service Provider jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties. The independent actuary's costs shall be payable equally by the Authority and the Service Provider.
- 3.6 Payment to the Service Provider's Scheme of the Transfer Amount shall only be made on the following conditions:
- 3.6.1 the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Schedule and in accordance with the LGPS Regulations;
 - 3.6.2 HM Revenue & Customs has consented to the making of the payment (which consent the Authority and the Service Provider and/or relevant Sub-Service Provider shall use reasonable endeavours to obtain);
 - 3.6.3 the Service Provider and/or relevant Sub-Service Provider has complied with all its obligations under this Schedule; and
 - 3.6.4 the trustees of the Service Provider's Scheme have confirmed in writing that:
 - (a) a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in paragraph 4 of this Schedule;
 - (b) they shall accept liability for each Transferring Member's accrued contracted out rights under the Fund; and
 - (c) they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.

4 Past service benefits

The Service Provider shall (and shall procure that each relevant Sub-Service Provider shall) ensure that the Service Provider's Scheme provides in respect of each Transferring Member such benefits as the Authority's Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer if he had remained a member of the LGPS.

5 Additional voluntary contributions

Nothing in this Schedule shall apply to AVCs or to benefits secured by them. However, the Authority shall use reasonable endeavours to ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Service Provider's Scheme. The Service Provider shall (and shall procure that each relevant Sub-Service Provider shall) ensure that the Service Provider's Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

6 No assistance

The Service Provider shall not encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the Service Provider's Scheme in respect of the Transferring Members.

7 Exit Provisions

7.1 The Service Provider undertakes to the Authority (for the benefit of the Authority themselves and for the Authority as agent and trustee for the benefit of the Eligible Employees) that on:

- 7.1.1 the expiry or termination of this Contract; or
- 7.1.2 the employment of any Eligible Employee transferring to a New Employer in accordance with **Clause 13.3.12(a)** of this Contract (or otherwise);
- 7.1.3 the Service Provider shall procure that the trustees of the Service Provider's Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the Service Provider's Scheme to the pension schemes of the Authority, any future service provider, or any New Employer (as applicable) which are no less favourable (in the opinion of the Authority's Actuary or an actuary appointed by the Authority) than the bulk transfer terms set out in the Actuary's Letter.

7.2 If the transfer payment paid by the trustees of the Service Provider's Scheme is less (in the opinion of the Authority's Actuary or an actuary appointed by the Authority) than the transfer payment which would have been paid had paragraph 7.1 of this Schedule been complied with, the Service Provider shall pay to the Authority, any future service provider or any New Employer (as appropriate) (or as such person shall direct) the amount of the difference.

8 Authority's Costs

Any costs of the Authority necessarily and reasonably incurred in connection with this Schedule shall be borne by the Service Provider.

SCHEDULE F – ITT QUESTIONNAIRE

1. The Specification

Tenderers are requested to complete a Contract Plan specifying how the Tenderer intends to meet each of the requirements in the Specification and in particular:

- 1.1 specify how the Tenderer will meet the requirements for the IT Provision and Equipment needs for the contract (section 1.9);
- 1.2 specify how the Tenderer intends to meet the requirements relating to patrol areas (section 2);
- 1.3 specify how the Tenderer intends to meet the requirements in relation to core service hours (section 3);
- 1.4 specify how the Tenderer intends to meet the requirements in relation to patrol requirements including special events and school restrictions (section 4);
- 1.5 specify how the Tenderer intends to meet the requirements in relation to cashless parking (section 5) and/or develop a cashless option which would be easy for users to park without the use of cash;
- 1.6 specify how the Tenderer intends to meet the requirements in relation to accommodation (section 6);
- 1.7 specify how the Tenderer intends to meet the requirements outlined in relation to staffing and personnel (section 8);
- 1.8 specify how the Tenderer intends to meet the requirements in relation to training and development (section 9);
- 1.9 specify how the Tenderer intends to meet the requirements in relation to Uniforms, CCTV and CEO Equipment (section 10);
- 1.10 specify how the Tenderer intends to meet the requirements in relation to the general conduct requirements for Civil Enforcement Officers and other employees (section 11);
- 1.11 specify how the Tenderer intends to meet the requirements in relation to patrols (section 12);
- 1.12 specify how the Tenderer intends to meet the requirements in relation to the issue of PCNs, including evidence and requirements in relation to Challenges, Representations and Appeals (section 13);
- 1.13 specify how the Tenderer intends to meet the requirements in relation to lines and signs maintenance and replacement (section 14);
- 1.14 specify how the Tenderer intends to meet the requirements in relation to monitoring and reporting (section 15);

- 1.15 specify how the Tenderer intends to meet the requirements in relation to PCN processing and administration (section 16), in accordance with the provisions of appendix 8 of the Specification so as to comply with the process required for representations and appeals. Tenderers should note that the Council and its advisors do not seek to provide appendix 8 as a definitive statement of the legal position on this issue, Tenderers are therefore advised to seek their own legal advice in relation to their proposals;
- 1.16 specify how the Tenderer intends to meet the requirements in relation to payment processing (section 17);
- 1.17 specify how the Tenderer intends to meet the requirements in relation to car park maintenance (section 18);
- 1.18 specify how the Tenderer intends to measure each KPI and specify what information will be provided in the monthly report to enable the Council to establish whether the KPI has been met or not for that month (Schedule 4 to the Contract);
- 1.19 The tenderer is invited to review the performance measurements of the KPIs and propose alternative mechanisms or additional means of measurements for each of them (Schedule 4 to the Contract);

2. Health and Safety

- 2.1 In relation to the health and safety requirements set out at appendix 5 of the Specification, Tenderers are requested to provide proposals to demonstrate how they will comply with the health and safety requirements. In doing so, they may wish to provide examples of contracts which are not office-based operations specifying the particular health and safety risk management challenges posed.

3. Approach to Employment

Tenderers are requested to provide proposals as to how they will deal with the following employment themes. In doing so they should answer the specific questions set out below on no more than one side of A4 per employment theme in Arial font 11. You may provide documents to support your responses in an Appendix.

3.1 Theme: Employee Engagement, Communication and Industrial Relations

- 3.1.1 In relation to the LBB contract, what will be your industrial relations framework and internal communication strategy?
- 3.1.2 How will you demonstrate that you will put the LBB staff at the heart of your organisation?
- 3.1.3 What are your intentions during mobilisation and transformation?
- (a) How will this strategy best induct transferring employees into your organisation?

(b) How will you gain an understanding of their individual skills and in what way will these best benefit the service provision to the Council?

3.1.4 How do you intend to introduce this Contract into your organisation as a whole, where will it sit and how will relationships be forged between this and other contracts?

3.1.5 How do you intend to encourage relationships between your central functions and the staff and management on this Contract?

3.1.6 What does your year 1 transformation plan look like?

3.2 Theme: Employment Policies, Processes and Equalities

3.2.1 How will you discharge your Equality Act duties and how will you ensure that the Council is able to discharge its non-delegable Equality Act duties?

3.2.2 How likely are you to use sub-contractors? How will you monitor how your sub-contractors treat the Council's staff?

3.2.3 What people issues do you envisage (by yourselves or any sub-contractors), e.g. location, changes to other contractual terms and conditions?

3.2.4 Where do you foresee this contract being delivered from? Please explain your relocation strategy, if appropriate for this contract, and any potential difficulties you foresee?

3.2.5 Please provide the detail of any potential reorganisation you intend to initiate as part of your tender including where this contract will sit in your organisational structure and any restructures as mentioned above.

3.2.6 Please detail how you envisage redeployment will work for this Contract.

3.3 Theme: Recruitment, Retention, Reward & Development

3.3.1 How will you identify talent and motivate and develop staff? How will this fit into your organisational framework?

3.3.2 How will you retain key individuals?

3.3.3 How will you monitor pay and protected characteristics?

3.4 Theme: Performance Data

3.4.1 As part of the contract monitoring by the Council, what Management Information would you be expecting to report back to the Council on a quarterly basis about employees on this Contract?

3.4.2 Will you follow any best practice guidelines e.g. CIPD calculations/benchmarking?

3.5 Theme: Employee Well-being

3.5.1 What approaches will you adopt to ensure the well-being of the staff?

3.6 Theme: Pensions

3.6.1 In order to enable the Council to obtain an initial indicative employer contribution rate from the LGPS actuary, where relevant, bidders should indicate whether the pension scheme offered will be open or closed to new employees.

4. Optional Requirements and Added Value

4.1 General Statement

4.1.1 The Council has identified some additional services that may add value to the Contract. The Council will be free to choose to adopt any, all or none of the proposals submitted under this section.

4.1.2 The provision of each itemised service must be treated as a stand alone item. It will not be acceptable for any costs involved to be offset against the prices shown for the provision of the mandatory services defined earlier in this Specification.

4.1.3 Indicative costs and details of how these services would be provided must be included.

4.1.4 These services must be compatible with the mandatory services required in the Specification and must not operate to the detriment of such services.

4.2 Independent Audit

4.2.1 As part of its monitoring process, the Council wishes that audits of the service are carried out periodically. These audits must be performed by an independent body, i.e. not the Council or the Service Provider.

4.2.2 The audits will include an element of compliance survey work (compliance with the parking restrictions) as well as Mystery Shopping, to check the performance of the Service Provider's staff and the performance of services such as notice processing.

4.2.3 The Council would be keen to receive proposals from the Service Provider to fund and provide such independent audits, to include their frequency, scope and suggestions of independent bodies or companies who could be employed to perform them.

4.3 Blue Badge and / or Permit Fraud Enforcement

4.3.1 The Service Provider may be asked to assist the Council in the detection and prevention of Blue Badge or Permit fraud.

4.3.2 Proposals are invited for providing this service on an ad-hoc basis.

4.4 Consultancy Services

4.4.1 Proposals are invited for the provision of consultancy services, which will include all or some of the following;

- The implementation of minor changes to CPZs;
- Minor revisions to Traffic Management Orders;
- Investigation of locations in the borough where pavement parking may be permitted.

4.5 CCTV Enforcement

4.5.1 The Council may choose to implement CCTV enforcement for parking and moving traffic contraventions through the use of CCTV Smart cars.

4.5.2 Proposals are invited for the provision of vehicles and for carrying out this service, either on an ad-hoc basis, or a permanent basis.

4.6 Permits

4.6.1 The Council invites proposals for the provision of a virtual permits and vouchers to replace the existing paper permits, which will be available through on-line and personal or postal applications.

4.6.2 Proposals are also invited for the provision of a permit fraud detection service.

The Tenderer is invited to provide proposal(s) to demonstrate how they can meet the requirements or any requirement set out in this section.

SCHEDULE G - CONTRACT PLAN

SEE ATTACHED DOCUMENT, TO BE COMPLETED BY THE TENDERER

(London Borough of Barnet - Contract Plan.doc)



[insert your organisation name here]

CONTRACT PLAN

METHOD STATEMENTS FOR THE PROVISION OF PARKING ENFORCEMENT AND RELATED SERVICES

CONTENTS

[SAMPLE HEADING 1].....	3
[SAMPLE HEADING 2].....	3
[SAMPLE HEADING 3].....	3

[SAMPLE HEADING 1]

[SAMPLE HEADING 2]

[SAMPLE HEADING 3]

[Sample normal text]

[Attach appendices as necessary]

SCHEDULE H - INSURANCE COVER FORM

I/We hereby certify that:-

The under-mentioned insurance policies are held by

(Name of Insured)

of

Employer's Liability Policy No

With

Public Liability Policy No

The policies contain a Principal's Clause that will indemnify the Authority in respect of any claims that may arise in connection with the insured carrying out Services under a Contract with the Council.

The indemnity provided by the Public Liability Policy is not less than five million pounds (£5,000,000) for any one incident or any one claim and unlimited in total.

The Policy Premiums have been paid and the policies are in force until the dates shown below:-

Employers Liability

Public Liability

Signed

Name

Position

Name of Organisation

Date

THE FORM MUST BE SIGNED BY AN INSURANCE COMPANY OR BROKER

SCHEDULE I (1) - FORM OF BOND

London Borough of Barnet

BY THIS BOND WE (Contractors name):

.....

whose registered office is situated at: -

Address

.....

.....

(hereinafter called "the Contractor") and:
(Bondsman's name)

.....

whose registered office is situated at: -

Address

.....

.....

(hereinafter called "the Surety") are jointly and severally bound to the Mayor and Burgesses of the London Borough of Barnet, Town Hall, North London Business Park, Oakleigh Road South, London N11 1NP (hereinafter called "the Authority") in the sum of 10% of the contract value in pounds sterling for the payment of which sums the Contractor and the Surety bind themselves their successors and assigns jointly and severally by these presents.

WHEREAS by a certain Contract bearing even date with the above written Bond and made between the Authority of the one part and the Contractor of the other part the Contractor has contracted with the Authority to provide the Service mentioned therein in conformity with the provisions of the said Contract.

NOW THE CONDITION of the above written Bond is such that if the Contractor shall duly perform and observe all the terms provisions conditions and stipulations of the

said Contract on the Contractor's part to be performed and observed according to the true purport intent and meaning thereof and if on default by the Contractor the Surety shall satisfy and discharge the damages sustained by the Authority thereby up to the amount of the above written Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect but no alteration of the terms of the said Contract made by agreement between the Authority and the Contractor or in the extent or nature of the Service to be performed thereunder and no allowance of time by the Authority or the Authorised Officer under the said Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning the said Contract on the part of the Authority or the Authorised shall in any way release the Surety from any liability under the above written Bond.

Sealed with our respective seals and dated this

..... day of 2011

THE COMMON SEAL of the above)
bounden Contractor was hereunto)
affixed in the presence of:)

Director

Secretary

SCHEDULE I (2) - DRAFT DEED OF GUARANTEE

LONDON BOROUGH OF BARNET

THIS AGREEMENT is made the.....day of.....2011

BETWEEN:

whose registered office is situated at

(hereafter called "the Guarantor") of the one part and THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET acting by the Council of the said North London Business Park, Oakleigh Road South, London N11 1NP (hereinafter called "The Authority") of the other part

WHEREAS

(1) This Agreement is supplemental to a contract (hereinafter called "the Contract") bearing even date herewith and made between

(hereinafter called "the Contractor") of the one part and the Authority of the other part whereby the Contractor has agreed and undertaken to provide Goods and Services for the Authority upon the terms and conditions more particularly described therein.

(2) The Contractor is a subsidiary company of the Guarantor.

(3) The Guarantor has agreed to guarantee the due performance of the Contract in a manner hereinafter appearing now the Guarantor hereby agrees with the Authority as follows:-

1. If the Contractor (unless relieved from the performance by any clause of the Contract or by the decision of a tribunal of competent jurisdiction) shall in any respect fail to execute the Contract or commit any breach of its obligations thereunder or shall cease to exist then the Guarantor will indemnify the Authority against all losses damages costs and expenses which may be incurred by it by reason of any default on the part of the Contractor in

performing and observing the agreements and provisions on its part contained in the Contract.

2. The Guarantor shall not be discharged or released from this guarantee by any agreement conduct omission breach or repudiation by the Contractor or by any forbearance whatsoever on the part of the Authority.

IN WITNESS WHEREOF.....

SCHEDULE J – TUPE SCHEDULE

SEE ATTACHED DOCUMENTS

(Schedule J (1) - TUPE Schedule 8 Jul 11 - Parking data FINAL.xls, password protected. Password to be emailed separately
Schedule J (2) - Org Chart - Parking - 8 July 11.doc)

Schedule J (2)

Parking Organisation Chart by post As recorded on SAP on 8 July 2011

--- Environment & Operations

- |-- Director of Environment and Operations (out of scope)
 - |-- Assistant Director - E&O (out of scope)
 - |-- **Parking Management (part of AD's remit)**
 - |-- Parking Manager (out of scope as he is on a fixed term contract)
 - |-- **Information Team**
 - |-- Manager
 - |-- **Post Team**
 - |-- Administrative Officer
 - |-- 3 Administrative Assistants
 - |-- **Information Team 1**
 - |-- Team Leader
 - |-- 2 Information Officers (CCTV)
 - |-- 6 Information Officers
 - |-- **Information Team 2**
 - |-- Team Leader
 - |-- 9 Information Officers
 - |-- **Policy & Projects**
 - |-- Manager
 - |-- **Parking Enforcement**
 - |-- Manager
 - |-- 2 Control Desk Operators
 - |-- **Maintenance Team**
 - |-- Site Investigations Officer
 - |-- Assistant Site Investigations Officer
 - |-- Parking Maintenance Engineer
 - |-- **CEO Team 1**
 - |-- Civil Enforcement Supervisor
 - |-- 9 Civil Enforcement Officers
 - |-- **CEO Team 2**
 - |-- Civil Enforcement Supervisor
 - |-- 8 Civil Enforcement Officers
 - |-- **CEO Team 3**

- | | | }-- Civil Enforcement Supervisor
- | | | }-- 10 Civil Enforcement Officers
- | | | }-- **CEO Team 4**
- | | | | }-- Civil Enforcement Supervisor
- | | | | }-- 8 Civil Enforcement Officers
- | | | }-- **CEO Team 5**
- | | | | }-- Civil Enforcement Supervisor
- | | | | }-- 5 Civil Enforcement Officers
- | | | }-- **Payments**
- | | | | }-- Finance Officer
- | | | | }-- 2 Finance Assistants

SCHEDULE 9 – APPENDIX 1

REISSUED INVITATION TO TENDER AND COVERING EMAIL

[REDACTED]

From: [REDACTED]
Sent: 08 September 2011 17:29
To: [REDACTED]
Subject: L.B Barnet Parking Tender - URGENT INFORMATION
Attachments: Transfer-Employees-LBB-6th-Sep-2011.pdf; Evaluation - Section 3.docx

Dear Tenderers,

Further to ongoing discussions between the Council, relevant employees and unions, the Council has agreed to implement the attached enhanced terms and conditions in relation to pensions and employment matters. The relevant employment and pensions provisions of the ITT document and contract have been amended to take account of these requirements, as shown in the attached documents.

In addition, the Council has amended the evaluation criteria (weightings) contained in paragraph 6 of the ITT document by:

- (1) deleting the 1 mark given for the tenderer's ability to "provide a suitable pension and assurances for all necessary payments" (entry 3.5 in table 1);
- (2) adding an additional 1 mark (making it in total 3 marks) for "effective recruitment, reward, training, development, retention and performance management processes, including identifying internal talent and future leaders" (entry 3.3 in table 1). The attached shows the amendments for this section of the evaluation table

Please consider these requirements in your tender submission.

This information has been released to each tenderer at the same time.

As a result of these changes, the date for submission of tenders will be amended to **16th September 2011 at 12.00 hrs.**

Yours sincerely,


[REDACTED]

[REDACTED]

Corporate Procurement Team

London Borough of Barnet, North London Business Park, Oakleigh Road South, London N11 1NP
Tel: [REDACTED]

Barnet Online: www.barnet.gov.uk

 please consider the environment - do you really need to print this email?

3	Effective HR practices & professional development and location issues	Weighting
3.1	A strong commitment to compliance with current and future employment law, regulations, codes of practice and good HR practice going forward e.g. TUPE and mobilisation arrangements	2
3.2	Any HR performance data provided is in line with best practice, for example, CIPD	1
3.3	A description of effective recruitment, reward, training, development, retention and performance management processes, including identifying internal talent and future leaders	3
3.4	An effective individual and collective employee communication and engagement approach throughout the organisation, including collective Industrial Relations.	2
3.5	Proposals for operational base and any other premises	1
3.6	Skills and knowledge of Contract Manager, senior staff and support structures	1
		10

Transfer of Employees from the London Borough of Barnet

22nd August 2011

1. The London Borough of Barnet in support of the delivery of its Corporate Priorities has committed to a programme of Organisational Change, which includes outsourcing some of its activities to commissioned partners. This commissioning process includes a robust procurement process in which workforce matters are included within the award categories.

The process of outsourcing will involve the Transfer of Undertaking and Protection of Employment [TUPE] Regulations and the London Borough of Barnet and its partners will comply with all of their TUPE obligations, plus any other obligations which are extant at that time. The London Borough of Barnet has also committed to enhancing the TUPE terms as set out below.

2. Pensions

2.1 The London Borough of Barnet will ensure that employees transferred from the Council to a new employer will be able to continue in membership of the Local Government Pension Scheme [LGPS] by requiring that the new employer obtains Admitted Body Status [ABS] within LGPS. ABS permits employees to participate in LGPS should they choose to do so although they will no longer be employed by the Council.

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3.1 The London Borough of Barnet will require that employees transferred from the Council to a new employer will not have their terms and conditions of employment varied by the new employer until after the first anniversary of the transfer from the Council to the new employer. Any changes to be made after the first anniversary of the transfer to the new employer will be the subject of consultation and negotiation, as appropriate, by the new employer with its recognised trade unions. In practical terms, a new employer will be able to make such changes as necessary to processes and procedures so as to reflect the new organisational structure immediately following transfer.

- 3.2** The cessation of the Code of Practice on Workforce Matters in Local Authority Service Contracts has removed the requirement on successful contractors to offer terms and conditions of employment to new employees who will work alongside former Council employees which are "no less favourable overall". However, the attention of contractors is drawn to the requirements arising from equal pay and equal value matters that will need to be considered where this may be envisaged.
- 3.3** As a general principle, where employees move to an employer that is not a member of the National Joint Council for Local Government Services, then pay awards decided by that body will cease to apply. However, a recent case, Parkwood Leisure Ltd. vs. Alemo-Herron and others, is considering this matter. The London Borough of Barnet will expect future employers to follow the outcome of this case and implement any necessary changes to their arrangements.
- 3.4** The London Borough of Barnet currently applies GLPC/ Hay job evaluation schemes and will expect new employers, where there is planned to be changes in job gradings, to utilise these methods up to and including the first anniversary of the transfer. Should the new employer plan to change the job evaluation systems applied, this will be subject, as appropriate, to consultation and negotiation with its recognised trade unions.
- 3.5** The London Borough of Barnet will discuss, prior to transfer to a new employer, on a contract by contract basis, with its recognised trade unions, the plans for relocation of employees and work to identify practicable and cost-effective solutions where these relocations affect current employees.
- 3.6** Where a former Council employee agrees, after transfer to a new employer, to a change in his or her terms of conditions, for example a promotion, this will be a matter for the individual. However, where collective changes are planned, the London Borough of Barnet expects that the new employer will conduct consultation and negotiation as appropriate with its recognised trade unions.

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4.1 The London Borough of Barnet recognises the importance of a workplace that is safe, free from discrimination and where employees feel able to express their reasonable concerns without fear of recrimination. To support this, the London Borough of Barnet has produced policies that cover, amongst other areas,:-

- Equalities Policy
- Health and Safety
- Whistle Blowing

Where employees are transferred from the London Borough of Barnet, new employers are expected to provide processes that are broadly equivalent to these.

4.2 It is expected that new employers will have available a Workforce Development, Education and Training Plan that will be accessible to the London Borough of Barnet and recognised trade unions prior to transfer.

4.3 The London Borough of Barnet has in place arrangements to provide support to employees experiencing difficulties in their personal or business life, it is expected that the new employer has similar arrangements in place and will be able to demonstrate these to the Council and recognised trade unions prior to transfer.

4.4 Where the London Borough of Barnet has transferred employees to a new employer, the new employer will be provided with the HR policies and procedures applicable to that group of employees that are current at the time of transfer. It is recognised that the new employer may need to make pragmatic changes to reflect its particular organisational structure. Any significant changes in the future will be the subject of consultation or negotiation with the new employer's recognised trade unions, as appropriate, by the new employer.

5 Trade Union and Employee Relations

- 5.1** The London Borough of Barnet has in place, with recognised trade unions, a Trade Union and Employee Relations Framework. This document sets out a number of processes which govern collective matters at the Council. The Council envisages that the new employer will utilise this Framework whilst dealing with collective matters, subject to pragmatic changes which reflect the organisational structure of the new employer, however, these matters will be a matter for the new employer to discuss with recognised trade unions.
- 5.2** The London Borough of Barnet provides a facility for the deduction of trade union subscriptions from salary for which the trade unions pay a fee. It is expected that potential new employers will continue this facility for the requisite fee for employees transferred from the London Borough of Barnet.
- 5.3** To ensure that the costs of agreed trade union release time from normal duties do not fall inequitably on one particular employer, a central fund will be created by the Council that employers will be required to contribute to. Employers will be able to access this fund under agreed terms to meet any costs jointly identified and incurred, by the Council and the new employer as appropriate.
- 5.4** It is expected that where reasonable notice is given and access does not cause operational difficulties, then trade union officials may normally be granted access to the premises of the new employer. It is recognised by all parties that this may mean that access to premises may need to be given to people who are not employees and suitable arrangements will need to be made.

22nd August 2011

Contract Number 50352

Authority	Colonial Business Committee	
Date	14/12/10, 15/2012/10/2	
Meeting	14/12/10, 15/2012/10/2	
Mr. [Name]	[Name] of [Company]	
Contract No.	[Contract No.]	
Created by	DATE	OFFICER'S INITIALS
[Name]	15/11/12	160/12-38
Checked by		
[Name]		
File No.	C/009-210	



DATED 30th April 2012

THE LONDON BOROUGH OF BARNET

and

NSL LIMITED

**CONTRACT FOR THE PROVISION OF
PARKING ENFORCEMENT AND RELATED SERVICES**

SCHEDULES 10 TO 17

SCHEDULE 10

INTELLECTUAL PROPERTY

Council Software

External Software

Contact with Civica plc as detailed in paragraph 1.9 of **Schedule 2** (Specification).

Service Provider Software

The Target Cost Schedule and the Contract Plan contains details of the prices and the method of delivery for the provision of Parking Services from NSL Ltd. NSL do not agree to the release of this information as it regarded the information as commercially sensitive and claims that the release would seriously undermine their competitive advantage and could seriously impact their commercial interests.

SCHEDULE 11

TARGET COST

The main principle of Target Cost Contracts is that the Service Provider receives a share of any savings and pays any excess when the final cost is compared to the Target Cost. The provision is designed to motivate the Service Provider to investigate and propose changes in the way the Services are provided that will reduce the Actual Cost while maintaining or improving the service levels defined by the Key Performance Indicators.

- If the Service Provider proposes a change to the Services by way of innovation or efficiency that the Council's Representative accepts as a proposal for a change to the Services in accordance with Schedule 4 the Target Cost is altered to reflect the Change Control Note.
- Any saving resulting from the above is shared by the Council and the Service Provider as set out in the Schedule of Variables.
- The amount resulting from the agreed share will be included by the Service Provider in the next application for payment.
- Payment will be made in accordance with **Clause 8**.
- The new Target Cost resulting from the Change becomes effective from the next payment period as defined in Schedule 3.
- Performance Related Payments are not affected by these provisions.

Target Cost

2.1 The Target Cost of the Services will be shown against individual items in Schedule 11. The following shall be included:

- 2.1.1 Labour and staff, including all costs in connection therewith;
- 2.1.2 Supply and administration of materials, goods, storage, and costs in connection therewith;
- 2.1.3 Accommodation including all rates, Rents, cost of Utilities and Insurance for each location;
- 2.1.4 Equipment and transport costs in connection therewith
- 2.1.5 I.T. System costs and all installation and maintenance charges, telecommunications costs and staffing costs associated therewith;
- 2.1.6 All banking charges and arrangements for credit/debit card facilities related to the Service, where supplied by the Service Provider.

A sample of a Target Cost Schedule is set out below. This may be varied by alteration or expansion depending on the Services required.

Item	Type	Description	Quantity	Annual Rate	Annual Target Cost
	1	Contract Manager			
	2	Assistant Contract Manager			
	3	Supervisor			
	4	CEOs - Senior			
	5	CEOs - Basic			
	6	CEOs - Mobile			
	7	Radio Controller			
	8	Correspondence Staff			
Labour and Staff	9	Administrative staff including Quality and monitoring			
Rates to cover all on-costs including but not limited to benefits, NI, fares, accommodation where necessary etc.	10	Payment Processing Staff			
	11	Enforcement Support Staff			
	12	Other - specify			
Premises	1	Premises/Bases			
including all associated costs	2	Telecommunications			
	3	Data Communication			
	4	Other specify			
Equipment	1	IT - Hand Held Equipment			
to include all costs leasing, repair, maintenance, consumables, losses, replacements	2	Radios/Telecoms, cameras			
	3	General office equipment			
	4	Uniforms and associated equipment			
	5	Vehicles - Trucks			
	6	Vehicles - Vans			
	7	Vehicles - Cars			
	8	Vehicles - Two wheelers			
	9	IT system - Initial costs should include comms lines for access to the IT system from the Managed Service site to the Service Provider sites and a back up internet facility			

	10	IT system - Costs for full provision from April 2014 and should include servers, comms lines for access to the IT system from the Managed Service site to the Service Provider sites and a back up internet facility. The Service Provider will need to consider the cost of access for other relevant third party users including the Council and other Council contractors.		
Materials including delivery, distribution and removal as necessary	1	Stationery, Postage and Documentation		
	2	Fuels/Oils/Greases		
	3	Cleaning		
Services	1	Provision of a cashless parking service by telephone		
	2	Provision of a cashless parking service by other means		
Miscellaneous Provisional items	1	Provision of a Bond		
	2	Start up costs		
			Annual Target Cost	0
			Maximum (up to 20 %) addition for Performance related Payment	%
			CONTRACT SUM	0.00

SCHEDULE 12

CONTRACT PLAN

BARNET

London Borough of Barnet

NSL Ltd



CONTRACT PLAN

**METHOD STATEMENTS FOR THE PROVISION OF PARKING
ENFORCEMENT AND RELATED SERVICES**

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SCHEDULE 13

Executed Form of Tender, Certificate of Confidentiality, Non-collusion and Non-cavassing, Insurance Cover Form and completed Tender Submission Checklist.

SCHEDULE A - FORM OF TENDER

LONDON BOROUGH OF BARNET

1. For the provision of parking services (the "Services").

To: The Mayor and Burgesses the London Borough of Barnet (the "Council")
{ [Name of Tenderer] } whose registered office is at
{ [Address of Tenderer] } and whose registered number is
{ [V.C. 330000] } (the "Tenderer"), having received an invitation to Tender
from the Council wishes to tender to provide the Services subject to the terms
and conditions set out in the Invitation to Tender, the Contract, the
Specification and the Target Cost Schedule.

1. CONSIDERATION OF THE TENDER

- 1.1 The Tenderer confirms that it understands that the Council is not bound to accept the lowest Tender, this Tender or any Tender it may receive, and understands that the Council reserves the right to invite fresh Tenders should it be considered necessary.
- 1.2 The Tenderer confirms that the insertion of any conditions qualifying this Tender or any unauthorised alteration to any of the Tender Documents may cause the Tender to be rejected and confirms that the Tenderer has not inserted any conditions qualifying this Tender or made any unauthorised alteration to any of the Tender Documents.
- 1.3 The Tenderer confirms that the terms of this Tender have not been adjusted in accordance with any agreement or arrangement with any other person or company.
- 1.4 The Tenderer agrees that this Tender shall remain open to be accepted or rejected by the Council and shall not be withdrawn for a period of 150 days from the date for return of Tenders as set out in the Invitation to Tender.
- 1.5 The Tenderer confirms that to the best of its knowledge and belief it has complied with all the relevant provisions of the Health and Safety at Work Act 1974 and any Regulations made under it.
- 1.6 The Tenderer confirms that it will comply with all current, relevant British Standard Specification or Code of Practice or equivalent European Union or international standards offering guarantees of safety, reliability and fitness for purpose.
- 1.7 The Tenderer confirms that it will not try to obtain or receive by whatever means any information which gives or is intended or likely to give the Tenderer or another party any unfair advantage over any other Tenderer (including the Council's own workforce) in relation to the tendering for and award of the Contract.

¹ Insert the Tenderer's name.

² Insert the Tenderer's address.

³ Insert the Tenderer's registered number.

SCHEDULE D - CERTIFICATE OF CONFIDENTIALITY, NON-COLLUSION AND NON-CANVASSING

LONDON BOROUGH OF BARNET

1. UNDERTAKINGS

In consideration of the Council having invited the Tenderer to tender for the provision of parking services, the Tenderer undertakes as follows:

- 1.1 to accept the restrictions concerning the confidentiality of information provided to the Tenderer set out in paragraph 10 of the Invitation to Tender;
- 1.2 to accept the warranties and disclaimers set out paragraph 8 of the Invitation to Tender; and
- 1.3 to comply with the conditions of non-collusion and non-canvassing as set out in paragraph 5.8 of the Invitation to Tender

2. APPLICATION

- 2.1 The Tenderer accepts that the undertakings set out in paragraph 1 above apply to all parties within its consortium and its constituent companies, advisers, potential sub-service providers and any other person or body to which it may pass all or part of any information relating to the procurement process.
- 2.2 The Tenderer undertakes to ensure that all of the persons and bodies mentioned in paragraph 2.1 are made aware of the restrictions set out in paragraph 1 and to comply with them.

3. BREACH

The Tenderer understands that a breach of the conditions set out in paragraph 1 and paragraph 2 above may result in the Council excluding it from further consideration in the procurement process.

Signed by the Tenderer's authorised representative

[Redacted Signature]

Name: [Redacted Name]

Position: *Chief Executive* [Redacted Position]

Date: *15 September 2011* [Redacted Date]

2. TUPE

- 2.1 The Tenderer confirms that it has taken legal advice on the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
- 2.2 The Tenderer further confirms that, in its view, TUPE is not [delete as appropriate] likely to apply to the Contract and that this is reflected in the Target Cost Schedule.

3. THE CONTRACT

In the event that the Tender is successful, the Tenderer undertakes to execute the Contract as soon as possible.

4. CONFIDENTIALITY

The Tenderer confirms that the details of this Tender have not been passed on to any person, except as authorised in the invitation to Tender.

5. COSTS

The Tenderer acknowledges that the Council will not pay or be liable for any expenses or costs incurred by the Tenderer in connection with the preparation and submission of this Tender.

6. PARENT COMPANY GUARANTEE / PERFORMANCE BOND

The Tenderer acknowledges that an undertaking to provide a Parent Company Guarantee (if applicable) and/or a performance bond will be required.

Signed by the Tenderer's authorised representative

[Redacted signature]

Name:

Position: *Director - Operations* *Commercial Services*

Address: *100, Westgate, London, W1R 3AL*

Telephone number:

Email address:

Date: *15 November 2011*

SCHEDULE H - INSURANCE COVER FORM

We hereby certify that:-

The under-mentioned insurance policies are held by

(Name of Insured) **NSL Limited**

of **4th Floor, Westgate House, Westgate, London, W15 1YY**

Employer's Liability Policy No **[REDACTED]**

With **[REDACTED]**

Public Liability Policy No **[REDACTED]**

The policies contain a Principal's Clause that will indemnify the Authority in respect of any claims that may arise in connection with the insured carrying out Services under a Contract with the Council.

The indemnity provided by the Public Liability Policy is not less than five million pounds (£5,000,000) for any one incident or any one claim and unlimited in total.

The Policy Premiums have been paid and the policies are in force until the dates shown below:-

Employers Liability **1st March 2012**

Public Liability **1st March 2012**

Signed **[REDACTED]**

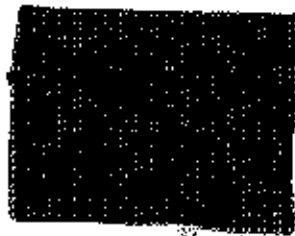
Name **[REDACTED]**

Position **Client Manager**

Name of Organisation **[REDACTED]**

Date **8th August 2011**

THE FORM MUST BE SIGNED BY AN INSURANCE COMPANY OR BROKER



14. TENDER SUBMISSION CHECKLIST

Name of Tenderer: NSL Ltd.

The Tenderer has submitted the following information with its Tender:

Document	Please tick if enclosed
Form of Tender (Schedule A)	✓
Target Cost Schedule (Schedule C)	✓
Certificate of Confidentiality, Non-Collusion and Non-Canvassing (Schedule D)	✓
Contract Plan (Schedule G in response to questions in Schedule F)	✓
Insurance Cover Form (Schedule H)	✓

SCHEDULE 14

FORM OF LICENCE

Not Required

SCHEDULE 15

BULK TRANSFER TERMS

1 Interpretation and definitions

In this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

Actuary's Letter means the letter from the Authority's Actuary, a copy of which has been attached to this Schedule;

Authority's Actuary means Barnett Waddingham LLP of 163 West George Street, Glasgow G2 2JJ, appointed by the Authority for the purposes of this Schedule;

AVCs means AVCs or SCAVCs as defined in the LGPS Regulations;

Due Date means the date agreed between the Fund and the Service Provider's Scheme once the last of the conditions in paragraph 3.6 of this Appendix has been satisfied;

Fund means The London Borough of Barnet Local Government Pension Scheme Fund within the LGPS;

Service Provider's Actuary means [name of actuary] of [name of firm], or another actuary appointed by the Service Provider for the purposes of this Schedule;

Service Provider's Scheme means the pension scheme or schemes nominated by the Service Provider in accordance with paragraph 13.3.7 of Schedule 15;

Transfer Amount means the amount or amounts referred to in paragraph 3.1 of this Schedule;

Transferring Member means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Service Provider's Scheme under paragraph 2 of this Schedule.

2 The Service Provider's Scheme

The Service Provider shall invite each Eligible Employee who joins the Service Provider's Scheme in accordance with **Clause** 13.3.7 of this Contract to consent to a transfer of benefits being made for him from the Fund to the Service Provider's Scheme. The Service Provider and/or relevant Sub-Service Provider must issue this invitation no later than one (1) month after the Relevant Transfer.

The invitation must be in a form acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed by the Authority) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the Service Provider of this consent in writing no later than three (3) months after the date of the invitation. The Service Provider shall provide the Authority with the names of the Transferring Members no later than four (4) months after the Relevant Transfer Date.

3 Transfer payment from the Fund

3.1 The Authority shall use reasonable endeavours to ensure that it transfers from the Fund to the Service Provider's Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Fund before the Relevant Transfer calculated in accordance with the Actuary's Letter and the LGPS Regulations.

3.2 As soon as reasonably practicable following the Relevant Transfer, the Service Provider shall promptly provide all data within its possession or under its control which the Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.

3.3 As soon as reasonably practicable following the Relevant Transfer, the Authority shall promptly provide all data within their possession or under their control which the Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.

3.4 The Authority shall use their reasonable endeavours to procure that:

3.4.1 as soon as reasonably practicable after the Authority's Actuary has been provided with the necessary data and information, the Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and

3.4.2 within one (1) week of completing this calculation, the Authority's Actuary shall notify the Service Provider's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

3.4.3 The Service Provider's Actuary will then have one (1) month (or such longer period as the parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary's Letter. The calculation shall be final and binding on the

parties if the Service Provider's Actuary raises no objection within this stated period.

- 3.5 If the Service Provider's Actuary objects in writing under paragraph 3.4 of this Schedule and the Authority's Actuary and the Service Provider's Actuary cannot subsequently agree the Transfer Amount within one (1) month (or such longer period as shall be agreed between the parties) of the objection, then the amount shall be determined by an independent actuary to be nominated by the Authority and the Service Provider jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties. The independent actuary's costs shall be payable equally by the Authority and the Service Provider.
- 3.6 Payment to the Service Provider's Scheme of the Transfer Amount shall only be made on the following conditions:
- 3.6.1 the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Schedule and in accordance with the LGPS Regulations;
 - 3.6.2 HM Revenue & Customs has consented to the making of the payment (which consent the Authority and the Service Provider and/or relevant Sub-Service Provider shall use reasonable endeavours to obtain);
 - 3.6.3 the Service Provider and/or relevant Sub-Service Provider has complied with all its obligations under this Schedule; and
 - 3.6.4 the trustees of the Service Provider's Scheme have confirmed in writing that:
 - (a) a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in paragraph 4 of this Schedule;
 - (b) they shall accept liability for each Transferring Member's accrued contracted out rights under the Fund; and
 - (c) they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.

4 **Past service benefits**

The Service Provider shall (and shall procure that each relevant Sub-Service Provider shall) ensure that the Service Provider's Scheme provides in respect of each Transferring Member such benefits as the Authority's Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer if he had remained a member of the LGPS.

5 **Additional voluntary contributions**

Nothing in this Schedule shall apply to AVCs or to benefits secured by them. However, the Authority shall use reasonable endeavours to ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Service Provider's Scheme. The Service Provider shall (and shall procure that each relevant Sub-Service Provider shall) ensure that the Service Provider's Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

6 **No assistance**

The Service Provider shall not encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the Service Provider's Scheme in respect of the Transferring Members.

7 **Exit Provisions**

7.1 The Service Provider undertakes to the Authority (for the benefit of the Authority themselves and for the Authority as agent and trustee for the benefit of the Eligible Employees) that on:

- 7.1.1 the expiry or termination of this Contract; or
- 7.1.2 the employment of any Eligible Employee transferring to a New Employer in accordance with **Clause 13.3.12(a)** of this Contract (or otherwise),
- 7.1.3 the Service Provider shall procure that the trustees of the Service Provider's Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the Service Provider's Scheme to the pension schemes of the Authority, any future service provider, or any New Employer (as applicable) which are no less favourable (in the opinion of the Authority's Actuary or an actuary appointed by the Authority) than the bulk transfer terms set out in the Actuary's Letter.

7.2 If the transfer payment paid by the trustees of the Service Provider's Scheme is less (in the opinion of the Authority's Actuary or an actuary appointed by the Authority) than the transfer payment which would have been paid had paragraph 7.1 of this Schedule been complied with, the Service Provider shall pay to the Authority, any future service provider or any New Employer (as appropriate) (or as such person shall direct) the amount of the difference.

8 **Authority's Costs**

Any costs of the Authority necessarily and reasonably incurred in connection with this Schedule shall be borne by the Service Provider.

SCHEDULE 16

Transfer of Employees from the London Borough of Barnet

22nd August 2011

1. The London Borough of Barnet in support of the delivery of its Corporate Priorities has committed to a programme of Organisational Change, which includes outsourcing some of its activities to commissioned partners. This commissioning process includes a robust procurement process in which workforce matters are included within the award categories.

The process of outsourcing will involve the Transfer of Undertaking and Protection of Employment [TUPE] Regulations and the London Borough of Barnet and its partners will comply with all of their TUPE obligations, plus any other obligations which are extant at that time. The London Borough of Barnet has also committed to enhancing the TUPE terms as set out below.

2. Pensions

2.1 The London Borough of Barnet will ensure that employees transferred from the Council to a new employer will be able to continue in membership of the Local Government Pension Scheme [LGPS] by requiring that the new employer obtains Admitted Body Status [ABS] within LGPS. ABS permits employees to participate in LGPS should they choose to do so although they will no longer be employed by the Council.

2.2 The London Borough of Barnet will consider on a case by case basis, in conjunction with the new employer, whether new employees [that is employees of the new provider who were not transferred from the London Borough of Barnet] employed on work transferred from the Council will have the opportunity to join LGPS. This is a complex matter and there is no underpinning plan as to the proportion of new employees who may or may not become eligible to join LGPS where ABS has been agreed.

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the transfer to the new employer will be the subject of consultation and negotiation, as appropriate, by the new employer with its recognised trade unions. In practical terms, a new employer will be able to make such changes as necessary to processes and procedures so as to reflect the new organisational structure immediately following transfer.

3.2 The cessation of the Code of Practice on Workforce Matters in Local Authority Service Contracts has removed the requirement on successful contractors to offer terms and conditions of employment to new employees who will work alongside former Council employees which are "no less favourable overall". However, the attention of contractors is drawn to the requirements arising from equal pay and equal value matters that will need to be considered where this may be envisaged.

3.3 As a general principle, where employees move to an employer that is not a member of the National Joint Council for Local Government Services, then pay awards decided by that body will cease to apply. However, a recent case, *Parkwood Leisure Ltd. vs. Alemo-Herron and others*, is considering this matter. The London Borough of Barnet will expect future employers to follow the outcome of this case and implement any necessary changes to their arrangements.

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5.1 The London Borough of Barnet has in place, with recognised trade unions, a Trade Union and Employee Relations Framework. This document sets out a number of processes which govern collective matters at the Council. The Council envisages that the new employer will utilise this Framework whilst dealing with collective matters, subject to pragmatic changes which reflect the organisational structure of the new employer, however, these matters will be a matter for the new employer to discuss with recognised trade unions.

5.2 The London Borough of Barnet provides a facility for the deduction of trade union subscriptions from salary for which the trade unions pay a fee. It is expected that potential new employers will continue this facility for the requisite fee for employees transferred from the London Borough of Barnet.

5.3 To ensure that the costs of agreed trade union release time from normal duties do not fall inequitably on one particular employer, a central fund will be created by the Council that employers will be required to contribute to. Employers will be able to access this fund under agreed terms to meet any costs jointly identified and incurred, by the Council and the new employer as appropriate.

5.4 It is expected that where reasonable notice is given and access does not cause operational difficulties, then trade union officials may normally be granted access to the premises of the new employer. It is recognised by all parties that this may mean that access to premises may need to be given to people who are not employees and suitable arrangements will need to be made.

22nd August 2011

SCHEDULE 17

Formula for calculating contribution to Trade Union Fund

Trade Union Facility Time Charging Mechanism

Withheld

Authority for Signing	<i>Capital Resources Committee</i> <i>19/12/11; PEL 25/12/11</i> <i>18/11/12; GFC 27/12/12</i>
Minister Contract	Contract Date
Prepared by Legal Division	<i>25/1/12</i> <i>BY INDEXED INITIALS</i> <i>RED/LEJP</i>
Legal Division Contract	
File No	<i>CP002.210</i>

DATED 30th April 2012

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BARNET

- and -

NSL LIMITED

**CONTRACT FOR THE PROVISION OF
PARKING ENFORCEMENT AND
RELATED SERVICES**

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