

## **CONDITIONS OF CONTRACT**

### **1. Definitions and Constructions**

In construing the provisions of this Contract, the following expressions shall have the meaning assigned to them unless such construction would be repugnant or ambiguous.

- 1.1 The "Employer" or "the Client" or "the Council" shall mean the Mayor and Burgesses of the London Borough of Bromley and shall include the Chief Executive, the Director of Environment and Leisure Services and/or their authorised representatives and successors.
- 1.2 The "Contractor" shall mean the firm or company or business whose tender for the Parking Operations and Enforcement Services shall be accepted by the Council and shall, where the context so requires or admits, include their personal representatives, successors and assigns.
- 1.3 "Authorised Officer(s)" shall be those Officer(s) of the Council notified to the successful Contractor in accordance with the provisions of the Contract and shall include the "Supervising Officer" who shall be notified to the Contractor as being primarily responsible for maintaining good working relationships between the parties and ensuring that the wishes of the Council and other clients are made known to and acted upon by the Contractor.
- 1.4 "The Director of Environment and Leisure Services" shall mean Mr G N Hayward or such other person who shall for the time being be duly appointed by the Council as the Director of Environment and Leisure Services for the London Borough of Bromley.
- 1.5 The "Contract Manager" means the duly-authorised representative of the Contractor last notified as such to the Council for all purposes connected with the Contract and shall be identified and carry the responsibilities assigned to him in accordance with the terms of the Contract and shall be the person described in the Specification as "the Operations Manager".
- 1.6 The "Tender" shall mean the Contractor's tender annexed hereto, together with Bill of Quantities and Schedule of Rates and supporting documentation.
- 1.7 The "Specification" means the Specification prepared by the Council including the description of the Services referred to at Clause 1.12 below together with any subsequent modifications to it.
- 1.8 The "Contract" shall mean the Agreement between the Council and the Contractor for the provision of the Services described therein, including The Instructions and Invitation to Tender, the Form of Tender,

Specification, Schedule(s), Appendices, Deed of Bond/Guarantee, Certificate of Non Collusion, Conditions of Contract, the Licence for use of the Car Parks and Control Equipment and, where requested by the Contractor, the Lease of office premises and facilities and any additions or variations thereto which may be agreed from time to time by the Contractor and the Council and all such documents shall be read and construed as forming the "Contract".

- 1.9 The "Contract Price" shall mean the sum of money payable by the Council to the Contractor for the provision of the Services referred to herein during the total Contract Period and shall consist of the Basic Fee and such sums payable for Fixed Price Services and Variable Services as are defined and calculated in accordance with the contract terms.
- 1.10 The "Contract Period" means the period of 5 years from the Commencement Date, the Authorised Officer may require the extension of this period for a further 5 years subject to agreement by the Contractor.
- 1.11 The "Commencement Date" means the 4<sup>th</sup> September 2006 or such alternative date as may be agreed in writing between the parties.
- 1.12 "The Service(s)" means the provision of parking operations and enforcement services in accordance with the Contract.
- 1.13 The "Supervising Officer" means the officer appointed by the Director of Environment and Leisure Services to manage the Contract as referred to in the Specification hereto as "The Parking Manager".
- 1.14 "Staff" means all personnel used by the Contractor in the performance of the Service(s), whether such personnel are partners, directors, or in any manner employed by the Contractor or by other sub-contractors of the Contractor, or are employed on their own account as independent contractors. Tenderers should note the provisions of Clause 14.9.
- 1.15 Except as otherwise expressly provided all elements of the Contract Documentation are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be referred in the first instance to the Supervising Officer who shall thereupon issue to the Contractor appropriate instructions in writing, which the Contractor shall carry out and be bound by. If any instruction changes the basis upon which the Contractor tendered so as to render any price or rate inappropriate, the said instruction shall be treated as a variation.
- 1.16 In the event of any inconsistency between these Contract Conditions and any other documents forming part of the Contract Documentation, these Contract Conditions shall be deemed to prevail.

- 1.17 In these Contract Conditions:(i) the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa; (ii) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract; (iii) "Act of Parliament" or any "Order, Regulation, Statute, Statutory Instrument, Code of Practice, Byelaw, Directive" or the like, whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it.
- 1.18 This Contract constitutes the entire understanding and agreement relating to the subject matter of the Contract and, save as expressly referred to or incorporated by reference, supersedes all prior negotiations, submissions or understandings with respect to this subject matter.

## **2. Contract Agreement**

- 2.1 The Contractor shall, when called upon so to do, enter into and execute the Form of Agreement (to be prepared at the cost of the Council).
- 2.2 The Method Statements submitted by the Contractor will form part of the Contract.

## **3. Performance of Services**

- 3.1 The Contractor shall administer the provision of the Services and shall, subject to the provisions of the Contract, perform the said Services complete and provide all labour, materials, transport to and from in or about the sites and locations at which the Services are to be performed and everything whether of a temporary or permanent nature required in and for the performance of the Services so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract save for such premises, facilities, equipment or other materials made available by the Council pursuant to the Contract.
- 3.2 The Contractor shall at all times provide the Services in accordance with the Contract and (without prejudice to the foregoing) in an efficient, effective and safe manner, to the reasonable satisfaction of the Authorised Officer.
- 3.3 The Contractor shall comply with all relevant Acts of Parliament, Statutory Regulations, Orders, Instruments and Codes of Practice Byelaws, Directives or the like relating to or arising from the provision of the Service including giving of notices or payment of fees (which the Contractor shall have taken into account in his Tender) to be observed and performed in connection with the Services and shall indemnify the Council against any loss or damage caused by non compliance with any such legal provision.

- 3.4 All operations necessary for the performance of the Services shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the use of the public toilets, car parks or access to or use or occupation of public or private roads and footpaths or of properties where they are in the possession of the Council or of any other person and the Contractor shall and indemnify the Council against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out or in relation to any such matters.
- 3.5 The Contractor shall provide the Services safely and in a manner that is not, or is not likely to be, injurious to health or detrimental to the environment or the fabric of any property.
- 3.6 The Contractor shall provide the Service at all times in such a manner as shall promote and enhance the image and reputation of the Council and its Borough and in particular shall comply with all instructions of the Supervising or Authorised Officer(s) regarding the quality of the Service to be provided.
- 3.7 If the Contractor fails to provide the Service or any part thereof with due diligence or in a proper, skilful and workmanlike manner or to the requirements of the Contract and to the satisfaction of the Supervising Officer or Authorised Officer(s), the Council itself may provide the Service or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Contractor under the Contract or shall be recoverable from the Contractor by the Council as a debt.
- 3.8 Where a person or body having the power, duty or responsibility to inspect any aspect of the subject matter of this Contract issues advice to the Contractor or the Council, the Contractor shall comply with it in all respects without cost to the Council.

**4. Inspection of Premises. Locations and Sites**

- 4.1 The Contractor shall be deemed to have inspected and examined all buildings, sites and locations at which or from which the Services are to be provided and to have satisfied himself before submitting his Tender as to the nature of the work and the plant and materials necessary for the completion of the Service the accommodation he may require and in general to obtain for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting his Tender.
- 4.2 The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of the rates and prices stated by him in the Schedule of Rates and Tender which shall (except insofar as is otherwise provided in the Contract) cover all his obligations under the Contract.

## **5. Quality Control**

- 5.1 It shall be the duty of the Contractor well and properly to provide the Service to a standard which is in all respects to the reasonable satisfaction of the Supervising Officer and to comply in all respects with the Contract.
- 5.2 The Contractor shall deal with any complaints received (whether orally or in writing whether from customers of the Services or others) in a prompt, courteous and efficient manner and in accordance with the Council's complaints procedure.
- 5.3 Unresolved complaints received or referred to the Council may be investigated by an Authorised Officer who may, where he considers it appropriate, issue a Default Notice on the Contractor.
- 5.4 The Contractor shall throughout the Contract Period institute and maintain a properly documented system of quality control designed to ensure that the Services are provided at all times and in all respects in accordance with the Contract. Such a system shall(a) include daily supervision and the carrying out of frequent inspections of buildings, sites and locations at which the Services are to be provided and equipment utilised by the Contractor; and (b) ensure the recording of any complaints received in connection with the provision or failure to provide the Service, (whether received orally or in writing and whether from members of the public or others) detailing the nature of the complaint, the name of the complainant, the time and date it was received, the action taken by the Contractor in respect of each such complaint, and the names of the Contractor's supervising and other staff involved in the action complained of and its remedy.
- 5.5 The system maintained by the Contractor in accordance with this condition shall be in addition to, and shall not prejudice :
  - (a) any independent inspection undertaken by the Council;
  - (b) the award of any Default Notice.
- 5.6 The system shall be operated by the Contract Manager on behalf of the Contractor and shall be open to inspection at any time by an Authorised Officer. In the event that any reasonable recommendations concerning the improvement of the system are made by an Authorised Officer from time to time, such recommendation shall forthwith be implemented by the Contractor.
- 5.7 An Authorised Officer shall have the right at any time to interview any member of the Contractor's staff in connection with the carrying out of all or any of the Services. 24hrs notice will be given to the Operations Manager.

- 5.8 An Authorised Officer shall also be entitled to request any information relating to the carrying out of the Services and such information shall be supplied by the Contractor forthwith upon request.

## **6. Contract Price and Payment**

- 6.1 The Contractor is required to quote a basic Annual Fee (calculated by multiplying a weekly charge by 52.14) for the provision of the day to day routine work as explicitly provided for in the Specification. This is the Basic Service and the price for it is referred to as the Basic Fee. It includes car park operations and maintenance, equipment repair and maintenance (including all cash collections), enforcement of on and off street parking restrictions, and, if applicable, the provision of school crossing patrols.
- 6.2 The price for the enforcement element of the Basic Services is also subject to a performance payment mechanism. This is described in detail in para 6.15.
- 6.3 The Contractor is required to provide a Schedule of Rates for Fixed Rate Services being services, materials and/or equipment other than the Basic Service which the Contractor is able and willing to provide to the Council as part of the Services set out in the Specification. The Authorised Officer will issue a Variation Order for such Fixed Rates Services as and when it requires.
- 6.4 The Council may request the Contractor to provide types of services, materials and/or equipment that fall within its sphere of competence and expertise but which are not included in the Specification. The Contractor may be required to provide a written quotation of such Variable Services the Council's acceptance of which will be given in writing. In the event that the Council declines the Contractor's quotation, it reserves the right to seek alternative quotations and in the event of the supply of services, materials and for equipment being carried out by a third party, the Contractor will co-operate with such third party whilst fulfilling its responsibilities under the Contract. In the event of any circumstance arising from the performance of such third party whereby the Contractor may or will be unable to fulfill its responsibilities aforesaid, it shall forthwith notify the Supervising Officer who shall take such action as he considers appropriate to resolve such conflict or hindrance to the Contractor's performance.
- 6.5 The Authorised Officer will submit to the Contractor at the end of each calendar month a statement of number of penalty charge notices issued by the Contractor over the preceding calendar month and the number of default notices issued by the Council to the Contractor over the same period.
- 6.6 The Contractor will submit separate invoices for each of the Basic Services, (defined in Clause 6.1) the Fixed Rate (defined in Clause 6.2) Services and any Variable Services (defined in Clause 6.3)

- 6.7 Payment for Basic Services will be made in arrears in 12 equal instalments. The Contractor will submit invoices for Basic Services, Fixed Rate and Variable Rate Services to the Authorised Officer no later than 14 days after the expiry of each relevant period during which the said services were provided. The invoice(s) must identify the Variation Order number (if any) or other authorised construction in respect of each Fixed Rate or Variable service, or item of material and/or equipment for which payment is claimed.
- 6.8 The Authorised Officer will verify the invoices for the Basic Service and those for the Fixed Rate and Variable Rate Services and, in accordance with current legislation the Council will pay said invoices within 30 days of receipt subject to the Supervising Officer being satisfied as to the sum claimed and having received any supporting documentation requested of the Contractor. The Council will as soon as possible notify the Contractor if it considers any invoice to be incorrect in any way.
- 6.9 The Council shall be entitled to deduct from the sums payable in respect of the Basic Service such sum(s) as is certified by the Supervising Officer as being deductible by reason of any reduction in or omission in the Service by the Contractor (whether pursuant to an instruction of the Council and/ or Default in Performance provisions set out herein or as a result of the Contractor's failure to comply with any provision of the Contract).
- 6.10 The Contract Price shall not include any Value Added Tax in respect of the Services.
- 6.11 The Annual Fee for Basic Services and charges for Fixed Rate Services shall be reviewed on the first anniversary of the Commencement Date ("the Review Date") and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the latest "All Items" Index of Retail Prices excluding Mortgages (RPIX) ("the Index") available at the time of the anniversary of the commencement date (calculated to the nearest second decimal point) and such increase or reduction shall take effect in respect of the 12 month period commencing on the Review Date. The annual increase will also be applied to the default levels contained in Clause 9. 'Calculating Loss to the Council'.
- 6.12 Similar reviews shall be carried out on each subsequent anniversary of the Commencement Date during the Contract Period save that the change (if any) shown by the Index shall be based upon the twelve month period expiring upon the publication of the monthly index figure immediately prior to the relevant Review Date and the commensurate change (if any) to the Basic Fee and charges for Fixed Rate Services

shall take effect during the 12 month period commencing on the relevant Review Date.

- 6.13 If the basis of computation of the Index shall change, any official reconciliation between the two bases of computation published by the Department of Employment (or any government department upon which duties in connection with the compilation and maintenance of the Index have devolved) shall be binding upon the Council and the Contractor and shall be applied in adjusting the application of the Index hereto.
- 6.14 In the absence of such official reconciliation, such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments the decision of the Council shall be final.

**Performance Payment Mechanism for Enforcement of on and off street parking restrictions and issue of penalty charge notices :**

- 6.15 Payment for the enforcement of on and off street parking restrictions and issue of penalty charge notices comprises 2 elements –the Basic Fee for the Enforcement Work Component of the Basic Services, and an additional payment or deduction twice per year related to performance measured against a basket of Key Performance Indicators.
- 6.16 The performance payment is dependent on the Contractor meeting or exceeding the required standards in relation to 4 Key Performance Indicators (KPIs).
- 6.17 The KPIs are designed to ensure the quality of Penalty Charge Notices (PCNs) issued by the Contractor, and to ensure that the Contractor performs in accordance with the Council's customer service principles. The KPIs are:

KPI 1 : Number of PCNs issued (after adjustment for tickets cancelled/ withdrawn/ written off due to poor quality information or contractor error). The contracted annual baseline number of PCNs on which the performance assessment will be based is 72000.

KPI 2 : Maintenance of agreed minimum staffing levels as set out in the tenderer's method statement

KPI 3 : Not exceeding agreed levels of staff turnover as set out in the tenderer's method statement.



KPI 4 : Maintaining staff training at agreed levels as set out in the tenderer's method statement

6.18 No performance payment will be due unless **all** KPIs are met.

6.19 For the purposes of the performance payment, the annual number of PCNs and performance against KPIs 2, 3, and 4 will be calculated each year from the anniversary of the Commencement Date of the contract.

**6.20 KPI 1 : Calculation of PCN numbers**

For the purposes of the performance payment, the number of PCNs issued is defined as :

the number of PCNs issued by the Contractor, minus :

the number of PCNs cancelled or voided by the Contractor, and test tickets, and the number of PCNs cancelled or written off by the Council as a result of poor quality pocket book entries, poor photographic evidence, or any other Contractor error including as a result of complaints from the public.

PCNs cancelled or written off by the Council will also be subject to default procedures as allowed for in the specification.

**6.21 KPI 2 Staffing Levels :**

The Contractor should submit an estimate of the minimum number of staff which they feel confident can achieve the required performance in respect of enforcing the restrictions set out in the Specification. The proposed staffing levels should be included in the tenderer's method statement. The minimum staffing levels submitted will form part of the contract and will be used to assess performance against KPI 2.

**6.22 KPI 3 Staff Turnover :**

The Contractor should submit an estimate of the level of staff turnover which they feel confident can achieve the required performance in respect of enforcing the restrictions set out in the Specification. The proposed staff turnover levels should be included in the tenderer's method statement. The staff turnover levels submitted will form part of the contract and will be used to assess performance against KPI 3.

#### **6.23 KPI 4 Staff Training :**

The Contractor should submit details of the training which staff will undergo to achieve the required performance in respect of enforcing the restrictions set out in the Specification. The proposed training programme should be included in the tenderer's method statement. The training programme submitted will form part of the contract and will be used to assess performance against KPI 4.

#### **6.24 Performance payment**

If all KPIs are met, the contractor will be entitled to a performance payment in addition to the Basic Fee for the enforcement element of the Basic Services as set out below.

The performance payment is only applicable to PCN numbers in excess of 72000 up to 80000. Should the number of PCNs issued exceed 80000 in any relevant year, the baseline number of PCNs may be reviewed.

For PCNs issued in excess of 72000 :

For PCN numbers 72001 - 73000 Performance payment = £15.00 per PCN;

For PCN numbers 73001 – 74000 Performance payment = £17.00 per PCN

For PCN numbers 73001 - 80000 Performance payment = £20.00 per PCN

#### **6.25 Deduction if PCN numbers fall below 71900**

If the number of PCNs issued falls below 71900, the following adjustment to the Basic Fee for the enforcement element of the Basic Services will apply. The deduction will apply to **all** PCNs below 72000, not just to those below 71900.

PCN numbers 71999 – 70900 : Amount deducted from Basic Fee = £15.00 per PCN

PCN numbers 70899 – 69900 : Amount deducted from Basic Fee = £20.00 per PCN

PCN numbers 69899 and below: Amount deducted from Basic Fee = £25.00 per PCN

The deduction will apply if PCN numbers fall below 71900 even if KPIs 2, 3 and 4 are met.

The amount of the performance payment is dependent on the current value of a PCN and will not be varied by the RPIX.

### **Payment structure/ invoicing**

- 6.26 Payment/ deduction related to performance will be made twice per year, depending on performance in the previous 6 months. For the first 6 months of each relevant year, the baseline number of PCNs and the payment per PCN (or deduction if applicable) will be reduced by 50%. Adjustment will be made at the end of the relevant year.
- 6.27 Invoices relating to the performance payment should be submitted twice per year. The first invoice should cover the first 6 relevant months, calculated from the anniversary of the Commencement Date of the Contract, and should form part of the invoice for the enforcement element of Basic Services for that month. The second invoice should be submitted at the end of the 12 relevant months, calculated from the anniversary of the Commencement Date of the Contract, adjusted to take account of the payment/ deduction made at the 6 month stage, and should form part of the invoice for the enforcement element of Basic Services for that month.
- 6.28 Invoices should be submitted no later than 14 days after the end of the relevant periods.

### **6.29 Review of baseline number of PCNs**

The base annual number of PCNs may be reviewed by the Council during the period of the contract in accordance with any material changes to parking restrictions or methods of enforcement. In the event of a revision to the base annual number of PCNs the Contractor will also be required to submit revised method statements relating to KPIs 2, 3, and 4 which will be subject to agreement with the Council and which will form part of the Contract.

- 6.30 Examples of the calculation of the performance payment/ deduction are provided at Appendix 15.

## **7. VAT**

- 7.1 In addition to the sums payable pursuant to Clause 6, the Council shall pay to the Contractor such Value Added Tax (if any) as may be properly chargeable by the Contractor to the Council in connection with the provision of the Services less any sum (if relevant) to be deducted by way of Income Tax.
- 7.2 The Contractor shall issue a tax invoice in respect thereof.

## **8. Default in Performance**

- 8.1 The Council requires a high quality service. The Contractor acknowledges this requirement and undertakes to use its best endeavours to provide such a service based on the philosophy of "Get it right first time".

- 8.2 The Supervising Officer shall be entitled to take steps to ascertain whether the Contractor has performed the Service and that he has done so in complete accordance with the Contract.
- 8.3 If the Supervising Officer shall determine that the said Service or any part thereof has either not been undertaken or has been carried out inadequately or otherwise not in accordance with the Contract (whether or not the Contractor has sub-contracted all or any part of the said Service) he shall notify the Contractor in writing of that fact by means of a Default Notice.
- 8.4 Any Default Notice issued may specify the breach complained of and the time period within which the Council requires the breach to be remedied, and may or may not include a financial deduction. The Contractor shall immediately act on any Default Notice by taking the steps required to remedy the breach complained of within the time period specified, together with such other steps as are necessary to minimise the impact of such breach on the overall quality of the Services without further charge or cost to the Council.
- 8.5 Where the Contractor fails to remedy the breach referred to in the Default Notice in accordance with the terms laid down therein, the Council shall have the power to implement Clauses 9 and 10 to perform the work affected until such time as the control processes have been restored to their agreed level. In this regard the Council may appoint an external assessor to investigate the failure of the systems and to recommend corrective action to the Contractor. Where such an appointment becomes necessary, the Contractor shall co-operate with the assessor and shall take all necessary steps to implement the recommendations made. The costs of such an exercise (together with a sum equal to 10% of those costs towards the Council's administrative costs and overheads) shall be payable by the Contractor to the Council on demand as a debt.
- 8.6 Where the breach of contract is in the opinion of the Supervising Officer and Director of Environment and Leisure Services, of a sufficiently serious nature and the contractor is unable to or fails to remedy the breach, the Council may terminate the contract.
- 8.7 Where any services provided by the contractor fail to meet the standards required by the Specification and/or other contract documentation, such services shall be deemed to be deficient and the Contractor shall be in breach of this Contract and the Council may issue a Default Notice.
- 8.8 If any deficient services are discovered as a result of the Contractor's own supervision of its work, then the Contractor shall rectify its breach (if necessary by performing or re-performing the deficient services) without delay and to the full satisfaction of the Council. In these circumstances, provided there is no loss or damage to the Council,

then the Contractor shall be entitled to be paid for the services as if they were properly performed the first time.

- 8.9 If it is not practicable to re-perform the deficient services, or if no re-performance is possible (for example, where services which have to be performed by a stated date or time are not performed properly within those time limits) then the Contractor will not be entitled to any payment for those deficient services. Where such deficient services are detected by monitoring by the Council or are reported to the Council a Default Notice may be issued. For the avoidance of doubt, the Contractor agrees to notify the Council of any deficient services of this nature of which it is aware.
- 8.10 Even where re-performance is not practicable or possible, and irrespective of whether a Default Notice has been issued, the Contractor shall use its best endeavours to ameliorate the situation.
- 8.11 Where the Contractor fails to remedy the breach referred to in the Default Notice in accordance with the terms laid down therein, the Council shall have the power to implement Clauses 9 and 10 of these Contract Conditions or rely on the provisions of Clause 11, depending on the nature and seriousness of the breach.

## **9. Calculating Loss to the Council**

- 9.1 For the avoidance of doubt, it is agreed and declared that the application of this Clause and its method of calculation represents a genuine pre-estimate by the parties of the reduction in the value of the Services to the Council, resulting from the failure of the Contractor to perform such Services strictly in accordance with the Contract.
- 9.2 Where the Supervising Officer determines that the Contractor has committed a breach of the Contract causing minor financial loss to the Council then the reduction in value shall be deemed to be Twenty five Pounds £25.00. This is to be referred to as a Category "A" Default.
- 9.3 Where the Supervising Officer determines that the Contractor has committed a breach of the Contract causing financial loss or inconvenience to the Council then the reduction in value shall be deemed to be Fifty pounds £50.00. This is to be referred to as a Category "B" Default.
- 9.4 Where the Supervising Officer determines that the Contractor has failed to rectify a Category "B" default to his satisfaction within the period specified in the Default Notice, then the Council shall be entitled to serve a further Default Notice upon the Contractor in respect of each period of 24 hours that the Contractor remains in default and the reduction in value in respect of each such Notice shall be deemed to be One hundred and Fifty pounds £150.00. This is referred to as a Category "C" Default.

- 9.5 Without prejudice to its other rights hereunder the Council shall be entitled to serve up to 3 Category "C" Default Notices in respect of any single Category "B" default and in the event of the Contractor remaining in default the Council shall thereafter be entitled to serve a Category "E" Default Notice.
- 9.6 Where the Supervising Officer determines that the Contractor has committed a breach of the Contract causing significant or major financial loss to the Council or damage to its image then the reduction in value shall be deemed to be Three Hundred pounds £ 300.00. This to be referred to as Category "D" Default.
- 9.7 Where the Supervising Officer determines that the Contractor has committed a breach of the Contract which has caused financial loss to the Council and/or damage to its image and/or the Council has been required to expend administrative time dealing with the rectification of the failure then the reduction in value shall be deemed to be Five Hundred pounds £500.00. This is to be referred to as a Category "E" Default.
- 9.8 The existence of the above calculation for reductions in the value of services shall in no way limit the Council's power to terminate the Contract in accordance with Clause 11 herein, after deficient performance of the Services.
- 9.9 The pre-estimate of the reduction in the value of the Services to the Council under this Clause of the Contract Conditions shall be final and may not be reviewed or revised in any arbitration proceedings under arbitration or otherwise.
- 9.10 Notwithstanding the provisions of this Clause the Council recognises the need for a settling in period and may show greater leniency in the imposition of financial charges during the first four weeks of the Contract Period. However the Contractor will be required and expected to comply with the provisions of any Default Notice(s) issued during that period.
- 9.11 The remedies of the Council under this Clause may be exercised successively in respect of any one or more defaults by the Contractor and without prejudice to the generality of the foregoing works the Council shall be entitled to issue further Default Notices in the event of any particular default of omission by the Contractor having consequences or requiring the Council to carry out remedial work or expend administrative time over a period exceeding one day as is more particular set out in the Specification.

## **10. Substituted Performance**

- 10.1 If the Contractor for whatever reason regularly fails to perform the Services in whole or in part strictly in accordance with the terms of the Contract, or in performing the Services there is an unacceptable level of deficient services, then without prejudice to any other remedy available to the Council, the Supervising Officer may make arrangements for the Council to provide and perform, by its own or the staff of another contractor, such services which the Contractor fails to perform or performs deficiently. In this event, the Council shall be permitted to use all or any part of the Contractor's equipment which was allocated to the performance of the Services, to assist in the performance of those services which the Contractor has failed to perform or has performed deficiently. The damages and costs (together with a sum equal to 10% of the costs of remedying the breach of contract towards the Council's administrative costs and overheads) shall be payable by the Contractor to the Council on demand as a debt.
- 10.2 Where the failure to provide and perform the Services is in the opinion of the Supervising Officer due to the failure of the Contractor's management or supervisory staff to perform their work adequately or at all, or is due to the absence of or insufficiency of such staff, the Supervising Officer may cause that part of the Services to be managed and supervised by the Council's own staff, or the staff of another contractor. In the event that the Council's own staff are used, the Contractor shall be charged the appropriate hourly rate (together with a sum equal to 10% of the costs of remedying the breach of contract towards the Council's administrative costs and overheads). Where another organisation is used to perform that part of the Services the full costs thereof (together with the 10% charge as mentioned above) shall be charged to the Contractor. The Contractor shall ensure that all of its staff utilised in the Contract co-operate fully with persons appointed to manage or supervise the Services under this Clause.
- 10.3 Where the failure to provide or perform the Services is in the opinion of the Supervising Officer due to the failure of the Contractor to provide adequate equipment, materials and consumables to perform the work properly (including but not limited to insufficiency of equipment, or materials of an inferior quality), the Supervising Officer may provide adequate equipment, materials and consumables to be used by the Contractor's staff in the performance of the Services. In the event that the Council supplies equipment, materials and consumables for the performance of the Services, the Contractor shall be charged the full cost of that equipment (either the purchase price or hire charge as appropriate) and/or the full cost of those materials and consumables (including, if necessary, the whole of the bulk purchase if it is common to obtain such materials and consumables in this manner), together with a sum equal to 10% of the costs of those items towards the Council's administrative costs and overheads.

- 10.4 The operation of this Clause shall not relieve the Contractor of any obligations under the Contract in respect of the Services as a whole, nor restrict the Council's right to terminate the Contract under Clause 11.

## **11. Termination**

Without prejudice to any other rights and remedies it may possess:

- 11.1 The Council upon agreement with the Director of Environment and Leisure Services shall be entitled forthwith upon the happening of any of the following events to terminate the Contract by notice in writing, such events being:
- (i) discovery of a material misrepresentation by the Contractor during the tendering process;
  - (ii) persistent minor breaches of the Contract by the Contractor as evidenced by the service of Default Notices;
  - (iii) the Contractor having failed to perform a substantial part of the Services or having committed any other breach of contract which in the opinion of the Supervising Officer and Director of Environment and Leisure Services justifies termination of the Contract, notwithstanding whether any Default Notices have in fact been served;
  - (iv) any action or omission by the Contractor and/or its staff which adversely affects the reputation of the Council;
  - (iv) the Contractor suffering any distress or process of execution to be levied on its goods; or if the Contractor consists of one or more individuals, any one of them dying, committing any act of bankruptcy or having a bankruptcy order made against him; entering into (whether an individual or a body corporate) any arrangement, agreement or composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986); or if the Contractor consists of a body corporate, the Contractor or its parent company having a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding-up; or having an application made for the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed, over the whole or any part of its business and/or assets; or having a provisional liquidator, receiver or manager of the whole or any part of its business appointed; or having possession taken of any of its



property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.

11.2 Upon such termination, in addition to such consequences as are set out in Clauses 8 and 9 above:

- (i) the Contractor shall be deemed to be in breach of this Contract;
- (ii) the Contractor shall forthwith cease to perform any of the Services;
- (iii) the Contractor shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Contractor;
- (iv) the Contractor shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract Period, to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing such Services (such costs to include all costs of closing out this Contract and entering into new contract(s) with replacement contractor(s)). The Council shall be at liberty to have such services performed by any persons (whether or not servants of the Council) as the Council shall in its sole discretion think fit;
- (v) the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payments which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under or arising from the Contract, or to deduct there from any sum due from the Contractor;
- (vi) the Council shall have the power to deduct from any monies owing to the Contractor such sums as are due to the Council or may thereafter become due to the Council under this or any other Contract between the parties;
- (vii) the Contractor shall forthwith vacate any Council Premises;
- (viii) the Contractor shall forthwith release and hand over to the Council any and all Council property, including but not limited to equipment, supplies, records and work-in-progress, whether in the form of documents, plans, calculations, drawings, computer data or other material in any medium;
- (ix) the Council shall be entitled to exercise a lien over any of the materials, consumables, clothing, equipment or other goods belonging to the Contractor on Council Premises or at the sites or locations at which the Service is provided for any sum due hereunder from the Contractor to the Council;

- (x) the Council shall be entitled to use all such materials, consumables, clothing, equipment or other goods over which it has exercised a lien pursuant to Clause 11.2(ix) above in the event that it performs the Services or arranges for the Services to be performed upon the default of the Contractor.
- 11.3 Upon termination of the Contract it is hereby agreed that the Contract Clauses relating to Indemnity, liability and insurance, arbitration and termination of this Contract shall continue in full force and effect and be enforceable by the Council.
- 11.4 For the avoidance of doubt, the rights of the Council under this Clause are in addition to any other rights or remedies the Council may have pursuant to any parent company guarantee or performance bond.
- 11.5 In the event of termination pursuant to Clause 11.1(iv) then all monies, stock and property of the Contractor then in the possession of or on the premises of the Council, shall vest in the Council provided that by agreement between the Council and the receiver, manager or liquidator of the Contractor the Services provided by the Contractor may be reinstated and continue to be provided on such terms as may be agreed.

## **12. Variation of Services**

- 12.1 The Council may from time to time require changes to the Specification and accordingly may, upon giving reasonable written notice to the Contractor, add to, delete from or otherwise amend in any way the provisions of the Specification. The Contractor shall be bound by any such variation.
- 12.2 Reasonable notice shall be deemed to have been given if it is either:
  - (i) one month's notice for changes to the Specification which the Council considers will result in more or less staffing being required by the Contractor or significantly more costs being incurred by the Contractor or
  - ii) three day's notice in any other case.
- 12.3 The value of such variations or additional work shall be agreed between the parties as shall any changes to the Contract Price arising from such variations or additional work and the value of all variations ordered by the Council in accordance with this Clause shall be ascertained by the Supervising Officer after consultation with the Contractor in accordance with the following principles:
  - (i) Where work is of similar character and executed under similar conditions to work priced in the Schedule of Rates it shall be valued at such prices and rates contained therein as may be applicable.

- (ii) Where work is not of a similar character or is not executed under similar conditions the rates and prices in the Schedule of Rates shall be used as the basis of valuation so far as may be reasonable failing which a fair valuation shall be made by the Director of Environment and Leisure Services. Alternatively the Authorised Officer will be entitled to seek bids for such work from the Contractor and other agencies.

12.4 For the avoidance of doubt, no increase in the Contract Price or additional payments shall be made in respect of any variation or additional work if there is a compensating reduction or reorganisation of any other part of the Service.

12.5 Subject to the above no amendments to the Contract shall be binding unless in writing and signed by the Supervising Officer on behalf of the Council and by the Contractor or his duly authorised representative and expressed to be for the purpose of such amendment.

### **13. Urgent Repairs**

13.1 If by reason of any accident or failure or other-event occurring to in or in connection with any site location building or equipment at or from or with which the Service is provided or any part thereof during the performance of the Services any remedial or other work or repair shall in the opinion of the Supervising Officer be urgently necessary and the Contractor is unable or unwilling at once to do such work or repair the Council may by its own or other workmen do such work or repair as the Supervising Officer may consider necessary.

13.2 If the work or repair so done by the Council is work which in the opinion of the Supervising Officer the Contractor was liable to do at his own expense under the Contract any costs and charges properly incurred by the Council in so doing shall on demand be paid by the Contractor to the Council or may be deducted by the Council from any monies due or which may become due to the Contractor. Provided always that the Supervising Officer shall as soon after the occurrence of any such emergency as may be reasonable practicable notify the Contractor thereof in writing.

### **14. Staff**

14.1 The Contractor shall at all times during the Contract Period assign to the Services the agreed Staff, which the Contractor holds out as having sufficient skill and expertise for the proper performance of the Services.

14.2 In particular, the Contractor agrees:

- (i) that where any staffing or skill levels have been agreed as part of its Tender proposal, those levels will be maintained;

- (ii) that it has sufficient reserves of trained and competent staff within each-skill level to provide the Services to the level/standard required by the Specification at all times, including sufficient reserves to provide cover for staff holidays, staff sickness or any other absence;
  - (iii) that 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 reason and that such replacements shall have the equivalent skill levels and shall in every way be suitable for the performance of the Services.
- 14.3 The Contractor shall at all times during the Contract Period employ enough persons of sufficient ability and status to perform and supervise the performance of the Services in a proper and continuous manner. If, in the opinion of the Supervising Officer, the Contractor is not employing sufficient staff or staff with the appropriate ability and status adequately to supervise the Contract, then the Contractor shall engage such additional staff or supervisory staff as the Supervising Officer shall reasonably deem to be necessary, and the cost will be borne by the Contractor. If the Contractor fails to take the required action, the provision of Clauses 8 to 10 inclusive shall apply.
- 14.4 The Contractor shall nominate a person to be responsible for health and safety matters as required by the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1992. The identity of such person shall be agreed with the Council such agreement not to be unreasonably withheld. Whilst on Council premises including all sites and locations at or from which the Services are provided the Contractor shall ensure that its staff are fully conversant with its health and safety policy and that they take all such precautions as are necessary to protect the health and safety of Council staff and the public. The Contractor shall require its staff to comply with the Council's safety policy statement, the lawful requirements of the Council's safety advisers and any detailed safety policy specific to those Council Premises whilst on those premises. Without prejudice to the generality of the foregoing the Contractor shall ensure that staff are properly trained and instructed with regard to fire risks and fire precautions.
- 14.5 The Contractor agrees that, whilst allocated to the performance of any duty which comprises part of the Services, all staff:
  - (i) shall maintain strict discipline and good order and shall not engage in behaviour or activities which could be contrary to or detrimental to the Council's interests;
  - (ii) shall be effective and efficient workers, competent in their particular profession or skill;

- (iii) shall abide by the standards, rules and regulations established by the Contractor for its own staff, including completion of time recording requirements and all safety and other regulations;
- 14.6 The Council reserves the right to require removal from the Services of any individual(s) used by the Contractor whom, in the opinion of the Supervising Officer:
  - (i) is not performing work in strict compliance with the Contract;
  - (ii) is or is deemed to be guilty of misconduct or negligence;
  - (iii) is acting in a manner which is detrimental to the Council's interests;
  - (iv) is not medically fit to perform the Services or provides a risk to the health of those with whom that person may come into contact during work on the Contract.,
  - (v) is not complying with the Council's policies for use of its buildings, for example, smoking in no smoking areas.
- 14.7 The right contained within Clause 14.6 shall not be exercised arbitrarily, vexatiously or capriciously by the Supervising Officer.
- 14.8 Any such individual removed will be replaced promptly with a properly qualified replacement, in such time as is acceptable to the Supervising Officer, and at no extra cost to the Council. In the case of management or other specialist staff who are employed in a senior capacity by the Contractor, prior written approval of the replacement shall be required. The Council shall in no circumstances be liable to the Contractor in respect of any such removal or ensuing disciplinary action and the Contractor shall fully and promptly indemnify the Council against any claim made by such staff.
- 14.9 Any contract, agency or self employed personnel engaged by the Contractor will be deemed to be sub-contractors and as such the permission of the Council will be required before they can be engaged. For the avoidance of doubt, the Contractor will be responsible in every respect for all personnel in the manner referred to in this Clause 14.9.
- 14.10 The Contractor will ensure that no conflict of interests affects any of the staff assigned to the Contract and, furthermore, that the assigned staff work exclusively on behalf of the Council whilst providing the Services.
- 14.11 The Contractor's contract of employment with its staff must require the staff to keep secret and secure any information relating to the work done for The Council and prohibit the Contractor's staff from making statements to the public or the media without prior consent of the Supervising Officer.

## **15. Performance Review And Best Value**

- 15.1 The Contractor shall ensure that the Contract Manager is available to meet the Authorised Officer, if so required, at least once every three months during the Contract Period, for a sufficient amount of time as is reasonably decided by the Authorised Officer (at no additional cost) to enable the Council to monitor and review the Contractor's performance under this Contract. Additional meetings (also at no additional cost) may reasonably be required by the Authorised Officer eg, if, in the Authorised Officer's opinion, the Contract is not running satisfactorily. The Contract Manager shall bring to these meetings such files and reports as may be requested by the Authorised Officer together with such management information as the Contractor is obliged to retain for the information of the Council under this Contract.
- 15.2 The Council has an electronic monitoring system controlled by computer. Contractors will be required to operate this system in accordance with instructions issued by the Authorised Officer. Monitoring may cover a sample of all Users at any one time. Information contained from this monitoring system will be used in the application of the terms of this Contract.
- 15.3 The Contractor acknowledges that the Council shall prepare Best Value Performance Plans and shall carry out Best Value Reviews at the Council's own expense and agrees that in so doing the Council may take into account and utilise any reports, information, files, data minutes, electronic or other forms of records compiled, supplied or obtained in connection with the performance of the Services.
- 15.4 The Authorised Officer may each year submit to the Contractor completed questionnaires relating to the Contractor's performance under this Contract and the responses contained in the completed questionnaires shall be retained by the Contractor for management information purposes so as to enable improvements to be made in service delivery and for use in performance review meetings as referred to in Clause 15.1.
- 15.5 In the event of the Authorised Officer requesting information from the Contractor in connection with any Council report, the Authorised Officer shall notify the Contractor of the dates by which it is required. Provided such notice is reasonable the Contractor shall provide the information requested by the dates stipulated. In addition to the foregoing, the Contractor shall provide regular monitoring reports as agreed during the term of the contract.

15.6 To the full extent of its obligations under this Contract, the Contractor shall undertake or refrain from undertaking such actions as the Council may reasonably request to enable the Council to comply with Part 1 of the Local Government Act 1999, including but not limited to the making of arrangements to secure continuous improvements in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

**16 Acquired Rights Directive And Transfer Of Undertakings (Employment Protection) Regulation 1981 (Tupe)**

16.1 The Contractor shall comply with any reasonable request made by the Council for access to and information concerning the numbers, identity, functions and terms and conditions of employment of staff employed by the Contractor in connection with the performance of the Contract, if such request is made by the Council for the purpose of considering the application of, or complying with the requirements of, the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) ("the Regulations") or the Acquired Rights Directive 77/187 ("the Directive") (or any amendment or re-enactment thereof) upon the termination of this Contract or any part thereof, or for the purpose of enabling other Tenderers so to consider or comply, or for the purpose of assessing the costs of such compliance. Information concerning the functions of such staff shall include all such information as is reasonably necessary in order to consider whether any particular individual is or is not assigned to the performance of this Contract or any part thereof. The Contractor shall warrant the accuracy and completeness of any information supplied. The Contractor shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information. The Council shall treat such information as confidential to itself and its advisers, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to submit a Tender for the provision of services in succession to the Contractor.

16.2 Where the Contractor supplies information to the Council pursuant to Clause 16.1 above, then

- (a) the Contractor shall at the same time notify the Council of any respects in which the facts and matters set out in the information supplied are expected to change between the date on which the information is supplied, and the date on which the Contract is due to terminate;

- (b) thereafter, the Contractor shall forthwith notify the Council if there are any changes to the information supplied other than expected changes of which the Council was notified pursuant to Clause 15.2(a); and
- (c) if the Contractor is notified by the Council that some other person has been selected to provide all or any of the Services comprised within the Contract in succession to the Contractor, the Contractor may not thereafter vary the numbers, identity, functions or terms and Clauses of employment of staff employed by the Contractor in connection with the performance of this Contract save with the prior written consent of the Council, provided that such consent shall not be withheld unless, in the reasonable opinion of the Council, the proposed variation is not such as would occur in the normal course of business irrespective of the termination of this Contract.

## **17. Vetting of Staff**

- 17.1 The Contractor will use his/her best endeavours to ensure that his/her staff/employees engaged in handling money have not been subjected to any criminal convictions. With this in mind, the Contractor will take at least two references for the employee in charge of handling money and will seek a declaration from the staff member that he/she has a clean criminal record and is honest, reliable and trustworthy. The Contractor will not use the member of staff in any circumstance in the involvement of cash where the Contractor has any suspicion as to the employees honesty and trustworthiness and/or where the employee has any criminal convictions.
- 17.2 Any person whom the Supervising Officer deems to be unsuitable, either as a result of the aforesaid checks or by virtue of a lack of co-operation in facilitating the checks, shall immediately be removed and replaced in accordance with Clause 14.6. The right contained within this Clause shall not be exercised arbitrarily, vexatiously or capriciously by the Supervising Officer. The Contractor shall not seek access to any police report (if any) obtained by the Council nor make detailed inquiry as to the reason for the Supervising Officer's decision.
- 17.3 The Contractor shall ensure that all staff utilised by it in performance of the Services shall at all times be properly attired and presentable, wearing appropriate clothing for the task to be performed.
- 17.4 The Contractor shall provide a means of identification to its staff, in a form approved by the Supervising Officer, and shall require its staff to wear and keep visible such identification at all times whilst on Council Premises or sites and locations at or from which the Services are to be provided. All staff used by the Contractor shall carry such identification at all times and make it available for inspection on request by any



officer(s) of the Council who similarly discloses their identity. Entry to Council buildings may be refused if the correct identification is not displayed. In this event, the Contractor shall be fully responsible for resultant delays or difficulties in the provision of the Services.

17.5 The Contractor shall be entirely responsible for the employment conditions and service of its own staff including without limitation the payment of wages but in making such payments shall have regard to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 and to the need to attract suitably qualified and experienced staff to fulfill the Contractor's obligations pursuant to Clause 14 and without prejudice to the generality of the foregoing such wages or rates of pay shall reflect the wages or rates of pay available for similar work within Greater London.

17.6 The Contractor shall ensure that its staff carry out their duties and behave while on or at any site location or building at or from which the Service is to be provided in an orderly manner and in as quiet a manner as may reasonably be practical, having regard to the nature of the duties being performed by them. The Contractor shall further ensure that its staff do not unlawfully remove any article or thing from any of the sites locations or buildings whether the property of the Council or of its employees, agents or sub-contractors or other persons.

17.7 The Contractor's staff engaged in and about the provision of the Services shall primarily be under the control and direction of the Contractor's own supervisory staff but shall nevertheless whilst on Council premises or at the sites buildings locations at which the Service is to be performed comply with all reasonable instructions and requests given to them by Authorised Officers.

## **18. Contract Manager**

18.1 The Contractor shall ensure that at all times during the Contract Period a Contract Manager is appointed and empowered to act on behalf of the Contractor and is available to Authorised Officer(s) in person at all times during which the Service is to be provided.

18.2 The Contractor shall as soon as possible and in any event within one month after acceptance by the Council of its Form of Tender give written notice to the Supervising Officer of the identity of the person proposed to be appointed as the Contract Manager together with details of his curriculum vitae and shall forthwith give notice of any subsequent proposed appointments. Any person proposed to be appointed as Contract Manager must first be approved in writing by the Council and the Contractor shall continue to propose different persons

to be appointed as Contract Manager until such approval has been given.

- 18.3 The Contractor shall notify the Supervising Officer in writing of the identity of any person proposed to be authorised to act for any period as Deputy for the Contract Manager before the start of that period. Any person proposed to be authorised to act as Deputy for the Contract Manager must first be approved in writing by the Council.
- 18.4 The Contract Manager or his duly authorised Deputy shall be the authorised representative of the Contractor for all purposes connected with the Contract. He must have authority to act and make decisions on behalf of the Contractor in all matters pertaining to the Services. Any notice, information, instruction or other communication, including without prejudice to the generality of the foregoing the procurement of staff, materials and equipment; the acceptance of Variation Orders to the Services and the preparation of quotations for Variable Services, given or made to the Contract Manager or his Deputy shall be deemed to have been given or made to the Contractor.
- 18.5 The Contract Manager or his duly authorised Deputy shall consult with an Authorised Officer and with such other of the Council's supervisory staff as may from time to time be specified by an Authorised Officer as often as may reasonably be necessary for the efficient provision of the Service in accordance with the Contract.
- 18.6 The Contract Manager shall inform an Authorised Officer promptly and in writing of any instances of activity or omission on the part of the Council which prevent or hinder or may prevent or hinder the Contractor from meeting its contractual obligations.
- 18.7 In the event of the Contract Manager being unable to obtain any satisfactory response to any enquiry concerning the terms of the Contract or the Service to be provided hereunder he may refer the matter to the Supervising Officer pursuant to Clause 1.15.
- 18.8 The Contract Manager will be based at the office accommodation provided by the Council or the Contractor during normal weekday office hours and be available to provide normal day to day line management of Parking Operations as well as management liaison with the Supervising Officer.

**19. Equal opportunities and unlawful discrimination**

- 19.1 The Contractor shall operate the equal opportunities policy detailed in the Method Statement. The Contractor warrants that this policy complies with the statutory obligations set down in the Race Relations Act 1976 and that it shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, in relation to decisions to recruit, train or promote staff.
- 19.2 The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 1983, which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equal opportunity in employment, including steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities. The Contractor shall provide such information as the Council may reasonably require to enable it to assess the Contractor's compliance with this Code of Practice.
- 19.3 If any court or tribunal, or the Commission for Racial Equality, should make any finding of unlawful discrimination against the Contractor then the Contractor shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Council may require the Contractor to provide full details of the steps taken to prevent such reoccurrence.
- 19.4 The Contractor's equal opportunities policy shall be set out in any instructions circulated to those members of the Contractor's staff concerned with recruitment, training and promotion; in relevant documentation available to its staff and others; and in its recruitment advertisements and other relevant literature. The Contractor may be required to provide to the Council copies of such instructions, documents, advertisements and other literature.

**20. Sureties**

- 20.1 If the Contractor is a subsidiary company within the meaning of Section 736 of the Companies Act 1985 then the Contractor shall provide a Guarantee in the form set out in the Tender Documents by its holding company or companies (as defined by the aforementioned Section 736) to secure due performance by the Contractor of its obligations due under the Contract to the Council.
- 20.2 If the Contractor is not a subsidiary company within the meaning of Section 736 of the Companies Act 1985 then the Contractor shall obtain the Guarantee of an Insurance Company or Bank to be jointly

and severally bound with the Contractor during the Contract Period in a sum equal to 10% of the annual sum payable in respect of the Basic Services (as varied) or such other sum as may entirely at his discretion be agreed by the Director of Environment and Leisure Services for the due performance of the Contract under the terms of a Bond with the said Insurance Company or Bank and the terms of the said Bond should be such as shall be approved by the Council and the provision of such sureties or the obtaining of such Guarantee and the cost of the Bond to be so entered into shall be at the expense in all respects of the Contractor.

- 20.3 The Council reserve the right to reject any Deed of Guarantee if dissatisfied with the financial security offered and to demand the provision of a Performance Bond in lieu.

## **21. Liability and Indemnity**

- 21.1 In its performance of the Services, the Contractor shall accept full responsibility for and shall indemnify and hold harmless the Council, its other Contractors and its and their staff from and against the following claims:-

- (i) All claims in respect of the Contractor's and its subcontractor's non-compliance with applicable laws and regulations, including but not limited to the Health and Safety at Work etc. Act 1974, Electricity at Work Regulations, The Income and Corporation Taxes Act 1970, The Finance (No 2) Act 1975, The Employment Protection (Consolidation) Act 1978 or any application of The Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Acquired Rights Directive (EEC/77/187);
- (ii) All claims whatsoever and howsoever arising which may at any time be made, which arise out of accidents to the Contractor's staff or the staff of the Contractor's subcontractor's and/or loss or damage to the Contractor's property and the property of its sub-contractors and its and their staff;
- (iii) All third party claims arising from the performance of the Services and all liabilities of whatsoever nature caused by the negligence of the Contractor and/or its sub-contractor and its and their staff. Where the Contractor and/or its sub-contractors and its or their staff have merely contributed by their negligence to such a claim, the Council will only rely on this indemnity to the extent of the Contractor's or its sub-contractor's contributory negligence;

- (iv) All loss or damage caused to any land, building or chattel in the ownership, occupation or possession of or partial occupation or possession of the Council by an employee or agent of the Contractor or its sub-contractors (whether such damage be caused by negligence or in any other way whatsoever); need something to say they are liable for any damage to vehicles belonging to the public?
- (v) Any consequential or indirect loss suffered by the Council as a result of the acts or omissions of the Contractor and/or its sub-contractors or its or their staff;
- (vi) All claims whatsoever and howsoever arising which may be made in relation to any Intellectual Property Rights in respect of any process, matter, or thing used, manufactured, supplied or delivered by the Contractor or its sub-contractors in connection with the Services;
- (vii) All claims whatsoever and howsoever arising which may at any time be made, which arise out of the failure of the Contractor to provide occupational pension benefits not less favorable in aggregate than those currently provided by the Council to its staff under the terms of the Local Government Superannuation Scheme where those staff have transferred to the Contractor under the provision of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Acquired Rights Directive (EEC/77/187).
- (viii) Any claim made to the Local Government Ombudsman pursuant to the Local Government Act 1974 in respect of the Services provided by the Contractor by virtue of this Agreement where:
  - (a) if in the event the Ombudsman makes a finding of maladministration and injustice in favour of the Claimant (being the person who brought the claim) as a result of fault by or on behalf of the Contractor; or
  - (b) having consulted with the Contractor the Director of Environment and Leisure Services determines to make early settlement of the complaint in advance of any investigation and/or report by the Ombudsman.

21.2 For the purpose of this Clause the Contractor shall

- (i) save where the Ombudsman specifically allocates blame to the Council indemnify the Council fully against any financial award made by the Ombudsman and in the event of such blame or fault being apportioned by the Ombudsman the Contractor shall meet that part of the award apportioned against the Contractor.

- (ii) indemnify the Council against such part or all of the settlement made as the Director of Environment and Leisure Services shall at his entire discretion consider fit having consulted with the Contractor.

## **22. Insurance**

22.1 Throughout the Contract Period, the Contractor shall maintain and shall ensure that its sub-contractors maintain the following insurance:

- (i) Third party insurance and such cover shall be not less than £2 million in respect of any one act or occurrence or series of acts or occurrence in any one year;
- (ii) Employers' liability insurance to comply with statutory requirements;
- (iii) The Contractor is bound to indemnify the Council in respect of any claim for death, bodily injury or damage to property arising during the contract term, where these are due to the failure of the Contractor to carry out its duties under the contract.

22.2 All deductibles under such insurance shall be the sole and exclusive responsibility of the Contractor.

22.3 Both the Contractor and its sub-contractors shall, where appropriate, name the Council as co-insured on any relevant policies, and shall ensure that its or their underwriters/insurers endorse the policies to prevent any exercise of rights of subrogation against the Council, its other contractors and its or their staff.

22.4 If the Contractor wishes to self-insure against such risks, details of these arrangements must have been approved by the Council in writing prior to the execution of the Contract.

22.5 The Contractor, shall prior to the commencement of the Services; and thereafter on the renewal date of each individual policy of insurance, as and when such occurs; and at such other times as the Supervising Officer may reasonably require:

- (i) Provide sight of original insurance documentation (including policies, cover notes, premium receipts and any other documents) to the Council;
- (ii) Supply copies of the original insurance documentation;

- (iii) Supply confirmation from the Contractor's and if relevant, sub-contractor's insurers that the insurance obtained is fully compliant with the obligations of this Contract.

22.6 The Council shall be entitled to notify the Contractor in writing that in its opinion any such policy of insurance or self-insurance arrangements does not provide sufficient cover to comply with this Clause 21 and to require the Contractor to provide such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and maintain such insurance as the Council shall reasonably require in breach of which the Council itself may cause such insurance to be effected. Where such breach does occur, the Contractor shall pay to the Council as a debt such sum as the Council shall certify as being the cost to the Council of effecting such insurance, together with a sum equal to 10% of the costs of such insurance as a contribution towards the Council's administrative costs and overheads.

22.7 The Contractor will be required at tender stage to indicate what its systems for dealing with third party insurance claims are. It shall be a condition of this Contract that the Contractor will deal speedily and efficiently with all claims submitted to it by third parties, either by its own staff or by referring such claims to its insurers.

## **23. Liability of Council**

23.1 The Council shall be liable to the Contractor for any loss or damage to the Contractor's property which is caused by the willful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever.

23.2 The Council shall in no circumstances be liable to the Contractor for any consequential, economic or financial loss of any kind whatsoever which the Contractor sustains in consequence of any failure on the Council's part to commission the volume of work anticipated by the Contractor or in any other way to generate the anticipated level of remuneration under this Contract. The Council shall be liable for payment of sums properly due to the Contractor under this Contract but shall only be liable to the Contractor for any consequential, economic or indirect loss caused by non-payment where the Contractor has given the Council at least one month's prior written notice of the importance of a particular payment, and has quantified the anticipated loss which a delay in payment would cause.

23.3 Any information given to the Contractor by way of guide quantities in the Bills of Quantities/Schedules of Rates and/or any plan, drawing, report database, file or similar information in the Specification, is only given as a guide. The Contractor agrees that it has ascertained for

itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Contractor's tender. No claim against the Council shall be allowed whether in contract, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any, inaccuracy.

**24. Security of Council Premises**

- 24.1 The Contractor shall be responsible for the security of all sites, buildings, locations and premises occupied by the Contractor for the purposes of the performance of the Service and shall ensure that they are locked and secured in accordance with the terms of the Contract.
- 24.2 The Contractor shall ensure that its staff are adequately supervised so that whilst on Council Premises they do nothing other than perform the Services. The Contractor shall ensure that its operations do not disrupt the orderly running of any Council Premises and that its staff behave with due consideration towards Council staff and others present on those premises.
- 24.3 Where the Council provide accommodation to the Contractor for the proper provision of the Services, the use of that accommodation shall be regulated by the Lease and/or Licence forming part of the Contract.
- 24.4 Where the Supervising Officer, having investigated any breach of this Condition, is of the opinion that the Contractor has not utilised its best endeavours to avoid breaches, has not provided adequate supervision or has failed in any other way to act responsibly, then this shall constitute a breach of contract.
- 24.5 In all Council Premises, the Contractor shall liaise with the Council's security staff to ensure that adequate arrangements exist to safeguard those premises. Where the Contractor's staff are the only staff present on the premises, then the temporary responsibility for ensuring that doors are locked and other similar security matters are carried out shall be undertaken by those staff whilst they are present on those premises. Details of arrangements for obtaining access to Council Premises shall be provided by the Supervising Officer.
- 24.6 The Contractor shall adhere to any arrangements for entry and use of Council Premises (for example, the provision of security passes) as may be detailed in the Specification, the Lease and/or Licence referred to in Clause 21.3 or otherwise notified by the Supervising Officer.



## **25. Confidentiality**

- 25.1 The Contractor shall not during the Contract Period or at any time thereafter make use for his own purposes, or disclose to any person (except as may be required by law or for the purpose of obtaining quotations or sureties as part of the provision of its tender) any information contained in any material provided to him by the Council pursuant to this Contract or prepared by the Contractor pursuant to the said Contract all of which information shall be deemed to be confidential.
- 25.2 The Contractor shall not dispose nor part with possession of any premises, sites, locations, and/or equipment or material provided licensed hired leased or loaned to him by the Council pursuant to the Contract other than in accordance with the express written instructions of the Council.
- 25.3 The Contractor will ensure his employees and/or subcontractors comply with the provision of this and every Clause in this Contract.

## **26. Notices**

### **26.1 Service of Notice on Contractor**

Any Notice to be given to the Contractor under the terms of the Contract shall be served by sending the same by prepaid first class recorded delivery post to or leaving the same at the Contractor's principal place of business (or in the event of the Contractor being a company) to or at its registered office.

### **26.2 Service of Notice on Council**

Any Notice to be given to the Council under the terms of the Contract shall be served by sending the same by pre-paid first class recorded delivery post to or leaving the same at the Bromley Civic Centre, Stockwell Close, Bromley BR 1 3UH addressed to the Director of Environment and Leisure Services.

- 26.3 Such Notice as is mentioned in Clause 25.1 and 25.2 (do you mean this clause?) shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or, if left at the addressee's premises, on the date that delivery was effected.

## **27. Arbitration**

- 27.1 If any dispute or difference of any kind whatsoever shall arise between the Council and the Contractor in connection with or arising out of the Contract or the carrying out of the Services, including any dispute as to any decision, opinion, instruction, direction, certificate or valuation given by any Council officer (save for the Director of Environment and Leisure Services and save for such decision, opinion, instruction or direction as are expressly stated in this Contract as being final whether during the progress of the Contract or after its completion, and whether before or after the termination, abandonment or breach of the Contract), it shall be referred to the Supervising Officer who shall endeavour to resolve the conflict.
- 27.2 The Supervising Officer's decision in any such matter shall be provided in writing to the Contractor.
- 27.3 If the Supervising Officer shall fail to give such decision within a reasonable period after being requested to do so, or if the Contractor is dissatisfied with any such decision, then the Contractor may require that the matter be referred to the Director of Environment and Leisure Services who shall be entitled to receive written and oral submissions from the Contractor and the Supervising Officer. The Director of Environment and Leisure Services shall issue his decision upon the dispute in writing as soon as reasonably practicable after the completion of submissions. Thereafter if the Contractor remains dissatisfied with the Director of Environment and Leisure Services's decision (which shall include decisions, opinions, instructions, directions, certificates or valuations made or given by the Director of Environment and Leisure Services and referred to at Clause ???) the Contractor may require that the matter be referred to the arbitration of a person to be agreed between the parties.
- 27.4 For the avoidance of doubt it is hereby expressly agreed that, in the event of any dispute (save for any decision, opinion, instruction, direction, certificate or valuation expressly stated in this Contract as being final) which cannot be resolved amicably between the parties, then the matter may be referred to arbitration by either party in accordance with the following provisions.
- 27.5 If the parties fail to agree on the identity of an arbitrator within one calendar month of either party serving on the other a written notice to concur in the appointment of an arbitrator, then the President for the time being of the Chartered Institute of Arbitrators, shall be requested to appoint an arbitrator.

- 27.6 If an arbitrator declines the appointment, or after appointment is removed by order of a competent court, or is incapable of acting, or dies and the parties do not within one calendar month of the vacancy fill the vacancy, then the President shall appoint an arbitrator to fill the vacancy.
- 27.7 In any case where the President for the time being of the Chartered Institute of Arbitrators is unable to exercise the functions conferred by this Clause, the said functions may be exercised by a nominee of the said President.
- 27.8 In the case of any dispute or question as to the adequacy of the Contractor's occupational pension scheme referred to in Clause 19.1 (vii)?? Is this of the spec these shall be determined by reference to an independent arbitrator appointed by the President for the time being of the Institute of Actuaries.
- 27.9 Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1950 and 1979.
- 27.10 The Arbitrator appointed shall have full power to open up, review and revise any decision, opinion, instruction, direction, certificate or valuation of any Council officer which is not in accordance with the Contract, and neither party shall be limited in the proceedings before such Arbitrator to the evidence or arguments put before the Supervising Officer for the purpose of obtaining the decision referred to above. Full weight shall be given to the power of the Supervising Officer to exercise any discretion under specified provisions of the Contract.
- 27.11 The award of the Arbitrator shall be final and binding on the parties.
- 27.12 The giving of any decision shall not disqualify the Supervising Officer from being called as a witness and giving evidence before the Arbitrator on any matter whatsoever relevant to the dispute or difference referred to arbitration.
- 27.13 The Contractor has accepted the calculation of the Council's liquidated and ascertained damages as contained in the default provisions in Clauses 8 and 9 of this Contract as being a genuine pre-estimate of its loss, and agrees that it will not thereafter seek to challenge this calculation by virtue of any arbitration proceedings.
- 27.14 Unless the Contract shall already have been terminated or abandoned the Contractor shall in every case proceed with the Services with all due diligence and in accordance with the Contract, and shall give effect

forthwith to every such decision of the Supervising Officer unless and until the same shall be revised by the Arbitrator as provided above.

**28. Copyright**

Copyright in the documents comprising this Contract shall vest in the Council but the Contractor may obtain or make at his own expense any further copies requested for use by him in performing the Contract.

**29. Waiver**

Failure by the Council at any time to enforce the provisions of the Contract or any part thereof shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

**30. Severance**

If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision of the Contract all of which shall remain in full force and effect.

**31. Assignment and Sub-Contracting**

- 31.1 Should the Council be affected by reorganisation under the provisions of the Local Government Act 1992 resulting in a structural change or amendment to its functions, this will result in a formal assignment of the Contract by operation of law. The Contractor shall use its best endeavours to assist in the smooth transfer of arrangements to facilitate this assignment.
- 31.2 The Contractor shall not be entitled to assign the whole or any part of the Contract.
- 31.3 The Contractor shall not sub-contract all or any part of the Services, without the prior written consent of the Council which consent may be withheld entirely at the discretion of the Director of Environment and Leisure Services. Notwithstanding such consent, the Contractor shall not be relieved from any liabilities or obligations under the Contract and shall be responsible for the acts, omissions and breaches of any sub-contractor as fully as if they were the Contractor's own.

- 31.4 Where consent to sub-contracting is granted, the Contractor shall provide each sub-contractor with a full set of Contract Documentation (un-priced) is this correct? and if required, shall satisfy the Council that the Contractor has obtained a written undertaking from the sub-contractor that the sub-contractor is familiar with the documentation and will perform the Services fully in conformity with the Contract and any such sub-contract shall contain a provision to the effect that it shall terminate upon the expiry or termination of the Contract unless assigned to the Council pursuant to Clause 30.5.
- 31.5 Where consent to sub-contracting is given any such sub-contract shall contain a provision entitling the Council at its discretion to take an assignment of the sub-contract despite the termination of the Contract for the Services between the Council and Contractor in which circumstances save for any antecedent breach by the Contractor or Sub-Contractor the Contractor shall release from any liability or obligations arising from the performance of the sub-contract following such assignment.

## **32. Force Majeure**

- 32.1 In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Services, the duty of the Contractor to perform the Services shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of any part of the Services not yet performed shall be held to the credit of the Council and returned to the Council.
- 32.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters, are not to be considered as events of Force Majeure or Acts of God.

## **33. Applicable Law**

- 33.1 This Contract and all its provisions shall be considered as a contract made in the United Kingdom and shall be construed in accordance with English Law. Each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Contract or the performance of the Services.

- 33.2 The Contract is binding on the Council and its successors and assignees and on the Contractor and its successors and permitted assignees.

**34. Use of the Council's Premises**

- 34.1 Where any premises in the ownership or control of the Council, are made available to the Contractor by way of lease or licence, they shall be occupied or utilised by the Contractor for the sole purpose of performing the Services. Such lease or licence shall terminate upon expiry or termination of the Contract and the Contractor shall vacate the said premises forthwith leaving them in a clean and tidy condition to the satisfaction of the Supervising Officer and the contractor shall be responsible for the cost of any repairs considered necessary by the Supervising Officer as a result of the acts of the Contractor or his staff.
- 34.2 The Contractor shall, if required to do so, join the Council in making application to the County Court for an order under Section S.38(4) of the Landlord and Tenant Act 1954, as amended, authorising the inclusion of a provision in any such lease to exclude Sections 24 to 28 inclusive and 37 of the said Act.

**35. Advertising**

- 35.1 No advertisement of any description will be allowed on premises, vehicles, equipment, materials or consumables used in the performance of the Services without the prior written consent of the Supervising Officer, which consent shall not be unreasonably withheld. Any advertisement which is placed on the Council's Premises with consent shall be promptly removed at the end of the Contract Period.
- 35.2 If required by the Supervising Officer, the Contractor shall cause any or all premises, vehicles, equipment, materials and consumables used in the performance of the Services to bear such advertisements, devices or insignia as the Supervising Officer may from time to time notify in writing, In these circumstances, the Supervising Officer shall issue a Variation Order to compensate the Contractor for additional costs involved.
- 35.3 The Contractor shall not advertise the fact that it is providing services to the Council under this Contract other than with the written permission of the Supervising officer.

**36. Agency**

- 36.1 The Contractor is not and shall in no circumstances hold itself out as being the servant or agent of the Council for any purpose other than those expressly conferred by this Contract.

36.2 The Contractor is not and shall not in any circumstances hold itself out as being authorised to enter into any Contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

36.3 The Contractor's staff are not and shall not hold themselves out as being, nor shall they be held out by the Contractor as being, servants or agents of the Council for any purposes other than those expressly conferred by this Contract.

### **37. Observance of Statutory Requirements**

The Contractor shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Byelaws, Directives or the like, to be observed and performed in connection with the Services provided under the Contract, and shall indemnify the Council accordingly against any loss or damage caused by non-compliance with any such legal provisions.

### **38. Health and Safety**

38.1 The Contractor shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974, the Management of Health & Safety at Work Regulations 1992, the Electricity at Work Act 1989, and of any other legal provisions pertaining to the health and safety of its own staff, the Council's employees and others who may be affected by its performance of the Services.

38.2 The Contractor shall provide its statement of safety policy to the Council at tender stage and upon execution of the Contract it shall be deemed to form part of the Contract.

38.3 The Contractor shall ensure that its safety policy has been drawn to the attention of all of its members of staff, and that all of its management and supervisory staff have a detailed knowledge of this policy and that they will observe the policy and require the Contractor's staff to comply fully with its provisions.

### **39. Breaches of Conditions or Specification**

The Contractor is advised that breaches of these Contract Conditions or the Specification are regarded as material breaches of Contract.

#### **40. Bribery and Corruption**

The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss or damage resulting from such cancellation if:

- 40.1 the Contractor shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other contract with the Council, or
- 40.2 the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor), or
- 40.3 in relation to any contract with the Council, the Contractor or person employed by it or acting on its behalf shall:
  - (i) have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
  - (ii) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

#### **41. Gratuities**

- 41.1 The Contractor or his employees agents or sub-contractors shall not solicit or accept any monies or any other incentive as payment for the performance of this Contract excluding bona fide payments made by the Council under the terms of the Contract. The Supervising Officer, having satisfied himself that such incentives have been accepted or sought, shall be entitled to treat such action as a breach of these Conditions.
- 41.2 In addition the Supervising Officer may require the removal from the Contract of any employee(s) or agent(s) or sub-contractor(s) of the Contractor involved in the receipt or pursuance of such monies or incentives as provided for in these Conditions.



**42. Information on Re-tendering**

42.1 If requested to do so by the Supervising officer, the Contractor shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a Tender exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended.

42.2 Such information provided pursuant to Clause 41.1 above shall be at no cost to the Council.

**43. Right to Set-off**

The Council reserves its right at Common Law and in Equity to set off against its indebtedness to the Contractor any debt owed to it by the Contractor and any liability, damage, loss, costs, charges and expenses which it has incurred in consequence of any breach by the Contractor of this Contract or any other contract with the Council.

**44. Assistance in Legal Proceedings**

44.1 If requested to do so by the Supervising Officer, the Contractor shall provide to the Council any relevant information (including but not limited to documentation and statements from staff) in connection with any legal inquiry (including Ombudsman inquiry), arbitration or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of the provision of the Services or the Contractor's presence on Council Premises, and the Contractor shall give evidence in such inquiries, arbitrations, proceedings or hearings.

44.2 Where the Contractor or any of its staff become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Supervising officer immediately in writing. Such notification shall include all relevant information to enable the Supervising Officer to investigate the matter fully.

44.3 Such information provided or assistance rendered pursuant to the obligation in Sub-Clauses 43.1 and 43.2 above, in whatever form, shall be at no cost to the Council.

**45. Contracts (Rights Of Third Parties) Act 1999**

For the purposes of the Contracts (Rights of Third Parties Act) 1999, this Contract is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.