



DATED 1 APRIL 2011

2011

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH

(2) T BROWN GROUP LIMITED

CONTRACT FOR THE INSTALLATION, RESPONSIVE REPAIRS AND PLANNED MAINTENANCE OF INDIVIDUAL CENTRAL HEATING, COMMUNAL BOILERS, WATER CONTROL SYSTEMS AND LANDLORD ELECTRICS FOR THE CENTRAL AREA OF LAMBETH

We confirm that this is: Volume 1/4

T Brown Group Limited signatories:

London Borough of Lambeth's witness to seal:

Director [Signature]

Chief Executive [Signature]

Director/Company Secretary [Signature]

SHARPE PRITCHARD® www.sharpepritchard.co.uk

Tel: [Redacted]

[Signature] Authorised Officer



DATED

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(2) T BROWN GROUP LIMITED

**CONTRACT FOR THE INSTALLATION, RESPONSIVE REPAIRS AND PLANNED MAINTENANCE OF INDIVIDUAL CENTRAL HEATING, COMMUNAL BOILERS, WATER CONTROL SYSTEMS AND LANDLORD ELECTRICS FOR THE CENTRAL AREA OF LAMBETH**

We confirm that this is:

Volume 2/4

T Brown Group Limited signatories:

London Borough of Lambeth's witness to seal:

.....  
Director  
.....

Director/Company Secretary

.....  
Chief Executive  
.....

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Tel: .....

.....  
**Authorised Officer**



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(2) T BROWN GROUP LIMITED

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We confirm that this is: Volume 3/4

T Brown Group Limited signatories:

London Borough of Lambeth's witness to seal:

Director [Signature]

Chief Executive [Signature]

Director/Company Secretary [Signature]

[Signature]

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Tel: 020 7464 6600

Authorised Officer [Signature]



DATED 1 APRIL 2011

2011

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH

(2) T BROWN GROUP LIMITED

CONTRACT FOR THE INSTALLATION, RESPONSIVE REPAIRS AND PLANNED MAINTENANCE OF INDIVIDUAL CENTRAL HEATING, COMMUNAL BOILERS, WATER CONTROL SYSTEMS AND LANDLORD ELECTRICS FOR THE CENTRAL AREA OF LAMBETH

We confirm that this is: Volume 4/4

T Brown Group Limited signatories:

London Borough of Lambeth's witness to seal:

Director [Signature]

Chief Executive [Signature]

Director/Company Secretary [Signature]

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Tel: [Redacted]

[Signature] Authorised Officer



DATED

2011

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

**(2) T BROWN GROUP LIMITED**

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**CONTRACT FOR THE INSTALLATION, RESPONSIVE  
REPAIRS AND PLANNED MAINTENANCE OF DOOR  
ENTRY, ACCESS CONTROL, CONCIERGE AND CCTV  
SYSTEMS FOR THE CENTRAL AREA OF LAMBETH**

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**Telephone**

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THIS DEED is made the                      day of                      2011

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH of Town Hall, Brixton Hill, Brixton, London SW2 1RW (the "Council") of the first part and T BROWN GROUP LIMITED (Company Number 01006630) whose registered office is situate at 24 High Street, Ewell, Surrey, KT17 1SJ (the "Contractor") of the second part.

WHEREAS

- (A) The Council wishes to have provided to it the Services as defined in this Contract ("Contract").
- (B) The Contractor is willing to perform such Services in accordance with the provisions of this Contract.
- (C) The Contractor's Offer to perform the Services in accordance with the provisions of this Contract was accepted by the Council in a letter of acceptance dated 11<sup>th</sup> October 2010.

## 1. DEFINITIONS

### 1.1 Defined Works and Phases

In this Contract, the following expressions shall have the meanings hereby assigned to them unless inconsistent with the context:

<b>"Action Plan"</b>	shall bear the meaning ascribed to it in paragraph 2.3 of Schedule 6 (Performance Default Remedy Mechanism)
<b>"Adjudication"</b>	has the meaning ascribed to it in the Housing Grants, Construction and Regeneration Act 1996.
<b>"Affiliate"</b>	in relation to any company, any holding company or subsidiary at the relevant time of that company or any subsidiary at the relevant time of such holding company and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006
<b>"ALMO"</b>	Lambeth Living Limited (Company Number 06276595) whose registered office is situate at Hambrook House, Porden Road, London SW2 5RW
<b>"Annexes"</b>	an annex in this Contract and Annexes shall be

construed accordingly.

**“Annual Review”**

the review mentioned in Clause 10.14 (Annual Review)

**“Assets”**

all assets, equipment and rights used by the Contractor from time to time to provide the Services in accordance with this Contract including:

- (a) hardware;
- (b) office equipment;
- (c) Software and any rights in Software and any other Intellectual Property Rights;
- (d) vehicles;
- (e) machinery;
- (f) equipment;
- (g) plant;
- (h) materials;
- (i) stock;
- (j) consumables;
- (k) any books and records (including operating and maintenance manuals and other record(s) of knowledge), and
- (l) knowledge

in each case as modified, upgraded, updated, supplemented and replaced from time to time but excluding the Council System, and any assets and rights in respect of which the Council remains the full legal and beneficial owner and excluding Real Property

**“Authorised Officer”**

any person, which may include a person who is not an employee of the Council, appointed from time to time by the Council whose name and contact details have been notified to the

	Contractor in accordance with Clause 12 (The role of the Council's Officers)
<b>"Benchmarking"</b>	shall bear the meaning ascribed to it in Schedule 10 (Benchmarking).
<b>"Best Value Obligations"</b>	the Council's or the ALMO's obligations under Part I of the 1999 Act as amended by the Local Government Act 2003;
<b>"Bond"</b>	a bond in the form set out in Schedule 11 (The Bond)
<b>"Borough"</b>	the London Borough of Lambeth and any properties held by the Council for housing purposes and in which the Council has a legal estate or interest or in which the ALMO has any legal estate or interest or which are managed by the ALMO and which are situated outside the London Borough of Lambeth
<b>"Business Day"</b>	a Day (other than a Saturday or Sunday) on which banks are generally open for deposit taking in the City of London
<b>"CDM Co-ordinator"</b>	shall have the meaning ascribed to that expression in the CDM Regulations
<b>"CDM Regulations"</b>	The Construction (Design and Management) Regulations 2007
<b>"Central Area"</b>	the part of the Borough shown edged blue on the plan annexed to this Contract and consisting of the Clapham and Brixton housing operational areas
<b>"Charges"</b>	the sums payable to the Contractor for the provision of the Services calculated for each Task by reference to the Prices for the Workstream, in which that Task falls, or as provided by the Contractor in response to a requirement to provide prices for all or part of the Task in a Task Order and in accordance with whichever of Schedules 7 (Engineering and Construction) or 8 (Term Service) is applicable to that Workstream and reduced by the Performance Profit Percentage and any amounts notified to the Contractor by the

	Authorised Officer pursuant to Clause 37.2 (Notification of Reductions) of this Contract
<b>"Clause"</b>	a clause in the Conditions and Clauses shall be construed accordingly
<b>"Commencement Date"</b>	is the 1 <sup>st</sup> July 2010.
<b>"Concierge Service"</b>	those parts of the Services included within Estate Cleaning for the North Area and the Central Area and described as the Concierge Service in the Workstream Documents.
<b>"Conditions"</b>	the terms and conditions set out at Clauses 1 to 66 of this Contract
<b>"Contract"</b>	the Conditions and the Schedules attached hereto (in each case as amended, varied or extended from time to time)
<b>"Contract Manager"</b>	the person from time to time appointed by the Contractor pursuant to Clause 25.5 (The Contract Manager)
<b>"Contract Notice"</b>	the contract notice dispatched by the Council to the Official Journal of the European Union on 17 October 2007 a copy of which is set out in Schedule 3 (The Contract Notice).
<b>"Contract Period"</b>	the period from the Commencement Date until the Expiry Date or earlier Termination Date
<b>"Contract Standard"</b>	the standards and other matters set out in Clause 9 (Performance of Services)
<b>"Contract Year"</b>	the period from 00.00.01 hours (one second) after midnight on 1 <sup>st</sup> April in each year until 24.00 hours (midnight) on 31 <sup>st</sup> March in each year and the period from 00.00.01 (one second after midnight) on the last 1 <sup>st</sup> day of April in the Contract Period until the Expiry Date
<b>"Contractor"</b>	T BROWN GROUP LIMITED (Company Number 01006630) whose registered office is situate at 24 High Street, Ewell, Surrey, KT17 1SJ or (if the context so admits) its assignees and successors and any of the Contractor's officers, Staff, sub-contractors or agents.

<b>“Contractor Premises”</b>	any property or part of a property owned or leased or otherwise in the possession of the Contractor consisting of depots, offices, site offices, equipment stores, buildings etc., which are used by the Contractor for the proper performance of the Services
<b>Contractor’s Offer</b>	The Contractor’s tender dated 25 <sup>th</sup> August 2009 as modified and clarified by the Contractor’s response to the invitation to negotiate (issued by the Council on 21 <sup>st</sup> October 2009) dated 6 <sup>th</sup> November 2009 as further modified and clarified in correspondence between the Contractor and EC Harris on behalf of the Council.
<b>“Contractor’s Software”</b>	Any Software used by the Contractor in the provision of the Services or any part or parts of the Services, which a new provider of the Services or that part or parts of the Services would of necessity have to use to provide the Services or that part or parts of the Services after the expiry or termination of this Contract
<b>“Contractual Change Order”</b>	any order issued by the Authorised Officer pursuant to Clause 54 (Contractual Change Orders)
<b>“Council”</b>	the Mayor and Burgesses of the London Borough of Lambeth and its successors in title and assigns
<b>“Council Data”</b>	all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium and which are (i) owned by the Council or the ALMO prior the Commencement Date and supplied or in respect of which access is granted to the Contractor by the Council or the ALMO under this Contract; or (ii) created after the Commencement Date in connection with the Council Network, or in connection with, arising out of or as a result of the provision of the Services or during the course of performance of any Task by the Contractor or a Sub-Contractor
<b>“Council Network”</b>	the telecommunications and data networks

including cabling, telecommunication hardware, Council Software, other software and switches used by the Council or the ALMO in the performance of services similar to the Services prior to the Effective Date including the local area network, wide area network broadband networks, wireless networks WiFi networks and such of as may be altered, reduced, expanded, replaced or added to during the Contract Period which the Contractor is required to use in the provision of the Services by the Council/ALMO

**“Council’s Property”**

any Real Property owned or leased or otherwise in the possession of or managed by the Council or the ALMO including dwellings, offices, buildings, accommodation or service areas, stores, open spaces, play spaces, grassed areas, communal areas, gardens, amenity areas, vehicle parking areas, roads, footways, access ways etc, where Services are required to be performed pursuant to this Contract and/or which are used by the Contractor, whether exclusively or together with Council or ALMO officers or staff or other contractors of the Council or the ALMO for the performance of the Services or for purposes incidental to or ancillary to the performance of the Services

**“Council’s Policies”**

the policies, procedures, standards, information and other matters giving rise to expectations by Residents of the Council listed in Schedule 2 (Council Policies) as amended by the Council and notified to the Contractor in writing from time to time

**“Council Software”**

all that Software and related preparatory materials which is/are owned by or licensed to the Council or the ALMO during the Contract Period, the use of which is required by the Contractor in the provision of the Services

**“Critical Performance Default”**

any of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the

performance of the Services;

- (b) a material breach by the Contractor of one of its obligations under this Contract (a breach of which obligation does not of itself necessarily directly impact on the quality of performance of the Services);
- (c) a failure to perform the Services to the levels specified in the Workstream Documents, which results in the Council or ALMO being in breach of an obligation of the Council or the ALMO (as the case may be), which may be owed to any third party under any Law;
- (d) non-compliance with any requirements of the Lambeth Asbestos Management Plan, which the Contractor is under an obligation to comply with;
- (e) a breach by the Contractor of its obligations to take out and maintain the Required Insurances or any other insurances required to be taken out and maintained by the Contractor in accordance with this Contract;
- (f) the Bond for whatever reason becomes invalid or unenforceable;
- (g) a failure by the Contractor to achieve accreditation following a re-inspection pursuant to Clause 11.4 (Contractor's Failure to Achieve Quality Assurance Accreditation); or
- (h) the inaccurate reporting or wilful misreporting or non-reporting by the Contractor of any aspect of its performance in relation to the Key Performance Indicators or in relation to any other matter set out in the Contract in relation to which the Council is reliant in whole or to a

significant extent on the Contractor's self-monitoring and/or quality managing system mentioned in Clause 11 (Quality Assurance).

<b>"Critical Performance Default Notice"</b>	shall bear the meaning ascribed to it by paragraphs 3.1 and 3.2 of Schedule 6 (Performance Default Remedy Mechanism)
<b>"Day"</b>	the period from midnight to midnight the following day (a period of twenty four (24) hours uninterrupted)
<b>"Decent Homes Delivery Programme"</b>	those parts of the Services included within each of Lots 1, 2 or 3 and described as the Decent Homes Delivery Programme in the Workstream Documents
<b>"Debt Amount"</b>	shall bear the meaning ascribed to it in paragraph 5.1 of Schedule 6 (Performance Default Remedy Mechanism)
<b>"Debt Notice"</b>	shall bear the meaning ascribed to it in paragraphs 5.1 and 5.2 of Schedule 6 (Performance Default Remedy Mechanism)
<b>"Default Mechanism"</b>	the procedure for assessing performance, calculating debts and issuing notices and for remedying Performance Defaults in respect of the Services set out in Schedule 6 (Performance Default Remedy Mechanism)
<b>"Default Notice"</b>	shall bear the meaning ascribed to it in paragraph 2.3 of Schedule 6 (Performance Default Remedy Mechanism).
<b>"Defined Cost"</b>	shall bear the meaning ascribed to it in Schedule 7 (Engineering and Construction) or Schedule 8 (Term Service) as the case may be
<b>"Directive"</b>	the EC Acquired Rights Directive 2001/23/EC as amended
<b>"Dispute Resolution Procedure"</b>	the procedure for the resolution of disputes set out in Clause 60 (Dispute Resolution)
<b>"DPA"</b>	the Data Protection Act 1998
<b>"Effective Date"</b>	11 <sup>th</sup> October 2010



<b>“EIRs”</b>	the Environmental Information Regulations 2004 together with any Code of Practice made pursuant to these regulations and any related guidance issued by the Secretary of State for the Department for Environmental Food and Rural Affairs, the Information Commissioner or Secretary of State for the Department for Constitutional Affairs.
<b>“Equalities Legislation”</b>	all legislation which makes unlawful discrimination on grounds of sex, sexual orientation, gender reassignment, age, disability, colour, race, ethnic or national origin or religion, marital status, part-time or temporary status in employment or otherwise howsoever including without limitation the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995 and the Disability Discrimination Act 2005
<b>“Estate Cleaning”</b>	those parts of the Services included within Lots 1, 2 and 3 and described as Estate Cleaning in the Workstream Documents.
<b>“Executive”</b>	the executive of the Council pursuant to section 11 of the Local Government Act 2000
<b>“Exit Arrangements”</b>	the exit arrangements set out in Schedule 4 (Exit Arrangements)
<b>“Expert”</b>	an independent person agreed between the Parties or appointed by the President of the Chartered Institute of Housing (as the case by may), to determine certain disputes or differences as provided for in this contract
<b>“Expiry Date”</b>	10 <sup>th</sup> October 2017 or such later date to which the Contract Period may be extended pursuant to Clause 7.2 (Extension of Contract Period)
<b>“Fee”</b>	shall bear the meaning ascribed to it by either Schedule 7 (Engineering and Construction) or Schedule 8 (Term Service) as the case may be.
<b>“Fellow Contractor”</b>	any other contractor or consultant engaged by the Council or the ALMO to carry out works or services on behalf of or to supply goods or

services to the Council or the ALMO including sub-contractors or sub-consultants of any tier and their respective employees

**“Final Date for Payment”**

The Day being twenty-two (22) clear Business Days after the Payment Due Date.

**“FOIA”**

the Freedom of Information Act 2000 and any subordinate legislation but excluding the EIRs together with all codes of practice made pursuant to the Act or subordinate legislation from time to time and any related guidance issued by the Information Commissioner or the Secretary of State for the Department for Constitutional Affairs

**“Force Majeure Event”**

the occurrence of:

- (a) war, civil war, armed conflict, terrorism or riot and civil commotion;
- (b) nuclear, chemical or biological contamination unless the source or cause of contamination is the result of the actions or omissions of the Contractor;
- (c) pressure waves caused by devices travelling at supersonic speeds;
- (d) fire or explosion (unless caused by the actions or omissions of the Contractor) and, lightening, severe storm or tempest, flooding of a depth which prevents vehicular traffic movement, earthquakes; or
- (e) any failure or shortage of power, fuel or transport (other than caused by the actions or omissions of the Contractor)

which prevents any performance of its obligations under this Contract by a Party either throughout the whole or a substantial part of the Borough

**“Framework Objectives”**

shall have the meaning ascribed to it in clause 5 of the Non-binding Framework Agreement issued by Joint Contracts Tribunal Limited and

published by Sweet & Maxwell in June 2005

**“Good Industry Practice”**

the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

**“Grounds Maintenance”**

those parts of the services included within Lots 1, 2 and 3 and described as Grounds Maintenance in the Workstream Documents

**“Guarantee”**

a guarantee in the form set out in Schedule 12 (The Guarantee) duly executed if the Contractor is a subsidiary company on the date hereof by the Contractor’s ultimate parent company or by the Contractor’s parent company with substantial assets in the United Kingdom

**“Health & Safety Manager”**

the manager appointed under Clause 27.10 (Health and Safety Manger and Representatives)

**“Health & Safety Representatives”**

the members of Staff appointed under Clause 27.10 (Health and Safety Manager and Representatives)

**“ICT”**

Information and/or communication technology

**“Index”**

(1) the Index for Decent Homes Delivery Programme, Voids, Planned and Cyclical Maintenance and Installation other than any items of work priced by reference to the PSA Schedules of Rates for Mechanical and/or Electrical Services (Fifth Edition) is the Building Maintenance Index – Local Authority Maintenance Cost Index – General issued by the Royal Institution of Chartered Surveyors Building Cost Information Service or any body upon which the duties in connection with the compilation and maintenance of such index shall have devolved;

(2) the Index for Responsive Repairs, Estate Cleaning, Grounds Maintenance and Planned Maintenance other than any items of work priced by reference to the PSA Schedules of Rates for Mechanical and/or Electrical Services (Fifth Edition) is the \_\_\_\_\_ issued by the Office for National Statistics or any body upon which the duties in connection with the compilation and maintenance of such index shall have devolved;

(3) the Index for items of work priced by reference to the PSA Schedules of Rates for Mechanical and/or Electrical Services (Fifth Edition) is Percentage updates on Schedule of Rates – Mechanical and Percentage updates – Electrical issued by the Department of Business Enterprise and Regulatory Reform or any body upon which the duties in connection with the compilation and maintenance of such index shall have devolved.

For the avoidance of doubt the Parties hereby declare and confirm that no other index, including the index referred to in any other PSA Schedule of Rates and the indices referred to in any of the National Housing Federation Schedules of Rates and any other index mentioned or referred to in the Response Document or Schedules of Rates shall be used to vary the Prices under Clause 46 (Indexation).

**“Installation”**

those parts of the Services included within each of Lots 4 to 12 (inclusive) and described as Installation in the Workstream Documents

**“Intellectual Property Rights”**

all intellectual and industrial property rights including database rights, patents or patent

rights, rights in know-how, trade marks (whether registered or not), models and copyright (whether in drawings, specifications, designs, software, processes or otherwise) wherever in the world enforceable

**“ITT”**

the document issued by the Council on 18<sup>th</sup> May 2009 inviting tenders for the Lots and containing instructions to tenderers and which is defined as “Instructions to Tenderers” in that document.

**“KPIs or Key Performance Indicators”**

the key performance indicators set out in Schedule 9 (KPIs, Service Levels and Performance Profit)

**“KPI Failure”**

shall have the meaning ascribed to it by paragraph 6.4 of Schedule 6 (Performance Default Remedy Mechanism)

**“Large Project”**

works of an estimated value (at initiation of the project) value of between £25,000.01 (Twenty five thousand pounds and one pence) and £499,999.99 (Four hundred and ninety nine thousand nine hundred and ninety nine pounds and ninety nine pence)

**“Law”**

any statute, statutory instrument, subordinate legislation, standard, law, proclamation, order, resolution, notice, rule of court, bye-law, directive, code of conduct or other instrument or requirement or decision, judgement or determination having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislation making institutions of the European Union, any court or other judicial forum, any Commission of Inquiry, local authority, statutory undertaking or relevant authority or any other body or person having such power. For the avoidance of doubt this includes the Equalities Legislation the EIRs and the FOIA

**“Lot”**

a lot as set out in the Contract Notice

**“Malicious Software”**

any software programme or code intended to destroy, interfere with, corrupt, or cause

undesired effects on programme files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**“Major Project”**

Works of an estimated (at initiation of the project) value of £500,000 (Five hundred thousand pounds) or more

**“Method Statement”**

a statement, which sets out how the Services or part or parts of the Services shall be performed either at the Effective Date or later in relation to a requirement or requirements of the Council in the Workstream Documents.

**“Minor Project”**

works of an estimated value (at initiation of the project) of no more than £25,000 (Twenty five thousand pounds)

**“Month”**

a calendar month

**“Monthly Progress Meeting”**

a meeting to be held each month during the Contract Period for the purposes mentioned in Clause 15.2. (Purposes of Monthly Progress Meeting)

**“Monthly Service Report”**

a report submitted by the expiry of the 5<sup>th</sup> (fifth) Business Day after the end of each month of the Contract Period by the Contractor to the Authorised Officer which shall include (without limitation) information on:

Monitoring data including the achievements of the Contractor against KPIs and Pis;

Resource inputs;

Information on performance and delivery of the Services;

An outline of problems that have been encountered and solutions that have been put in place;

Any outstanding information and issues;

Any proposed amendments to the Services;

Staffing levels;

	Health & Safety (including any RIDDOR notices)
	Information on Sub-Contractors and the percentage of agency Staff and the Services in which they have been employed;
	All complaints and equalities issues
<b>"North Area"</b>	the part of the Borough shown edged blue on the plan annexed to this Contract and consisting of the North Lambeth and the Stockwell and Vassall housing operational areas.
<b>"Notice"</b>	any communication described as a notice in the Contract save for any given under the procedures contained in the Default Mechanism or in Schedules 7 (Engineering and Construction) and 8 (Term Service) .
<b>"Non Critical Performance Default"</b>	a Performance Default which is not a Critical Performance Default
<b>"Operational Plan"</b>	the totality of the Method Statements submitted, as required by the ITT, with its Tender by the Contractor as approved by the Authorised Officer pursuant to Clause 8.7 (Review and Approval of Operational Plan) which set out in practical terms how the Contractor intends to provide the Services and to ensure that the Services are provided to the Contract Standard the draft of which is contained in Schedule 19 (The Operational Plan) and which is the plan mentioned in Clauses 8.7 (Review and Approvals of Operational Plan), 9.2 (Contract Standard) and 13 (Operational Plan)
<b>"PL Insurance"</b>	shall bear the meaning ascribed to it Clause 47.1 (Contractor to Insure)
<b>"Parties"</b>	the Council and the Contractor
<b>"Payment Due Date"</b>	(a) the first Business Day in the second Month following the Month in which the Contractor performed the Tasks or parts of the Tasks

for which it seeks payment of the Charges for these Tasks or parts of Tasks; or

- (b) in the case of payment of the proportion of Performance Profit due to the Contractor, the day which is the fortieth (40<sup>th</sup>) Business Day from the end of the Contract Year to which the payment of the proportion of Performance Profit relates; or
- (c) if the Authorised Officer is of the opinion at the Commencement Date that there is insufficient information or data to set appropriately detailed targets or accurately assess the Contractor's performance against some or all of the KPIs for a Workstream during the first Contract Year, the Payment Due Date for the payment of the proportions of Performance Profit for that Workstream in the first Contract Year and all Workstreams in the second Contract Year shall be the fortieth (40<sup>th</sup>) Business Day from the end of the second Contract Year; or
- (d) in the case of an invoice issued by the Council pursuant to Clause 34.4 (Payment of Costs of Step-in) or paragraph 5 of Schedule 6 (Performance Default Remedy Mechanism) the date of the invoice

**“Performance Default”**

any negligent act or omission, any breach of contract and/or any failure by the Contractor or any of its officers, agents, employees or



Subcontractors properly to perform any of the obligations, terms and conditions of the Contract including (without limitation) any failure to perform the Services to the Contract Standard or the Service Levels;

**PIs or Performance Indicators**

any measures, other than KPIs, against which the Authorised Officer requires the ability either for himself or the Contractor to measure the Contractor's performance of the whole or any part or parts of the Services from time to time and which may in the Authorised Officer's absolute discretion contain minimum levels of services to be provided by the Contractor and specify methods, ways, procedures and frequencies for the provision of the Services or any part or parts of the Services.

**"Performance Profit Percentage"**

the percentage of the Charges which is stated in the Tender to be the Contractor's performance profit in relation to the provision of the Services.

**"Performance Profit"**

the product in monetary terms of multiplying the Charges by the Performance Profit Percentage

**"Personal Data"**

personal data as defined in the DPA which is:

- (a) supplied to the Contractor by the Council or obtained or created by the Contractor in the course of performing the Services; or
- (b) supplied to the Council by the Contractor or which relates to the Staff

**"Planned and Cyclical Maintenance"**

those parts of the Services included within Lots 1, 2 or 3 and described as Planned and Cyclical Maintenance in the Workstream Documents.

**"Planned Maintenance"**

those parts of the Services included within each of Lots 4 to 12 (inclusive) and described as Planned Maintenance in the Workstream Documents.

**"Policy"**

one of the Council's Policies

<b>“Prices”</b>	the rates or prices set out in the Response Document and the pre-priced Schedules of Rates as adjusted by the percentages and other adjustments set out in the Response Document all as varied from time to time by the indexation provisions set out in Clause 46 (Indexation) and/or changed pursuant to paragraph 5.2 of Schedule 10 (Benchmarking) as the result of a Benchmarking
<b>“Project Participants”</b>	shall bear the meaning ascribed to it in the Non-binding Framework Agreement issued by the Joint Contracts Tribunal and published by Sweet and Maxwell Limited in June 2005
<b>“Race Relations Act 1976”</b>	the Race Relations Act 1976 as amended and in particular by the Race Relations (Amendment) Act 2000 and the Statutory Code of Practice on the Duty to Promote Racial Equality issued by the Commission for Racial Equality pursuant to the Race Relations (Amendment) Act 2000
<b>“Real Property”</b>	land and appurtenances including any improvements to such land and appurtenances and all structures on the land including (but without prejudice to the generality of the forgoing) any buildings, trees and all interests, benefits, easements and inherent rights and any other matters benefiting the land whatsoever but excluding any movable machinery and equipment
<b>“Recipient”</b>	shall have the meaning ascribed to it in Clause 45 (Payment of VAT)
<b>“Relief Event”</b>	shall have the meaning ascribed to it in paragraph 6.3 of Schedule 6 (Performance Default Remedy Mechanism)
<b>“Regulatory Authority”</b>	any Relevant Authority which regulates any of the activities forming part of or incidental to or ancillary to the performance of the Services including the Council
<b>“Relevant Authority”</b>	any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of

	the United Kingdom or of the European Union
<b>"Remedy Notice"</b>	shall have the meaning ascribed to it by paragraph 1.1 of Schedule 6 (Performance Default Remedy Mechanism)
<b>"Remedial Period"</b>	shall have the meaning ascribed to it in paragraph 1.1 of Schedule 6 (Performance Default Remedy Mechanism)
<b>"Required Action"</b>	the action which the Council proposes to take or takes under Clause 34 (Council Step-in) to remedy the matters referred to in Clause 34.1 (Circumstances when Council can Step-in)
<b>"Required Insurances"</b>	the insurance mentioned in Clause 47.1 (Contractor to insure)
<b>"Resident"</b>	any person resident in a dwelling; provided to them by the Council or the ALMO; managed by the Council or the ALMO; or the owner of which is liable to contribute towards the cost of the Services;
<b>"Response Document"</b>	the documents contained in Schedule 18 (The Response Document)
<b>"Responsive Repairs"</b>	those parts of the Services included within each of Lots 1 to 12 (inclusive) and described as Responsive Repairs in the Workstream Documents
<b>"Review Date"</b>	the first day of April in each year of the Contract Period; the first Review Date being 1 <sup>st</sup> April 2011
<b>"Schedules"</b>	the schedules to this Contract including any Annexes to those schedules
<b>"Schedules of Rates"</b>	the pre-priced schedules of rates contained in Volume 5 of the Workstream Documents and the PSA Schedules of Rates for Electrical and/or Mechanical Services (Fifth Edition)
<b>"Scrutiny Committee"</b>	the committee of the Council established pursuant to section 21 of the Local Government Act 2000 or any sub-committee of that committee or working party or group

created by that committee.

**“Service Levels”**

the minimum levels of service required to be provided against each of the Key Performance Indicators in any Contract Year as prescribed in Schedule 9 (KPIs, Service Levels and Performance Profit) and/or as varied by the Authorised Officer under Clause 54 (Contractual Change Orders).

**“Services”**

the services required to be performed by the Contractor under this Contract as more particularly set out in the Workstream Documents attached to this Contract at Schedule 17 (Workstream Documents) (and as may be modified from time to time pursuant to the terms of this Contract) and comprising Lot [ ]

**“Software”**

any and all computer programmes, including all modules, routines and sub-routines of such programmes

**“South Area”**

the part of the Borough shown edged blue on the plan annexed to this Contract consisting of the Streatham and Norwood housing operational areas.

**“Staff”**

all personnel used by the Contractor in the performance of the Services, whether such personnel are operatives, supervisors, directors, or in any manner employed by the Contractor or by Sub-Contractors (of any tier) or/are employed on their own account as independent contractors, who have been approved in writing by the Council and who have completed the Contractor’s induction programme, which has been approved in writing by the Council, and which includes training on the Council’s Policies and any other training detailed in the Workstream Documents, and who have been cleared to work in the provision of the Services following a check with the Criminal Records Bureau. For the avoidance of doubt the Parties declare and agree that the Staff do not include any person other than a natural person; such non-included persons being companies or other entities

having legal personality.

**“Sub-Contractor”**

any person, including entities having legal personality, and of any tier who performs any of the obligations or exercises any of the power or rights of the Contractor under this Contract or forms part (at any tier) of the Contractor’s supply chain or advises the Contractor or provides any service to the Contractor in relation to the Services or otherwise assists the Contractor in the performance of the Services under a contract other than under a contract of service

**“Supplier”**

shall have the meaning ascribed to it in Clause 45.2 (Payment of VAT)

**“Task”**

a task as defined in either Schedule 7 (Engineering and Construction) or Schedule 8 (Term Service)

**“Task Order”**

an instruction from the Authorised Officer to the Contractor as defined in either Schedule 7 (Engineering and Construction) or Schedule 8 (Term Service)

**“Tenants Management Organisation”**

any body of persons or organisation which has acquired the right to manage any geographical area of housing provided by the Council so that such area of housing is no longer managed by the Council or the ALMO

**“Termination Date”**

the earlier of the Expiry Date and any date of termination of this Contract pursuant to Clauses 57 (Termination for Cause) or 58 (Bribery and Corruption)

**“TUPE”**

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and/or any other regulations enacted for the purpose of implementing the Directive into English law

**“TUPE Requirements”**

the requirements, relating to the TUPE, other legislation relating to the transfer of employees and the rights of those employees and the Code of Practice on Workforce Matters in Public Sector Service Contracts (March 2005) issued by

the Cabinet Office as amended from time to time, which are set out in Schedule 15 (TUPE and Related Matters)

**“Variation Order”**

any instruction issued by the Authorised Officer other than a Contractual Change Order or a Task Order including any instruction to vary the content or detailed requirements of a Task or the approved proposals of the Contractor for carrying out of a Task or any instruction given pursuant to clause 14.3 of the NEC3 Engineering and Construction contract or clause 14.3 of the NEC3 Term Service contract as incorporated in this Contract.

**“VAT or Value Added Tax”**

value added tax as provided for in the Value Added Tax Act 1994

**“Veolia Protocol”**

the protocol between the Council and Veolia ES Cleanaway (UK) Limited set out in Schedule 16 as amended from time to time under Clause 54 (Contractual Charge Orders)

**“Voids”**

those parts of the Services included within Lot 1, 2 or 3 and described as Voids in the Workstream Documents

**“WDA”**

the Western Riverside Waste Authority and its successors.

**“WiFi”**

Wireless Fidelity or the continuous transmission of high band-width video and multimedia information which enables data devices to connect to each other by wireless transmissions

**“Works Order”**

an instruction by the Authorised Officer to carry out an item of work within a Task

**“Workstream”**

one of the Decent Homes Delivery Programme, Responsive Repairs, Voids, Planned and Cyclical Maintenance, Estate Cleaning, Grounds Maintenance, Installation and Planned Maintenance.

**“Workstream Documents ”**

the detailed documents for the Services set out in Schedule 17 (Workstream Documents) consisting of the following for each

Workstream in each Lot:

- a. A summary description of the Workstream broken down by objectives, scope and critical success factors;
- b. A summary of the key Clauses and Schedules applicable to that Workstream
- c. Preliminaries for that Workstream
- d. Specifications for that Workstream
- e. Pricing information for that Workstream
- f. KPIs and PIs for that Workstream
- g. Requirements for Method Statements for that Workstream
- h. Annexes containing amongst other matters priority times for performance of certain items of work and a model form of Task Order

**"1999 Act"**

the Local Government Act 1999.

**2. INTERPRETATION OF CONTRACT**

**2.1 General Interpretation**

Except as otherwise expressly provided, all elements of this Contract are to be construed and take effect as mutually explanatory of one another.

**2.2 Order of Precedence**

In the event of any inconsistency between the provisions of Clauses 1 to 64 inclusive of this Contract, the Schedules and the Annexes, the conflict shall be resolved according to the following order of priority:

- 2.2.1 Clauses 1 to 66 inclusive;
- 2.2.2 Schedule 17 (Workstream Documents);
- 2.2.3 Schedule 6 (Performance Default Remedy Mechanism);

