

APPOINTMENT OF CONSULTANT
FIRE RISK ASSESSMENTS
PHASE 2 – MEDIUM RISK BLOCKS

AGREEMENT


THE CLIENT: *The Royal Borough of Kensington and Chelsea
Tenant Management Organisation Limited*

wishes to appoint

THE CONSULTANT: *C S Stokes and Associates Ltd*


to carry out the second phase of Fire Risk Assessments on the Council's medium risk blocks as more particularly described in the attached documents.

The TMO has accepted the fee tender dated 24th August 2010 submitted by the Consultant (copy attached) and the Consultant shall commence the assessments on 18th October 2010.

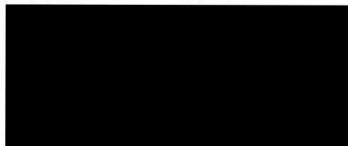
Signed:  _____ Date: 20/10/10
Simon Throp
Head of Asset, Investment and Engineering

For and on behalf of: **Royal Borough of Kensington and Chelsea
Tenant Management Organisation Limited
Network Hub
292A Kensal Road
London W10 5BE**

I/WE ACCEPT THIS APPOINTMENT under the terms detailed herein.

Signed:  _____ Date: 21st October 2010
Name: C STOKES
Position: Director

For and on behalf of: **C S Stokes & Associates Ltd**



PART 1: GENERAL INFORMATION AND REQUIREMENTS

1.0 INTRODUCTION

- 1.1 This Brief specifies the requirements for Fire Risk Assessments (FRAs) in the communal areas of the Royal Borough of Kensington and Chelsea (the Council) Council's housing stock. These properties are managed by the Royal Borough of Kensington and Chelsea Tenant Management Organisation Ltd (the TMO). This Brief provides general information relevant to the Commission and details the service requirements and standards to be provided.
- 1.2 The TMO is an Arms Length Management Organisation which manages the Council's residential blocks on behalf of the Council. The properties consist of self-contained dwellings mainly purpose-built, however, some blocks have been converted into flats at some stage in the past. The blocks are from a wide variety of building types and sizes and are located throughout the Borough. The residents are a cross-section of the community and therefore some will have a degree of vulnerability and not all will be fully able-bodied.
- 1.3 The existing property portfolio has been prioritised by potential fire risk and the blocks considered to be medium risk are listed in Appendix 1. This list is subject to change and properties may be omitted or added at the TMO's discretion. The consultant will carry out additional FRAs / reviews when requested at rates to be agreed pro-rata to the rates quoted for the properties listed in Appendix 1. If the TMO omits any property or properties at reasonable notice no further costs or charges will be claimed by the Consultant.
- 1.4 The Consultant must submit documentary evidence of his competence to undertake the Commission, e.g. his qualifications and experience particularly experience of assessing residential blocks. (See Part 4: Quotation Instructions)
- 1.5 It is a requirement of the client that the consultant holds a current fire risk assessment qualification e.g from IOSH, NEBOSH, the Northern Ireland Fire Safety Panel or similar to be submitted for approval by the TMO before the consultant's tender is accepted. (See Part 4: Quotation Instructions)
- 1.6 The consultant is to adhere to TMO policies, procedures and requirements, copies of which are available from the Project Manager.
- 1.7 All of the Consultant's personnel entering sites must have obtained a CRB standard level check within the preceding three years. The consultant is responsible for ensuring this and for maintaining clearance every three years for each of his staff working on a TMO / Council site.
- 1.8 All of the Consultant's personnel entering sites must carry appropriate photo identification cards, prominently displayed, bearing their name and the name of the company who employs them.
- 1.9 Maintaining satisfactory standards, delivering reports and responding to queries quickly are conditions of the contract between the TMO and the consultant. Timeframes are to be agreed at the start of the work programme.
- 1.10 The Consultant's appointment will be for a one year period with a TMO-only discretionary option to extend for a further one year subject to the consultant's satisfactory performance.
- 1.11 Fee Quotations are to be submitted for providing all the Services detailed. Further information on the tendering process is provided in Part 4: Quotation Instruction.

1.12 A separate price is required to take account of the Consultant producing basic floor plans for each property as necessary but these plans must take account of the following specifications:

1. OS Mastermap base mapping will be provided by the TMO in AutoCAD 2010 (.dwg) format.
2. All mapping returned to the TMO is to be produced with reference to the base mapping and made available to the TMO in the AutoCAD format.
3. All mapping material produced by the Assessors will include the current TMO OS Crown Copyright notice.

These plans should then be labelled with the fire safety information as per requirements set out in Part 2: Specification of Services Item 1.3.

2.0 ROLES AND RESPONSIBILITIES

2.1 The Client is the Royal Borough of Kensington and Chelsea Tenant Management Organisation Ltd, referred to as The TMO throughout this Brief.

2.2 The Project Manager is Valerie Sharples
Project Services Manager
Network Hub
292A Kensal Road
London W10 5BE

T: [REDACTED]
E: vsharples@kctmo.org.uk

Or such other person or firm as the TMO may appoint from time to time.

2.3 The Project Manager will have responsibility for the following:-

- The Client's representative and contact between the TMO, the Council and the Consultant.
- Making all TMO decisions and issuing instructions during the contract's duration.

2.4 The Project Manager will have responsibility for the following:-

- Obtaining quotations and participating in the selection of consultants.
- Agreement of fees and appointment of consultants.
- Agreement of variations to the Agreement, resulting from changes to the Brief, and any consequential effect on fees.

2.5 TMO H&S Advisor is Janice Wray
Human Resources Team
Network Hub
292A Kensal Road
London W10 5BE

T: [REDACTED]
E: jwray@kctmo.org.uk

Or such other person or firm as the TMO may appoint from time to time.

2.6 The TMO H&S Advisor will be responsible for the following:-

- Overseeing the consultant's technical performance, service delivery, responsiveness and quality.

- Discussing recommendations with the Consultant and clarifying any queries.
- Re-prioritising the properties within Appendix 1 as necessary.
- Liaison with the Council and the London Fire Brigade as necessary

3.0 QUALITY

- 3.1 Consultants are expected to provide a consistently high quality service and should be able to demonstrate through documentation that their organisations are capable of maintaining a quality standard that satisfies all contractual requirements.
- 3.2 The TMO require Consultants to be able to satisfy the provisions of a quality management system as set out in BS EN ISO 9001 and preferably be registered to a UKAS certification body.

4.0 HEALTH AND SAFETY FILES

- 4.1 Health and Safety Files exist only for some of the sites and then only relating to specific works projects. These will be made available on request

PART 2: SPECIFICATION OF SERVICES

1.0 SCOPE OF WORKS

Fire Risk Assessments and Reviews

- 1.1 Fire Risk Assessments will be undertaken and reviewed regularly at a frequency dictated by the degree of risk. The FRA and FRA reviews will include an individual examination of each communal fire door including whether it operates correctly and the findings will be clearly documented in each report.
- 1.2 FRAs and/or reviews may be alternatively or additionally instructed when
- (a) the building itself is altered
 - (b) there is an incident
 - (c) it is requested by the HSE, LFB or the client.
- 1.3 FRAs and reviews will focus on:
- i. The compartmentation of the building and any possible shortcomings with it.
 - ii. The operation and adequacy of fire doors including their fire resistance rating and smoke/ fire seals etc.
 - iii. Adequacy of fire fighting equipment.
 - iv. Adequacy of automatic detection system, extraction systems, sprinklers, dry risers, wet risers etc.
 - v. Assessment of the means of escape (to include final exit doors) and assessment of secondary means of escape where present and it's appropriateness / viability, emergency lighting, signage, etc.
 - vi. Fitness for purpose of the building in relation to fire safety.
 - vii. Fire safety management systems and their recording procedures.
 - viii. Marking of fire detection and fire fighting equipment, fire doors (including their fire resistance rating and smoke/ fire seals) and compartmentation on floor plans provided by the client where possible and in all other cases to be produced by the consultant. Symbols and other information marked-up on the drawings will be the same as in the HM Government Guides 'Fire Safety Risk Assessment'.
- 1.4 Tenderers will be required to ensure that the TMO meets its obligations under the legislation and specifically to illustrate their methodology when carrying out a FRA. FRA and review reports should be recorded in a standardised format an example of which must be submitted to the Client for approval by the Client, RBKC and the London Fire Brigade in advance of works commencing. This standardised format will need to be comprehensively completed so that all aspects of fire safety have been examined, noted, located by description and commented upon (whether requiring remedial action or not). Recommendations should be as detailed as possible. Where there are a variety of options each of which would ensure compliance with the legislation these should be outlined. Recommendations should be related directly to specific defects (and their locations) observed during the assessment. In particular, the location of the observed defect should be detailed in the Action Plan so that it is clearly stated e.g. that "the front entrance door of flat 7 was inspected and found not to have self-closers or intumescent strips fitted". In addition to other information, the consultant will identify and record on a Schedule in the report a detailed, itemised description of each required action which must be colour coded / prioritised as follows
- (a) remedial action required by law, including the defect, its remedy and a citation of the appropriate legislation

- (b) remedial action recommended by the Consultant (to be prioritised & an approximate cost given)
- (c) fire safety improvement recommended by the Consultant (to be prioritised & an approximate cost given)

Each item in the Schedule is to be located and described in a format ready for use as a works instruction to a contractor.

Remedial actions and improvements will be recorded on the Action Plan section of the standardised form.

- 1.5 FRA reports shall be completed and delivered to the Client within one week of the assessment being carried out. One hard copy and one electronic copy (in a format to be agreed) will be required. Additionally, an electronic copy of each action plan will be required which must be in a format compatible with a typical database application. Again the format should be agreed with the Client in advance.

Floor Plans

- 1.6 The TMO will provide OS Mastermap with blocks outlined.
- 1.7 The floor plans need to identify not only information on communal areas but also all designated escape routes including those from individual dwellings.

Client meetings

- 1.8 Regular meetings will be held between the Project Manager, the H&S Advisor and the Consultant to discuss possible issues, monitor progress and review the service provided. The meetings will be held monthly and will be chaired by the TMO Project Manager and minuted by the TMO H&S Advisor and the Consultant will be expected to attend at no additional cost.

Ad Hoc advice

- 1.9 The consultant will offer fire safety help, advice and support to TMO managers, employees as and when requested. A mobile phone number and an email address are required. It is expected that phone calls and emails are dealt with promptly.

2.0 PROCUREMENT PROGRAMMME

- 2.1 The appointment process programme is as follows:-

Issue the Consultants' Brief	6th August 2010
Consultants' quotations return	27 th August 2010
Consultants' interviews	w/c 31st August 2010
Consultant's appointment	6th September 2010
Consultant's services commence	late Sept / early Oct 2010

3.0 SERVICE DELIVERY PROGRAMME

- 3.1 FRAs for all blocks listed in Appendix 1 shall be completed within twelve months of the Consultant's appointment and reviews shall be undertaken at frequency dictated by risk.

- 3.2 Consultants will be asked to indicate on the Quotation Form whether or not they would be capable of completing the surveys and assessments within six months and also to provide an alternative quotation.

4.00 ASBESTOS

- 4.1 The TMO maintains records of any asbestos containing materials (ACMs) that are suspected or confirmed as present in the housing stock. In relation to communal areas the majority of this information is obtained from an ongoing programme of "Type 2" surveys and is available on a block by block basis upon request from the H&S Team. It is possible that additional ACMs are present particularly within inaccessible areas of the blocks.
- 4.2 The Consultant shall, wherever possible, identify the presence of asbestos or other suspect materials when carrying out initial inspections/surveys of buildings and notify the TMO H&S Adviser of details. Where necessary the TMO will engage a specialist asbestos surveyor to sample suspect materials and / or carry out an independent asbestos survey.

5.0 CONSULTATIONS, MINUTES AND OTHER RECORDS

- 5.1 The Consultant shall take minutes or notes of meetings and consultations with site managers and any other employees and shall copy these to attendees/ participants and to the Project Manager and TMO H&S Advisor.

6.0 SURVEYS/ SITE INSPECTIONS

- 6.1 The Consultant will be required to carry out site inspections so that FRAs and FRA reviews are adequately researched and reports are detailed.
- 6.2 The Consultant shall make all necessary arrangements for accessing estates/blocks/dwellings and ensure that appropriate notices are sent to all residents advising them of the work being carried out.
- 6.3 Where the Consultant has to carry out inspections of high level elements and in enclosed spaces he must comply with relevant Health and Safety regulations in force at the time and only use suitably qualified/experienced personnel. Where required the Consultant shall carry out a risk assessment and provide a method statement detailing their proposals for accessing the high level elements and the safety measures that need to be taken when surveying areas with difficult access.

7.0 OUTLINE SPECIFICATION

- 7.1 The Consultant shall submit detailed descriptions/ outline specifications to support and illustrate any remedial works he recommends

8.0 OTHER CONSTRAINTS

- 8.1 The consultant is to consider and include in his recommendations for remedial works any constraints on the proposals which are risks the TMO should consider before

deciding to proceed with any proposal. In particular, consultant to be mindful of the residential nature of the blocks and also of the vulnerability of the residents.

PART 3: TERMS AND CONDITIONS

1.0 DEFINITIONS

- 1.1 TMO – Client – The Royal Borough of Kensington and Chelsea Tenant Management Organisation Limited.
- 1.2 Council – The Royal Borough of Kensington and Chelsea.
- 1.3 Words importing the masculine gender include the feminine gender and vice versa.
- 1.4 Words importing singular shall include plural and vice versa.
- 1.5 Words importing persons shall include firms, partnerships, companies and corporations and vice versa.
- 1.6 Headings in these Conditions are for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.7 Reference to clauses, conditions, paragraphs, schedules and appendices are references to clauses, conditions, paragraphs, schedules and appendices of the Agreement document.
- 1.8 Stipulations as to the time of payment by the TMO to the Consultant are not the essence of the Contract. Other stipulations as to time are of the essence.
- 1.9 The Agreement means the Consultant's Brief Parts 1, 2, 3, 4 and Appendices and shall be governed by and construed in accordance with English Law.
- 1.10 Reference to any enactment, order, regulation, statutory provision or other similar instrument shall be construed as a reference to any enactment, order, regulation, statutory provision or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instruction.

2.0 CLIENT REPRESENTATIVES

- 2.1 The rights and powers of the Client in relation to termination of the Agreement under clause 16 will be exercised by the TMO's Chief Executive. All other rights and powers of the Client under the Agreement will be exercised by the TMO Health, Safety & Facilities Manager.

3.0 PROVISION OF THE SERVICE

- 3.1 The Consultant shall provide the Service in a proper skilful, professional and workmanlike manner in conformity with the normal standards of the profession to the satisfaction of the TMO.
- 3.2 If the Consultant is unable to provide the Service or any part thereof, whether or not this is as a result of any act or omission on the part of the TMO, the Consultant shall inform the TMO Health, Safety & Facilities Manager promptly, and confirm in writing,

giving details of the circumstances, reasons and likely duration. The provision of information under this condition shall not in any way release or excuse a Consultant from any of his obligations under this Agreement.

- 3.3 Should the Consultant reasonably require any further instruction or information in connection with the provision of the Service, he shall make a written application giving adequate detail for the same to the TMO Health, Safety & Facilities Manager. Such application shall be made on a date, which, having regard to the date by which the Consultant reasonably needs the same for or in connection with the provision of the Service, is neither too far away from nor too close to that date having regard to all the circumstances including the time likely to be required by the TMO Health, Safety & Facilities Manager to respond to the application.
- 3.4 The Consultant shall perform the Service in accordance with all requirements set out in this Agreement giving advice and opinions when asked to do so, volunteering services as appropriate and giving warnings of any mistake, discrepancy, conduct or omission which could affect any of the TMO's objectives in commissioning the Service.

4.0 SCOPE OF THE SERVICE

- 4.1 The specific service requirements are detailed within Part 1 of the Brief.

5.0 SUB-CONSULTANTS

- 5.1 The Consultant may, but only with the prior written consent of the TMO Health, Safety & Facilities Manager, sub-let any part of the service to Sub-Consultants. However any such sub-letting will not relieve the Consultant of any liability or obligation under this Agreement and the Consultant shall be responsible for the acts, defaults or neglect of any Sub-Consultant or its agents, servants or employees in all respects as if they were the acts, defaults or neglect of the Consultant. The TMO Health, Safety & Facilities Manager may also require as a condition of giving any consent to sub-let, a direct warranty and undertaking from the Sub-Consultant concerning the provision of the Service and the Consultant providing him with any details he may require to satisfy himself as to the suitability of the proposed sub-contract conditions, technical suitability, relevant experience and financial strength of the Sub-Consultant, risk to the TMO and the necessity of such an appointment.
- 5.2 The TMO may require, but not unreasonably so, the removal of a Sub-Consultant from the provision of the Service. On receiving such an instruction, the Consultant shall replace the Sub-Consultant immediately and shall notify the TMO Health, Safety & Facilities Manager of the replacement.

6.0 ASSIGNMENT

- 6.1 Consultants shall not assign or transfer any benefit or obligation under this Agreement whether in whole or in part without the prior written consent of the TMO, whose consent the TMO shall be absolutely entitled to withhold.
- 6.2 The TMO reserves the right to impose such conditions as it sees fit in giving any consent pursuant to this clause 6 and such conditions may include payment to the TMO of such reasonable administrative and legal costs as may be incurred.

7.0 EMPLOYEES

- 7.1 The Consultant shall employ sufficient persons to ensure that the Service is provided at all times and in all respects in accordance with the Agreement.
- 7.2 The Consultant's personnel employed in and about the provision of the Service shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties. The Consultant shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Service.
- 7.5 The TMO Health, Safety & Facilities Manager may require, but not unreasonably, the Consultant or a Sub-Consultant to remove a specific employee from the provision of the Service and such employee shall forthwith be removed and a suitable replacement provided unless the TMO Health, Safety & Facilities Manager instructs otherwise.
- 7.6 The Consultant shall not remove an employee from the Service without first receiving the consent of the TMO Health, Safety & Facilities and she shall be consulted in respect of any new or replacement employee.

8.0 PROJECT LEADER

- 8.1 The Consultant shall advise the TMO Health, Safety & Facilities Manager of the identity of the person who shall be the liaison between the Consultant and the TMO with regard to the performance of the Agreement and progress of the project. This person shall be known as the Project Leader.
- 8.2 The Project Leader may not be replaced without the consent of the TMO, which consent shall not be unreasonably withheld.

9.0 COMMENCEMENT OF THE AGREEMENT

- 9.1 This Agreement shall commence on the date inserted on the Form of Agreement or the date when the Consultant shall have first commenced performance of the Service, on the written instruction of the TMO Health, Safety & Facilities Manager, whichever is the earlier.
- 9.2 Unless terminated, the Agreement with the Consultant shall be concluded when the Consultant has completed all the services required under this Agreement including any variations or modifications.

10.0 DOCUMENTS MUTUALLY EXPLANATORY

- 10.1 Except as otherwise expressly provided, the Agreement documents are to be taken as mutually explanatory of one another. Should the Consultant become aware of any ambiguities or discrepancies he shall immediately inform the TMO Health, Safety & Facilities Manager giving full details. Any such notified ambiguities or discrepancies

shall be resolved by the TMO Health, Safety & Facilities Manager. If any instruction given resolving an ambiguity or a discrepancy changes the basis upon which a Consultant quoted so as to render any price inappropriate, the said instruction shall be treated as a Modification under clause 12.

- 10.2 In the event of any inconsistency between these Conditions and any other part of the Agreement documents, these Conditions shall prevail.

11.0 VARIATION OF THE AGREEMENT

- 11.1 Following the formation of a binding agreement no omission from, addition to or variation of the Agreement shall be valid unless in writing and signed by the TMO Health, Safety & Facilities Manager.

12.0 MODIFICATION

- 12.1 A modification means an instruction by the TMO Health, Safety & Facilities Manager which materially amends the quality or quantity of the Service. It does not include any instruction required as a result of any negligent omission or any default of the Consultant or any instruction relating to sequence or timing of the execution of the Service.
- 12.2 All modifications shall be authorised in writing by the TMO Health, Safety & Facilities Manager.
- 12.3 No liability is accepted by the TMO for any claim by the Consultant for any loss (whether direct or indirect) and/or expense occasioned by any modification except where the sole cause of the modification is a breach of contract by the TMO.
- 12.4 Fees shall be adjusted in accordance with clause 17, Fees and Payments.

13.0 POSTPONEMENT

- 13.1 The TMO may at any time and for any reason postpone the carrying out of all or any part of the Service by notice in writing. On receipt of such notice, the Consultant shall comply immediately with its terms.
- 13.2 A postponed project will not be classed as aborted unless specifically notified as such in writing by the TMO. If the Service is aborted under this Condition the Agreement will determine immediately.
- 13.3 The Consultant's sole claim in the event of postponement or abandonment shall be for any reasonably incurred fees that remain outstanding for work undertaken prior to the postponement or abandonment of the Project, to be calculated in accordance with clause 17..

14.0 DEFAULT IN PERFORMANCE

- 14.1 If in the opinion of the TMO the Consultant on any occasion shall have omitted to perform any part of the Service or failed to perform any part of the Service in a manner and to a standard required by the Agreement, the TMO may (without

prejudice to any other rights or remedies under the Agreement or in law), do any one or more of the following:-

- a) Instruct the Consultant to re-execute and make good the defective service.
- b) Deduct from the Consultant's fee an amount reasonably determined to be compensation for the part of the Service that has not been provided or has been provided inadequately.
- c) Without determining the Agreement, arrange for the TMO itself to provide or procure the provision of part of the Service until such time as the Consultant shall have demonstrated to the reasonable satisfaction of the TMO that the Consultant will once more be able to perform such part of the Service to the Agreement standard. During such period the Consultant's performance of such part of the Service and the TMO's payment to the Consultant for such part of the Service shall be suspended. For the purpose of this Condition the TMO shall serve a notice on the Consultant setting out those parts of the Service which the TMO intends to provide or procure the provision of and shall serve a notice on the Consultant that (if such be the case) the TMO requires the Consultant to resume the provision of such part of the Service.
- d) Without determining the whole of the Agreement, determine the Agreement in respect of part of the Service only and thereafter the TMO would provide or procure another consultant to provide such part of the Service.
- e) Determine, in accordance with clause 15 (Termination), the whole of the Agreement.

14.2 The TMO may claim from the Consultant any cost incurred by the TMO, including any reasonable administration costs, in respect of the provision of any part of the Service by the TMO or by another consultant, in the circumstances set out in items a), b), c), d) and e) above, to the extent that such costs exceed the fee which would otherwise have been payable to the Consultant for such part of the Service.

14.3 The TMO may instigate a random audit to determine the performance of the Service. The TMO reserves the right to employ its own representative or agent to undertake such an audit and the Consultant shall afford all reasonable access and co-operation for the TMO, its representative or agent to facilitate this.

14.4 The TMO's powers under this clause 14 shall not be exercised unreasonably or vexatiously.

15.0 TERMINATION

15.1 The TMO may terminate the Agreement immediately following serving of a notice for the following events:-

- a) Any material misrepresentation by a Consultant contained in his Quotation or in his presentation submitted to the TMO prior to entering into this Agreement with the TMO.
- b) Serious or persistent default in performance.

- c) A Consultant fails to take measures reasonably required to ensure that the service will be progressed in a manner that will ensure completion by the specified date or fails to maintain a satisfactory quality standard.
- d) Should the Consultant become bankrupt, or make a composition or arrangement with its creditors, or has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver, or has a Winding Up Order made or resolution for voluntary winding up passed, or has a provisional liquidator, receiver or manager of the consultancy appointed, or has possession taken by or on behalf of a creditor, termination will be immediate,

15.2 The Consultant may terminate the Agreement for the following reasons:-

- a) For a breach of any Condition of this Agreement by the TMO which is not remedied within the 28 day notice period.

15.3 Where this Agreement is terminated by the TMO the following shall apply:-

- a) The TMO shall be under no obligation to make any further payments to the Consultant and shall be entitled to retain any payment which may have fallen due to the Consultant before termination.
- b) The Consultant shall forthwith release and hand over to the TMO any and all property belonging or licenced to the TMO including but not limited to supplies, equipment, records (including electronic data) and work in progress.
- c) For avoidance of doubt where the TMO has terminated this Agreement for any of the reasons set out in this clause and work is incomplete at that termination, the TMO shall be entitled to engage another consultant to complete the Consultant's duties under this Agreement and offset the additional costs incurred due to the termination against any payment due to the Consultant for work completed up to termination.

15.4 Any rights or remedies to which either party becomes entitled or subject before termination of this Agreement shall remain effective.

16.0 NOTICES

16.1 Any notice required to be served upon the TMO under this Agreement shall be in writing and delivered by hand, or sent by first class recorded post or facsimile.

16.2 Notices to the TMO shall be addressed to:-

Chief Executive
Royal Borough of Kensington and Chelsea
Tenant Management Organisation Limited
Network Hub
292A Kensal Road
London W10 5BE

Facsimile Nr:- [REDACTED]

- 16.3 Any notice required to be served on the Consultant under this Agreement shall be in writing and delivered by hand or sent by first class recorded post or facsimile.
- 16.4 Notices to the Consultant shall be addressed to the last known business address or in the case of a company to the registered office of that company.
- 16.5 Unless otherwise stated in this Agreement any notice is effectively served or deemed to have been served when:-
- Hand delivery – time of delivery.
 - Recorded first class post delivery – the earliest of actual receipt or the second day after posting.
 - Facsimile – where there is confirmation of uninterrupted transmission by a transmission report and where there is no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form within two days (excluding weekends and bank holidays).

17.0 FEES AND PAYMENTS TMO Health, Safety & Facilities Manager

- 17.1 Fees for the performance of Services are as stated on the Quotation form.
- 17.2 Lump Sums and Time Charge Rates shall include for all expenses and disbursements whether foreseen or otherwise.
- TMO Health, Safety & Facilities Manager
- 17.3 All quoted prices shall be fixed for a period of 24 months from the date of the Agreement. Should the Agreement be extended beyond 24 months, all prices shall then be reviewed.
- 17.4 Fees will not be adjusted except in accordance with this Agreement. Any application for additional fees must be made in writing as soon as it becomes evident that instructions issued by the TMO Health, Safety & Facilities Manager may warrant an adjustment of fees under clause 12.
- 17.5 No work shall be executed on a Time Charge basis without the prior approval of the TMO Health, Safety & Facilities Manager after receiving confirmation that additional work has been requested. Time charges when authorised shall be the hourly rate of the level of staff required to carry out the work regardless of the actual hourly rate of the member of staff executing the work.
- 17.6 Any adjustment to the fees will be valued by the TMO Health, Safety & Facilities Manager using the rates and charges submitted with the Consultant's fee proposal and the Consultant will provide breakdowns and such supporting evidence as the TMO Health, Safety & Facilities Manager may require to substantiate such amounts claimed.
- 17.7 If the service has to be modified as a result of changes being made to the service delivery that do not have the approval of the TMO Health, Safety & Facilities Manager any additional fees incurred by the Consultant as a result of modifications having to be made will not be reimbursed.
- 17.8 If the service is cancelled, postponed or delayed fees will be paid for the service completed to that date calculated at the quoted rates.

- 17.9 Fee payments may be requested at no less than monthly intervals for work executed in arrears. The fee due shall be calculated on the number of assessments, reviews and surveys carried out to date. A list shall be attached to each invoice identifying the individual blocks, the service completed and the price for that service.
- 17.10 If any part of a fee invoice submitted by the Consultant is disputed for any reason, the Consultant will be notified (and such notification may be by electronic mail) within 21 days of receipt of the reason. No payment will be made on any part of the invoice that is disputed until such time as the whole amount has been agreed and/or the invoice has been re-issued in an agreed amount.
- 17.11 If any corrections have to be reasonably made to a fee invoice submitted by the Consultant that fee invoice must be resubmitted. Fee invoices that have been corrected by hand will not be paid.
- 17.12 Fee invoices shall be addressed to the Royal Borough of Kensington and Chelsea Tenant Management Organisation Limited. Each invoice shall clearly indicate the service title and be given a unique reference number. They shall be sent to Janice Wray, TMO Health, Safety & Facilities Manager, People & Organisational Development, Kensington and Chelsea TMO, Network Hub, 292A Kensal Road, London W10 5BE.
- 17.13 Fee invoices correctly submitted will be paid within 30 days of the date of receipt.
- 17.14 Any sums not disputed and remaining unpaid at the expiry of 30 days following receipt of correct submission of an invoice shall bear interest at 2% above Bank of England base rate current at the date the payment falls due. It is agreed between the parties that the rate of interest described herein provides Consultants with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

18.0 EMPLOYEES TAX, ETC

- 18.1 The Consultant shall be entirely responsible for the employment and conditions of service of the Consultant's employees and shall ensure that any Sub-Consultant of the Consultant is likewise responsible for its employees.

19.0 VALUE ADDED TAX

- 19.1 The Consultant shall (if so legally required) be registered with Customs and Excise for Value Added Tax. The TMO shall pay to the Consultant such Value Added Tax as may be properly chargeable by the Consultant in connection with the provision of the Service.
- 19.2 Any sums quoted in this Agreement are exclusive of Value Added Tax. Consultants shall add the appropriate Value Added Tax to any fee invoice submitted.

20.0 STANDING ORDERS

- 20.1 The Consultant is required to comply with TMO's Financial and Contract Regulations (The Regulations). These documents are available for examination but the TMO will acquaint the Consultant with relevant Regulations as and when necessary.

21.0 COPYRIGHT

- 21.1 The Consultant grants to the TMO a royalty free exclusive copyright in all of the drawings, documents and information produced by the Consultant under this Agreement. The Consultant may retain copies of all drawings, documents and information but shall not reproduce those drawings, documents or information for any purpose other than the performance of the Service or as directed by the TMO.
- 21.2 Copyright of any original systems, formats or the like developed by the Consultant, which could be adapted for use on other projects for other Clients, will remain with the Consultant.
- 21.3 Copyright of any drawings, documents or information supplied by the TMO or Council to the Consultant shall remain with the TMO and Council and shall not be reproduced by the Consultant for any purpose other than the performance of the Service.

22.0 CONFIDENTIALITY, FREEDOM OF INFORMATION, PROBITY AND CONFLICT OF INTEREST

- 22.1 The Consultant shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to this Agreement.
- 22.2 Clause 22.1 shall not apply to any disclosure that is reasonably required by persons engaged in the performance of the Consultant's obligations under the Agreement, is already in the public domain or is required to be disclosed by law.
- 22.3 Any attempt at bribery, corruption, financial inducement or other improper conduct in relation to the service which comes to the Consultant's attention shall be immediately reported to the TMO Health, Safety & Facilities Manager. The Consultant will at his own expense co-operate with and provide statements or other evidence required by the TMO and the Council, their internal and external auditors, the District Auditor, the Ombudsman, police or any other competent authority responsible for investigating such matters.
- 22.4 The Consultant shall co-operate and assist the TMO with disclosures under the Freedom of Information Act 2000 (The Act) and the parties confirm that a disclosure required by the Act shall be classified as a disclosure required by law under clause 22.2 so that the obligations of confidentiality do not apply save that nothing in this clause shall impose an obligation on either party to disclose information which it would be precluded from providing under the Act.
- 22.5 The Consultant shall declare any actual or potential conflict of interest which might conflict with the interests of the TMO or the Council and this information must immediately be notified to the TMO Health, Safety & Facilities Manager.

23.0 PRESS AND PUBLICITY

- 23.1 The TMO and Council's aim is for the highest standard of presentation of the image of their activities to the public and to ensure a fair and favourable reputation for their services via effective communication to the media and the public. The Consultant will be required to comply with the Council's Code of Practice for Publicity.
- 23.2 All information and publicity concerning the TMO and Council's activities and those of the Consultant in connection with this Agreement shall be approved by the TMO.
- 23.3 All enquiries received by the Consultant from press, radio, television or other media which may concern the TMO or Council shall be referred to the TMO's Head of Press and Public Relations.
- 23.4 The Consultant shall notify the TMO well in advance of any activity under this Agreement which is likely to achieve publicity to enable the TMO's Press Office to take a positive approach to such activities and deal with them appropriately.
- 23.5 On no account should the Consultant use or adapt the TMO or Council corporate logos or images without prior written approval of the TMO.

24.0 GRATUITIES

- 24.1 The Consultant shall not, whether himself or by any partner or director engaged in the provision of the Service, or by any person employed by him, or by any Sub-Consultant working with him, in provision of the Service, solicit or accept any gratuity, tip or other form of money taking or reward, collection or charge for any part of the Service other than charges properly approved by the TMO in accordance with the provision of the Agreement.

25.0 INDUCEMENTS

- 25.1 The Consultant shall not offer, give or agree to give, to any person any gift or consideration of any kind as an inducement or regard for doing or forbearing to do, or for having done, or forborne to do, any action in relation to the obtaining or execution of this Agreement or any other contract with the TMO or Council or for showing, or forbearing to show, favour or disfavour to any person employed by or Sub-Consultant working with the TMO or Council. Nor shall any like act be done by any person employed by or sub-consultant working with the Consultant or acting on his behalf (whether with or without the knowledge of the Consultant), nor in relation to this Agreement or any other contract with the TMO or Council shall the Consultant or any other person employed by him, or Sub-Consultant working with him, or acting on his behalf commit any offence under the Prevention of Corruption Acts 1889 to 1916, or give any fee or award, the receipt of which is an offence under Sub-Section (2) of Section 117 of the Local Government Act 1972.

26.0 AGENCY

- 26.1 Neither the Consultant nor his personnel nor his Sub-Consultants shall in any circumstances hold himself or themselves out as being a servant or agent of the TMO or the Council otherwise than in circumstances expressly or necessarily implied by the Agreement.

- 26.2 Neither the Consultant nor his personnel nor his Sub-Consultants shall in any circumstances hold himself or themselves out as being authorised to enter into any contract on behalf of the TMO or Council or in any other way to bind the TMO or Council to performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or necessarily implied by the Agreement.
- 26.3 Neither the Consultant nor his personnel nor his Sub-Consultants shall in any circumstances hold himself or themselves out as having the power to make, vary, discharge or waive any statutory obligation of the TMO or Council.

27.0 INSURANCE AND INDEMNITIES

- 27.1 The Consultant shall maintain Professional Indemnity Insurance in an amount each year of not less than £2,000,000 (Two million pounds) in respect of each and every claim or series of claims arising out of one event for a period of one year from the date of completion of the Services and provided that such insurance is available at commercially reasonable rates from a reputable insurer. The Consultant shall inform the TMO if such insurance ceases to be available at commercially reasonable rates in order that the Consultant and the TMO can discuss the means of best protecting their respective positions.
- 27.2 The Consultant shall release, indemnify and keep indemnified the TMO on demand from and against all liability or claim, actions, demands, costs, charges and expenses which may arise out of or in consequence of the non-performance of the Consultant of its obligations under the Agreement.
- 27.3 The Consultant is also required to release, indemnify and keep indemnified the TMO on demand against any liability or claim arising from personal injury, death or damage to or loss of property caused by the Consultant's negligence and is required to maintain Public Liability Insurance and Employer's Liability Insurance in respect of such claims. Public Liability Insurance shall cover the TMO as principal. The minimum cover required to be maintained is £5,000,000 (Five million pounds).
- 27.4 The Consultant shall ensure that suitable (as determined by the TMO Health, Safety & Facilities Manager) levels of insurance cover are maintained by all Sub-Consultants.
- 27.5 The Consultant shall on demand produce to the TMO Health, Safety & Facilities Manager copies of his insurers Certificate of Indemnity issued on renewal of the policies of insurance required above verifying the level of cover and the period of insurance.

28.0 CO-OPERATION

- 28.1 If requested to do so, the Consultant shall provide to the Council's Director of Law and Administration any relevant information in connection with any legal inquiry, Court proceedings or Tribunal in which the TMO may become involved or any relevant disciplinary hearing or investigation internal to the TMO or Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Service under this Agreement.

28.2 The Consultant shall, immediately upon becoming aware of the same, notify the TMO Health, Safety & Facilities Manager of any accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Service.

28.3 The Consultant shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of the TMO or the Council or the ombudsman or the London Fire Brigade to provide documents or to procure the provision of documents relating to the project and to provide or procure the provision of any oral or written explanation relating to the same.

29.0 LEGAL ADVICE

29.1 In the event of it becoming necessary for the Consultant to seek legal advice on behalf of the TMO, or to protect the TMO or Council's best interests in connection with the Service, he shall, in the first instance, notify the TMO Health, Safety & Facilities Manager who will instruct the Council's Director of Law and Administration to provide advice.

30.0 WAIVER

30.1 Failure by the TMO at any time to enforce the provisions of the Agreement or require performance by the Consultant of any of the provisions of the Agreement, shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Agreement, or any part thereof, or the right of the TMO to enforce any provision in accordance with its terms.

31.0 SEVERANCE

31.1 If any provision of this Agreement 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, all of which shall remain in full force and effect.

32.0 DISPUTES

32.1 In the event that either party is dissatisfied with the conduct of the other party in relation to performance of this Agreement the Chief Executive on behalf of the TMO and the project Partner or Director on behalf of the Consultant may send a Notice of Dissatisfaction to the other party setting out the matter to which the notice relates, the reason for such dissatisfaction and, where relevant, the action that is to be taken under the terms of the Agreement.

32.2 In any case, where the TMO also intends to withhold any payment otherwise due under the Agreement, the notice referred to in clause 32.1 will include a notice of intention to withhold payment. Such written notice shall be given no later than 7 days before the final date for payment.

32.3 On receipt of a notice the parties shall use their reasonable endeavours to agree a solution to the notified dissatisfaction. If the matter cannot be resolved to the parties' satisfaction the dispute or difference shall be determined by legal proceedings.