

BETWEEN

PLYMOUTH CITY COUNCIL

AND

[CONCESSIONAIRE]

**CONTRACT FOR THE SUPPLY, INSTALLATION AND MAINTENANCE OF BUS SHELTERS
AND INFORMATION PANELS INCLUDING RIGHT TO DISPLAY ADVERTISING ON BUS
SHELTERS AND INFORMATION PANELS IN THE CITY OF PLYMOUTH**

**DRAFT TERMS AND CONDITIONS. THE COUNCIL RESERVES THE RIGHT TO FINE TUNE
THIS CONTRACT AND THE ATTACHED SCHEDULES (TO REFLECT ALL CLARIFICATIONS
AGREED DURING THE TENDER PROCESS) BEFORE CONTRACT AWARD PROVIDING THAT
SUCH FINE TUNING DO NOT AMOUNT TO A MATERIAL CHANGE AND DO NOT BREACH
THE CONCESSION CONTRACTS REGULATIONS 2016**

THIS DEED of AGREEMENT

Dated [DATE]

- (1) PLYMOUTH CITY COUNCIL whose office is situated at Ballard House, West Hoe Road, Plymouth, PL1 3BJ (**Council**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Concessionaire**).
- Each a "Party" and together "Parties"

BACKGROUND

- (A) The Council placed a concession notice [REFERENCE] on [DATE] on the Find a Tender system seeking expressions of interest from potential service providers for the provision of the Services to itself and the right to exploit the Concession.
- (B) Following receipt of expressions of interest, the Council invited potential service providers (including the Concessionaire) on [DATE] to tender for the provision, maintenance and cleaning of advertising and non-advertising bus shelters and freestanding information panels in the city of Plymouth
- (C) On the basis of the Concessionaire's Tender, the Authority selected the Concessionaire to enter into this Contract to provide the Services to the Council and to run the Concession.
- (D) This Agreement sets out the terms and conditions for the provision of the Services and operation of the Concession.

1. DEFINITIONS

"Actual Profit"	means for the period under measurement: the total revenue generated by the Concessionaire from the Concession less the Concessionaire's total costs in the delivery of obligations under this Contract
"Advertiser"	means a person who has contracted with the Concessionaire for the use of the Concessionaire's Advertising Panel(s)
"Advertiser Claim"	has the meaning given in Clause 58.5
"Advertising"	means any form of paid-for or free message / communication / advertisement / sponsorship (in any format, size or type);
"Advertising Panel"	means an advertisement Structure which carries Advertising of 6-sheet or 4-sheet or other format as

	defined in this Contract and its Schedules, which is freestanding or affixed to, or part of the structure of a Bus Shelter. An Advertising Panel can be single side or double sided, illuminated, or non- illuminated, scrolling or non-scrolling, digital or non-digital;
"Affected Party"	means a Party affected by a Force Majeure Event;
"Approval"	means the written consent of the Council, the Contract Manager or any person authorised by the Contract Manager. ("Approved" or "Approve" shall be construed accordingly);
"Area"	means the administrative area of Plymouth City Council.
"Best Value Duty"	means the duty imposed on the Council by Part 1 of the Local Government Act 1999 ("1999 Act") (as may be amended from time to time) and under which the Council is under a statutory duty to continuously improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation;
"Bribery Act"	means the Bribery Act 2010 and any subordinate Law made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
"Bus Shelters"	means all and any of the bus shelter equipment to be provided, installed and maintained by the Concessionaire at no cost to the Council in accordance with the terms of this Contract and which shall remain in the ownership of the Concessionaire and the term Bus Shelter will be construed accordingly;
"BCP"	means a business continuity plan agreed between the Parties (or varied) in accordance with Clause 35 to provide effective prevention and recovery in connection with the Services and/or Concession if the Services

	and/or Concession are exposed to internal or external threats, such plan to be agreed by the Parties during the Mobilisation Period, and in any event prior to the commencement of any works under this Contract;
"Calendar Days"	means a day reckoned from midnight to midnight and shall include weekends and bank holidays in England and Wales;
"Change Control Procedure"	means the change control procedure set out in Schedule 3;
"Change in Law"	means the coming into effect after the Commencement Date of this Contract of: (a) any Law, other than any Law which on the Commencement Date of this Contract has been published: (i) in a bill as part of a governmental department consultation paper; (ii) in a bill; (iii) in a draft statutory instrument; or (iv) published as a proposal in the Official Journal of the European Communities (b) any legal guidance; or (c) any applicable judgment of a relevant Court of law which changes or establishes a binding precedent;
"Clause"	means the Clause(s) of this Agreement;
"Commencement Date"	means 4 September 2022;
"Code of Practice"	means Code of Practice relevant to advertisements erected pursuant to this Contract as laid down from time to time by the Advertising Standards Council
"Concession"	means the right given to the Concessionaire for the Contract Period to manage, promote and exploit Advertising on Bus Shelters or other Structures to be provided by the Concessionaire, in accordance with the terms of this Contract.
"Concession Year"	means a period of twelve months commencing on the Commencement Date, or any anniversary of the Commencement Date;

“Conditions of Contract”	means these terms and conditions contained within this Contract as varied from time to time in accordance with the terms of this Contract;
“Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, personnel and suppliers of the Parties, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
“Contract”	means this concession agreement entered into between the Council and the Concessionaire including the Conditions of Contract and all Schedules and appendixes attached to this Agreement;
“Contract Manager”	means the representative appointed by the Council pursuant to Clause 6 ;
“Concessionaire’s Authorised Representative”	means such person nominated in writing by the Concessionaire to act as the Concessionaire’s representative in relation to this Contract;
“Concessionaire’s Assets”	has the meaning given to it in Clause 55;
“Concessionaire’s Equipment”	means all equipment, parts, materials, articles vehicles and/or mechanisms provided by the Concessionaire for use in the provision of the Services and/or operation of the Concession including the Bus Shelters and information panels;
“Concessionaire’s Premises”	means any premises owned or occupied by the Concessionaire or for which the Concessionaire has legal responsibility;
“Contract Period”	means the period during which this Contract shall remain in force and effect pursuant to Clause 3 (<i>Duration of Contract</i>) and shall be the Initial Term as may be reduced or extended in accordance with the terms of this Contract;
“Controller”	shall take the meaning given in the GDPR;
“Council Data”	means

	<p>(i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Concessionaire or provided to the Concessionaire for processing under this Contract which at all times shall remain the property of the Council; or</p> <p>(ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;</p>
"Council's Equipment"	means all equipment, parts, materials, articles and/or mechanisms provided by the Council for use in the provision of the Services and/or in the operation of the Concession;
"Council's Premises"	means any premises owned or occupied by the Council or for which the Council has legal responsibility;
"Court"	means a court of competent jurisdiction within the United Kingdom and the European Court of Justice and acts or directions of the European Union Commission;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Concessionaire under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Officer"	shall take the meaning given in the GDPR;
"Data Subject"	shall take the meaning given in the GDPR;

“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Detailed Implementation Plan”	means the implementation plan agreed by the Parties under Clause 54, and a copy of which will be incorporated into this Contract at Schedule 9 once agreed;
“Dispute Resolution Procedure”	means the procedure set out in Clause 38 ;
“Discriminatory Change in Law”	means a Change in Law, the terms of which will apply expressly and solely to: (a) this Contract and not to similar contracts (b) the Concessionaire and not to other persons;
“DPA 2018”	means the Data Protection Act 2018;
“EIR”	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government in relation to such legislation;
“Existing Bus Shelters”	shall mean those bus shelters which are identified as existing bus shelters in the Shelter Location List
“Exit Plan”	means the plan produced and updated by the Concessionaire in accordance with Clause 56, a copy of which is appended at Schedule 11;
“Expiry Date”	means the date this Contract will expire in accordance with Clause 3 ;
“Financial Information Pro-Forma”	means the document which may be used by the Concessionaire for the provision of information detailed in Clause 9.1 and a template of which is attached at Schedule 14;
“Fixed Fee Payment”	means the fixed fee payment to be paid by the Concessionaire to the Council per advertising face on a bus shelter or freestanding information panel provided by the Concessionaire under the terms of this Contract, such fee to be payable in accordance with the provisions of Schedule 5;

"FOIA"	means the Freedom of Information Act 2000 and any subordinate Law made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Law;
"Force Majeure Event"	means any event materially affecting the performance by a Party of its obligations under this Contract arising from any act, event, omission, happening or non-happening beyond its reasonable control including, but not limited to: fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;
"GDPR"	shall mean the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Change in Law"	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
"Guarantee"	means the parent company guarantee in the form set out in Schedule 12;
"Guarantor"	means any person granting a Guarantee pursuant to Clause 11;
"Incumbent Concessionaire"	means the concessionaire who provided services the same as or similar to the Services to the Council immediately prior to the Commencement Date;
"Information"	has the meaning given under section 84 of FOIA;
"Initial Order"	shall mean any one or more Orders issued by the Council pursuant to this Contract which together comprise the instructions for the replacement of each of the Existing Bus Shelters

“Initial Term”	Means the initial term of the Contract from the Commencement Date to 03 September 2032 ;
“Instructions to Tenderers”	means the instructions to tenderers issued by the Council on [insert date ITT was issued] and attached as Schedule 2 ;
“Intellectual Property Rights” or “IPR”	means patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition;
“Investment Work”	means: (a) the provision of new Structures (b) the replacement of a Structure with an enhanced Structure; (c) the illumination of Structures which are not already illuminated; (d) the conversion of a Structure to digital media (e) bringing a new panel into use, development surveys, planning or site preparation; (f) provision of new advertising units; (g) enhancements to the Structures including better lighting, additional health and safety equipment, new signage, new digital panels, equipping it with wifi; (h) conversions of a Structure that will result in additional revenue generated, for example, converting a backlit panel to digital; (i) installation work, including electrical connections; (j) the repositioning of existing Structures;

	<p>(k) the replacement of a static display with a moving or scrolling display;</p> <p>(l) work required to implement changes in health and safety legislation which is necessary to enable the continued use of any Structure;</p> <p>(m) replacement of builds, lighting, screens, engines and electrical devices following their expiry or when they are beyond economic repair and are over 10 years old; and/or</p> <p>(n) removal and reinstatement of any Structures in accordance with the terms of this Contract (and subject to) Clause 59.8 to 59.10;</p>
"Key Performance Indicators"	means the key performance indicators as defined and "KPIs" set out in Schedule 1
"Law"	means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a relevant Court of law, or directives or requirements of any Regulatory Body of which the Concessionaire is bound to comply. Any reference to "Law" shall be construed accordingly;
"LED"	means the Law Enforcement Directive (Directive (EU) 2016/680)
"Living Wage"	As set by the Living Wage Foundation or any successor body;
"Living Wage Foundation"	An initiative of Citizens UK, Charity No 1107264;

“Local Government Ombudsman”	Means a local commissioner (known as the Local Government Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;
Mobilisation Period	The period between the date of this Contract and [];
“Month”	means calendar month;
“Net Revenue”	Revenue receivable by the Concessionaire from the management, promotion and exploitation of advertising on the Structures to be provided by the Concessionaire under this Contract after deduction of: (a) all credits properly paid to Advertisers in accordance with sound business practice but not due to any negligence or default by the Concessionaire; (b) direct sales commissions and normal agency commission actually allowed all bad debt;
“Non-Urgent Fault Call-Outs”	shall mean any fault call-out which is not an urgent fault call-out and may otherwise be referred to as a "less urgent fault call-out" and any reference to "non-urgent" or "less-urgent" shall be construed accordingly.
“Order”	shall mean an instruction in writing given by the Contract Manager on behalf of the Council requiring the inclusion of any item of equipment plant or machinery from the Concessionaire within the Contract by its installation or refurbishment as identified therein.
“Party”	means a party to this Contract and “Parties” shall be construed accordingly;

"Persistent Breach"	means where the Concessionaire commits the same (or similar) breach of the terms of this Contract at least three (3) times in any rolling six (6) Month period or at least six (6) times in any rolling twelve (12) Month period;
"Personal Data"	shall take the meaning given in the GDPR;
"Personal Data Breach"	shall take the meaning given in the GDPR;
"Processor"	shall take the meaning given in the GDPR;
"Prohibited Act"	<p>the following constitute prohibited acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the other Party a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the other Party; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Protective Measures”	shall mean appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Qualifying Change in Law”	means: a Discriminatory Change in Law; and/or A Specific Change in Law in so far as it comes into effect after the Commencement Date and in any case was not foreseeable at the date of this Contract;
“Quarter Day”	means 31 March, 30 June, 30 September and 31 December;
“Relevant Employee”	Means an employee (except an apprentice or intern) employed by the Concessionaire, aged 18 or over, who has involvement in the delivery of the Concessionaire’s obligations under this Contract for at least two or more hours in any given week, for eight or more consecutive weeks in a year;
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE;
“Replacement Concessionaire”	means any third party appointed by the Council from time to time to provide all or any of the Services which are substantially similar to any of the Services, or received in substitution for any of the Services, or which will operate a concession similar to the Concession, following the expiry, termination or partial termination of this Contract whether those services and/or concession are provided by the Council internally and/or by any third party;
“Request for Information”	means a request for information or an apparent request under the Code of Practice to Government Information, FOIA or the EIR;

"Revenue Share"	means the revenue paid by the Concessionaire to the Council based on a share of the Concessionaire's revenues in relation to the Concession as more particularly set out in Schedule 5;
"Schedule(s)"	means all, each and any of the Schedules attached to this Contract as the context permits;
"Service(s)"	means the Services to be provided pursuant to this Contract, more particularly described in the Specification and Service shall be construed accordingly;
"Shelter Location List"	a list identifying the Sites as set out in of Schedule 1;
"Sites"	the sites specified by the Council, as set out in the Shelter Location List at which the Concessionaire will install, clean and maintain Structures in accordance with this Contract;
"Specific Change in Law"	means any Change in Law which specifically refers to the provision of a service being the same as or substantially similar to the Services or to the holding of shares in companies whose main business is providing a service being the same as or similar to the Services;
"Specification"	means the description of the Services to be provided under this Contract and the basis and scope of the Concession, as set out in Schedule 1;
"Staff"	means all persons employed or engaged by the Concessionaire to perform this Contract together with the Concessionaire's servants, suppliers, agents, volunteers and sub-Concessionaires used in the performance of this Contract and/or the provision of the Services;

“Structure(s)”	a structure in the form of a Bus Shelter and/or other street furniture, in the ownership of and to be supplied by the Concessionaire as part of the Services, including Existing Bus Shelters, in accordance with the terms of the Specification and this Contract, and which shall be installed by the Concessionaire on or adjacent to the public highway at locations to be prescribed by the Council and which are set out in of Schedule 1;
“Sub-Contract”	means a contract between the Concessionaire and a third party pursuant to which the Concessionaire agrees to source the provision of any of the Services and/or Concession from the Sub-Concessionaire;
“Sub-Concessionaire”	means the third party with whom the Concessionaire Sub-Contracts the provision of any of the Services and/or Concession;
“Sub-Processor”	means any third party appointed to process Personal Data on behalf of the Concessionaire related to this Contract;
“Tender Response Document”	means the Concessionaire’s proposal to meet the Specification
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended;
“Urgent Fault Call-Out”	shall mean those fault call-outs where the Contract Manager reasonably considers that a Structure is likely to be so damaged or unsafe as to be a danger to traffic pedestrians or property and any reference to urgent fault shall be construed accordingly
“VAT”	means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;

“Variation”	means any change to: (i) the terms and conditions of this Contract (including Schedules) (ii) the Services or any of them (iii) the Concession and any aspect of it (iv) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract provided such variation or change is in accordance with Clause 14;
“Working Day”	means Monday to Sunday 365 days per year (or as adjusted by the leap year):
“Working Hours”	means the hours of 0800 to 1800
“Works”	shall mean the supply and installation or making good (as the case may be) and the maintenance repair and cleansing of each Structure in accordance with this Contract

2. INTERPRETATION OF THIS CONTRACT

- 2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any bylaws, licenses, statutory instruments, rules, regulations, orders, notices, directions, European Union legislation made thereunder, and any condition attaching thereto.
- 2.3 The headings in this Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 2.4 The expression ‘person’ used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.

- 2.5 In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.6 References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.7 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the Schedules.
- 2.8 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Concessionaire.
- 2.9 In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
- 2.9.1 The Conditions of this Contract;
 - 2.9.2 Schedule 1 (*Specification*);
 - 2.9.3 Remaining Schedules of this Contract with the exception of **Schedule 7** (*Tender Response Document*);
 - 2.9.4 **Schedule 7** (*Tender Response Document*)

3. DURATION OF CONTRACT

- 3.1 This Contract shall commence on the **Commencement Date** and shall continue for the Initial Term unless terminated sooner in accordance with the provisions of this Contract.
- 3.2 Notwithstanding **Clause 3.1** above, the Concessionaire shall, following contract award and during the Mobilisation Period, comply with the requirements set out at **Schedule 9**.
- 3.3 Subject to **Clauses 3.1 and 3.4** this Contract shall (unless terminated earlier in accordance with the terms of this Contract), expire on the expiry of the Initial Term or subsequent agreed extension period and the provisions of **Clause 40** shall apply.

- 3.4 This Contract may be extended at the sole discretion of the Council either by one or successive extensions subject to a total maximum extension period of ten (10) years by the Council providing to the Concessionaire at least six (6) Months' prior notice in writing of its wish to extend, such notice to include the length of the requested extension.
- 3.5 If the Council notifies the Concessionaire of its desire to extend the Contract beyond the Initial Term pursuant to **Clause 3.4**, this Contract shall, unless terminated earlier in accordance with the terms of this Contract, be extended for the term set out in the notice and the terms and conditions of this Contract will continue to apply during the extension period.
- 3.6 In the event the Contract is extended in accordance with **Clauses 3.4 and 3.5** this Contract shall unless terminated sooner in accordance with provisions of this Contract, expire on the expiry of the Contract Period and the provisions of **Clause 40** shall apply.

4. THE CONCESSION AND SERVICES

- 4.1 The Concessionaire shall provide the Services during the Contract Period in accordance with the Contract.
- 4.2 Subject to the provisions of this Contract, the Council grants to the Concessionaire for the Contract Period, the right to operate the Concession in accordance with the terms of this Contract.
- 4.3 The Concessionaire shall:
- 4.3.1 discharge its obligations under this Contract with all due skill, care and diligence by appropriate, competent, qualified and trained Staff; and
 - 4.3.2 except as otherwise specified in this Contract provide all Staff and a sufficient number of Staff, the Concessionaire's Equipment, information and data and anything else whatsoever required for the provision of the Services and/or operation of the Concession; and
 - 4.3.3 except as specified in writing, not in any circumstances use the Council's Premises and/or Council's Equipment.

- 4.4 The Concessionaire shall at all times comply with all other relevant Council policies and codes of practice provided a copy has been given or made available by the Council to the Concessionaire.
- 4.5 If the Concessionaire wishes to upgrade any of the Structures to include digital advertising screens, any Approval from the Council of the Concessionaire's proposals shall be subject to the Parties agreeing the proposed change in accordance with Clause 14 and the Change Control Procedure.

4A. LICENCE TO ACCESS LAND

- 4A.1 In consideration for the sum of £1, payable by the Concessionaire on demand, the Council grants the Concessionaire a right for the duration of this Contract to access the land to which the Bus Shelters and Structures are affixed for the purposes of providing the Services and exercising the rights granted by the Concession.

5. CONCESSIONAIRE'S WARRANTY, RESPONSIBILITY AND KNOWLEDGE

- 5.1 The Concessionaire warrants and represents that:
- 5.1.1 it has the full capacity, authority and all necessary consents to enter into and perform this Contract; and
 - 5.1.2 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract; and
 - 5.1.3 it has not directly or indirectly canvassed any member or official of the Council with a view to gaining more favourable consideration of its submission for this Contract and has complied in all respects with the conditions and instructions of tendering; and
 - 5.1.4 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Concessionaire in connection with this Contract, the Instructions to Tenderer's, and the Concessionaire's Tender Response Document are true, complete and accurate in all respects; and
 - 5.1.5 In the past three (3) years prior to the Commencement Date:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting

- principles that apply to it in any country where it files accounts; and
- (b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

- 5.2 The Concessionaire shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, Schedule 1 (*Specification*) and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services and operation of the Concession.
- 5.3 The Concessionaire shall be responsible for the accuracy of all drawings, documentation and information or anything else supplied to the Council by the Concessionaire and the Concessionaire shall indemnify the Council against all and any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein and shall indemnify the Council against any direct or indirect losses, damages or costs incurred as a consequence of the same.

6. THE COUNCIL'S OBLIGATIONS

- 6.1 The Council shall, upon commencement of this Contract, provide the name and contact details of the appointed individual to act as the Contract Manager.
- 6.2 The Contract Manager shall:
- 6.2.1 have responsibility for administering this Contract on behalf of the Council;
 - 6.2.2 act as the Council's representative in connection with this Contract at all times;
 - 6.2.3 exercise the functions allocated to him/her under this Contract.
- 6.3 The Council may remove and replace the Contract Manager, such removals or replacements being notified in writing to the Concessionaire's Authorised Representative.
- 6.4 The Contract Manager may appoint from time to time individuals to act as the Contract Manager's Representatives to oversee the day to day operation of the Contract, Concession and/or Services and the Contract Manager shall notify the Concessionaire in writing immediately upon any such appointment.

- 6.5 The Council shall provide reasonable co-operation to the Concessionaire and shall provide such information as the Concessionaire shall reasonably request and which is strictly necessary in order to enable the Concessionaire to deliver its obligations under this Contract.

7. CONCESSIONAIRE'S STAFF

- 7.1 The Council will require the Concessionaire to provide in writing the name, telephone number, contact address and email address for the Concessionaire's Authorised Representative who will be responsible for the management of this Contract. The Concessionaire's Authorised Representative must be empowered by the Concessionaire to take decisions in respect of this Contract and must be available to the Council during Working Hours.
- 7.2 The Concessionaire's Authorised Representative must have sufficient knowledge of this Contract, the Concession and the Services to deal with all the Council's requirements in respect of the performance of this Contract. The Council may acting reasonably direct that any nominated Concessionaire's Authorised Representative whom it believes is unsuitable in respect of skill and knowledge to carry out the functions on behalf of the Concessionaire specified in this Contract is no longer involved in the delivery of obligations under this Contract. However, the final decision in relation to a Staff member shall remain the responsibility of the Concessionaire.
- 7.3 The Concessionaire's Staff shall be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties and shall at all times:
- 7.3.1 comply with the relevant provisions of the Contract; and
 - 7.3.2 comply with all relevant Law, policies, codes, rules, procedures and standards of the Concessionaire and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Concessionaire by the Contract Manager from time to time.

- 7.4 The Concessionaire shall carry out appropriate pre-employment checks, prior to the appointment of all Staff involved in connection with the delivery of obligations under this Contract, (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications and an appropriate check with the Disclosure and Barring Service, where relevant).
- 7.5 The Concessionaire shall obtain consent, prior to the commencement of any work of each Staff member employed to work in connection with this Contract, to carry out all necessary checks under **Clause 7.5** and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
- 7.6 Any Staff member whose conduct places any of the Council's personnel, any member of the public and/or any third party at risk or which might bring the Council into disrepute when working in connection with the provision of the Services shall be the subject of immediate investigation by the Concessionaire and dealt with to the satisfaction of the Council which might direct that the Staff member be removed from working in connection with the Services.

8. CONTRACT PRICE AND PAYMENT

- 8.1 The payment of the Fixed Fee Payment under the Contract shall be subject to the following:
- 8.2.1 In the event that a Structure is installed during a Concession Year, the Fixed Fee Payment payable in respect of that particular Structure shall be a pro-rata sum of the Fixed Fee Payment payable for that particular Structure, which shall become payable from the date installation of the particular Structure is completed and is deemed by the Council to be useable and shall be invoiced by the Council in accordance with 8.3.3.
- 8.2.2 In the event that a Structure is permanently removed during a Concession Year, the Fixed Fee Payment in respect of that particular Structure shall be a pro-rata sum of the Fixed Fee Payment payable in respect of that particular Structure. Further:
- 8.2.2.1 To the extent that an element of the Fixed Fee Payment is due from the Concessionaire in respect of that particular Structure, the Council shall invoice the Concessionaire for such payment in accordance with Clause 8.3.3; and

8.2.2.2 To the extent that the Concessionaire has overpaid the Fixed Fee Payment for that particular Structure, consequent to its permanent removal, the Council shall set off the liability to repay such overpayment in accordance with Clause 8.4.

8.2A If the Concessionaire is unable to display advertising on any of the advertising Structures for reasons outside its control for a period of more than 14 Calendar Days, then subject to the Concessionaire's compliance with Clause 8.2A.1 and subject also to Clause 8.2A.2 below, the Concessionaire is not required to pay any Fixed Fee Payment in respect of the affected Structure for the period of such disruption and will be entitled to a pro rata refund of any advance payments made. Provided the inability to access the Structures is not the result of the acts or omissions of the Council, the Concessionaire will use its best endeavours to resume advertising as soon as possible and will be subject to a long stop date of 6 months following which the Fixed Fee Payment will resume in any event unless there is a major reason for the advertising suspension such as a road closure.

8.2A.1 If the Concessionaire proposes to withhold payment of the Fixed Fee Payment or seeks a reimbursement of the same pursuant to the circumstances described in Clause 8.2A above, it shall at its earliest opportunity and within one month of becoming aware of the grounds for seeking a suspension (or as appropriate reimbursement) of the Fixed Fee Payment, write to the Council's Authorised Representative providing full details of the date on which the advertising has become not possible, the reasons why, a full breakdown of the sums proposed for withholding (or reimbursement as appropriate) together the steps it has taken or proposes to take to bring the affected Structure back into use.

8.2A.2 If the Council disagrees or wishes to seek further clarification in relation to the contents of a notice received from the Concessionaire pursuant to Clause 8.2A.1 above, the Council shall within one month of receipt of the notice, discuss the same with the Concessionaire's Authorised Representative, and if following such discussions, the Council continues to dispute the proposals received from the Concessionaire pursuant to Clause 8.2A.1, the Council acting in good faith, shall within one month of concluding discussions with the Concessionaire's Authorised Representative, pursue any related dispute with the Concessionaire in accordance with Clause 38 (Dispute Resolution). For the avoidance of any doubt, the Concessionaire will not be required to make the Fixed Fee Payment during the Dispute Resolution Procedure.

- 8.2.3 For the avoidance of doubt, any pro-rata adjustments of the Fixed Fee Payment caused pursuant to the circumstances described in Clauses 8.2.1 and 8.2.2 (including 8.2.2.1 and 8.2.2.2) above shall be calculated as follows:
- 8.2.3.1 in the event of an adjustment caused pursuant to Clause 8.2.1 and/or 8.2.2.1, by reference to the number of Calendar Days remaining in the relevant Concession Year; and
- 8.2.3.2 in the event of an adjustment caused pursuant to 8.2.2.2, by reference to the number of Calendar Days that have elapsed in the relevant Concession Year up to and including the date of removal of the relevant Structure.
- 8.3 Notwithstanding **Clause 8.2** above, the following terms will form part of this Contract:
- 8.3.1 In consideration of the Concessionaire operating the Concession under the terms of this Contract, payment will be made by the Concessionaire to the Council in accordance with the terms of **Schedule 8**.
- 8.3.2 If a Party fails to make payment due to the other Party under this Contract by the due date, then, without limiting the other Party's remedies under this Contract, the defaulting Party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.3.2 will be charged in line with the Late Payment of Commercial Debt Act which is currently 8% plus the Bank of England interest rate. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from two (2) Working Days after the dispute is resolved until payment.
- 8.3.3 The Council shall invoice the Concessionaire for payments due to it under the terms of this Contract quarterly during the Contract Period and such invoices shall be issued by the Council to the Concessionaire approximately two (2) weeks following receipt by the Council of information submitted by the Concessionaire pursuant to Clause 9.1 and 9.3 below. All invoices will be sent to the Concessionaire by email. The Concessionaire will need to ensure that a valid email address is provided to the Council for receipt of invoices on commencement of the Contract.
- 8.3.4 The Concessionaire shall subject to Clause 8.3.5 below, pay invoices within thirty (30) Calendar Days of date of the invoice; and in full and in cleared funds to the bank account nominated by the Council.
- 8.3.5 if the Concessionaire disputes any invoice:
- (a) the Concessionaire shall notify the Council in writing within three (3)

Working days of the receipt of the invoice, specifying the reasons for disputing the invoice;

- (b) The Council shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
- (c) the Concessionaire shall pay to the Council all amounts not disputed by the Concessionaire on the due date as set out in Clause 8.3.4 above;
- (d) the Parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
- (e) if the Parties have not resolved the dispute within thirty (30) Calendar Days of the Concessionaire giving notice to the Council, the dispute shall be resolved in accordance with Clause 38 (Dispute Resolution)

8.4 The Council may at any time, without notice to the Concessionaire, set off any liability of the Concessionaire to it against any liability it has to the Concessionaire, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. Any exercise by the Council of its rights under this **Clause 8.4** shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

8.5 The Concessionaire shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Concessionaire has a valid Court order requiring an amount equal to such deduction to be paid by the Council to the Concessionaire.

8.6 For the avoidance of doubt, the Parties agree that the Concessionaire shall provide the Services and operate the Concession and that there will be no charges or cost due from the Council in respect of the provision of the Services to it and/or operation of Concession.

8A. TAX TREATMENT

8A.1 The Parties acknowledge and agree the amounts payable by the Concessionaire in accordance with Clause 8.1 and Schedule 5 are exclusive of VAT.

8A.2 The Parties acknowledge the grant of a right of land under Clause 4A.1 is exempt from VAT.

- 8A.3 Notwithstanding that cleaning and maintenance will be provided at the Concessionaire's cost, for accounting purposes an annual fee ("Maintenance Fee") is deemed attributable to the obligation on the Concessionaire to maintain and clean the Bus Shelters in accordance with the terms of this Contract. The Concessionaire will calculate the Maintenance Fee on an annual basis and will inform the Council in writing of the Maintenance Fee prior to 4 September each year. The Concessionaire will provide a VAT only invoice to the Council on 4 September each year for the Maintenance Fee for the prior year.
- 8A.4 For accounting purposes, in consideration of the advertising rights granted by the Council to the Concessionaire in accordance with the terms of this Contract, an annual fee equal to the Maintenance Fee ("Licence Fee") is attributed to this supply from the Council to the Concessionaire. The Council will provide a VAT only invoice to the Concessionaire on the 4 September each year for the Licence Fee for the prior year. Where applicable the Concessionaire will prepare this VAT only invoice under a self-billing agreement. For the avoidance of doubt, the Maintenance Fee will not be payable by the Council to the Concessionaire in any circumstances.
- 8A.5 The Licence Fee and the Maintenance Fee may be reviewed annually on the 1st September of each year by prior agreement between the Parties. Payment of both VAT invoices will be considered payable by offset.
- 8A.6 Without prejudice to the provisions of Clause 62.2, if the Council suffers any loss, damage, costs, claims, charges or expenses as a consequence of the Concessionaire breaching its obligations under this Clause 8A and/or the arrangements set out in this Clause 8A being declared unlawful by a Court, tribunal and/or HMRC, the Concessionaire shall fully and promptly indemnify and keep indemnified the Council in respect of all such losses, damage, costs, claims, charges or expenses incurred by the Council.

8B. COUNCIL USE OF ADVERTISING SPACE

- 8B.1 In addition to the payments due to the Council in accordance with the terms of this Contract, the Concessionaire will permit the Council to use the advertising space set out in Schedule 5 in accordance with the terms set out in Schedule 5

9. INFORMATION PROVISION AND REPORTING

- 9.1 On the first Quarter Day following the Commencement Date, the Concessionaire shall provide the Contract Manager with written confirmation of the following:
- 9.1.1 the number of Structures provided to the Council in that Concession Year;
 - 9.1.2 the number of Structures that the Concessionaire envisages providing to the Council under the terms of this Contract in each of the next three Concession Years;
 - 9.1.3 confirmation of the costs that the Concessionaire has incurred in obtaining, erecting and installing the Structures provided under this Contract;
 - 9.1.4 an estimate of the costs that the Concessionaire reasonably envisages it will incur in obtaining, installing and erecting any other Structures in the remainder of that Concession Year;
 - 9.1.5 confirmation of the costs that the Concessionaire reasonably envisages it will incur in obtaining, erecting and installing any additional Structures that the Concessionaire is reasonably expected to install in each of the next three Concession Years;
 - 9.1.6 a full breakdown of the costs that the Concessionaire has incurred or is likely to incur in that Concession Year in relation to the maintenance of the Structures that it will provide under this Contract, such breakdown to include details of its relevant costs in relation to Staff;
 - 9.1.7 a forecast and breakdown of the costs that the Concessionaire reasonably expects to incur in each of the next three (3) Concession Years in relation to the maintenance of the Structures to be provided under this Contract, including details of expected costs relating to Staff;
 - 9.1.8 full details of any other costs incurred or reasonably likely to be incurred by the Concessionaire in that Concession Year directly in relation to the delivery of its obligations under this Contract;
 - 9.1.9 a full breakdown of any other costs incurred or reasonably likely to be incurred by the Concessionaire in that Concession Year directly in relation to the delivery of its obligations under this Contract;
 - 9.1.10 a full breakdown of any other costs reasonably likely to be incurred by the Concessionaire over the next three (3) Concession Years directly in the delivery of its obligations under this Contract;
 - 9.1.11 confirmation of the Net Revenue generated by the Concessionaire under this Contract for the immediately preceding Concession Year;

- 9.1.12 a forecast of the Net Revenue that the Concessionaire reasonably expects to generate under this Contract for the remainder of that Concession Year and each of the next three (3) Concession Years;
 - 9.1.13 an analysis of any Net Revenue trends;
 - 9.1.14 confirmation of the level of Actual Profit made by the Concessionaire under this Contract for that Concession Year; and
an estimate of the Actual Profit that the Concessionaire reasonably expects to make under this Contract for the remainder of that Concession Year and in each of the next three (3) Concession Years.
- 9.2 Subject to Clause 9.2.1, 9.2.2 and 9.2.3, the Concessionaire shall provide the information set out in Clause 9.1 to the Contract Manager using the Financial Information Pro-Forma appended at Schedule 14 and the Concessionaire should also note the following:
 - 9.2.1 The Concessionaire shall when completing a Financial Information Pro-Forma, be expected to provide information on matters other than those listed in Clause 9.1 above, as set out in the Financial Information Pro-Forma and the terms of this Clause 9.
 - 9.2.2 To the extent that the Financial Information Pro-Forma does not contain a section for the provision of all of the information listed in this Clause 9, the Concessionaire shall provide the information requested under this Clause 9 and which is not covered in the Financial Information Pro-Forma to the Council in writing at the same time when submitting a completed Financial Information Pro-Forma.
 - 9.2.3 The Council reserves the right to amend the format and layout of the Financial Information Pro-Forma.
- 9.3 Following its first submission of information in accordance with Clause 9.1 and 9.2 above, the Concessionaire shall on each Quarter Date during the Contract Period, submit to the Contract Manager updated information to include all of the information listed in Clause 9.1 above and Clause 9.2, 9.2.1, 9.2.2 and 9.2.3 shall apply on each occasion the Concessionaire is required to provide information under this Clause 9
- 9.4 Every six (6) months following the Commencement Date, the Concessionaire shall provide the Council with full details in writing of all development information, including in relation to any Investment Work
 - 9.4.1 the current status of such work (whether (i) planning application lodged; (ii) planning appeal; (iii) whether awaiting clearance from the Council;

- 9.4.2 Approval given by the Council but awaiting construction or further work; (v) refused Approval; or (vi) abandoned;
 - 9.4.3 the current estimated costs of such works; and
 - 9.4.4 the costs incurred and/or committed from the Investment Work, on a monthly cumulative basis
- 9.5 On each anniversary of the Commencement Date, the Concessionaire shall provide to the Council written information relating to any health or safety matter relating to the operation of obligations under this Contract including:
 - 9.5.1 the number of instances of non-compliance with the Concessionaire's health and safety obligations under this Contract or under Applicable Law and the nature of each instance of non-compliance;
 - 9.5.2 the frequency of accidents occurring among the Concessionaire's contractors per one hundred thousand (100,000) person-hours worked;
 - 9.5.3 number of incidents reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (SI 2013/1471) (RIDDOR);
 - 9.5.4 the mean average number of Calendar Days between the occurrence of incidents reportable under RIDDOR, such number to be expressed as a percentage of the Term that has elapsed, up to a maximum of 366 Calendar Days (where no incidents have occurred this shall be recorded as 100%);
 - 9.5.5 the average number of incidents reportable under RIDDOR in each Concession Year per £1,000,000 (one million pounds sterling) of operating revenue; and
 - 9.5.6 the number of hours lost due to injuries per one hundred thousand (100,000) person-hours worked.
- 9.6 The Concessionaire shall provide the Council on demand with all such information as may be necessary to enable the Council:
 - 9.6.1 to monitor the effective implementation of the Concessionaire's rights and obligations under this Contract;
 - 9.6.2 to respond to and manage any emergency or safety incident affected by or in the vicinity of any bus shelter/street;
 - 9.6.3 to carry out an audit of the Concessionaire's compliance with its health and safety obligations under this Contract and under applicable Law; and
 - 9.6.4 to carry out an audit of the Concessionaire's compliance with any other terms of this Contract.

10. RELOCATION OF BUS SHELTERS/STRUCTURES

- 10.1 The Council may at the Concessionaire's cost require the relocation of Bus Shelters/Structures within the Area in accordance with the Specification.
- 10.2 Where the Council requires relocation of Bus Shelters/Structures than it shall submit a relocation request in accordance with the Change Control Procedure.

11. PARENT COMPANY GUARANTEE

- 11.1 Where the Council informs the Concessionaire that the award of this Contract shall be conditional upon receipt of a valid Guarantee from acceptable Guarantors, on or prior to the execution of this Contract, the Concessionaire shall deliver to the Council executed Guarantees from each of the Guarantors substantially in the form set out in **Schedule 12**.
- 11.2 Failure to comply with this **Clause 11** shall entitle the Council to terminate this Contract.

12. BEST VALUE DUTY

- 12.1 The Concessionaire acknowledges that the Council is required to adhere to its Best Value Duty and agrees that it will comply with the Best Value Duty in delivering the Contract, including but not limited to, its obligations in respect of Clause 14.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Concessionaire shall not Sub-Contract the whole or any part of this Contract to any person without the prior Approval of the Council (such Approval not to be unreasonably withheld or delayed).
- 13.2 If the Concessionaire should Sub-Contract the provision of the Services and/or the operation of the Concession or any part thereof to any person, that shall not relieve the Concessionaire from any liability or obligation under this Contract and the Concessionaire shall be responsible for the acts, defaults or neglect of any Sub-Concessionaire or agents in all respects as if they were the acts, defaults or neglect of the Concessionaire.

- 13.3 Where the Council has Approved the use of a Sub-Concessionaire or Sub-Concessionaires, such Sub-Contract(s) shall reflect the same terms of this Contract and for the avoidance of doubt the Sub-Contract(s) shall not contain any terms which are incompatible and/or conflict with this Contract.
- 13.4 The Council shall be entitled to:
- 13.4.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any Contracting Authority or Replacement Concessionaire which shall not increase the burden of the Concessionaire's obligations pursuant to this Contract; or
- 13.4.2 novate this Contract to any body established by statute in order substantially to perform any of the functions that previously had been performed by the Council which shall not increase the burden of the Concessionaire's obligations pursuant to this Contract.
- 13.5 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.

14. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 14.1 Any Variation of this Contract shall be subject to the Change Control Procedure.
- 14.2 The Concessionaire shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services and/or the Concession. As part of this obligation the Concessionaire shall identify and report to the Contract Manager at six monthly intervals in each Concession Year on:

- 14.2.1 the emergence of new and evolving relevant technologies which could improve the Services and/or operation of the Concession;
 - 14.2.2 new or potential improvements to the Services and/or operation of the Concession including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services and/or operation of the Concession;
 - 14.2.3 new or potential improvements to the interfaces or integration of the Services and/or Concession with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 14.2.4 changes in ways of working that would enable the Services and/or Concession to be delivered with greater benefits to the Council.
- 14.3 Any potential changes highlighted as a result of the Concessionaire's reporting in accordance with **Clause 14.2** shall be addressed by the Parties using the Change Control Procedure.

15. PERFORMANCE MONITORING AND CONTRACT REVIEW

- 15.1 Contract review meetings will be held between the Concessionaire's Authorised Representative and the Contract Manager at regular intervals in accordance with the Specification, to discuss the Concessionaire's performance of this Contract and the information provided by the Concessionaire pursuant to **Clause 9**. The Concessionaire shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required at no additional cost to the Council.
- 15.2 The Parties shall monitor the Concessionaire's performance in the delivery of the Concessionaire's obligations under this Contract in accordance with the requirements set out in Schedule 1 (Specification) including the Key Performance Indicators contained therein.
- 15.3 Notwithstanding Clauses 15.1 and 15.2 above, the Council shall monitor the Concessionaire's performance of obligations under this Contract and such performance monitoring shall include but will not be limited to the following:
- 15.3.1 The Concessionaire's provision of information detailed in Clause 9 of this Contract and whether such information has been provided on time;

- 15.3.2 The issue of whether the Concessionaire has made payments due to the Council on time and in accordance with the terms of this Contract;
 - 15.3.3 The issue of whether Structures have been installed by the Concessionaire correctly and in accordance with the terms of this Contract;
 - 15.3.4 The issue of whether the Concessionaire is undertaking its obligations to maintain the Structures correctly and in accordance with the terms of this Contract;
 - 15.3.5 The issue of whether the Concessionaire is meeting its environmental obligations (whether set out in Law or this Contract) in the discharge of its obligations under this Contract; and
 - 15.3.6 The issue of whether the Concessionaire is operating the Concession in accordance with the terms of this Contract.
- 15.4 The Concessionaire will at its own cost, provide all information, assistance, data, records and co-operation reasonably required by the Council to assist it in monitoring the Concessionaire's performance of obligations under this Contract. The Council shall notify the Concessionaire of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under this Contract) the Concessionaire shall implement all suggestions made by the Council, which shall act reasonably, in relation to the future delivery of obligations under this Contract.
- 15.5 Provided that the Concessionaire's Authorised Representative is given reasonable notice of the same, the Concessionaire's Authorised Representative shall attend meetings where an issue related to the Services is to be considered unless an emergency situation arises, as determined by the Contract Manager in which case the Concessionaire's Authorised Representative may be required to attend a meeting with the Contract Manager at short notice.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 All Intellectual Property Rights acquired or created by the Concessionaire or on the Concessionaire's behalf for the Council, commissioned by the Council or which relate to the Concessionaire's performance of this Contract, shall vest in the Concessionaire. In the event that the Council has a particular need for an IP licence in relation to the Concessionaire's IP rights, the Parties will meet to discuss the possibility of this and the Concessionaire shall use all reasonable endeavours to grant the Council a licence on terms to be agreed, in respect of its IP rights.

- 16.2 All Intellectual Property Rights supplied by the Council to the Concessionaire shall at all times be and remain the exclusive property of the Council and such items shall be held by the Concessionaire in safe custody at its own risk and maintained and kept in good condition by the Concessionaire until returned to the Council and shall not be disposed of other than in accordance with the Council's written instructions, nor shall such items be used otherwise than as authorised by the Council in writing.
- 16.3 The Concessionaire acknowledges that any rights granted by the Council to use or exploit any of the Council's Intellectual Property Rights shall terminate immediately upon the termination of this Contract for any reason. All goodwill in respect of the Council's Intellectual Property Rights shall remain with the Council at all times.
- 16.4 Notwithstanding the generality of **Clause 16.1**, the Concessionaire shall indemnify the Council on written demand in respect of all liabilities suffered or incurred by or awarded against the Council in connection with any claim or action against the Council by any third party that any material displayed or advertised on any Structure infringes the Intellectual Property Rights of that third party (**Third Party IPR Claim**).
- 16.5 The Council agrees that:
- 16.5.1 it will notify the Concessionaire in writing as soon as reasonably practicable of any Third Party IPR Claim of which the Council has notice;
 - 16.5.2 it will not admit any liability or agree to any settlement or compromise of a Third Party IPR Claim without the prior written consent of the Concessionaire, which will not be unreasonably withheld or delayed;
 - 16.5.3 the Concessionaire will be entitled to assume exclusive conduct of the Third Party IPR Claim provided that the Concessionaire will consult with the Council in respect of the conduct of any Third Party IPR Claim and where the Council is listed as a defendant or co-defendant the Council shall have the right to require that the Council and the Concessionaire will conduct the defence of the Third Party IPR Claim jointly and will allow each other full access to all relevant documentation; and
 - 16.5.4 it will provide reasonable cooperation and assistance to the Concessionaire in the defence or settlement of any Third Party IPR Claim.

17. AUDIT RIGHTS

- 17.1 Notwithstanding the Concessionaire's obligations under **Clause 9** above, the Concessionaire shall permit or procure permission for any authorised representative of the Council (including the Council's internal auditors and external auditors) to have reasonable access for audit purposes to information, documents, data, systems, the Concessionaire's Premises or the Concessionaire's Equipment used in the delivery of obligations under this Contract and any information, documents, reports or anything else reasonably required for inspection by the Council and/or its authorised representatives.
- 17.2 For the purposes of this Clause 17 access shall include (without limiting the generality of the foregoing):
- 17.2.1 reasonable access to the Staff of the Concessionaire who are engaged in the delivery of obligations under this Contract;
 - 17.2.2 inspection of the arrangements being made by the Concessionaire to comply with its obligations under this Contract;
 - 17.2.3 access to such financial and other records kept as part of and in connection with the delivery of obligations under this Contract by the Concessionaire as may be reasonably required from time to time by the Council to enable the Council to verify that the obligations under this Contract are being delivered in accordance with all applicable laws. The Concessionaire shall keep and maintain for a period of twelve (12) years after the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract and all obligations delivered under it, including all expenditure and investment costs incurred or forecasted by the Concessionaire under this Contract, all actual income and revenue generated under this Contract, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause is in addition to any legal requirement and does not negate the need for any such retention of records.
- 17.3 Subject to the provisions of **Clause 9**, access may be at any time without notice provided there is good cause for access without notice and provided that the Contract Manager and/or the Contract Manager's Representatives shall comply with all reasonable requirements of the Concessionaire for the purpose of protecting the

confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.

- 17.4 The Council reserves the right to carry out an audit jointly with the Concessionaire of the performance of authorised Sub-Concessionaires used in connection with the delivery of the Concessionaire's obligations under this Contract.

18. RECORDS

- 18.1 The Concessionaire shall maintain current and accurate records of all work carried out in the delivery of its obligations under this Contract and all sums received or payable in connection with any activity or service which the Concessionaire is required to provide under this Contract and shall ensure that these records shall be available for inspection by an authorised representative of the Council at all reasonable times upon request.
- 18.2 The Concessionaire shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of records irrespective of the storage media which are under the Concessionaire's control and which including the Council's Data, are connected to the delivery of the Concessionaire's obligations under this Contract. Such safeguards shall include an obligation on the Concessionaire to ensure that access to records is only obtained by such Staff as may be specifically designated by the Contract Manager and access to records by Staff is provided only as necessary in connection with the delivery of obligations under this Contract.
- 18.3 If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council in the event that the Concessionaire does not have in place a method for reinstatement or replacement of such records within seven (7) Working Days of receipt of a notice from the Council and without prejudice to the Council's other rights at law the Concessionaire shall reimburse the Council's reasonable costs in restoring such records and/or the Council's Data.
- 18.4 The Concessionaire shall grant the Council or any agent employed by the Council full access on reasonable notice to its books of account and records as required to establish or verify any information that the Concessionaire is obliged to supply pursuant to this Contract.

19. PUBLICITY

- 19.1 Except with the prior Approval of the Council, the Concessionaire shall not make any press announcements or publicise this Contract or any part thereof in any way.
- 19.2 The Concessionaire shall take reasonable steps to ensure the observance of the provisions of **Clause 19.1** by all of its Staff and Sub-Concessionaires.
- 19.3 The Council shall consult with the Concessionaire to inform its decision regarding any redactions required by the Concessionaire prior to publication, however the final decision regarding publication shall lie with the Council taking into account the guidance for dealing with a Request for Information.
- 19.4 The Council shall be entitled to publicise and/or release a copy or copies of the Contract in accordance with any legal obligation upon the Council and/or compliance with a Court order, including any examination of this Contract by an auditor or otherwise.
- 19.5 The Concessionaire shall acknowledge the support of the Council in any materials that refer to the Services and/or Concession and in any written or spoken public presentations about the Services and/or Concession. Such acknowledgements (where appropriate or as requested by the Council) shall include the Council's name and logo (or any future name or logo adopted by the Council) using the templates provided by the Council from time to time. In using the Council's name and logo, the Concessionaire shall comply with all reasonable branding guidelines issued by the Council from time to time.

20. FREEDOM OF INFORMATION

- 20.1 The Concessionaire acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Concessionaire's expense) to enable the Council to comply with these information disclosure requirements.
- 20.2 The Concessionaire shall and shall procure that its Sub-Concessionaire(s) shall:
- 20.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a

- Request for Information;
- 20.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- 20.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 20.3 The Council shall be responsible for determining at its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a Request for Information.
- 20.4 In no event shall the Concessionaire respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 20.5 The Concessionaire acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) and the equivalent code of practice issued under Regulation 16 of the EIR, be obliged under the FOIA or the EIR to disclose Information:
- 20.5.1 without consulting with the Concessionaire; or
- 20.5.2 following consultation with the Concessionaire and having taken its views into account,
- provided always that where Clause 20.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Concessionaire advanced notice, or failing that, to draw the disclosure to the Concessionaire's attention after any such disclosure.
- 20.6 The Concessionaire shall ensure that all Information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 20.7 The Concessionaire acknowledges that any details provided by it outlining information that it considers to be confidential or commercially sensitive are of indicative value only and that the Council may nevertheless be obliged to disclose such information in accordance with its legal obligations under FOIA and EIR.

21. CONFIDENTIALITY

- 21.1 Subject to **Clause 21.2**, the Parties shall keep confidential the Confidential Information of the other Party and all matters relating to this Contract and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 21.2 Clause 21.1 shall not apply to any disclosure of information:
- 21.1.1 required by any applicable Law, provided that **Clause 20** shall apply to any disclosures required under the FOIA or the EIR;
 - 21.1.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
 - 21.1.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of **Clause 21.1**;
 - 21.1.4 by the Council of any document to which it is a party and which the Parties have agreed contains no commercially sensitive information;
 - 21.1.5 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
 - 21.1.6 by the Council to any other department, office or agency of the Government; and
 - 21.1.7 by the Council relating to this agreement and in respect of which the Concessionaire has given its prior written consent to disclosure.
- 21.3 On or before the Expiry Date the Concessionaire shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

22. DATA PROTECTION

- 22.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Concessionaire is the Processor. The only processing that the Concessionaire is authorised to do is listed in Schedule 8 by the Council and may not be determined by the Concessionaire.
- 22.2 The Concessionaire shall notify the Council immediately if it considers that any of the

Council's instructions infringe the Data Protection Legislation.

- 22.3 The Concessionaire shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include
- 22.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 22.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Concessionaire's obligations under this Contract;
 - 22.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 22.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 22.4 The Concessionaire shall, in relation to any Personal Data processed in accordance with its obligations under this Contract:
- 22.4.1 process that Personal Data only in accordance with Schedule 8, unless the Concessionaire is required to do otherwise by Law. If it is so required the Concessionaire shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - 22.4.2 ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:
 - 22.4.2.1 nature of the data to be protected;
 - 22.4.2.2 harm that might result from a Data Loss Event;
 - 22.4.2.3 state of technological development; and
 - 22.4.2.4 cost of implementing any measures.
 - 22.4.3 ensure that:
 - 22.4.3.1 the Staff do not process Personal Data except in accordance with this Contract (and in particular **Schedule 8**)
 - 22.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - 22.4.3.2.1 are aware of and comply with the Concessionaire's duties under this Clause;
 - 22.4.3.2.2 are subject to appropriate confidentiality undertakings with the Concessionaire or any Sub-Processor;

- 22.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - 2.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 22.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - 22.4.4.1 the Council or the Concessionaire has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - 22.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 22.4.4.3 the Concessionaire complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - 22.4.4.4 the Concessionaire complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data
- 22.4.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of this Contract unless the Concessionaire is required by Law to retain the Personal Data
- 22.5 Subject to **Clause 22.6**, the Concessionaire shall notify the Council immediately if it:
 - 22.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 22.5.2 receives a request to rectify, block or erase any Personal Data;
 - 22.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 22.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

- 22.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 22.5.6 becomes aware of a Data Loss Event.
- 22.6 The Concessionaire's obligation to notify under Clause **22.5** above shall include the provision of further information to the Council in phases, as details become available.
- 22.7 Taking into account the nature of the processing, the Concessionaire shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under **Clause 22.5** (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - 22.7.1 the Council with full details and copies of the complaint, communication or request;
 - 22.7.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Legislation;
 - 22.7.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 22.7.4 assistance as requested by the Council following any Data Loss Event;
 - 22.7.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 22.8 The Concessionaire shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Concessionaire employs fewer than 250 staff, unless:
 - 22.8.1 the Council determines that the processing is not occasional;
 - 22.8.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 22.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 22.9 The Concessionaire shall allow for audits of its data processing activity by the Council or the Council's designated auditor. The Council is entitled, on giving at least three (3)

Calendar Days' notice to the Concessionaire, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data under this Contract by the Concessionaire. The requirement to give notification in advance will not apply if the Council believes that the Concessionaire is in breach of any of its obligations under this Contract. The Concessionaire shall designate a data protection officer if required by the Data Protection Legislation.

- 22.10 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Concessionaire must:
 - 22.10.1 notify the Council in writing of the intended Sub-Processor and processing;
 - 22.10.2 obtain the written consent of the Council;
 - 22.10.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 22 such that they apply to the Sub-Processor; and
 - 22.10.4 provide the Council with such information regarding the Sub-Processor as the Council may reasonably require.
- 22.11 The Concessionaire shall remain fully liable for all acts or omissions of any Sub-Processor.
- 22.12 The Concessionaire may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 22 by replacing it with any applicable controller or processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 22.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Concessionaire amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 22.14 The Concessionaire shall undertake all of the above processing activities at its own expense and at no extra cost to the Council.
- 22.15 The Concessionaire shall without undue delay inform the Council if any Personal Data is lost or destroyed or becomes damaged, corrupted or unusable. The Concessionaire

will make regular backups of the Personal Data and will restore such Personal Data at its own expense.

23. BRIBERY CORRUPTION AND FRAUD

- 23.1 The Concessionaire shall not, and shall ensure that its Staff and Sub-Concessionaires do not, offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 23.2 The Concessionaire shall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by the Staff, the Concessionaire (including its shareholders, members and directors) and/or any of the Concessionaire's suppliers, in connection with the receipt of monies from the Council.
- 23.3 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Concessionaire's obligations under this Contract and payments made hereunder, the Council shall have the right of access to the Concessionaire's Premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview the Staff engaged in connection with the delivery of such obligations.
- 23.4 The Concessionaire:
- 23.4.1 shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act; and
- 23.4.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
- 23.5 The Concessionaire shall if requested, provide the Council with any reasonable

assistance, at its own cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.

- 23.6 The Concessionaire shall have an anti-bribery policy.
- 23.7 The Council shall be entitled to immediately terminate the Contract or any part of it and to recover from the Concessionaire the amount of any loss resulting, plus the value of any gift or consideration if in relation to the Contract or any other contract with the Council if the Concessionaire and or any of its Staff:
- 23.7.1 (whether with or without that Concessionaire's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful Sub- Contract), or
- 23.7.2 commit any offence under the Prevention of Corruption Acts 1889 to 1916 and/or Bribery Act 2010; or
- 23.7.3 given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act, 1972.
- 23.8 If any breach of this **Clause 23** is suspected or known, the Concessionaire must notify the Council immediately.
- 23.9 The Concessionaire must respond promptly to the Council's enquiries, co-operate with any investigation in relation to **Clause 23** including allowing the Council to audit books, records and any other relevant documentation.

23A. BRIBERY CORRUPTION AND FRAUD – COUNCIL

- 23A.1 The Council shall not, and shall ensure that its staff do not, offer or give, or agree to give, to any employee, agent, servant or representative of the Concessionaire any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the granting or execution of the Contract.
- 23A.2 Where the Concessionaire has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Council's obligations under this Contract, the Concessionaire shall have the right of access to the Council's premises

(as identified at the head of this Contract) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview the Council's staff engaged in connection with the delivery of such obligations.

23A.3 The Council:

23A.3.1 shall not, and shall procure that its staff shall not, in connection with this Contract commit a Prohibited Act; and

23A.3.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Concessionaire, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Concessionaire before execution of this Contract.

23A.4 The Council shall if requested, provide the Concessionaire with any reasonable assistance, at its own cost, to enable the Concessionaire to perform any activity required by any relevant government or agency in connection with this Contract for the purpose of compliance with the Bribery Act.

23A.5 The Council shall have an anti-bribery policy.

23A.6 The Concessionaire shall be entitled to terminate on the provision of at least twelve (12) Months' notice the Contract or any part of it and to recover from the Council the amount of any loss resulting, plus the value of any gift or consideration if in relation to the Contract, the Council and or any of its staff:

23A.6.1 (whether with or without that Council's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful Sub-Contract), or

23A.6.2 commit any offence under the Prevention of Corruption Acts 1889 to 1916 and/or Bribery Act 2010.

23A.7 If any breach of this Clause 23A is suspected or known, the Council must notify the Concessionaire immediately.

- 23A.8 The Council must respond promptly to the Concessionaire's reasonable enquiries, co-operate with any investigation in relation to Clause 23A including allowing the Concessionaire to audit books, records and any other relevant documentation.

24. RE-USE OF PUBLIC SECTOR INFORMATION

- 24.1 The Concessionaire acknowledges that the Council has legal responsibilities to allow re-use of public sector information in accordance with the Re-Use of Public Sector Information Regulations 2015.
- 24.2 The Council shall not authorise re-use of information which is exempt from disclosure under the FOIA and the EIR.
- 24.3 The Council shall not authorise re-use of information where the Concessionaire owns the Intellectual Property Rights in that information, unless re-use is required by Law and/or compliance with a Court order.
- 24.4 Where information is jointly owned by the Council and the Concessionaire and it is impossible to identify the Intellectual Property Right elements owned by each Party the Council shall consult the Concessionaire before authorising re-use, however the final decision shall lie with the Council.

25. INSURANCE

- 25.1 The Concessionaire shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- 25.1.1 public liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;
 - 25.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;

the "Required Insurances" in respect of all risks which may be incurred by the Concessionaire, arising out of the Concessionaire's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss.

Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Concessionaire.

- 25.2 The Concessionaire shall give the Council, on request, copies of all insurance certificates referred to in this Clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts of other evidence of payment of the latest premiums due under those policies.
- 25.3 If, for whatever reason, the Concessionaire fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Concessionaire.
- 25.4 The terms of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under this Contract.
- 25.5 The Concessionaire shall hold and maintain the Required Insurances for a minimum of twelve years following the expiration or earlier termination of this Contract.

26. HEALTH AND SAFETY

- 26.1 In relation of the delivery of the Concessionaire's obligations under this Contract, the Concessionaire shall at all times comply with the requirement of the Health and Safety at Work etc. Act 1974 and any other legislation or order pertaining to the health and safety of employees and others who may be affected by the Concessionaire's acts or omissions in delivering obligations under this Contract.
- 26.2 The Concessionaire shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of this Contract. The Council shall promptly notify the Concessionaire of any health and safety hazards that may exist or arise of which it becomes aware and which may affect the Concessionaire in the performance of this Contract.
- 26.3 The Concessionaire shall notify the Council immediately in the event of any incident occurring in the performance of obligations under this Contract where that incident causes any personal injury or damage to property that could give rise to personal injury and shall indemnify the Council in full against any direct or indirect losses, damages or costs incurred as a consequence of the same.

- 26.4 The Concessionaire shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons in the performance of this Contract.
- 26.5 The Concessionaire shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 26.6 The Concessionaire shall fully comply with any and all safety procedures issued by the Council from time to time and shall procure that its Staff and Sub-Concessionaires shall comply with such procedures.
- 26.7 The Council reserves the right to suspend the provision of the Services and/or Concession in whole or in part without paying compensation if and whenever the Concessionaire is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work etc. Act 1974 and provisions within this **Clause 26**.

27. PERFORMANCE OF WORKS AND EXTENSIONS OF TIME

- 27.1 The Concessionaire shall carry out and perform the Works using all professional skill and care and exercising all due diligence in full accordance with the Specification and the other provisions and terms of this Contract (including without limitation any timescales thereby given) and any decisions, instructions or Orders given by the Council or the Contract Manager pursuant thereto.
- 27.2 The Concessionaire shall be entitled to such extension of time as would in all the circumstances be reasonable to complete any part or parts of the Works to the extent that he has been prevented or obstructed from carrying out or completing such part or parts of the Works within the timescales applicable thereto in accordance with the terms of this Contract by any of the following events:
- 27.2.1 Breach or default of the Council its servants or agents
- 27.2.2 Delay in obtaining any planning permission where an application for planning permission is submitted in accordance with the Contract and in particular (but

without limitation) any timescales provided therefor

- 27.2.3 Extreme weather conditions (provided they occur within the appropriate timescale for completing the relevant part or parts of the Works in respect of which an extension of time is being claimed)
- 27.2.4 Any variation ordered, or other instruction given by the Council or the Contract Manager to the extent that this Contract does not otherwise expressly or impliedly make provision and the Concessionaire is not by the terms of this Contract required or implicitly expected to have allowed for any delay which might be caused by such variation or instruction. PROVIDED that the Concessionaire shall not be entitled to rely upon an event referred to in sub clauses 27.2.2 or 27.2.3 unless he shall have notified the Contract Manager as soon as reasonably practicable and in any event prior to the expiry of the relevant timescales referred to in clause 41 in respect of which if the Concessionaire were in default the Council would be entitled to terminate the Contract.
- 27.3 The Contract Manager shall in the event of a claim from the Concessionaire but in any event may in the absence of such a claim make an assessment of the delay which has been suffered by the Concessionaire as a result of any of the events mentioned in clause 27.2 and shall notify the Concessionaire in writing of any extension of time to which he considers the Concessionaire is fairly entitled (if any).
- 27.4 Such a notification may be given after the timescale for completing any part or parts of the work has expired and an extension so notified shall act retrospectively so that the position of the parties shall be amended if appropriate to reflect what their respective positions would have been had the extension of time been granted before the timescale for completing that part or parts of the Works had expired.
- 27.5 The Concessionaire shall submit in support of any claim for an extension of tie full and detailed particulars together with such other documents and other information as the Contract Manager may request to enable him to verify the validity of the claim.

- 27.6 The Concessionaire shall constantly use his best endeavours to prevent delay in the progress of any part or parts of the Works howsoever cause and to prevent the completion of any part or parts of the Works being delayed or further delayed beyond the time when they are required to be completed in accordance with this Contract and the Concessionaire shall do all that may be reasonably required to the satisfaction of the Contract Manager to proceed diligently with the Works.
- 27.7 In considering the extension of time to which the Concessionaire would fairly be entitled the Contract Manager shall have regard to the Concessionaire's duties mentioned in the sub-clause 27.6.

28. OBSERVANCE OF STATUTORY AND LEGAL REQUIREMENTS

- 28.1 Without prejudice to the particularity of the foregoing or the particularity of the Clauses in this Contract the Concessionaire shall, and shall procure that all Sub-Concessionaires shall comply with all requirements of the Law to be observed and performed in connection with the delivery of the Concessionaire's obligations under this Contract and shall indemnify the Council against all actions, claims, demand, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach or failure by it or any of its Staff to comply with the requirements of this **Clause 28**. The Concessionaire shall notify the Council of any breach of any statutory or other provision relating in any way to the delivery of its obligations under this Contract.
- 28.2 Notwithstanding the above, the Concessionaire shall at all times, fully comply with all Law, guidance and codes of practice that relate to the delivery of the Concessionaire's obligations under this Contract including but not limited to those relating to highways law.
- 28.3 The Council will consider any representation made by the Concessionaire in relation to this Clause. The Council reserves the right to suspend the provision of the Services and/or Concession in whole or in part without paying compensation if and whenever the Concessionaire is, in the reasonable opinion of the Council, in contravention of the Law including those provisions referred to in this Contract or at any time enacted or notified to the Concessionaire during the course of this Contract.

- 28.4 If the right reserved in **Clause 28.3** is exercised then the Council may employ and pay a Replacement Concessionaire to provide the Services and/or Concession required and, where appropriate, may recover from the Concessionaire any additional costs in so doing.

29. ORDERS

- 29.1 The Council shall identify in the Initial Order which Existing Bus Shelters are to be removed and replaced in accordance with this Contract and the Concessionaire shall carry out the Works in accordance therewith. This initial order identifying advert shelter sites and types will be developed with mutual consent between the Concessionaire and the Council.
- 29.2 Every Order comprised within the Initial Order shall have been issued to the Concessionaire within 9 months of the Commencement Date.
- 29.3 The removal of those Existing Bus Shelters which the Specification indicates are not owned by the Council shall be carried out by the Incumbent Concessionaire but the removal of any of the other Existing Bus Shelters shall be carried out by and at the expense of the Concessionaire.
- 29.4 Each Order shall specify the type of Shelter and the type (if alternative types are available under this Contract) of any other Bus Shelter which is to be provided by the Concessionaire pursuant to that Order and the Concessionaire shall comply with the terms thereof. In the event that such specification is not given in an Order the Concessionaire shall promptly seek clarification from the Contract Manager who shall confirm the Council's requirements in respect thereof in writing to the Concessionaire. Until such clarification is given the Concessionaire notwithstanding any other provision of this Contract shall not be required to carry out that part of the Works which relates to that Bus Shelter which has not been properly specified in the Order.
- 29.5 The Concessionaire shall not pursuant to this Contract install or refurbish or exercise any advertising rights upon any Bus Shelter unless such Bus Shelter has been identified within an Order for the purpose of inclusion within the Bus Shelter.

30. HUMAN RIGHTS ACT 1998

- 30.1 In the Delivery of its obligations under this Contract the Concessionaire shall comply with the Human Rights Act 1998 as if it was a “Public Authority” within the meaning of the Human Rights Act 1998.
- 30.2 If a third party threatens or commences proceedings or complaint against the Council on the grounds that there has been a breach of any person’s rights under the Human Rights Act 1998 in connection with this Contract, the Concessionaire shall use all reasonable endeavours to co-operate with the Council so as to enable the Council:
- 30.2.1 to achieve the aim of successfully averting or defending the proceedings or complaint; and/or
- 30.2.2 to comply with any order, judgment or direction made pursuant to the same by any duly authorised authority.
- 30.3 The Council may additionally in its discretion determine such modifications to this Contract as may be required to enable it to comply with the provisions of the Human Rights Act 1998 and the Concessionaire shall forthwith comply with such modifications.

31. CHANGE IN LAW

- 31.1 The Concessionaire shall take all steps reasonably necessary to ensure that its obligations under this Contract are performed in accordance with the terms of this Contract following any Change in Law.
- 31.2 The Concessionaire shall comply with any General Change in Law at the Concessionaire’s sole risk and cost.
- 31.3 If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:
- 31.3.1 any necessary change to the delivery of its obligations under this Contract;
- 31.3.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law.
- 31.3.3 whether relief from compliance with the obligations is required, including the

obligation of the Concessionaire to achieve the Commencement Date, milestones, or to meet any Service level requirements at any time.

- 31.4 As soon as practicable after any notification in accordance with Clause 31.3 the Parties shall discuss and agree the matters referred to in that Clause and any way in which the Concessionaire shall provide evidence of how it can mitigate the effect of the Change in Law; including:
- 31.4.1 providing evidence that the Concessionaire has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub Concessionaires;
 - 31.4.2 demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Concessionaire before it occurred; and
 - 31.4.3 giving evidence as to how the Qualifying Change in Law has affected the cost of delivering its obligations under this Contract.

32. TRANSFER OF UNDERTAKINGS

- 32.1 The Concessionaire shall comply with Schedule 6 (TUPE) in respect of any Relevant Transfer.

33. FORCE MAJEURE

- 33.1 Subject to Clause 33.2, no Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.
- 33.2 The Concessionaire cannot claim relief if the Force Majeure event is one where a reasonable concessionaire should have foreseen and provided for the cause in question.
- 33.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party before the expiration of twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 33.4 Within forty-eight (48) hours, the Parties shall consult with each other in good faith

and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

- 33.5 If the Force Majeure continues for more than ninety (90) Calendar Days the Council may terminate this Contract by giving a minimum of thirty (30) Calendar Days' written notice. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.
- 33.6 This **Clause 33** does not affect the Council's rights to terminate this Contract in accordance with **Clause 39** (*Termination*) in respect of any ground for termination which does not arise from a delay in or failure of the Concessionaire in the performance of its obligations under this Contract where such delay or failure has not arisen as a result of a Force Majeure Event

34. INDUSTRIAL ACTION

- 34.1 The Concessionaire shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Contract adversely.
- 34.2 Irrespective of any industrial action and/or industrial dispute by its Staff, the Concessionaire shall make every attempt to ensure its Staff continue to deliver its obligations in accordance with the Contract.
- 34.3 The occurrence of industrial action by the Staff shall not relieve the Concessionaire from any of its obligations set out in this Contract
- 34.4 In the event that:
- 34.2.1 industrial action is taken by any Staff member such as that the delivery of the Concessionaire's obligations under this Contract are , in the opinion of the Council, materially disrupted; or
 - 34.2.2 action is taken by the Concessionaire so as to prevent its Staff from delivering its obligations under this Contract;

The Council reserves the right at its absolute discretion to make alternative arrangements for the provision of the Services and to charge the

Concessionaire for any difference in resultant cost including the cost of a Replacement Concessionaire or may terminate this Contract by notice in writing to the Concessionaries in accordance with the terms of this Contract.

35. BUSINESS CONTINUITY

- 35.1 The Concessionaire shall submit to the Council for its approval a draft BCP on or before the [REDACTED]. The Council shall not unreasonably withhold such approval. Once the Council has issued its approval this shall be the BCP for the purposes of this Contract, unless varied in accordance with this Clause 35.
- 35.2 The Parties shall comply with the provisions of the BCP and the provisions of Schedule 13.
- 35.3 The Concessionaire shall ensure that it is able to implement the BCP at any time in accordance with its terms.
- 35.4 The Concessionaire shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the delivery of its obligations under this Contract, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.
- 35.5 The BCP shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of the Concessionaire's obligations under this Contract or any part thereof, as determined by the Contract Manager.
- 35.6 The Concessionaire shall review and assess the BCP every twelve (12) Months and produce a report to the Council of the success or failure. If the Council is not satisfied with the BCP provided by the Concessionaire, the Council reserves the right to ask for the review and assessment to be repeated at the Concessionaire's expense.
- 35.7 Any costs incurred in the implementation of the BCP shall be the responsibility of the Concessionaire.

36. COMPLAINTS

- 36.1 The Concessionaire shall ensure that it has a complaints procedure in place from

the Commencement Date in respect of complaints about the Services and/or related to the Concession, a copy of which shall be provided by the Concessionaire to the Council during the Mobilisation Period for Approval by the Council, such Approval not to be unreasonably withheld by the Council. Further, in the event that the Concessionaire proposes to update the said complaints procedure during the Contract Period, it shall submit a copy of the updated complaints procedure to the Council for Approval, and such request shall be considered in accordance with the Change Control Procedure.

- 36.2 The Concessionaire shall notify the Contract Manager within five (5) Working Days if it receives any complaints in relation to its obligations under this Contract with details of how the Concessionaire proposes to resolve the complaint. If the complaint is not resolved to the satisfaction of the Contract Manager within the time specified by the Contract Manager, the Contract Manager may take action in accordance with **Clause 37**.

37. REMEDIES FOR POOR PERFORMANCE

- 37.1 If the Contract Manager informs the Concessionaire's Authorised Representative in writing that the Council considers that any part of the Concession being operated and/or the Services provided do not meet the requirements of this Contract or differ in any way from specified requirements, and this is other than as a result of default or negligence on the part of the Council, and if the breach or failure to provide any all or any part of the Service and/or Concession is capable of remedy, the Concessionaire shall, at its own expense produce a plan of corrective action specifying timescales for the plan of action to be put into place (the "Action Plan").
- 37.2 If the Concessionaire fails to produce the Action Plan within the time limit specified by the Council or if there are any elements of the Action Plan that the Contract Manager disagrees with then the Contract Manager shall specify amendments to the Action Plan and the Concessionaire shall pay to the Council the costs of preparation of any such amendments made by the Council.
- 37.3 Approval of the Action Plan will be confirmed in writing by the Contract Manager to the Concessionaire's Authorised Representative subject to the Council being satisfied in respect of the Action Plan.

- 37.4 Improvements in performance will be monitored in accordance with the Action Plan by each of the Parties.
- 37.5 If the Concessionaire fails to satisfy the Council within the time limit specified by the Council in the Action Plan that the areas of concern raised in the Action Plan have been remedied then the Council shall be entitled to terminate all or any part of this Contract by notifying the Concessionaire in writing of the problem and giving not less than twelve (12) Months' notice to terminate from the date of the notice and the provisions of **Clause 40** of this Contract shall apply.
- 37.6 Without prejudice to any other rights and remedies the Council may have pursuant to this Contract the Concessionaire shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Concessionaire's delay in the performance of its obligations under this Contract and which delay the Concessionaire has failed to remedy following reasonable notice from the Council.
- 37.7 If the breach by the Concessionaire or failure to provide all or any of its obligations under this Contract is not capable of remedy, as determined by the Contract Manager, it shall be dealt with in accordance with **Clause 39**.

38. DISPUTE RESOLUTION

- 38.1 The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Contract Manager and the Concessionaire's Authorised Representative. Failure to agree a settlement within five (5) Working Days shall result in the dispute being escalated to both Parties managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within five (5) Working Days, thereafter it shall be escalated to each Parties appropriate director for resolution. The respective directors shall meet within five (5) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this **Clause 38**.
- 38.2 Nothing in this **Clause 38** shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 38.3 If the dispute cannot be resolved by the Parties pursuant to **Clause 38.1** the dispute

shall be referred to mediation pursuant to the procedure set out in **Clause 38.5** unless:

38.3.1 the Council considers that the dispute is not suitable for resolution by mediation; or

38.3.2 the Concessionaire does not agree to mediation.

38.4 The performance of this Contract by the Concessionaire shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Concessionaire and its Staff shall comply fully with the requirements of this Contract at all times.

38.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

38.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

38.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

38.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

38.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by both Parties

38.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both Parties.

- 38.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 38.7 Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation.

39. TERMINATION

- 39.1 The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole if any one of the events set out in this **Clause 39.1** occurs:
- 39.1.1 if the Concessionaire breaches the provisions of **Clause 23** (*Bribery, Corruption, and Fraud*);
 - 39.1.2 if the Concessionaire has offered or agreed to pay or give or did pay or give any sum of money inducement or valuable consideration directly or indirectly to any person in respect of an act or omission in relation to any other tenderer or proposed tenderer relating to any of the Concessionaire's obligations under this Contract ;
 - 39.1.3 if at any time the Concessionaire (or it is discovered by the Council that the Concessionaire):
 - 39.1.3.1 has fixed or adjusted the amount of its tender for this Contract by or in accordance with any Contract or arrangement with any other person; or
 - 39.1.3.2 has communicated to any person other than the Council the amount or approximate amount of its proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender); or
 - 39.1.3.3 ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Concessionaire's obligations under this Contract; or
 - 39.1.3.4 allows or permits an acquisition of the majority of shares carrying a right to vote in the Concessionaire or its Holding Company by a

- person who is not at the Commencement Date a majority shareholder where that acquisition has a material adverse effect of the performance of this Contract; or
 - 39.1.3.5 has an application made under the Insolvency Act 1986 in its respect to the Court for the appointment of an administrative receiver; or
 - 39.1.3.6 a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed; or
 - 39.1.3.7 has a liquidator receiver or manager of its business or undertaking duly appointed; or
 - 39.1.3.8 has an administrative receiver as defined in the Insolvency Act 1986 or the Companies Act 2006 appointed; or
 - 39.1.3.9 has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Concessionaire's affairs approved in accordance with the Insolvency Act 1986; or
 - 39.1.3.10 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge; or
 - 39.1.3.11 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitles the Court to make a winding-up order; or
 - 39.1.3.12 has an administration order made in respect of it; or
 - 39.1.3.13 undergoes a change of control, within the meaning of section 450 of the Corporation Tax Act 2010, which in the opinion of the Council impacts adversely and materially on the performance of this Contract.
- 39.2 The Council may terminate this Contract in whole or in part by notice in writing with immediate effect if at any time the Concessionaire:
 - 39.2.1 fails to comply with any statutory duty or requirement in so far as such duty or requirement affects or relates to the delivery of the Concessionaire's obligations under this Contract, including the loss of any statutory licence or certification which is required for the performance of the Concessionaire's obligations under this Contract or as otherwise required by the Contract; or

- 39.2.2 does anything which has the effect of putting the Council in breach of a statutory duty or any licence held by the Council; or
 - 39.2.3 fails to comply with or breaches **Clause 22** (*Data Protection*); or
 - 39.2.4 fails to make payments to the Council in accordance with the terms of this Contract; or
 - 39.2.5 if at any time the Concessionaire commits a Persistent Breach or Persistent Breaches of any of the terms of this Contract, and where the Persistent Breach or Persistent Breaches are capable of remedy but are not remedied by the Concessionaire in accordance with **Clause 37** (*Remedies for Poor Performance*);
 - 39.2.6 If at any time the Concessionaire commits a substantial breach of any of the terms of this Contract and the Contract Manager reasonably regards such a breach as incapable of being remedied; or
 - 39.2.7 if a KPI failure (as described in Clause 39.2.1) occurs and the failure relates to data breach under GDPR this particular failure will not fall away even if rectified and will still count towards the 3 breach termination provision.
- 39.3 The Council may terminate this Contract immediately by notice in writing to the Concessionaire in the event that the Council considers that any of the circumstances set out in regulation 44(1)(a) or (c) of the Concession Contracts Regulations 2016 ("CCR") as amended from time to time have arisen.
- 39.4 The Council may terminate this Contract immediately by notice in writing to the Concessionaire in the event that it considers that any of the circumstances set out in regulation 44(1)(b) of the CCR have arisen. Termination of this Contract pursuant to this Clause 39.4 shall be deemed to be a material breach which the Concessionaire has failed to remedy and the provisions of Clause 39.5 shall apply. The Concessionaire shall notify the Council in writing immediately upon becoming aware of the circumstances referred to in Clause 39.4 applying.
- 39.5 In the event of termination by the Council in accordance with this Clause 39, without prejudice to any other claims or rights which it might have, the Council shall be entitled to claim from the Concessionaire the additional costs, expenses, losses and/or damages sustained by it arising from such termination, including but not limited to those arising from employing and paying other persons to carry out and perform the Services and/or operate the Concession.

40. CONSEQUENCES OF TERMINATION

- 40.1 If the Contract is terminated in accordance with **Clause 39** (*Termination*):
- 40.1.1 The Concessionaire shall at the end of the notice period prescribed in the Council's termination notice, cease to perform the Services; and
- 40.1.2 On expiry of the Council's termination notice (or where reasonably so required by the Council before such expiry) the Concessionaire shall procure that all data and other material belonging to the Council (including all Council Data) (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith.
- 40.2 If the Concessionaire fails to comply with **Clause 40.1.2**, the Council may recover possession thereof and the Concessionaire grants a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of the Concessionaire's Premises where any such items may be held.
- 40.3 If the Concessionaire is unable or fails to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services and/or Concession or any part thereof and all costs and/or losses incurred thereby shall be recoverable from the Concessionaire by the Council as a debt. The Council's right under this **Clause 40.3** shall be without prejudice to any other rights or remedies which it may possess.
- 40.4 The Council shall be entitled to reclaim from the Concessionaire such losses and expenses incurred by it in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract for the Concessionaire's material breach. Such loss or damage to which the Council is entitled shall include but shall not be limited to the reasonable costs to the Council:
- 40.4.1 in the recovery of compensation in respect of the time spent by its officers in terminating the Contract; and
- 40.4.2 in the recovery of compensation in respect of the time spent by its officers in making alternative arrangements for the provision of the Services and/or Concession or any part thereof; and/or
- 40.4.3 In the event that the Council appoints a Replacement Concessionaire and who despite the Council's best efforts provides revenue share and fixed fee

payments at rates less than those offered by the Concessionaire, subject to the Council mitigating its losses, the Council shall be entitled to recover compensation for any loss of or difference in Revenue Share and Fixed Fee Payments for the remainder of the Contract Period.

- 40.5 The rights of the Council under this **Clause 40** are in addition to and without prejudice to any other rights or remedies the Council may have against the Concessionaire directly or pursuant to any guarantee or indemnity.
- 40.6 Expiry or earlier termination of the Contract shall be without prejudice to the rights and remedies of the Concessionaire and the Council accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either such Party to recover any amount outstanding at the termination or expiration.
- 40.7 Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under **Clauses 1** (*Definitions*), **2** (*Interpretation of This Contract*), **5** (*Concessionaire's Warranty, Responsibility and Knowledge*), **16** (*Intellectual Property Rights*), **17** (*Audit Rights*), **20** (*Freedom of Information*), **21** (*Confidentiality*), **22** (*Data Protection*), **23** (*Bribery, Corruption and Fraud*), **24** (*Re-Use of Public Sector Information*), **27** (*Performance of Works and Extensions of Time*), **32** (*Transfer of Undertakings*), , **40** (*Consequences of Termination*), **41** (*Concessionaire's Default*), **56** (*Exit Management*), **62** (*Indemnity*) or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination

41 CONCESSIONAIRE'S DEFAULT

- 41.1 If the Concessionaire shall fail to execute the Works with all professional skill due diligence and expedition in full accordance with the requirements of this Contract including any time limits specified for completion or performance of the Works or any part thereof or shall refuse or neglect to comply with any reasonable orders given to him in writing by the Council within the time specified thereby in connection with the Works or any such part thereof (or none is specified within a reasonable time) or shall contravene any of the terms and conditions requirements or other provisions of the Contract then the Council may without prejudice to any of its other rights and powers under this Contract in its absolute discretion and option:

- 41.1.1 itself or by its servants agents or concessionaires execute such part of the Works as the Concessionaire has not completed in accordance with the Contract; or
 - 41.1.2 Subject to the provisions of sub clause 41.3 determine the Contract forthwith by notice in writing to the Concessionaire.
- 41.2 If the Council shall take any action pursuant to clause 41.1.1 then the Council shall be entitled to the reimbursement by the Concessionaire the costs and expenses of so doing and any damages for delay properly payable to the Council in accordance with the Contract and without limitation be entitled to retain and apply any money which may be due on the Contract from him to the Concessionaire, or such part thereof as may be necessary for the payment of such costs expenses and damages. The Concessionaire shall pay to the Council all such costs expenses and damages (or if any sums have been retained by the Council pursuant to the foregoing the amount by which such costs expenses and damages exceed the sums so retained) within 20 days of an invoice therefore certified by the Contract Manager. The Council will not be bound by any action taken pursuant to clause 41.1.1 in respect of any later breach, non-performance or non-observance of the Concessionaire.
- 41.3 The Council shall only exercise its rights and powers under sub clause 41.1.2 (but such restriction shall not affect or limit in any way any other right of the Council to terminate this Contract which it may have) in the following circumstances:
 - 41.3.1 if the Concessionaire has failed to attend at the relevant Site within 12 Working Hours of an Urgent Fault Call-Out or does not rectify a defect or fault within 20 Working Days of a Non-Urgent Fault Call-Out
 - 41.3.2 If the number of hours during which the Concessionaire is in default in respect of his obligations following receipt of fault call-outs (otherwise called fault reports) exceed in aggregate 15 Working Hours per any five or less Urgent Fault Call-Outs within any one month period or 25 Working Days per any five or less Non-Urgent Fault Call-Outs within any one month

- 41.3.3 If, following departure from a relevant Site prior to clearance of any fault or faults thereat as may be permitted in accordance with this Contract, the Concessionaire shall fail to return to the relevant Site to rectify the said fault or faults within 4 Working Hours of notification from the Contract Manager to do so; or
- 41.3.4 If the Concessionaire shall fail to comply with a written notice to remedy any default specified therein within 14 days from the date of service thereof or if such default is not capable of being made good within that time or within such further time as may be reasonably necessary therefor;
- 41.3.5 If the Concessionaires default is not capable of being remedied (provided that a default shall not be regarded as being incapable of being remedied for the purpose of this sub clause solely by reference to the fact that any date or time specified in this Contract by which any act or work is required to have been performed by the Concessionaire has passed or expired unless the Council shall have given reasonable notice beforehand to the Concessionaire in writing that time shall be made of the essence in relation to the performance of such act or work)
- 41.3.6 In view of any previous breaches or defaults of the Concessionaire it would be reasonable for the Council to terminate the Contract with immediate effect.

42 NOTICES

- 42.1 Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 42.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, registered post or by the recorded delivery service) such letters shall be addressed to the other Party in the manner referred to in **Clause 42.3**. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered

or posted or sooner where the Party acknowledges receipt of such letters.

42.3 For the purposes of **Clause 42.2**, the address of each Party shall be as follows:-

43.3.1 The Council:

FAO the Contract Manager [as
named for the purposes of this
Contract]
Plymouth City Council
Ballard House,
West Hoe Road
Plymouth
PL1 3BJ

42.3.2 The Concessionaire
[title and name of person]
[address for service]

42.4 Either Party may change its address for service by serving a notice in accordance with this **Clause 42**.

43 **LEGAL PROCEEDINGS**

43.1 If requested to do so by the Contract Manager the Concessionaire shall provide to the Council within the timescale set by the Contract Manager any relevant information (including but not limited to documents and statements from the Concessionaire and/or its Staff) in connection with any legal inquiry dispute resolution or Court proceedings in which the Council may become involved and which relate to the Concessionaire's obligations under this Contract.

43.2 Where the Concessionaire 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 and/or the Concession it shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.

43.3 If requested to do so by the Council, the Concessionaire shall provide, at no cost to the Council, any relevant information in connection with any legal enquiry, relevant disciplinary hearing, dispute resolution or Court proceedings in which it may become involved arising out of or related to the Concessionaire's obligations under this Contract.

43.4 The Concessionaire shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Concessionaire's failure to meet any timescale specified in Law and/or any reasonable timescale specified by the Council in connection with this **Clause 43**.

44 **LOCAL GOVERNMENT OMBUDSMAN**

44.1 In the event of a complaint to the Local Government Ombudsman involving activities the subject of this Contract, the Concessionaire shall at its own expense give to the Council and to the Local Government Ombudsman every assistance in the investigation of the complaint.

44.2 Where any investigation by the Local Government Ombudsman takes place the Concessionaire shall:

44.2.1 provide any information requested in the timescale specified;

44.2.2 attend any meetings as required and permit its Staff to attend;

44.2.3 promptly allow access to any documents deemed by the Council to be relevant to the investigation and/or the complaint;

44.2.4 allow itself and any Staff deemed to be relevant to be interviewed;

44.2.5 allow itself and any of its Staff to appear as witness in any ensuing proceedings; and

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

44.3 Where any financial redress compensation or award is recommended by the Local Government Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Local Government Ombudsman, and which investigation or complaint arises directly or indirectly out of the Concessionaire's delivery of its obligations under this Contract then the Council shall be entitled to recover the cost of that financial redress compensation or award from the Concessionaire.

- 44.4 The Concessionaire shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Concessionaire's failure to meet any timescale specified in Law and/or any reasonable timescale specified by the Council in connection with this **Clause 44**.

45 **AGENCY**

- 45.1 The Concessionaire shall not, and shall procure that nor its Staff or Sub-Concessionaires shall not, in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by this Contract.
- 45.2 The Concessionaire shall not, and shall procure that its Staff and/or Sub-Concessionaires shall not, say or do anything that might lead any other person to believe that the Concessionaire is acting as the agent of the Council.
- 45.3 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the Parties and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.

46 **ENTIRE AGREEMENT**

- 46.1 Except where expressly provided in this Contract this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations communications negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.
- 46.2 Nothing in this **Clause 46** is intended to exclude or limit liability for any statement representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.

47 **CONFLICT OF INTEREST**

- 47.1 The Concessionaire shall take appropriate steps to ensure that neither it, its Staff nor any of its Sub-Concessionaires are placed in a position where there is or may be an

actual conflict or a potential conflict between the pecuniary or personal interests of the Concessionaire or such persons and the duties owed to the Council under the provisions of this Contract. The Concessionaire will disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Contract Manager.

48 **LIEN OR ENCUMBRANCE**

48.1 The Concessionaire will not create, or allow any other person to create, any lien or encumbrance on any property belonging to the Council, the Council's Equipment and/or on the Council's Premises.

49 **SEVERANCE**

49.1 If any term condition or provision contained in this Contract shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall not affect the validity legality or enforceability of the remaining parts of this Contract.

49.2 Pursuant to **Clause 49.1**, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.

49.3 The obligations of the Parties under any invalid, unlawful or unenforceable provision of this Contract shall be suspended during the negotiations referred to in **Clause 49.2**. Failure to agree on such provision as aforesaid within three (3) Months of commencement of negotiations shall entitle either Party to serve notice to terminate this Contract.

50 **WAIVER**

50.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

50.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of

Clause 42 *(Notices)*.

- 50.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

51 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 51.1 Subject to any rights expressed to be enforceable under this Contract by the Replacement Concessionaire and/or any other third party, no person who is not a Party to this Contract shall have any right to enforce any term of this Contract, which expressly or by implication, confers a benefit on him without the prior consent in writing of both Parties. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contract (Rights of Third Parties) Act 1999.

52 LAW AND JURISDICTION

- 52.1 The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

53 LOW PERFORMANCE DAMAGES

- 53.1 Low performance damages shall apply to the Contract and shall be calculated in accordance with the low performance damages provisions of Schedule 1.

54 ROLES AND RESPONSIBILITIES

- 54.1 Following its draft implementation plan submitted and appended to this Contract as part of its Tender Response Document, the Concessionaire shall:
- 54.1.1 Promptly enter into discussions with the Council following Contract Award in order to agree the detail and timelines to be included in the Detailed Implementation Plan; with a view to agreeing a Detailed Implementation Plan during the Mobilisation Period;

- 54.1.2 Ensure that the Detailed Implementation Plan includes all requirements, requirement dates and timescales which the Council may have identified to it during the tender stages and/or Mobilisation Period;
 - 54.1.3 Ensure that the Detailed Implementation Plan clearly outlines all the steps required to implement the Services during the changeover period from the Incumbent Concessionaire to the Concessionaire; and
 - 54.1.4 Ensure that the Detailed Implementation Plan clearly outlines the required roles and responsibilities of all Parties concerned, including staffing requirements.
- 54.2 The Concessionaire shall deliver a Detailed Implementation Plan to the Council, in accordance with the terms agreed with the Council pursuant to Clause 54.1.1 above, by the expiry of the Mobilisation Period, for Approval from the Council. The Detailed Implementation Plan once approved by the Council shall be incorporated into this Contract at schedule 9.
- 54.3 Once the draft Detailed Implementation Plan has been approved by the Council (acting reasonably), the Concessionaire shall maintain and update the Detailed Implementation Plan on a monthly basis to reflect the then current state of the implementation of the Service.
- 55 **ASSETS**
- 55.1 The Concessionaire shall be responsible at its own cost for providing and maintaining in a safe manner all Structures, Concessionaire's Assets and Concessionaire's Equipment necessary and/or used for the proper and efficient performance of the Service and operation of the Concession during the Contract Period.
- 55.2 The Concessionaire shall maintain all Structures Concessionaire Assets and Concessionaire's Equipment in a safe condition so that they are fit for the purpose of delivering the Service and Concession and as a minimum comply with the requirements of this Contract.
- 55.3 The Concessionaire shall provide all Structures, Concessionaire's Assets and Concessionaire's Equipment for the provision of the Service and operation of the Concession which at least meet the standard indicated in the Specification, Concessionaire's Tender and in particular any environmental requirements.

55.4 The Concessionaire shall be responsible for the security of all Structures, Concessionaire's Assets and Concessionaire's Equipment used by the Concessionaire in the provision of the Service and operation of the Concession and the Council shall not (as far as permitted by Law) be liable for loss, damage or injury in respect of such equipment and materials.

55.5 The Council shall be entitled at any time to temporarily disturb, or obstruct any Structure if in the Council's opinion it is necessary or desirable to do so, including but not limited to or in connection with:

55.5.1 the safety of any person or thing;

55.5.2 any emergency;

55.5.3 breach by the Concessionaire of an obligation to which the Concessionaire is subject; or

55.5.4 the exercise by the Council of any legal duty it is under.

56 **EXIT MANAGEMENT**

56.1 The Parties acknowledge the importance of and, notwithstanding the obligations in this Clause 56, agree to use all reasonable efforts to effect an effective handover of the responsibility for the provision of the Service from the Concessionaire to the Council or to a Replacement Concessionaire on termination or expiry of this Contract.

56.2 The Concessionaire shall ensure compliance with the provisions of schedule 11.

56.3 The Exit Plan shall include but not be limited to:

56.3.1 the Concessionaire's methodology and timelines for achieving an orderly transition of Services from the Concessionaire to the Replacement Concessionaire on the expiry or termination of this Contract including for the safe and orderly removal of all Structures installed by the Concessionaire under this Contract and the rectification and making good of the Council's land and/or public highway;

56.3.2 the Concessionaire's obligations to maintain the Structures during a period of transition between the transfer of Services from the Concessionaire to the Replacement Concessionaire;

56.3.3 full details and a breakdown of the respective responsibilities of the Parties (to a level of detail consistent with good industry practice) in respect of

orderly transfer on the expiry or termination of this Contract of the Services to the Replacement Concessionaire and the timetable for transfer.

- 56.4 The Concessionaire shall review and (if appropriate) update the Exit Plan as required to reflect changes in the Service. In the event that the Concessionaire proposes any amendments to the Exit Plan, such requests will be considered in accordance with the Change Control Procedure.
- 56.5 Twelve (12) Months prior to expiry of this Contract or as soon as reasonably practicable after service of a notice of Termination (whichever occurs first), the Concessionaire shall implement and comply with its obligations under the Exit Plan.
- 56.6 The Parties shall discharge all their respective obligations under the Exit Plan in accordance with:
- 56.6.1 the timetable for such activity specified in the Exit Plan; and
 - 56.6.2 good industry practice.
- 56A TRANSFER OF STRUCTURES
- 56A.1 The Parties agree that prior to the end of Contract Period there will be an option for the Council to acquire from the Concessionaire the ownership of some or all of the Structures. The option will be exercised on the following basis:
- 56A.1.1 No more than 18 and no less than 12 months prior to the expiry of the Contract Period, the Council shall write to the Concessionaire's Authorised Representative requesting a proposal from the Concessionaire detailing the terms on which the Concessionaire would be willing to transfer ownership of all or some of the Structures to the Council;
 - 56A.1.2 The Concessionaire shall, within 3 months of receipt of a notice from the Council provide a proposal including the terms specified in Clause 56A.1.1;
 - 56A.1.3 The Council shall, within 3 months of receipt of the proposal provided by the Concessionaire respond to the Concessionaire stating either:
 - 56A.1.3.1 that it does not wish to proceed with a transfer of the Structures; or
 - 56A.1.3.2 that it wishes to proceed with a transfer of the Structures on the basis as set out in the notice served by the Concessionaire; or
 - 56A.1.3.3 proposing alternative terms on which the Council wishes to

proceed with a transfer of the Structures.

56A.1.4 Where the Council makes an alternative proposal regarding the transfer of the Structures in accordance with Clause 56A.1.3.3, the Parties shall discuss such proposals as soon as reasonably possible. Each Party shall use its reasonable endeavours to reach an agreement regarding the terms on which the Structures may be transferred but nothing in this Clause 56A shall oblige the Concessionaire to transfer the Structures if the Parties are unable to agree.

56A.1.5 Where the Council, either based upon the terms of the notice served by the Concessionaire or on the outcomes of any discussion pursuant to 56A.1.4, agrees terms with the Concessionaire on the transfer of Structures the transfer of the ownership will take place upon the expiry of the Contract Period.

56A.1.6 Any agreement between the Parties on the transfer of Structures pursuant to this Clause 56A will be subject to the Parties formalising terms in the form of a written agreement signed by an authorised signatory or each Party. The Parties hereby confirm that they will conduct any negotiations for the transfer of Structures to the Council in good faith.

56A.1.7 Any dispute between the Parties on the terms on which any Structures are proposed for transfer to the Council will be dealt with in accordance with the Dispute Resolution Procedure.

56A.1.8 The Parties acknowledge and accept that any digital screens or other elements of the Structure which are not the property of the Concessionaire are excluded from the operation of this Clause 56A and will be removed from the Structures by the Concessionaire at the end of the Contract Period.

57 CONSENTS, LICENCES AND PLANNING

57.1 Subject to Clause 57.3, in performing its obligations under or pursuant to this Contract, the Concessionaire shall ensure that it obtains and maintains throughout the Contract Period all necessary permits, licences, authorisations and any other permissions (whether statutory or otherwise) required to perform its obligations under this Contract.

57.2 The Concessionaire shall ensure that within six (6) Months of the date of this Contract it obtains and maintains throughout the Contract Period a provisional or actual principal contractor's licence required to perform its obligations under this Contract and in

accordance with Construction (Design and Management) Regulations 2015 (CDM). The Concessionaire shall maintain records of the licence and transfer copies of all such records to the Council promptly on request.

- 57.3 The Concessionaire shall in relation to its obligations under this Contract, observe the requirements of and, subject to Clause 57.4, shall be responsible for the obtaining of planning or any other consents required under the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning Act 2008 and all other statutory provisions and regulations relating to the delivery of the Concessionaire's obligations under this Contract including but not limited to planning and highways legislation.
- 57.4 The Concessionaire shall not make any application for planning or any other consent under Clause 57.1 or 57.3 without the Contract Manager's prior Approval.
- 57.5 In consideration for the Concessionaire providing the Services and paying the Revenue Share and Fixed Fee Payments in accordance with the terms of this Contract, the Council pursuant to section 115E of the Highways Act 1980 hereby grants permission during the Contract Period for the Concessionaire to erect Structures in the highway and to display advertising on selected Structures in accordance with the terms of this Contract.

58 ADVERTISING

- 58.1 The Concessionaire shall be responsible for ensuring that:
- 58.1.1 all advertisements comply with all applicable Law and the terms of this Contract;
 - 58.1.2 all necessary licences and consents for the display of advertisements or copyright material or the appearance of any person in advertisements are obtained and paid for;
 - 58.1.3 no advertisement shall breach the copyright, trademarks or other intellectual property or other rights of any person or be defamatory to them; and
 - 58.1.4 that the Concessionaire shall remove any advertisement that does not comply with the foregoing requirements as soon as reasonably practicable.
- 58.2 The Concessionaire shall properly maintain all notices and advertisements erected pursuant to this Contract and shall use its best endeavours to ensure that all advertisements conform in all respects with the Code of Practice relevant to such

advertisements as laid down from time to time by the Advertising Standards Council.

- 58.3 The Concessionaire shall not enter into an agreement with Advertisers or other persons that restricts or negates the rights and powers of the Council under this Contract. All arrangements made by the Concessionaire with Advertisers and other third parties shall provide for termination or suspension in whole or part in the event that the Council exercises its rights under Clause 55.5 above or to terminate this Contract.
- 58.4 The Council shall not be responsible to the Concessionaire or to any Advertiser or any third party for any compensation payment or any other third party for any compensation payment or any other expenses, damages, losses or liabilities in the event that the Council exercises its rights under Clause 55.5 or terminates this Contract.
- 58.5 The Council agrees that:
- 58.5.1 it will immediately notify the Concessionaire in writing of any Advertiser Claim of which the Council has notice, giving particulars of the Advertiser Claim in reasonable detail;
 - 58.5.2 it will not admit any liability or agree to any settlement or compromise of an Advertiser Claim without the prior written consent of the Concessionaire, which will not be unreasonably withheld or delayed;
 - 58.5.3 it will provide reasonable cooperation and assistance to the Concessionaire in the defence or settlement of the Advertiser Claim; and
 - 58.5.4 the Concessionaire will be entitled to assume exclusive conduct of the Advertiser Claim provided that the Concessionaire will consult with the Council in respect of the conduct of any Advertiser Claim and where the Council is listed as a defendant or co-defendant the Council shall have the right to require that the Council and the Concessionaire will conduct the defence of the Advertiser Claim jointly and will allow each other full access to all relevant documentation.
- 58.6 The Concessionaire shall indemnify and keep indemnified the Council against all liabilities arising in actions and proceedings brought and for costs, damages, expenses, penalties, claims, demands and liabilities suffered by an Advertiser or any other third party pursuant to the Council exercising its rights under Clause 55.5 and subject to Clause 59.9, Clause 59.8 or terminating this Contract.
- 58.7 The Concessionaire acknowledges that there will be restrictions on commercial

advertising in sensitive areas, the locations of which will be determined at the discretion of the Council. Whilst the Council will from time to time explain its requirements in this regard, the Concessionaire agrees to comply with the Council's requirements in this regard.

58.7A The Council shall notify the Concessionaire following Contract award and before the expiry of the Mobilisation Period, its requirements relating to sensitivity around advertisements in particular location(s) (if any). In respect of any new Structures to be installed after the Mobilisation Period, the Council shall notify the Concessionaire of any requirements relating to sensitivity around advertisements in the location(s) of those particular Structures (if any) prior to the date the particular Structure is to be installed (such date to be as notified by the Concessionaire). The Concessionaire shall ensure that any requirement relating to advertisement sensitivity in particular location(s) notified by the Council shall at all times be adhered to and that the Concessionaire shall not display any advertising in breach of any advertising sensitivity requirements notified by the Council.

58.8 The Concessionaire shall endeavour to minimise the number of complaints to the Council about the state or appearance of the advertisements, the appearance or behaviour of the Concessionaire's staff or Sub-Concessionaires, or inconvenience caused by the posting of advertisements or by maintenance or other works.

58.9 The Concessionaire shall procure that Advertisers shall exercise the standard of reasonable skill, care and diligence in the production of the advertisements to be expected of a prudent and competent person experienced in the production of advertisements similar in size, scope and complexity to the advertisements.

59 MAINTENANCE AND CLEANING OF STRUCTURES

59.1 The Concessionaire shall at its cost, maintain and clean all Structures in accordance with the requirements of the Specification.

59.2 In the event that any Structure needs replacing or repairs, the Concessionaire shall undertake such repairs and maintenance within the timescales prescribed within this Contract and such repairs and/or maintenance shall include but not be limited to:

59.2.1 repairing any Structure (or part of a Structure) and fixings (save where such illumination is specifically described as Investment Work) the

illumination of existing Structures (including the associated costs of new wiring fundamental to the illumination);

59.2.2 painting and other decoration;

59.2.3 other cosmetic activities including the removal of graffiti, dust, stickers, fly-posters and other litter from the Structures;

59.2.4 cleaning of the Structures;

59.2.5 repairs and renewals required as a result of acts of vandalism or weather damage;

59.2.6 illumination repairs (replacement of components such as ballasts, RCDs, tubes)

59.2.7 replacement of bulbs, lighting, screens, engines and electrical devices following their expiry or when they are beyond economic repair;

59.2.8 provision of digital support services; and

59.2.9 any other work undertaken to ensure that the Structure maintains its standard of performance.

59.3 The Concessionaire shall, by no later than the end of the third Concession Year and at least once every three (3) years thereafter, undertake detailed surveys of Structures and Sites in accordance with the Specification and other reasonable requirements of the Council. The Concessionaire shall prepare detailed inspection reports recording the condition of each Structure and the maintenance, repairs, replacement or renewals required to ensure that each Structure is kept to a standard equivalent to new, save for reasonable wear and tear (**Detailed Inspection Report**). If the Concessionaire fails for any reason to undertake surveys and prepare any of the Detailed Inspection Reports in accordance with this Clause 59.3, the Council shall be entitled to do so (itself or using one or more contractors) and its costs of so doing (as notified by the Council to the Concessionaire) shall be borne by the Concessionaire.

59.4 The Concessionaire acknowledges that the maintenance and cleaning obligations under this Contract will be subject to quality inspections undertaken by the Council, and that in the event that the Council reasonably considers that the Concessionaire has failed to clean and maintain the Structures in accordance with this Contract, it will upon being directed to do so by the Council, at its own cost, take steps to ensure that the Structures are cleaned and maintained in accordance with the terms of this Contract.

59.5 During the Contract Period the Concessionaire shall make updates to the Shelter Location List as and when the Sites and/or Structures change in accordance with the terms of this Contract, and as otherwise agreed between the Parties, to ensure that it is kept as up-to-date, complete and accurate as possible. The Concessionaire shall provide an updated version of the Shelter Location List to the Council on a six monthly basis during the Contract Period.

59.6 The Concessionaire shall maintain detailed files in relation to each Site, including copies of any Detailed Inspection Reports. All information in such files shall belong to the Council and the Concessionaire shall transfer copies of all such files to the Council promptly on request.

59.7 The Council shall be responsible for maintaining that part of the highway upon which the Structure is erected and the highway around the Structure and for collecting litter and for the leaving the highway in a clean and tidy condition.

59.8 The Concessionaire shall on the Council's request, promptly remove and reinstate, so far as reasonably practicable, any Structure in the event that such removal is reasonably required by the Council in order that the Council can deal with any emergency situation and/or undertake its statutory or other public function as highway authority. For the avoidance of doubt, any works required by the Council pursuant to this Clause 59.8 shall be undertaken at the Council's cost, such costs to be reasonable. If any costs are due from the Council pursuant to this Clause 59.8, the Concessionaire shall submit an invoice to the Council within thirty (30) Calendar Days of completing the works requested, and payment by the Council shall be within thirty (30) Calendar Days of receipt of the Concessionaire's invoice.

59.9 If the Concessionaire shall unreasonably refuse to comply with a request received from the Council pursuant to Clause 59.8, the Concessionaire shall indemnify the Council in respect of all liabilities incurred or suffered by the Council that the Council would not have suffered or incurred but for the Concessionaire's refusal to comply.

59.10 The Council shall not be liable to the Concessionaire for any damage to such Structure caused by such removal and reinstatement.

60 ELECTRICAL AND OTHER SERVICES

- 60.1 The Concessionaire shall be responsible at its own cost for all electricity and any other services (including telecommunications services) or utilities used by or in relation to the Structures, and for the costs of any maintenance, cleaning and repairing of such supplies of service or utilities (reference the Electricity at Work Regulations 1989 and the NICEIC Regulations)
- 60.2 Where any electrical or other service supply is provided by the Council the relevant charges relating to the operation of the Concession shall be assessed and charged at such times as may be agreed from time to time and payment will be due to the Council (as applicable) within thirty (30) Calendar Days of any notification to the Concessionaire of such charges.
- 60.3 If any supply is no longer required for the purpose of this Contract, the Concessionaire shall, at its own expense procure the disconnection of the same and ensure it is made safe.
- 60.4 Where the supply of the electricity or of any other service is under the control of the Council, the Council does not guarantee such supply and shall not incur any liability if such supply is disconnected or interrupted for any reason.

61 MODERN SLAVERY ACT REQUIREMENTS

- 61.1 The Concessionaire shall implement due diligence procedures for its own suppliers, Sub-Concessionaires and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.
- 61.2 The Concessionaire shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has sourced from producers or manufacturers using forced labour in its operations or practices.

61A. MODERN SLAVERY ACT REQUIREMENTS – COUNCIL

- 61A.1 The Council shall implement due diligence procedures for its own suppliers to ensure that there is no slavery or human trafficking in its supply chains.
- 61A.2 The Council shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has sourced from producers or

manufacturers using forced labour in its operations or practices.

62 INDEMNITY

- 62.1 None of the Parties shall exclude or limit its own liability for:-
- 62.1.1 death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and Sub-Concessionaires);
 - 62.1.2 acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and Sub-Concessionaires); or
 - 62.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 62.2 The Concessionaire shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents, (unless caused as a result of default or negligence by the Council or the Council's employees or agents) against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, claims, charges, expenses, consequential loss or damage and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to:
- 62.2.1 any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Concessionaire, or any other loss which is caused directly or indirectly by any act or omission of the Concessionaire;
 - 62.2.2 the Concessionaire's failure to provide all or any part of the Service and/or operate the Concession in accordance with the terms of this Contract;
 - 62.2.3 any breach by the Concessionaire of any of the provisions of the Contract;
 - 62.2.4 the use by the Concessionaire of the Council's Equipment;
 - 62.2.5 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Concessionaire.
- 62.3 The liability set out in Clause 62.2 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of

the Concessionaire.

63 LIVING WAGE

63.1 The Concessionaire shall meet the obligations for the Living Wage as set out below:

63.1.1 From the date of this Contract, the Concessionaire shall for all of its Relevant Employees;

- (a) pay not less than the Living Wage; and
 - (b) increase the amount which it pays to affected Relevant Employees by the same amount as any increase to the Living Wage, within six (6) Months of the date on which any increase in the Living Wage is officially announced by the Living Wage Foundation; and
 - (c) notify all Relevant Employees of the date and amount by which their wages will increase within one (1) Month of the official announcement by the Living Wage Foundation
- of the next increase of their wages involved in the delivery of obligations under this Contract (except for apprentices and interns) and who are aged 18 or over, and who are employed in the delivery of obligations under this Contract.

63.2 The Concessionaire shall ensure that all of its sub-contractors and/or Sub-Concessionaires engaged in the provision of the Service and/or Concession adopt the measures set out in Clause 63.1.1 in relation to such individuals as if they were the Concessionaire's Relevant Employees in respect of the delivery of such obligations.

63.3 Without prejudice to any other provision of this Contract, the Concessionaire shall;

63.3.1 provide to the Council such information concerning the payment of the Living Wage to its Relevant Employees and/or the Relevant Employees of sub-contractors and/or Sub-Concessionaires as the Council may reasonably require from time to time; and

63.3.2 co-operate and provide all reasonable assistance to the Council in monitoring the effect of the Living Wage on the quality of service provided under this Contract.

64. COUNCIL BREACH

- 64.1 If the Concessionaire considers the Council to have materially breached any of its obligations under this Contract, the Concessionaire shall write to the Contract Manager informing the Council of the alleged breaches it contends to have occurred ('Council Breaches'), the steps it requires the Council to undertake to remedy the alleged breaches and the timescales within which it requires the alleged breaches to be remedied, such timescale to be reasonable and proportionate and shall not be less than three (3) Months.
- 64.2 If following receipt of written notice from the Concessionaire pursuant to Clause 64.1 above, the Council accepts the Council Breaches it shall within four (4) Working Days confirm this in writing and then, within a further fourteen (14) Working Days provide the Concessionaire with a remedial plan in writing, and the Concessionaire shall act reasonably and in good faith in agreeing the remedial plan.
- 64.3 If following receipt of a notice received from the Concessionaire pursuant to Clause 64.1 above, the Council disputes the Council Breaches and/or the remedial steps and/or timescales identified by the Concessionaire, the Contract Manager shall within ten (10) Working Days of receipt of the notice, request a meeting with the Concessionaire's Authorised Representative to discuss the notice and its content. At such meeting the Parties shall act reasonably and in good faith in meeting to discuss the issues raised in dispute by the Council. In the event a meeting is requested by the Council pursuant to this Clause 64.3, the remedial timescales referred to in Clause 64.1 shall be suspended.
- 64.4 If following the meeting referred to in Clause 64.3 above, the Parties are able to agree a remedial plan to remedy the Council Breaches, the Council shall confirm the agreed remedial plan in writing and the remedial timescales shall be reasonable and proportionate to the Council Breaches to be remedied but in any case such period shall be not less than three (3) Months.
- 64.5 If following the meeting referred to in Clause 64.3 above, there remains a dispute between the Parties as to Council Breaches, remedial steps or timescales alleged by

the Concessionaire, the Concessionaire may refer the dispute for resolution in accordance with Clause 38 (Dispute Resolution) within fourteen (14) Working Days. The Parties shall act reasonably and in good faith in the resolution of such dispute. In the event that the matter is not so referred the notice issues pursuant to this Clause 64 will be deemed to be withdrawn and of nil effect.

- 64.6 If pursuant to the Parties engaging in the dispute resolution processes referred to in Clause 64.5 above, they are able to agree on a remedial plan, including remedial steps to be taken and timescales for improvement in respect of the alleged breaches referred to in Clause 64.1, the Council shall confirm the agreed remedial plan in writing and the timescales for remedial improvement shall be reasonable and proportionate and shall not be less than three (3) Months.
- 64.7 If pursuant to the Parties engaging in the dispute resolution processes referred to in Clause 64.5 above, the Parties are unable to agree on the resolution of issues that were the subject of the dispute resolution processes, and subject to the outcome and conclusion of the dispute resolution processes, if the Concessionaire acting reasonably and in good faith contends that the Council remains in material breach of its obligations under this Contract, the Concessionaire shall serve a written notice on the Council specifying the material breaches alleged by the Concessionaire, the remedial steps and timescales for improvement, such timescales to be reasonable and proportionate to the alleged breach and shall at times, be not less than three (3) Months.
- 64.8 If following the expiry of the timeframe for improvement referred to in Clauses 64.2, 64.4, 64.6 and/or 64.7, the Concessionaire acting reasonably and in good faith contends that the Council remains in material breach of its obligations under this Contract, it may serve written notice to terminate this Contract on the Council, and the period of such notice to terminate shall not be less than twelve (12) Months.
- 64.9 In the event that the Contract is terminated pursuant to Clause 64.8 above, the provisions of Clause 40 (Consequences of Termination) shall apply and the Council shall not (save where required by Law) be liable to the Concessionaire for any loss, expense, cost, liability (both direct and indirect) caused, suffered or incurred by the Concessionaire consequent to such termination.

This agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED AS A DEED)
by PLYMOUTH CITY COUNCIL)
by affixing its Common Seal)
the day and year first before written:)

Authorised Signatory

EXECUTED AS A DEED)
for and on behalf of)
[NAME OF SERVICE CONCESSIONAIRE])
the day and year first before written by:)

.....Director

.....Print Name

.....Director/Secretary

.....Print Name

SCHEDULE ONE:
SPECIFICATION

[the final contract will include the agreed specification at schedule 1]

KEY PERFORMANCE INDICATORS

Bus Shelter Contract - Key Performance Indicators

The Key Performance Indicators shall apply to the performance by the Concessionaire of its obligations under this Contract.

The Concessionaire shall, on a monthly basis, monitor and record its performance of its obligations under this Contract by reference to the criteria applicable to each of the Key Performance Indicators for the purpose of preparing and delivering to Plymouth City Council a monthly KPI report for the preceding month by the beginning of the third week in each month during the term.

The Concessionaire's achievements against the Key Performance Indicators shall be used in part by Plymouth City Council to monitor and assess the Concessionaire's performance pursuant to this Contract and to qualify and substantiate judgements should Plymouth City Council consider exercising any of its termination rights under this Contract.

Operation	Target Response Time	Comment
Deep Cleaning	Annually	<p>To include the whole of the shelter including the roof and timetable case.</p> <p>The Contractor is to take care not to damage the following equipment whilst undertaking this task: RTPI display items. In</p>

		<p>the event the equipment is damaged the replacement cost will be borne by the Contractor.</p> <p>The Contractor will dispose of all rubbish on completion of the cleaning works.</p>
<p>Priority Area (High Specification Shelters) Routine Cleaning (City Centre area) please Refer to the asset register.</p>	14 Working Days	<p>To include underside of roof.</p> <p>The Contractor will dispose of all rubbish on completion of the cleaning works. stickers, fly-posters and other litter from the Structures</p>
<p>Standard Area (Standard Specification shelters)</p>	20 Working Days	<p>To include underside of roof.</p> <p>The Contractor will dispose of all rubbish on completion of the cleaning works. stickers, fly-posters and other litter from the Structures</p>
<p>Offensive Graffiti Cleaning</p>	8 Hours Working Days	<p>To include offensive fly-posting removal</p> <p>The Contractor will dispose of all rubbish on completion of the cleaning works.</p>
<p>Clear roofed shelter roof cleaning</p>	20 Working Days	<p>The Contractor will dispose of all rubbish</p>

		on completion of the cleaning works.
Living roofed shelter maintenance	14 Working Days	A visual inspection every 14 days to monitor roof health – Watering may be needed during droughts of more than eight weeks. Annually, in Spring Application of fertiliser and removal of weeds. Annually, in Autumn Removal of weeds and cut back dead stalks. The Contractor will dispose of all rubbish on completion of the cleaning works.
Emergency Damage	8 Working Hours	Contractor's staff to attend to site to determine what action or resource is required. Each shelter will be clearly labelled with a shelter location name and 24-hour 365-day incident response number and an email address. It will include the name of the company responding, and a shelter reference number. These labels will be maintained over the duration of the contract.

Dangerous Structure	8 Working Hours to remove 4 weeks to replace	Contractor's staff to remain on site until removal unit attends to remove structure. Any shelter damaged will be replaced at zero cost to the Council
Removal of Broken Glass	4 Working Hours	
Glazing Repairs	1 Working Days for Glazing repairs.	Glass panels in standard shelters replaced four times in a year, as a result of vandalism will be replaced with a polycarbonate glazing.
Illumination Faults	2 Working Days	To include courtesy lighting.
Roof leaks	3 Working Days for repairs	If water ingress from a leaking roof results in the failure of an RTI display this must be repaired by the Contractor at zero cost to the Council unless caused by vandalism
Structural Safety	Inspection Annually	
Electrical Safety	Inspection Annually	To include full integrity check of circuits.
Structural Relocation or Removal	Less than 1 Months	Subject to electrical supply company and alternate location agreement with Planning if required.

Day to Day Maintenance of Shelter Structure	5 Working Days	NRSWA involvement will require longer response time.
Painting Shelter Structure	5 Year Rolling	The Contractor will be responsible for painting and refurbishing shelters as necessary to ensure aesthetics standards are maintained.

Low Performance Damages

Information regarding the low performance damages has been provided in the table below.

Item	Low Performance Damages	Payment Terms
Delay in completing Provision and Installation Phase	A sum of £200 per day will be payable by the Contractor for each day by which the actual completion of works to deliver all new shelters is delayed beyond the timescales indicated in the accepted programme of works. Actual completion is considered achieved once the final acceptance tests has been signed off by the Project Officer.	The Council shall raise an invoice following receipt of the monthly KPI report which shall be payable by the Concessionaire within 30 Calendar Days.

Deep Cleaning	Failure to demonstrate deep cleaning has been undertaken. £10 per shelter.	The Council shall raise an invoice following receipt of the monthly KPI report which shall be payable by the Concessionaire within 30 Calendar Days.
Offensive Graffiti Cleaning	Failure to demonstrate Offensive Graffiti Cleaning has been undertaken. £20 per shelter.	The Council shall raise an invoice following receipt of the monthly KPI report which shall be payable by the Concessionaire within 30 Calendar Days.
Shelter roof cleaning	Failure to demonstrate a program of shelter roof cleaning has been undertaken. £30 per shelter.	The Council shall raise an invoice following receipt of the monthly KPI report which shall be payable by the Concessionaire within 30 Calendar Days.
Dangerous Structure	Failure to demonstrate reactive attendance to a dangerous structure report £1000 per shelter.	The Council shall raise an invoice following receipt of the monthly KPI report which shall be payable by the Concessionaire within 30 Calendar Days.

Key Performance Indicator	Target
Number of faults reported along with details on type of fault, occurrence, and meeting fault response and repair times.	90%

For the purposes of Clause 39.2.1, a KPI will be classed as failed if it falls below the Default Target for each category where applicable. A category without a Default Target will not apply to Clause 39.2.1.

* Subject to Clause 39.2.8, in the event that a KPI failure other than a failure to meet the Default Target relating to KPIs in Schedule 1 and the failure is resolved under Clause 37, the KPI failure will no longer be reportable as an on-going failure).

** An example of the Concessionaire being unable to meet the 95% target for reasons outside its control is if the Concessionaire is unable to access the site within the prescribed time limits due to the shelter being cordoned off by the police or fire services. If an event such as this occurs, the failure to meet the time deadlines will not count towards the Target or Default Target.

** This Default Target will apply to the previous 12 months of installations. Therefore if more than 10% of failures occur in one month but aggregated over the past 12 months this reaches for example only a 5% failure rate then the Target Default percentage will not have been met.

SCHEDULE TWO: INSTRUCTIONS TO TENDERERS

[The Instructions to Tenderers will slot into the final contract at schedule 2]

SCHEDULE THREE:

CHANGE CONTROL PROCEDURE

1. GENERAL PRINCIPLES

- 1.1 Where the parties require a Variation to this Contract ('a Change'), the parties shall comply with the procedure set out in this Schedule 3 ('the Change Control Procedure') by issuing a written request for a change to the Contract in accordance with this Schedule 3 ('Change Control Note').
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Concessionaire shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Concessionaire in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any action or work undertaken by the Concessionaire and/or the Concessionaire's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 3, shall be undertaken entirely at the expense and liability of the Concessionaire.

2. PROCEDURE

- 2.1 Where the Council wish to make a Change, subject to Clauses 2.1A and 2.1B below, it will submit to the Concessionaire a written request for the Concessionaire to produce a Change Control Note within three weeks of the date of the request from the Council, in duplicate and signed by the Concessionaire.
- 2.1A If following a request for a Change from the Council, and if to facilitate the provision of a Change Control Note the Concessionaire requires information from the Council on any of the points listed at paragraphs 2.3(b), (c), (d) and/or (g), the Concessionaire shall within seven (7) Calendar Days of receipt of the Council's request, write to the Contract Manager setting out what further information it requires from the Council pursuant to paragraphs 2.3 (b), (c), (d) and/or (g).
- 2.1B If a clear written request is received from the Concessionaire pursuant to paragraph 2.1A above, the Council shall provide the information requested within seven Calendar Days of receipt of the Concessionaire's written request and the Concessionaire's timescale for providing a completed Change Control Note shall be extended by fourteen Calendar Days from the timescale set out at paragraph 2.1 above.
- 2.2 A recommendation to amend this Contract by the Concessionaire shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Concessionaire at the time of such recommendation.
- 2.3 Each Change Control Note shall contain:

- (a) the title of the change;
- (b) the originator and date of the request or recommendation for the change;
- (c) the reason for the change;
- (d) full details of the change, including any specifications;
- (e) full details of the costs implications of the change, including as appropriate, any impact on the Concessionaire's payment obligations as set out in Schedule 5;
- (f) a timetable for implementation, together with any proposals for acceptance of the change; and
- (g) details of the likely impact, if any, of the change on other aspects of this Contract including:
 - (i) the timetable for the provision of the change; and
 - (ii) other contractual issues;
 - (h) the date of expiry of validity of the change control note, such period to be no less than [28 Calendar Days]; and
 - (i) in relation to any request for Change proposed by the Council, an indication of whether the Change is supported by the Concessionaire and if the Change is not so supported, the Concessionaire's full reasoning on which it bases its views.

2.4 For each Change Control Note submitted by the Concessionaire the Council shall, within the period of the validity as specified in the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, and as appropriate:
 - (i) request further information;
 - (ii) suggest alternatives or changes to the proposed Change;
 - (iii) arrange for an agreement to be drafted and agree timescales in relation to this, to record the Changes the Parties wish to agree, and for such agreement to be sent to the Concessionaire for execution; or
 - (iv) notify the Concessionaire of the rejection of the Change Control Note.

2.5 For the avoidance of doubt, in the event that the Council exercises its rights under paragraph 2.4(b)(ii), the Concessionaire shall within 28 Calendar Days of receiving notification from the Council to this effect, submit a revised Change Control Note to the Council. Following receipt of a revised Change Control Note from the Concessionaire, the Council shall consider the request and determine the change request in accordance with its options under paragraph 2.4 above.

SCHEDULE FOUR:

1.1 PUBLIC INTEREST DISCLOSURE (WHISLTEBLOWING)

The Concessionaire shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Concessionaire) and shall establish and where necessary update from time to time a procedure for the Concessionaire's personnel encouraging those personnel to report to the Concessionaire any incidents of malpractice within the Concessionaire or Council. In this context "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

1.2 EQUALITIES

- (a) The Concessionaire shall adopt and operate a policy to comply with its statutory obligations including but not limited to those under the Human Rights Act 1998, the Data Protection Act 1998 and the Equality Act 2010 and shall observe as far as possible all relevant codes of practice, including the EHRC Employment Statutory Code of Practice, which came into force on 6 April 2011, and accordingly will not treat one group of people less favourably than another because of their colour race religion nationality gender age sexual orientation or any disability in relation to its decisions to recruit, train or promote employees or its performance of the Services, particularly in relation to its dealings with members of the public and the Concessionaire shall ensure that its employees also comply with its statutory obligations, in the same terms as above, particularly in relation to their dealings with members of the public when engaged in the performance of the Services.
- (b) The Concessionaire shall observe as far as possible and at least in accordance with the Council's published criteria the Equality and Human Rights Commission's Code of Practice on Racial Equality in Employment brought into effect by the Race Relations Code of Practice relating to Employment (Appointed Day) Order 2006 which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities.
- (c) In the event of any finding of unlawful discrimination being made against the Concessionaire during the term of this Contract by any Court or employment tribunal or of an adverse finding in any form of investigation by a body charged with carrying out such investigation over the same period the Concessionaire

shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

- (d) The Concessionaire shall on request provide the Council with details of any steps taken under paragraph 1.2(c) above.
- (e) The Concessionaire shall set out its policy on discrimination:
 - (i) in instructions for those concerned with the recruitment training and promotion of its employees and sub-contractors;
 - (ii) in documents available to employees, recognised trade unions or other representative groups of employees; and
 - (iii) in recruitment advertisements or other literature.
- (f) The Concessionaire shall on request provide the Council with examples of the instructions and document recruitment advertisements or other literature.
- (g) The Concessionaire shall provide such information as the Council may reasonably request for the purpose of assessing the Concessionaire's compliance with paragraphs 1.2(a) to 1.2(f) above as far as relevant. The Concessionaire shall maintain racial incidents records and provide this information on a regular basis
- (h) The Concessionaire shall by reference to its obligations under this paragraph 1.2 at all times maintain a system of audit monitoring and actions in respect of its employment practices services and customer care generally with a view to eliminating any disadvantage or discrimination on the basis of and to promoting equality of opportunity on the grounds of race (including ethnic origin nationality national origin or colour), gender, marital status, gender reassignment or disability, the promotion of good race relations between people of different racial groups, the need to take steps to take account of disabled persons disabilities, the promotion of positive attitudes towards disabled persons and the need to encourage participation by disabled persons in public life. Further, the Concessionaire shall co-operate with the Council in providing statistics and other information as the Council may from time to time reasonably require in connection with its duties as a public authority in connection with persons protected under the Equality Act 2010.

1.3 ENVIRONMENT

- (a) The Concessionaire shall comply with its statutory obligations under Environmental Legislation and for the purposes of this Contract "Environmental Legislation" means the Environmental Protection Act 1990, the Water Resources Act 1991, the Clean Air Act 1993, the Environment Act 1995 and any regulations,

directions or guidance having statutory effect pursuant to the same, or any EU directive having effect which makes provision for the control of pollution, the control of hazardous substances, the control of land use, the protection of wildlife, planting and the countryside.

- (b) In the event of any finding by any Court or tribunal or other judicial or quasi-judicial body being made against the Concessionaire in respect of any breach of environmental legislation the Concessionaire shall take appropriate steps to abate such a breach and prevent its repetition.
- (c) The Concessionaire shall upon request provide the Council with details of any steps taken under paragraph 1.3(b) above.
- (d) The Concessionaire shall:
 - (i) institute and maintain an environmental management system in accordance with the procedures targets and other specifications mentioned in, and shall provide and perform obligations under this Contract in all respects in accordance with, the Environmental Statement (where the words "Environmental Statement" mean the environmental method statement and any other information or representations supplied with incorporated into or presented as part of the Concessionaire's Tender Response Document to the Council's invitation to the Concessionaire to bid for this Contract.
 - (ii) operate such environmental management system as referred herein during the operational phase that complies with the Council's environmental objectives and targets and shall furnish such detailed information as the Council may reasonably require in regard thereto and without prejudice to the generality of the foregoing shall accurately complete and submit to the Council, at such times as the Council shall reasonably direct (but so that the Concessionaire shall not be required to submit more than one return in any one period of 12 months), performance returns in the form to be directed by the Council (acting reasonably). The Concessionaire shall also permit the Council (acting reasonably) to inspect the system referred to in this paragraph for compliance with the requirements of this paragraph.

1.4 BEST VALUE

In undertaking the Services, the Concessionaire shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual

obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide best value outcomes to the Council as are set out in the Specification AND FURTHER the Concessionaire shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance of the Services required under this agreement and this paragraph in particular.

SCHEDULE FIVE:
PAYMENT SCHEDULE & CHARGES

PAYMENTS

Fixed Fee payment

The Concessionaire will pay the Council the following Fixed Fee Payment for the duration of the Contract.

- An annual Fixed Fee Payment of £[] to be paid in equal quarterly payments for each digital screen installed and commissioned.
- An annual Fixed Fee Payment of £[] to be paid in equal quarterly payments for each non-digital panel installed and commissioned.
- The Fixed Fee Payment will be made in accordance with the conditions outlined in Clause 8.

The Fixed Fee Payment shall be adjusted annually in accordance with the change in the Consumer Price Index.

The Concessionaire will provide the Council with a quarterly statement [x] Calendar Days after the quarter end detailing the Advertising Panels type (digital or non-digital), address, date of installation/commission if not fully operable for the period and the quarterly Fixed Fee Payment due.

The Council will raise and send through to the Concessionaire an invoice reflecting the statement which will be paid by the Concessionaire within 30 days of the date of the invoice.

The Council will provide a VAT only invoice to the Concessionaire on the 4 September each year for the Fixed Fee Payment for the prior year. Where applicable the Concessionaire will prepare this VAT only invoice under a self-billing agreement.

Revenue Share

In addition to the Fixed Fee Payment, the Concessionaire will pay the Council an annual Revenue Share, calculated as XX% of the Net Revenue generated by the Concessionaire across the Contract in each financial year, payable in equal quarterly payments.

The Concessionaire's commercial finance teams will issue a revenue statement to the Council detailing the Net Revenue generated and the Revenue Share owed within [x] Calendar Days of

the year end. The Council will then raise and send through to the Concessionaire an invoice reflecting the statement which will be paid by the Concessionaire within 30 Calendar Days.

Within [30] Calendar Days of the year end, the Concessionaire will send through an independently audited revenue statement detailing any over / under payment due to the Council. For any underpayments, the Council will invoice the Concessionaire as outlined above. Any over payments will be deducted from the next Fixed Fee payment.

The Council will provide a VAT only invoice to the Concessionaire on the 4 September each year for the Revenue Share Payment for the prior year. Where applicable the Concessionaire will prepare this VAT only invoice under a self-billing agreement.

Low Performance Damages

Schedule 1 sets out the possibility of low performance damages. In the event that low performance damages become payable in accordance with Schedule 1, the Council shall raise an invoice following receipt of the monthly KPI report which shall be payable by the Concessionaire within 30 Calendar Days.

PROVISION OF ADVERTISING SPACE

The Concessionaire will provide the Council with the following advertising space:

Access, free of charge, to 5% of plays per fortnight across the proposed 80 digital screens deployed across Plymouth.

These will be subject to availability, fair usage and standard trading terms and conditions which can be found at [enter website or location reference] For the avoidance of doubt, the Council shall not be obliged to pay for any advertising to be provided by the Concessionaire free of charge pursuant to this Schedule 5 and any provisions that provide otherwise in the Concessionaire's standard trading terms and conditions shall not apply. To the extent that the terms contained within the Concessionaire's standard trading terms and conditions directly conflict with the terms of this Contract, the Parties agree that the terms of this Contract shall prevail.

SCHEDULE 6:**TUPE****1. DEFINITIONS AND INTERPRETATION**

The definitions and rules of interpretation in this paragraph apply in this Schedule:

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the Third Party Employer to the Concessionaire or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Concessionaire or Sub-Contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE

Employment Liabilities: All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Final Staff List: the list of all the Concessionaire's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Provisional Staff List: the list prepared and updated by the Concessionaire of all the Concessionaire's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Concessionaire by virtue of the application of TUPE.

Relevant Transfer: a relevant transfer of the Services for the purposes of TUPE.

Replacement Services: any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Concessionaire.

Replacement Concessionaire: any third party service provider of Replacement Services appointed by the Council from time to time.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Concessionaire or Sub-Contractor to the Council or any Replacement Concessionaire.

Staffing Information: in relation to all persons detailed on the Concessionaire's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Sub-Contractor: the contractors or service providers engaged by the Concessionaire to provide goods services or works to, for or on behalf of the Concessionaire for the purposes of providing the Services to the Council.

Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Concessionaire or Sub-Contractor by virtue of the application of TUPE.

Third Party Employer: a service provider engaged by the Council to provide [some of the] Services to the Council before the Effective Date and whose employees will transfer to the Concessionaire on the Effective Date.

Transfer Date: the Transferred Staff's first day of employment with the Concessionaire (or its Sub-Contractor).

Transferred Staff: those employees whose employment compulsorily transfers to the Concessionaire or a Sub-Contractor by operation of TUPE, COSOP or for any other reason, as a result of the award of this Contract.

Transferring Employees: those employees whose contracts of employment transfer with effect from the Service Transfer date to the Council or a Replacement Concessionaire by virtue of the application of TUPE or otherwise on the expiry or termination of this Contract .

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended.

2. TRANSFER OF EMPLOYEES TO THE CONCESSIONAIRE ON THE EFFECTIVE DATE

2.1 The Council and the Concessionaire agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Third Party Employees shall transfer to the Concessionaire or Sub-Contractor. The Concessionaire shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Effective Date.

2.2 In the event of a Relevant Transfer, the Concessionaire shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:

- (a) any proposed changes to terms and conditions of employment the Concessionaire or Sub-Contractor may consider making on or after the Effective Date;
- (b) any of the employees informing the Council and any Third Party Employer they object to being employed by the Concessionaire or Sub-Contractor; and
- (c) any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Concessionaire or Sub-Contractor may consider taking on or after the Effective Date.

2.3 The Concessionaire shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Concessionaire or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

2.4 The Concessionaire shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Concessionaire or any Sub-Contractor envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Concessionaire will give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. EMPLOYMENT EXIT PROVISIONS

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of

termination of this Contract , or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Concessionaire will inherit liabilities in respect of the Transferring Employees with effect from the relevant Service Transfer Date.

- 3.2 The Concessionaire shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Concessionaire or any Sub-Contractor in the provision of the Services, the Concessionaire's Provisional Staff List and the Staffing Information together with any additional information required by the Council , including information as to the application of TUPE to the employees. The Concessionaire shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 28 Calendar Days prior to the Service Transfer Date, the Concessionaire shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Concessionaire, the Concessionaire's Final Staff List, which shall be complete and accurate in all material respects. The Concessionaire's Final Staff List shall identify which of the Concessionaire's and Sub-Contractor's personnel named are Transferring Employees.
- 3.4 The Council shall be permitted to use and disclose the Concessionaire's Provisional Staff List, the Concessionaire's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Concessionaire for any services that are substantially the same type of services as the Services (or any part of the Services).
- 3.5 The Concessionaire warrants to the Council and the Replacement Concessionaire that the Concessionaire's Provisional Staff List, the Concessionaire's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Concessionaire's Final Staff List.
- 3.6 The Council regards compliance with this paragraph 3 as fundamental to the Contract. In particular, failure to comply with paragraph 3.2 and/or 3.3 in respect of the provision of accurate information and employee liability information about the Transferring Employees shall entitle the Council to suspend payments due under this contract until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph shall not exceed an amount equivalent to payments that would be payable in the three month period following the Concessionaire's failure to comply with paragraph 3.2 and/or 3.3 as the case may be.

- 3.7 The Concessionaire shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Concessionaire shall and shall procure that any Sub-contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.9 The Concessionaire shall indemnify and keep indemnified in full the Council and each and every Replacement Concessionaire against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Concessionaire or any Sub-Contractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative,
- arising from or connected with any failure by the Concessionaire and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.10 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.11 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11, to the extent necessary to ensure that any Replacement Concessionaire shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Concessionaire by the Concessionaire in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.12 Despite paragraph 3.11, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

SCHEDULE 7:
TENDER RESPONSE DOCUMENT

SCHEDULE 8:
NOT USED

SCHEDULE 9:
IMPLEMENTATION PLAN

[The successful bidder's detailed implementation plan will be inserted here]

SCHEDULE 10:
NOT USED

SCHEDULE 11:
EXIT PLAN

[The successful bidder's exit plan will be inserted here.]

SCHEDULE 12

PARENT COMPANY GUARANTEE

SCHEDULE 13 – BCP – BUSINESS CONTINUITY PLAN

[To be inserted post award. The successful bidder's business continuity plan will be inserted here]

SCHEDULE 14 – FINANCIAL INFORMATION PRO-FORMA

Financial Information Pro-Forma												
Year:												
Profit & Loss Account	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Total No. of Shelters Installed												
Total No. of Advertising Faces (paper)												
Total No. of Advertising Faces (digital)												
Total No. of Freestanding Info Panels												
Total No. of Advertising Faces (paper)												
Total No. of Advertising Faces (digital)												
Expenditure:												
Wages > direct costs inc. cleaning & maintenance												
Rent												
Office/Admin												
Rates												
Maintenance												
Utilities												
Insurance												
Fees to PCC - Fixed												
Fees to PCC - Variable												
Hardware Installation & Utilities												
Capital Invested (per shelter)												
Capital Invested (per info Panel)												
Capital Invested (Total)												
TOTAL EXPENDITURE												
Income												
Advertising revenue (digital shelters)												
Advertising revenue (paper shelters)												
Advertising revenue (digital info panels)												
TOTAL INCOME (Forecasted for later years)												